

Meeting with WHO DG Dr Tedros, 20 November 2017:

Civil society concerns: FENSA and its implementation

The G2H2 “FENSA Watch” working group has taken up civil society engagement in the WHO reform process over the last six years. Civil society advocates have been in particular worried about the power of the private commercial sector to influence policy-making and the normative work of WHO, and about how WHO deals with conflicts of interest.

The FENSA Watch working group focuses its attention on (a) admission of NSA into official relations (b) implementation tools; and (c) FENSA implementation in key WHO processes and hosted partnerships. FENSA Watch (a) provides a space to continue the conversation and deepen the analysis of key issues of FENSA implementation; (b) gathers and shares intelligence about FENSA implementation and related instruments, processes and actors; (c) supports and facilitates specific advocacy interventions at the WHO secretariat, the WHO Governing Bodies, the WHO member states, and, if adequate, through public statements.

FENSA Watch welcomes the continuous process of WHO to take into consideration concerns from civil society regarding the protection of WHO’s independence, integrity and trustworthiness vis a vis its constitutional mandate to be the leading global agency for health policy.

FENSA: General concerns

Regarding the WHO Framework on engagement with non-State actors (FENSA) and its implementation, FENSA Watch highlights the following civil society concerns. Similar statements have been made throughout the process of negotiating and drafting FENSA (see enclosure).

- **GPW13 and partnerships including the private sector:** The draft WHO 13th General Programme of Work states that *“WHO cannot accomplish the ambitious targets of GPW 13 without partners from all sectors including civil society and the private sector. It can also serve as a catalyst for partnerships between non-State actors and government. Therefore WHO will need to ensure that the Framework of Engagement with Non-State Actors is implemented in such a way as to enable partnerships, while protecting the integrity of the Organization. Partnerships will also require humility on the part of WHO”*.

We see FENSA not as an *enabling* instrument for partnerships between WHO and non-State actors, but as an instrument to *manage* engagements between WHO and non-State actors (NSA). Treating FENSA as an instrument for enabling partnerships with the private sector risks watering down safeguards such as FENSA Para 45 and could prevent such safeguards from fulfilling their purpose.

The WHO Secretariat is under an obligation to implement FENSA in a manner that safeguards WHO’s ability to stay true to its constitutional mandate, and protects its most valuable asset: its independence, integrity and trustworthiness. Unless key safeguards are implemented effectively, any closer alignment with SDG 17 (global partnership) risks undermining WHO’s capacity to fulfil its constitutional mandate.

- **The need for a comprehensive WHO Conflict of Interest policy:** The term *conflict of interest* is mentioned multiple times in the FENSA. Furthermore, WHA Resolution 69.10 also requested the DG to include in the guide to staff *“measures that pertain to the application of the relevant provisions contained in the existing WHO policies on conflict of interest, with a view to facilitating the implementation of the Framework of Engagement with Non-State Actors”*. However, the reality is that there is still no consistent conflict of interest policy in WHO regulating institutional conflicts of interest.

We expect WHO to frame a comprehensive and consistent conflict of interest policy, based on up to date definitions that will address *institutional* conflicts of interest and prevent the legitimisation of new and existing forms of commercial influence. The definitions used so far by the WHO Secretariat confuse conflicts of interest *within* an institution or person with conflicts *between* actors who have diverging or fiduciary duties, which in the case of corporations is to maximise profits vis a vis public actors whose mandate is to protect public health. Such definitions may divert attention away from conflicts that exist within public actors (in the particular case: within the WHO) between their mandates and prime functions and their secondary interest to be adequately funded.

As an example: Currently, the official in charge of FENSA implementation also has the responsibility of partnerships and resource mobilization. Independent of the skills and integrity of this official, the institutional arrangement of combining responsibilities for both tasks in one person risks compromising WHO's stand on FENSA. The responsibility of FENSA implementation should be rather moved to the Office of Legal Counsel.

Implementation issues

- **Handbook and guide:** Para 43 of FENSA mentions the handbook for NSA and a guide for staff for giving out the details of FENSA. We appreciate that there was a consultation with NSAs to develop such a handbook where it was announced that civil society feedback on these instruments is welcome. We expect both the handbook and the guide for staff to be published in time before the next EB so that MS and NSA are given sufficient time and opportunity to make comments in view of the next report on FENSA implementation.
- **Detailed explanations on FENSA provisions, e.g. on Para 45:** FENSA empowers the Secretariat to provide detailed explanation to FENSA provisions during the implementation. We expect such explanations to be included in the guide to staff. For instance, under Para 45 "*particular caution*" should be exercised "*when engaging with private sector entities and other non-State actors whose policies or activities are negatively affecting human health and are not in line with WHO's policies, norms, and standards, in particular, those related to non-communicable diseases and their determinants*". We see it as the duty of the Secretariat to explain the elements of particular caution to staff.
- **NSA register and classification:** The register of non-State actors, providing all the necessary information as requested on an actor's nature and activities, was expected to be published before the last WHA. A key element of the register will be the classification of NSA according to the four specific policies (NGOs, private sector entities, philanthropic foundations and academic institutions). After the already considerable delay, we expect the register to be fully operational before the next EB. And we expect the implementation of related mechanisms as outlined in the document EB 140/42 (Para 5), mainly regarding discontinuation of Official Relations, to be undertaken without delay.
- **Staff secondment:** WHA Resolution 69/10 requests the DG to exclude secondment from sensitive posts. We expect a non-exhaustive list of such sensitive posts to be published in a follow-up report to the report on "Criteria and principles for secondments" submitted to the last WHO (A70/53).
- **Information on entities applying for Official Relations and entities applying for the renewal of Official Relations.** Such information needs to be published at least six weeks in advance (Para 59, FENSA) so that Member States and Civil Society have time to provide comments. In view of EB 140, the Secretariat did not make this information available to MS sufficiently in advance; document EB140/42 was published only on 13 January 2017. As a result, informed decision-making on the controversial case of admitting the Bill and Melinda Gates Foundation into Official Relations – the admission was contested by many civil society organizations – was not possible. FENSA Watch intends to submit a detailed memo in this regard to the WHO DG.

Defend the World Health Organization from corporate takeover

May 23, 2015

At the forthcoming World Health Assembly (WHA), two key deliberations have the potential to fundamentally influence the future of the World Health Organization (WHO). The Assembly will consider the latest draft of the 'framework for engagement with non-state actors'. It will also finalize proposals for the financing of WHO for the next two years. The latter includes a critical proposal by the Director General for a 5% increase in assessed (mandatory) contributions.

We, the undersigned civil society organizations and social movements urge the Member States of the WHO to intervene in these deliberations to strengthen WHO and protect its integrity and independence.

We are concerned that rich member-state donors have been deliberately undermining the WHO and weakening its capacity to promote global health by underfunding, tight earmarking of donor funding and opening spaces for corporate influence. Partly as a response to this situation a number of Member States are driving an initiative directed at protecting WHO from improper influence through regulating WHO's engagement with the private sector entities, philanthropic foundations, academic institutions and non-governmental organizations. However, this initiative may be blocked at the WHA.

The funding crisis

Donor funds account for 80% of WHO's budget and 93% of donor funds is tightly earmarked to programs that the donors support. This prevents WHO from implementing programs that rich countries do not support, even when they are decided by the World Health Assembly. Threats of further funding cuts are held out if attempts are made to implement such programs.

The compromised ability of the WHO to intervene effectively during the 2014 Ebola crisis is a tragic illustration of the impact of the budgetary crisis on WHO's capacity to fulfill its mandate. Over the last four years WHO has been through a far reaching reform program driven in part by arguments that the freeze on assessed (mandatory) contributions should remain in place until the Organization addresses its inefficiencies. Such arguments fly in the face of clear evidence that these inefficiencies are largely a function of WHO's financial crisis brought on by the freeze on assessed contributions.

The Director-General has now proposed a 5% increase in assessed contributions..While 5% is a relatively small increment, much less than the big donors contribute as voluntary contributions, it is of huge symbolic value and a crucial step towards breaking the logjam of freeze on

assessed contributions. Predictably, certain large donor countries are gearing up to oppose the increase and refuse to adopt the budget.

WHO's relationship with global corporations lies at the heart of the crisis

Threats to health and barriers to affordable health care arise due to the commercial interests of big corporations. The increasing incidence of obesity, diabetes, heart disease and stroke due to intensively marketed cheap ultra-processed foods is a stark example. Pharmaceutical corporations clearly value shareholders' demand for profits over affordable access to essential medicines and vaccines. For WHO to fulfill its mandate it must be able to name such threats and barriers and develop and implement policies and programs to manage them.

However, rich member states, the USA and UK in particular, have repeatedly opposed WHO taking any action which might run counter to the interests of transnational corporations. Furthermore certain rich member states are seeking to force WHO to open up its policy making and decision making spaces to the transnational corporations.

Proposals for 'multi-stakeholder partnerships' would designate junk food manufacturers as partners in the task of addressing obesity, heart disease and stroke. Over the last two years WHO and its Member States have been locked in a contentious debate around the rules governing corporate influence over decision making in WHO. Rich countries are seeking to use these rules to clear the way for transnational corporations to buy influence and insert corporate staff into strategic positions within the WHO Secretariat.

The present draft of the 'framework for engagement with non-state actors' is contested and problematic. It is more important to get a good outcome than rush to adopt a document that might further legitimize corporate influence of decision making in the WHO..

A recently leaked document from the International Food and Beverage Alliance (see accompanying document) illustrates the lengths that the corporations will go to ensure that the 'framework for engagement' increases their access to policy-making in the agency and the degree to which member states can be 'persuaded' (if such persuasion is needed) to support them.

We call upon the delegates to the 68th World Health Assembly to defend the integrity, independence and democratic accountability of the World Health Organization by

- **supporting the increase in assessed contributions;**
- **taking such time as is necessary to achieve a robust framework for engagement with non-state actors, to protect the Organization from improper influence.**

Aliança de Combate do Tabagismo/Brasil
 (ACT/Br)
 Alianza LAC - Global por el Acceso a
 Medicamentos
 All India Drug Action Network
 Alliance de la Societé Civile Malienne
 contre la Maladie à Virus d'Ebola
 Associação Brasileira Interdisciplinar de
 Aids (ABIA)
 Baby Milk Action
 Berne Declaration
 Breastfeeding Association of Trinidad and
 Tobago
 BUKO Pharma-Kampagne
 Colombian Episcopal Conference
 Colombian Medical Federation
 Corporate Accountability International
 Centro Studi e Ricerche in Salute
 Internazionale e Interculturale (CSI)
 University of Bologna
 Diverse Women for Diversity
 Drug Action Forum - Karnataka
 European Mutual-help Network for
 Alcohol related problems
 First Steps Nutrition Trust
 Fundacion Ifarma
 Health Action International (HAI)
 Health Innovation in Practice (HIP,
 Geneva)
 Health Poverty Action
 HealthWrights (Workgroup for People's
 Health and Rights)
 Hesperian Health Guides
 INFACT Canada / IBFAN North America
 Initiative for Health and Equity in Society
 International Association of Consumer
 Food Organizations – Europe (IACFO-
 Europe)
 International Association of Health Policy
 in Europe (IAHPE)

International Baby Food Action Network
 (IBFAN)
 International-Lawyers.Org
 Knowledge Ecology International (KEI)
 Medact
 Medicines Information Center from the National
 University of Colombia (CIMUN)
 Medico International
 Medicus Mundi International Network
 MEZIS e.V. - Mein Essen zahl ich selbst
 Initiative unbestechlicher Ärztinnen und
 Ärzte
 National Alliance of People's Movements
 (NAPM)
 NGO Forum for Health
 NGO Misión Salud (Colombia)
 O Fórum da Amazônia Oriental - FAOR
 Osservatorio Italiano sulla Salute Globale
 (OISG)
 People's Health Movement (PHM)
 Policies for Equitable Access to Health (PEAH)
 Public Services International
 REDES (Friends of the Earth Uruguay)
 Salud y Farmacos -EE UU
 SOCHARA (Society for Community Health
 Awareness. Research and Action)
 Society for International Development (SID)
 Third World Health Aid (TWHa)
 Third World Network (TWN)
 Treatment Action Campaign
 Universities Allied for Essential Medicines
 VBBBvzw / IBFAN Belgium
 Wemos
 World Action on Salt and Health
 World Social Forum on Health and Social
 Security
 Young Professionals Chronic Disease Network
 ZimbabweLGBTQ

Civil Society Statement
On the World Health Organization's Proposed
Framework of Engagement with Non-State Actors (FENSA)
69th World Health Assembly, May 2016

We, the undersigned Civil Society Organisations (CSOs), believe that the independence, integrity and credibility of the World Health Organization (WHO) are non-negotiable for the fulfilment of its constitutional functions. Actions of a few dominant donor countries, venture philanthropy foundations with large conflicted investments, private sector and private sector influenced NGOs and entities erode WHO's capacity to do its job.

The existing safeguards – to protect WHO from undue influence and to avoid or properly resolve conflicts of interest – are not sufficient and have been inconsistently enforced. That is why we, public interest advocates from civil society, stand ready to support the development of a robust effective framework to regulate relationships with non-state actors (NSAs). The on-going negotiations on the *Framework of Engagements with Non-State Actors* (FENSA) could have been an opportunity to adopt such a framework.

We fear that the upcoming FENSA negotiations during the World Health Assembly may be used by certain Member States (MS) to further dilute the existing policies regulating the engagements with the private sector and weaken stronger provisions that have been negotiated so far.

Compared to existing measures, the current draft FENSA does bring certain improvements. For example, proactive disclosure of financial contributions and the prohibition of secondments from the private sector. **However, major concerns are left unaddressed.**

FENSA, in its overarching section puts private sector entities on an equal footing with other NSAs, failing to recognize their fundamentally different nature and roles. It uses the principle of '*inclusiveness*' for all five '*types of interactions*' (resources, participation, evidence, advocacy and technical collaboration) to all NSAs. When applied to major transnational corporations, their business associations and philanthropic foundations, this categorization of interactions, combined with an alleged right to inclusiveness, will once and for all, legitimize the framing of public health problems and solutions in favor of the interests and agendas of those actors.

FENSA, for example, proposes technical collaboration with the private sector, including capacity building, with no adequate safeguards. It seems that there is opposition from developed countries to a clause that would exclude private sector resources for activities such as norms and policies development and standard setting. FENSA removes the existing minimum restrictions on accepting financial resources from the private sector to fund salaries of WHO staff. If the WHO relies on funds from the private sector for *any* operational expenses, it risks showing favouritism toward those sectors in its standard-setting, expert-advisory, and other public health functions.

FENSA's proposal to expressly allow business interest groups to obtain "Official Relations" status under the label of Non State Actors will, once and for all, legitimize lobbying by business associations and philanthropic foundations at WHO governing bodies. This will

normalise the inclusion of business agendas into public health decision-making. This seems in direct contradiction with FENSA's stated principles that any engagement must "*protect WHO from any undue influence, in particular on processes in setting and applying policies, norms and standards*"; and "*not compromise WHO's integrity, independence, credibility and reputation.*"

Member States have so far failed to rectify FENSA's **flawed definitions and conceptualization of conflicts of interest**. Thus FENSA ignores the prime purpose of institutional conflict of interest policies that is to ensure that "*an institution's own financial interest*" and those of its senior officials do not "*pose risks to the integrity of the institution's primary interests and missions.*" FENSA blurs the distinction between a conflict of interest which is *within* an actor or institution, with "*conflicting or diverging interests*" *between* actors. The issue of conflicting interests is, of course, important. But it has to be dealt with through robust risk assessment measures and political debate. **Had the correct conceptualization of conflicts of interest been applied throughout the entire FENSA process the document would have taken a different form.**

We fear that FENSA's poor conceptualization of conflicts of interest will be transferred to and felt at national level and that it will be used to redefine national rules, undermining any chance of effective safeguards.

Some Member States that resist the development of strict conflict of interest rules for WHO have developed relatively strict conflict of interest policies, e.g. to prevent industry from unduly influencing regulators and elected officials in their own jurisdictions. For example, OECD Member States who have committed to follow the *OECD Guidelines for Managing Conflict of Interest in the Public Service* at the domestic level, are now obstructing the development of a WHO comprehensive conflict of interest policy. Similarly, the UK *National Institute for Health and Care Excellence* (NICE) prohibits involvement of any experts from the private sector, yet the UK delegation resists inclusion of such a provision in FENSA. Canada's Federal Government prohibits financial contributions by corporations to political parties and limits the amount of contributions by individuals. **Member States must shed such double standards.**

Finally, we note that, referring to the *2030 Agenda for Sustainable Development*, at the last minute some Member States inserted into the draft Resolution and the FENSA document, references to "*multi-stakeholder partnerships*". Yet the entire FENSA fails to address how WHO should appropriately approach public-private hybrid entities, that undoubtedly create avenues for undue influence on policy-making. The OECD Guidelines have highlighted public-private partnerships, sponsorships and lobbying as particular "*at risk areas*" for conflicts of interest.

We call on Member States to:

- **Not approve a faulty FENSA at WHA:** this process will define the role of our highest global authority in public health for years to come and needs to be done correctly.
- **Evaluate the process, re-open transparent debate, clarify concepts, obtain missing evidence,** including from WHO civil servants and public interest advocates, and do an

in-depth review of the adequacy of existing relevant WHO policies. WHO must emerge from this process as an agency able to fulfill its mandate.

- **Stop developing FENSA under contradictory objectives:** both as an instrument to attract voluntary financial resources for WHO and, at the same time, as a safeguard to protect its mandate. It can't be done. If WHO is to fulfill its constitutional mandate, Member States must find other financial solutions: lift the freeze on assessed contributions and increase their levels of funding. This would end WHO's dependency on voluntary, often earmarked and volatile contributions. It would resolve the most important – financial – institutional conflict of interest of WHO and at the same time prevent wasting resources on implementing an ill-conceived FENSA.
- **Strengthen rather than weaken the safeguards against undue influence from the private sector:** at the very least, FENSA should not dilute the existing WHO safeguards contained in policies regulating WHO's relations with NGOs and the private sector. FENSA should acknowledge the especially high risks posed by inappropriate interaction with food, beverage, baby food, alcohol, pharmaceutical, medical technology, and tobacco industries in all WHO work.
- **Strengthen these safeguards by developing a comprehensive and effective conflict of interest policy:** if conflicts of interest had been effectively addressed, some of the recent public health emergencies would have been dealt with more efficiently, moreover also saving public resources.
- **Fully protect WHO from the undue influence of venture philanthropy and corporate funding:** WHO should be fully funded by Member States. In addition, FENSA should set out clear rules regarding acceptance of cash or in-kind contributions from these NSAs, recognizing that such forms of funding to WHO risk unduly affecting WHO's integrity, independence and effectiveness in fulfilling its mandate.
- **Protect the integrity of Official Relations:** ensure that the Official Relations policy is adequately discussed after this WHA so that it becomes a safeguard against undue influence, not a wide open lobby channel to influence the work of WHO governing bodies.

This statement is endorsed by the following:

- 1 Active-Sobriety, Friendship and Peace (Norway)
- 2 Aktionsgruppe Babynahrung AGB (Germany)
- 3 AIMI (Indonesia)
- 4 All India Drug Action Network
- 5 Associação IBFAN Portugal
- 6 Association of Breastfeeding Mothers (UK)
- 7 Association for Improvements in the Maternity Services (AIMS) (UK)
- 8 Baby Milk Action (UK)
- 9 Birthlight
- 10 BUKO Pharma-Kampagne
- 11 The Berne Declaration (Switzerland)
- 12 CEFEMINA - Feminist Center for Information and Action (Costa Rica)

- 13 Centre for Health Science and Law (Canada)
- 14 Corporate Accountability International (US)
- 15 Blue Cross Norway
- 16 Diverse Women for Diversity (India)
- 17 Drug Action Forum (India)
- 18 El Poder del Consumidor (Mexico)
- 19 European Alcohol Policy Alliance
- 20 FIAN
- 21 First Steps Nutrition Trust (UK)
- 22 Fondazione Lelio e Lisli Basso ISSOCO, Italy
- 23 Geneva Infant Feeding Association
- 24 Global Alcohol Policy Alliance (GAPA)
- 25 Health Innovation in Practice (HIP), Geneva
- 26 The A Team (UK/USA)
- 27 IBFAN (Global)
- 28 IFARMA Foundation (Colombia)
- 29 INFACT Canada
- 30 Initiativ Liewensufank (Luxembourg)
- 31 IOGT International
- 32 Institute for Alcohol Studies (UK)
- 33 International Code Documentation Centre (ICDC)
- 34 Health Action International (Global)
- 35 Initiative for Health & Equity in Society (India)
- 36 Lactation Consultants GB
- 37 La Leche League GB
- 38 LOCOST (India)
- 39 Medico International (Germany)
- 40 Medicus Mundi International - Network Health for All
- 41 Midwives Information & Resource Service (MIDIRS) (UK)
- 42 Mission Salud
- 43 NGO Forum for Health (NGO F4H)
- 44 Osservatorio Italiano sulla Salute Globale (OISG), Italy
- 45 Peoples Health Movement
- 46 Public Services International
- 47 Research Foundation for Science Technology & Ecology (India)
- 48 Responsible Approaches to Infant Feeding (NZ)
- 49 School of Public Health, University of the Western Cape (Australia)
- 50 Society for International Development (SID)
- 51 SOYNICA (Nicaragua)
- 52 Third World Network
- 53 Transnational Institute (Global)
- 54 Treatment Action Campaign (South Africa)
- 55 Terra Nuova
- 56 UK Health Forum
- 57 Wemos (The Netherlands)
- 58 World Obesity Federation (Global)
- 59 World Public Health Nutrition WPHNA (Global)
- 60 Young Professionals Chronic Disease Network (Global)