



IBFAN COMMENTS October 2017
Concept Note towards WHO's 13th General Programme of Work

General Comments:

As one of WHO's longest-standing public interest partners, IBFAN welcomes the opportunity to submit the following comments on *The Draft Concept Note towards WHO's 13th General Programme of Work* (dtGPW). We appreciate the enormity of the task facing WHO and Member States – especially with limited resources. We offer these suggestions in the hopes that the consultation will lead to some key changes in approach, so that WHO can stay true to its constitutional mandate and protect its most valuable asset: its independence, integrity and trustworthiness.

IBFAN's central concern is that WHO makes a clear distinction between the needs and rights of human beings, whose health is WHO's prime responsibility, and the wishes of rich funders and corporations - who have fiduciary duties to maximise profits. There is a fundamental difference in public-interest actors (who are guided by a public-health mission) and private commercial entities who come in many different forms but are guided by a market profit-making logic. These entities form the greatest risk to WHO and it is politically indispensable to ignore this in today's world, where commercial influence is so often hidden. Many of our suggestions relate to this issue.

Alignment with the SDGs (P3 Para 2)

The dtGPW proposes to work for a '*transformed WHO*' '*fit for the 21st century*' essentially by '*aligning*' WHO more closely with the *Sustainable Development Goals* (SDGs).¹ The dtGPW asserts that there is already a '*remarkable alignment of the SDGs with WHO's constitution.*'

IBFAN is concerned about this assertion and fears that unless key safeguards are implemented, closer alignment risks undermining WHO's capacity to fulfil its constitutional mandate and its unique prime functions. Of particular concern is, of course SDG 17: *Strengthen the means of implementation and revitalize the global partnership for sustainable development* – said to be the overarching mode under which all the other goals are said to be reached.

Most worryingly, in its section *Providing the world's Governance Platform for Health* (P8 Para 3), the dtGPW goes further even than SDG17, promoting the idea that private sector entities and philanthropic foundations should actually be involved in governance:

'At the same time, it is recognized that global governance has evolved from intergovernmental governance alone, and WHO is also an emerging platform for multistakeholder (i.e. government, nongovernmental organizations, private sector entities, philanthropic foundations and academic institutions) governance.'

Here the dtGPW is completely failing to acknowledge the different objectives and duties of WHO and its Member States and those of the Private Sector. The only safeguard mentioned is FENSA. Furthermore, the IBB

reference to WHO striving to be a ‘good partner’ with a ‘sense of humility’ in an ‘ecosystem of partners’ dishonours WHO’s unique mandate: ‘to act as the directing and co-ordinating authority on international health work’ⁱⁱ.

Strengthening and expanding partnerships (P11 Para 2)

“WHO exists in an ecosystem of partners who can only achieve the SDG targets if they all work together. These partners include United Nations agencies but also nongovernmental organizations, private sector entities, philanthropic foundations and academic institutions. WHO will use FENSA, which is yet to be fully implemented, as an enabler of responsible and productive partnerships. WHO will strive to work as a good partner, collaborating for synergies, and with a sense of humility.”

IBFAN and all those who have closely followed the development and adoption of FENSA, are aware that FENSA’s ability to protect WHO’s ‘integrity, independence, credibility’ⁱⁱⁱ remains an unresolved issue, with much depending on WHO’s approach on Conflicts of Interest and its willingness to evaluate it.^{iv} It is premature and misleading at this time to present FENSA as an ‘enabler of responsible... partnerships’ which simply needs to be ‘fully implemented.’ The dtGPW frequently uses terms such as ‘partner’, and ‘stakeholder’ with no acknowledgement or explanation of what is meant. Nor is there any acknowledgment of the role transnational corporations have had in changing their meaning and fighting for their inclusion into public decision-making processes, all in the name of ‘inclusiveness’. IBFAN considers it of utmost importance that such terms are evaluated in the light of WHO’s unique experience, history, constitutional mandate and function.

The UN’s official website: ‘A successful sustainable development agenda requires partnerships between governments, the private sector and civil society. These inclusive partnerships built upon principles and values, a shared vision, and shared goals that place people and the planet at the centre, are needed at the global, regional, national and local level.’ Urgent action is needed to mobilize, redirect and unlock the transformative power of trillions of dollars of private resources to deliver on sustainable development objectives. Long-term investments, including foreign direct investment, are needed in critical sectors, especially in developing countries. These include sustainable energy, infrastructure and transport, as well as information and communications technologies. The public sector will need to set a clear direction. Review and monitoring frameworks, regulations and incentive structures that enable such investments must be retooled to attract investments and reinforce sustainable development. National oversight mechanisms such as supreme audit institutions and oversight functions by legislatures should be strengthened.^v

Focus on outcomes and impact. (P3, Para 1)

The dtGPW makes no mention of the need to protect *evaluation of impact* from undue commercial influence and to guard against Conflicts of Interest. In the field of infant and young child feeding there are many examples where the close relationship between UN agencies, Member States, Civil Society and manufacturers of products unduly influences and weakens regulatory and approval processes for the trade, importation and use of products – all to the detriment of child health.

As WHO knows only too well, the funding of research used as a basis for its norms and guidelines and as evidence for the efficacy and use of products, requires much detailed attention. In the field of nutrition, inappropriate Private Sector funding can and does distort the availability, accessibility and consumption of healthy foods by skewing nutrition planning in favour of imports and the consumption of highly processed foods and away from more bio-diverse, sustainable and culturally appropriate foods. Such funding and ‘partnerships’ can also divert funding – in all areas – away from prevention to treatments. An [analysis of current nutrition funding](#) by the World Bank Group, *Results for Development Institute* and *1,000 Days* reveals the imbalance of resource allocation, to the detriment of breastfeeding, stunting and anemia.

Since poor diets are the biggest cause of death and disability globally, and the cost of diet-related disease IBB

is fast consuming health budgets, It is surprising that there is little or no mention of nutrition, or breastfeeding and complementary feeding that is so crucial the survival, growth and development, as well as the prevention of obesity.

With this in mind, special attention must be given to marketing and NCDs. To encourage WHO partnerships with the Private Sector with no adequate conflict of safeguards to protect and prioritize public health, leaves WHO's norm setting open to exploitation.

WHO's Global Coordinating Mechanism (GCM) already gives disproportionate access and promotion to a wide range of processed food corporations and public private partnerships, and shows no sign of heeding FENSA's requirement to "*exercise particular caution...when engaging with private sector entities ... whose policies or activities are negatively affecting human health ...*"

In this way, spurious marketing strategies masquerading as health initiatives gain credibility from the image transfer from WHO. Similarly, voluntary '*here today, gone tomorrow*' initiatives and promises of incremental changes in the composition of a few products, can undermine policy makers resolve to bring in effective and much needed legislation to protect public health. WHO does not have the capacity to 'quality assure' such activities or guarantee that they are in conformity with WHO policy. The problem of independent evaluation is made even more problematic, indeed impossible, if WHO is in partnership with an interested party. (See *Fostering Innovation* below.)

Become more Operational (P3, Para 4)

WHO – and other UN agencies – have become increasingly vulnerable to undue influences since Member States' assessed contributions have been virtually frozen since the 1990s, and so much of WHO's budget ear-marked for specific programmes., and so much of WHO's budget ear-marked for specific programmes. We appreciate that this makes it difficult for WHO to work on policy and programme areas that donors don't like – even those decided by Member States at the WHA. IBFAN continues to advocate for sustained funding from an increase in Member States assessed contributions as the only appropriate solution that will allow WHO to carry out its core work.

In this context, the proposal that WHO should become more *operational* will inevitably increase the pressure to accept and rely on alternative, and most likely, private resources with all the risks outlined above and below. Viewing FENSA as a fund-raising strategy, rather than as a safeguard for WHO, creates problems and risks that need to be openly debated.

WHO's role as a platform for the negotiation of conventions, regulations or frameworks (P8 Para 5):
Alongside the *Framework Convention on Tobacco Control* and the *International Health Regulations*, the Concept Note could mention the *Global Strategy on Infant and Young Child Feeding* (GSIYCF). This Strategy, along with the WHA Resolutions on infant and young child feeding, is followed would do much to safeguard child health.

It sets out the two and only appropriate roles for the baby feeding industry: full compliance with the *International Code* and Resolutions and meeting standards of Codex Alimentarius

Fostering Innovation (P10, Para 3)

There is an urgent need for Col safeguards to be mentioned in the section on *Fostering Innovation*. (P10 Para 3.) While innovation is important, it also presents risks to health. Before facilitating the integration of innovations, WHO has a responsibility to ensure that public health is protected from the unintended consequences of novel strategies, by independently reviewing, scrutinizing and ensuring that innovations are supported by '*Relevant convincing / generally accepted scientific evidence or the comparable level of*
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evidence under the GRADE classification.’ Such scrutiny will be jeopardized if it is in partnership with an interested party.

It is worth noting that in general, corporations choose ill-defined terms such as ‘*generally accepted*’ ‘*History of safe use*’ ‘*science-based*’ ‘*scientifically demonstrated.*’

Omission: Policy Coherence in Trade

A glaring omission in the dtGPW is the need for Policy Coherence between WHO and Codex Alimentarius. The Standard setting procedures of Codex and its guidelines covering National Codex Committees and National Codex Contact Points, are wide open to undue commercial influences. Because of the imbalance of resources and power, businesses and their front groups are disproportionately and inappropriately represented at Codex meetings (often sitting on government delegations and sometimes even leading them). These industries regularly fund dinners and receptions for participants and contribute to secretarial services. The lack of an adequate COI policy leads to the minimizing of global public health needs and the prioritization of regulatory measures that facilitate trade interests. This has a profound influence on everything that Codex does, including the evidence base that is used to decide on the safety of ingredients, additives etc. It also affects developing countries efforts to protect the right to food and health, by preventing strategies that promote land and sea-grabbing, mono-cropping and soil depletion. IBFAN is supporting WHO – the parent organisation of Codex – in its efforts to achieve Policy Coherence, and this should be mentioned in the dtGPW.

Why the current FENSA is not an adequate safeguard

Since its very first draft FENSA has been rejected many times by the majority of Member States for its insufficiencies, in particular the way conflicts of interest were conceptualised and the process and timetable for evaluation. WHO Member States Representatives from the African Region recommended:

‘that WHO should develop a comprehensive policy on conflicts of interest in the framework of engagement with non-State actors. It was emphasized that WHO should proceed with caution in developing a policy on engagement with non-State actors, as such a policy would have far-reaching implications for the Organization. It was underscored that decision-making within WHO governing bodies should remain the exclusive prerogative of Member States.’^{vi}

A still contested FENSA was eventually adopted in May 2016 – with promises of due diligence and increased transparency, and that WHO would “*exercise particular caution...when engaging with private sector entities ...whose policies or activities are negatively affecting human health..*”

Following FENSA’s adoption, a restructuring of WHO and its relationships with private-sector actors has been promoted under terms such as ‘*inclusiveness*’ and ‘*widening engagement*’ with ‘*stakeholders*’, respectively ‘*non-State actors.*’ Concerned Member States clarified the mandate of WHO’s Secretariat: to strengthen dialogue and cooperation with other stakeholders ‘*as appropriate whiletaking into account the importance of managing conflicts of interest.*’^{vii}

Faulty Conflict of Interest Definition

FENSA contains a conflict of interest concept that redefines legal conflicts of interest, and legitimizes problematic multi-stakeholder arrangements. The definitions 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). FENSA’s muddled definitions divert attention away from conflicts that exist *within* public actors – conflicts between their mandates and prime functions and their secondary interest to be adequately funded.^{viii}

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With the sheer number of PPPs and multi-stakeholder initiatives now being encouraged we fear that it will be impossible for WHO to apply the due diligence and scrutiny needed to prevent commercial exploitation and allow it to fulfil its prime constitutional function to protect health for all.^{ix}

For further information contact: prundall@babymilkaction.org

¹ dtGPW13, p. 3, para 2
¹ Constitution of the World Health Organization, Article 2 (a) http://www.who.int/governance/eb/who_constitution_en.pdf,
¹ Framework of Engagement with non-State Actors, WHA69/10 Annex. Principle 5 (f)
¹ *Feedback on the Online consultation Safeguarding against possible conflicts of interest in nutrition programmes: "Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level"* IBFAN response: <http://www.who.int/nutrition/consultation-doi/ibfan.pdf?ua=1>
<http://www.who.int/nutrition/consultation-doi/comments/en/>
¹ UN. (2017). "Goal 17: Revitalize the global partnership for sustainable development." Sustainable Development Goals: 17 Goals to Transform our World <http://www.un.org/sustainabledevelopment/globalpartnerships/>, accessed 11.10.2017
¹ WHO 2016, Annex to EB 136/4, op. cit., para. p. 2-3, para 5
¹ 2011, EBSS/2/DIV/2 (g) (Emphases added)
¹ See e.g Richter, J. (2015). "Time to debate WHO's understanding of conflicts of interest." British Medical, Journal (BMJ) rapid response, 22 October www.bmj.com/content/348/bmj.g3351/rr;
Richter, J. (2015) "Conflicts of interest and global health and nutrition governance - The illusion of robust principles," BMJ RR, 12 Feb. 2015, www.bmj.com/content/349/bmj.g5457/rr; Richter, J. (2017). "Comments on Draft Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level." <http://www.babymilkaction.org/consultations>
¹ Richter, J. (2005). Global partnerships and Health for All: Towards an institutional strategy. A discussion paper prepared for WHO's Department of Government, Civil Society and Private Sector Relations (GPR). Geneva, WHO: 20 pp, <http://info.babymilkaction.org/files/Richter%20Global%20Partnerships%20and%20health%20for%20all.pdf>

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