

A Civil Society view on the report of the EAG on the review of its relevance and effectiveness of the WHO Code of Practice

We welcome the report of the EAG and share many of the advisory group's assessments, conclusions and recommendations:

The Code is a relevant instrument to address the health workforce crisis

- **The EAG report states that there are no doubts about the relevance of the Code to the health workforce development challenges faced by Member States at national, regional and global level.**
- **The EAG states that the Code puts in place a global architecture to guide global cooperation and provides a platform for continuing dialogue on health systems strengthening and calls the Code a “groundbreaking legal instrument”**

We agree with this assessment. We do not have to discuss the relevance of the ongoing health workforce crisis. And we agree that the Code is a key instrument to address it: Mainly the legal quality of the Code and the related obligations of WHO member states are the main difference to the many resolutions, declarations and strategies adopted over the last years.

We particularly like the title of the EAG report, *“WHO Global Code of Practice: A tool for health workforce development and health systems sustainability.”* One of the handicaps of the Code is its title, referring only to the “international recruitment of health personnel”. In fact there is much more than this in the Code. But who knows about it?

To harvest its full relevance, better dissemination and knowledge of the Code, its consequent implementation and strong accountability mechanisms are key. This has not yet been achieved, as the EAG correctly states. We come back to this later when we discuss the effectiveness of the Code.

We admit that the Code is a young instrument, and we are happy to see that its “parents” have not yet given it up. In this regards, the information session of the EAG with representatives of the Permanent Missions to the UN on 6 March was an eye-opener to us: 19 Member States representatives from all continents participated, everybody who promoted the Code in the negotiations in 2010 was there, and the commitment was still the same. To see this is good news, as the Code is worthless without leadership and commitment by the countries.

- **The EAG report rightly states that Member States should be vigilant to ensure that the provisions of the Code remain responsive to emerging trends and dynamic global policy drivers. The EAG recommends a next review of the Code's effectiveness and relevance in 2018/19, aligned with the third round of national reporting.**

In fact the Code “should be considered a dynamic text that should be brought up to date as required.” (the EAG quoting Art. 9.5 of the Code). But when is the right moment? Right now the Code does not fully reflect any more the realities of integrated economic regions (EU, ASEAN) and the growing influence of international treaties on trade (including trade in services).

When the text that once will be brought up to date, we expect that also some of the red rags and no-go areas of the initial Code negotiations will be reconsidered. In 2010 we were happy that the Code was at least adopted. Next time we might be more challenging, putting one of our main “headaches” with the Code on the table: The burning issue of “return of investment”, or call it compensation. And do not shake your heads!

Compensation might be a conversation stopper. But solutions to strengthen the Code must include developing a (regional) governance structure for a sustainable, binding, financing system to compensate health workforce losses due to migration. This should also be addressed in broader / new instruments e.g. in a framework/ financing on health systems strengthening.

But is the Code an effective instrument for change?

- **The EAG there are significant gaps in particular full implementation and dissemination of the Code across countries and regions. Contributory factors to successful implementation in Member States include the level of awareness, political commitment, technical and financial resources to support systematic implementation and reporting on the Code, and whether there is engagement by all stakeholders to deliver the promise of the Code.**
- **The EAG concludes that these implementation gaps constrain a full assessment of the effectiveness of the Code's potential.**
- **The EAG states that the success of the Code in comparison with other governance initiatives and instruments in global health would be better assessed once further evidence is available from national reporting.**

We agree with all this. In the current situation, because of the implementation gaps correctly referred to by the EAG, and as there are also governance and expectations gaps, the Code is not (or not yet) an effective instrument for achieving the change that is desperately needed for:

- Better protection of and equal rights for migrating health workers
 - Better protection of countries with critical health workforce shortage against the loss of their human capital
 - Better instruments for national, regional and global health workforce planning
- ... just to mention some of the many challenges.

Some of the EAG's conclusions and recommendations could have been quoted from the MMI/PHM/HW4All statement at the 66th World Health Assembly two years ago, mainly:

- Weak uptake and ownership by member states
- Weak leadership by WHO due to missing resources
- The critical issue of information sharing, transparency and accountability
- The critical issue of involving and cooperating with all stakeholders in the global and national policy dialogue and the implementation of the Code

We then stated that the success or failure of the Code implementation will be seen as a case study for the capacity of WHO – and its members – in the field of global standard setting and regulation. This is still valid, and, again, we are not yet there. The elephant in the room may be that although we require transnational social policies and laws for redressing negative effects of a globalized economy with growing inequalities, all countries are ‘sovereign’ responsible for the wellbeing of their citizens. Yet, fiscal capacity resulting from present (Europe) or past (African countries) austerity measures

by ECB/ IMF/WB, limit the possibility of investment for self sustainable health workforces.

We also agree with other EAG conclusions:

- There is a need for coordinated and coherent health workforce policy action at the sub-national, national, regional and global levels remains vital;
- There is evidence from local and national initiatives to translate the Code into practical measures;
- WHA's renewed commitment towards UHC reaffirms the leadership role of WHO in HRH, demanding continuing support and implementation of the Code.

And we are happy to learn that in the second round of reporting, the reports provided by Designated National Authorities will be publicly available; this transparency is necessary for monitoring purposes, but also for sharing information among stakeholders.

So let us go the way proposed by the EAG. And also this journey starts with a first step:

Designate a national authority and report on the implementation of the Code! All WHO member states! Show and renew your commitment to the Code by fulfilling this basic accountability requirement.

...and the second one: We hope and expect that the renewed commitment to the Code leads to the expansion of the capacity of WHO Secretariat and WHO Regional Offices to support Member States and stakeholders to expand awareness and implementation of the legal instrument to its fullest potential.

The last steps of the way of the Code, in a longer perspective, might be:

(1) The development of an overarching global governance framework on health workers migration and mobility

From a civil society perspective, such a framework

- should be consequently rooted in a "3R" (rights-regulation-redistribution) approach;
- should focus on rights of migrant health workers;
- should include stronger guidance for national legislation and the development of bilateral/regional instruments;
- should address (the other side of the currently existing) redistribution: the compensation or return of investment for sending countries

Such an effort would require a broader institutional ownership/platform, including ILO, IOM, OECD, ECOSOC and other multilateral and regional organizations and actors, and integrating their current policy initiatives spanning health, migration and development.

(2) The integration of the health workforce issue into a broader instrument (a non-binding code or binding convention) on international obligations for strengthening national health systems

UHC and Ebola have put the need to strengthen national health systems back at the top level of health policy. And that is at least a good starting point.

But this is the future. And there are plenty of things to do in the present to make the Code what we want it to be: a real instrument of change.