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Whole-Of-Government Approaches to NCDs: The Case of the Philippines Interagency Committee—Tobacco

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Abstract: To address the rise in non-communicable diseases (NCDs), governments are now being urged to 'put forward a multisectoral approach for health at all government levels, to address NCD risk factors and underlying determinants of health comprehensively and decisively' [UN, 2011. *Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases* (No. A/66/L.1). New York, NY: United Nations]. There is a global consensus that whole-of-government approaches (WG) can be particularly effective in regulating products such as tobacco, pre-packaged foods and alcohol, which are or can

Health Policy and Planning, Vol 30, No. 7 (September 2015): pg. 844-852. [DOI](#). This article is © Oxford University Press and permission has been granted for this version to appear in e-Publications@Marquette. Oxford University Press does not grant permission for this article to be further copied/distributed or hosted elsewhere without the express permission from Oxford University Press.

be major risk factors for NCDs. Despite the overwhelming push towards interagency arrangements for health policymaking and implementation, including in contemporary efforts to prevent and control NCDs, there has been minimal investigation into how countries have pursued WG and which types of institutional designs and arrangements offer particular utility to achieve health objectives. This article examines these issues through a case study concerning the interagency mechanism that the Philippine government currently utilizes to govern tobacco control, the Interagency Committee—Tobacco (IAC-T). We conducted key informant interviews ($n = 33$) with government officials, and representatives from civil society organizations, health professional associations and intergovernmental organizations. We targeted informants who have been involved in the work of the IAC-T and/or tobacco control policy more broadly. We also analysed public documents to contribute to our analysis of the structure, functioning and legal status of the IAC-T. Our findings highlight two salient challenges that arose in the Philippines case: (1) the inclusion of industry representation on the IAC-T and (2) the attempt to consolidate the responsibilities of the different departments through a policy of 'balance' between health and commercial interests. We analyse how health proponents navigated this challenging institutional arrangement and the various barriers they faced in achieving the intended health objectives. We draw from this case to discuss the lessons that can inform broad calls for WG to NCDs.

Keywords: Whole-of-government, intersectoral collaboration, tobacco control, health policy, non-communicable diseases, Health in All Policies

Key Messages

- Whole-of-government approaches to non-communicable diseases (NCDs) hold promise for policy coherence across sectors.
- The whole-of-government approach to tobacco control in the Philippines demonstrates that not all such approaches best serve health objectives.
- This article points to the importance of not only structural features of whole-of-government approaches for NCD control but also the institutional culture and entrenched political and economic interests.

Introduction

The most recent evidence from the Global Burden of Disease Study indicates that the number of deaths from communicable diseases in 2010 has decreased by approximately 10% since 1990, whereas the burden of non-communicable diseases (NCDs) has increased markedly, now accounting for two of every three deaths worldwide and 54% of disability-adjusted life years (up from 43% in 1990) (Lozano *et al.* 2012; Murray *et al.* 2012). To address this increase in NCDs, governments are encouraging each other to 'put

forward a multisectoral approach for health at all government levels, to address NCD risk factors and underlying determinants of health comprehensively and decisively' (UN 2011). There is a global consensus that whole-of-government approaches (WG) can be particularly effective in regulating products such as tobacco, pre-packaged foods and alcohol, which are or can be major risk factors for NCDs (Beaglehole *et al.* 2011). This emphasis on WG began with calls for intersectoral action in the Declaration of Alma Ata, then as healthy public policy in the Ottawa Charter for Health Promotion (WHO 1986; Nutbeam 1994), and most recently in the discourse on Health in All Policies (HiAP) (Kickbusch *et al.* 2008). Proponents suggest that the objective of HiAP can be realized through a 'collaborative approach to improving the health of all people by incorporating health considerations into decision-making across sectors and policy areas' (Rudolph *et al.* 2013). The HiAP discourse explicitly incorporates the language used by proponents of WG such as 'joined-up-government' (Kickbusch *et al.* 2008; Kickbusch 2010). In other words, WG is recognized as a vehicle to achieve the health objectives of HiAP.

Early proponents of the WG to governance observed that many, if not all, government departments largely functioned along discrete lines with minimal collaboration or co-operation across sectors that lead to government inefficiencies and internal conflicts. These early proponents viewed the WG as a means of moving public policy out of ministerial silos with the ultimate goal of establishing and implementing coherent policy across sectors (Christensen and Lægreid 2007). Other purported benefits include cost sharing (i.e. pooling of resources) (Vangen and Huxham 2003; Lundin 2007), enhanced policy coherence (Kavanagh and Richards 2001; De Alba 2012) and accountability across sectors (Wilkins 2002). Health policy proponents of WG have advocated for the insertion of health into the portfolios of agriculture, finance, labour, foreign affairs and other sectors (Vega 2004; Marmot *et al.* 2008; WHO 2009; Kickbusch 2010). The central rationale provided in the health policy literature in favour of WG is that many health problems require crosscutting solutions (Sacks *et al.* 2009). WG are seen to facilitate the realization of health objectives by creating public policy that systematically incorporates health objectives across government sectors. For example, it is known that tobacco control, with the ultimate goal of decreased tobacco consumption, requires co-ordination across sectors such as finance (e.g. taxation

strategies), agriculture (e.g. crop substitution programmes), and health (e.g. tobacco cessation programmes). WG are not without challenges. Some studies have found that conflicting objectives among different sectors can lead to stalemate or fragmentation in decision-making (Exworthy and Powell 2004), resource inefficiencies or loss of departmental autonomy (Vincent 1999; Exworthy and Powell 2004; Coulson 2005). The principal question that needs to be asked is how can WG best meet the intended health objectives?

Before we discuss our research into the case of the Philippine Interagency Committee—Tobacco (IAC-T), it is important to clarify what we mean by interagency arrangement in order to facilitate future comparative work across countries, institutional designs and processes. We use the term interagency arrangement to mean formal (i.e. politically mandated) relationships between more than two sectors (i.e. a section of government that deals exclusively with a particular issue such as health, justice or agriculture). An interagency arrangement is one type of WG. Many partnerships in the health sector involve voluntary arrangements that address a particular administrative issue or enhance access to products or services (Buse and Walt 2000a,b; Buse and Waxman 2001). Interagency arrangements are often established when a particular goal is thought to be best achieved through co-operation (instrumental value) or when actors have a commitment to inclusive governance or question the legitimacy of top-down decision-making (intrinsic value) (Lasker *et al.* 2001; Coulson 2005; Ansell and Gash 2008). Governments have begun to mandate interagency arrangements to address NCDs, specifically in the area of tobacco control. For example, the tobacco control legislation in Kenya establishes the Tobacco Control Board that advises on the implementation of the Tobacco Control Act of 2007 (Tobacco Control Act 2007, 2007). Brazil has a similar interagency arrangement (CONICQ) but with a broad mandate to strengthen tobacco control in the country and implement the provisions of the Framework Convention on Tobacco Control (FCTC) (Lee *et al.* 2010).

In some contrast, such arrangements have yet to be systematically instituted by governments in the areas of food and alcohol governance. The cases of WG to tobacco control can provide important lessons for food and alcohol governance; particularly given that each area involves a commercial entity whose products are

associated risk factors for NCDs. It has been argued that prepackaged food and alcohol pose less risk to human health than tobacco, yet scholars have begun to make the case that the differences among the three are outweighed by their similarity (Brownell and Warner 2009; Moodie *et al.* 2013). The most important similarity between the three products, one that allows for lessons from the regulation of one product to be applied to the others, is that all three industries actively seek no or minimal regulation of their products (Brownell and Warner 2009; Moodie *et al.* 2013). The food industry, such as the tobacco industry, is known to heavily lobby government to prevent the regulation of their products (Brownell and Warner 2009; Cappuccio *et al.* 2013). Arguably, WG to food and alcohol regulation are even more vulnerable to industry co-option given that, particularly for food, the two industries have been successful in framing the linkage between their products and NCDs as an issue of consumer choice rather than an issue inherent to the product itself. For example, the food industry asserts that there is no 'bad' food but rather bad individual choices (Koplan and Brownell 2010). The success of this type of rhetoric is reflected in the willingness of norm-setting organizations such as the World Health Organization (WHO) and governments to partner with the food industry in health education and promotion campaigns (Koplan and Brownell 2010; Stuckler and Nestle 2012). The norms pertaining to tobacco and the tobacco industry are markedly different where many governments and prominent intergovernmental organizations such as the WHO and the World Bank explicitly prohibit partnerships with the tobacco industry. In other words, governments do not have the same social sensitivity or institutional policies against partnering with the food industry as they do with the tobacco industry. Given this complex policy space there is a pressing need to examine how countries have pursued WG and which types of institutional arrangements offer particular utility for achieving health objectives (Kickbusch 2010). Our research examines these issues through a case study of the IAC-T, the interagency mechanism instituted by the Philippine government to govern tobacco control. The Tobacco Regulation Act (hereafter RA 9211) is the principal Act governing tobacco in the Philippines and establishes the IAC-T to implement the provisions of the Act (Tobacco Regulation Act 2003).

Methods

We chose this salient case because the Philippines was one of the first countries to mandate an interagency arrangement for tobacco control. We explore this institutional arrangement using different data sources. Our investigation includes interviews with key informants ($n = 33$) from different sectors of government, civil society, the tobacco industry and the tobacco-growing sector (see Table 1). Key informants were chosen because of their involvement in tobacco control in the Philippines, and more specifically their involvement with the IAC-T. We included informants who served on the IAC-T as well as individuals who had contact with members of the IAC-T in their work on tobacco issues. We also used a snowball sampling technique wherein the informants that we initially identified were asked to suggest other individuals who they thought could contribute to our understanding of the structure and functioning of the IAC-T. All informants were asked whether their institutional affiliation could be included in the presentation of the findings. Documents were also included for analysis, which included government legislation, policy and technical briefs, and domestic legal disputes involving the IAC-T. We transcribed the interviews verbatim. The transcripts were entered into NVivo qualitative software and were analysed along with the documentary sources using open coding. We used the open coding technique to facilitate inductive analysis. The authors obtained ethical approval from their institute.

Table 1. List of key informants by affiliation

Number of participants	Government
2	Department of Finance
6	Department of Trade and Industry
2	Department of Agriculture
5	Department of Health
1	Department of Foreign Affairs
1	National Tobacco Administration
2	Legislature
	Civil society
4	Health NGOs
2	Medical Association
1	Trade Union
3	Tobacco Industry
	Intergovernmental organizations

Number of participants	Government
2	World Bank
2	World Trade Organization

Results

As mentioned above, the IAC-T is responsible for implementing and enforcing the Tobacco Regulation Act of 2003 (RA 9211). Our findings focus on both RA 9211 and the IAC-T as we demonstrate that the Act and the mandated interagency arrangement are reinforcing. It is specified in RA 9211 that the secretary of the Department of Trade and Industry (DTI) is to serve as chair of the IAC-T and the secretary of the Department of Health (DOH) is to serve as vice-chair. Six other departments are represented on the committee along with a 'representative from the Tobacco industry to be nominated by the legitimate and recognized associations of the industry' (Tobacco Regulation Act 2003) and one representative from civil society nominated by the DOH. Inclusion of an industry representative on the IAC-T seemed to play an important role in preempting FCTC Article 5.3, which requires Parties to act to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Our findings suggest that the timing of RA 9211, with the formal inclusion of a tobacco industry representative on the IAC-T, prior to the Philippines ratifying the FCTC, has pre-empted the movement towards FCTC compliant legislation.

RA 9211, the IAC-T and FCTC pre-emption

The Philippines Congress adopted the Act in 2003, 2 years before the country ratified the FCTC, but only a few months after adoption of the Convention by the World Health Assembly. As such, RA 9211 does not purport to incorporate the FCTC into domestic law. One director-level key informant from the World Bank based in the Philippines noted that there is still much confusion in government and civil society on the legal authority of the FCTC. The Philippines is a dualist legal system meaning that 'the constitution of the state accords no special status to treaties; the rights and obligations created by them have no effect in domestic law *unless legislation is in force to give effect to them* (original emphasis)' (Aust 2007). The fact that the Philippines must pass legislation to enact the provisions of the FCTC

into domestic law heightens the importance of RA 9211 as a pre-emptive measure. The timing of the legislation appears to have served the protection of industry interests, ensuring that the industry has a seat on the only mandated tobacco control body in the country (IAC-T)—an arrangement that would be unlikely post-FCTC—and the correspondingly weak tobacco control measures introduced in RA 9211 (i.e. mostly weaker than those required by the FCTC). An additional nuance to the timing of RA 9211 is that industry interests are better positioned to dissuade the establishment of an FCTC-compliant legislation. Our findings point out that these two elements (i.e. industry inclusion and weak legislation) are reinforcing, whereby the composition of the IAC-T makes enforcement of RA 9211 difficult by taking away power from the DOH, whereas the Act itself makes it difficult for the DOH to move towards FCTC-compliant measures.

Key informants from DTI confirmed the central role of RA 9211 in Philippine tobacco control stating that 'policy on cigarettes and tobacco comes from RA 9211', and that it 'is the policy and law with respect to tobacco and cigarettes that we follow'. This perspective was enshrined in a decision given by the Court of Appeals in a recent case between Philip Morris Philippines (PMPMI) and the DOH (Philip Morris Philippines Manufacturing, INC. v. The Department of Health, n.d.). PMPMI petitioned the court to compel the DOH and the Bureau of Food and Drugs (now the Food and Drug Administration) to grant them the ability to carry out promotional activities, which they argued was lawful according to RA 9211. The DOH had summarily denied PMPMI's application for permission to engage in promotional activities independently of the IAC-T and indicated to PMPMI that tobacco companies were no longer permitted to do so according to RA 9211, but more importantly the DOH used the provisions of the FCTC to justify their decision. In other words, the DOH used not only the domestic legislation (which permits promotional activity) but also the provisions of the FCTC (which discourages promotional activity). The Court of Appeals decided in favour of PMPMI's petition and stated that:

"The Framework Convention on Tobacco Control (FCTC) is not self-executing and cannot be the direct legal basis for the respondents to justify its mistaken stance that Tobacco Promotions are now fully prohibited ... it provides only for the **gradual elimination** of tobacco due to health concerns and

takes into account the “**legal environment and technical means available**” to the signatory-Country. Until such time when there is already a new law *totally* eliminating all forms of tobacco use and tobacco-related activities, this Court has not other recourse but to act only in accordance with the prevailing *R.A. No. 9211*.” [No emphasis added] (Philip Morris Philippines Manufacturing, INC. v. The Department of Health, n.d.)

The findings from our interviews indicate that the Philippines Tobacco Institute (PTI), an industry interest group, and/or its key members also advance the authority of RA 9211 in the public discourse on the relationship between the Act and the FCTC, further supporting the argument that the Act indeed has served to preempt stricter tobacco control measures from the FCTC and has served to situate power and control within the IAC-T rather than with the health sector specifically. In another legal case in 2011, the PTI sought to set aside the implementing rules and regulations (IRR) of the Food and Drug Administration Act of 2009, arguing that they did not apply to tobacco products because the IRR went beyond RA 9211. The PTI specifically argued that:

“the IRR of R.A. No. 9711 which placed tobacco products within the regulatory powers of the Food and Drug Administration was issued by the respondents in disregard of the provisions of Republic Act No. 9211 otherwise known as the ‘Tobacco Regulation Act of 2003’ which bestows the exclusive authority to regulate tobacco products upon the Interagency Tobacco-Committee, where petitioner is also a member.” (Philippine Tobacco Institute v. The Department of Health 2011)

The court decided against PTI in this case stating that they did not provide sufficient evidence of definite or immediate harm to the petitioner. It is important to note that the ruling was issued because the ‘allegations (by PTI) fail to establish an actual existing right on the part of the petitioner (PTI) that was violated’, not because the court decided on the relationship between the IRR and RA 9211 (i.e. the authority of the IAC-T) (Philippine Tobacco Institute v. The Department of Health 2011). Also, the PTI explicitly used their membership on the IAC-T in their argumentation, which suggests that industry interests support the IAC-T. The industry has not argued against the IAC-T like it has other perceived shifts of authority to health-oriented government departments and agencies. One would

expect the industry to vehemently oppose the IAC-T if the industry thought that their interests were threatened by its authority and functioning, as indicated by these two cases.

The challenge of incrementalism

There was and continues to be tension about whether some tobacco control legislation is better than none (an incrementalist approach) among tobacco control proponents in the Philippines. Some tobacco control proponents in the Philippines, a minority, argue that certain perceived improvements in tobacco control legislation might actually hinder the movement towards strong future tobacco control legislation. Beginning in the drafting stages of RA 9211 there were conflicting perspectives on the utility of the Act, specifically because of the composition of the IAC-T. Prior to the adoption of RA 9211, a high-ranking government official in the DOH, with experience in tobacco control, including with the FCTC, commented that the draft Act should be 'vetoed because congress made the Department of Trade the chair of the overall committee instead of the Department of Health ... (which) was a signal to me that this was obviously ... geared towards trade, and health was an afterthought'. In contrast, a prominent tobacco control advocate from civil society had urged this official to support the Act, noting, 'no matter how imperfect it is I think we can start with something rather than have nothing at all'. The merit of an incremental approach to tobacco control legislation was echoed in all of the interviews with tobacco control advocates from civil society. Our findings suggest that, apart from the possible benefits of having some tobacco control legislation, the IAC-T is a persistent challenge to tobacco control efforts.

'Balancing' private interests and health

The first paragraph of RA 9211 states:

"It is the policy of the State to protect the populace from hazardous products and promote the right to health and instill health consciousness among them. It is also the policy of the State ... to promote the general welfare, to safeguard the interests of the workers and other stakeholders in the tobacco industry. For these purposes, the government shall institute a

balanced policy whereby ... tobacco products shall be regulated in order to promote a healthful environment ... and at the same time ensure that the interest of tobacco farmers, growers, workers and stakeholders are not adversely compromised." (emphasis added) (Tobacco Regulation Act 2003)

This explicit statement for the need to balance health and economic aspects of tobacco and tobacco control has served to reify the perspective that health is only one consideration in Philippine tobacco control policy. Interviewees from public health agencies and organizations consistently raised concerns that the emphasis within the IAC-T has typically focused on business aspects of tobacco regulation. Participants from DTI emphasized unprompted that RA 9211 represents a 'balance' between health and stakeholders from the tobacco sector. The fact that the DTI chairs the IAC-T in the Philippines is unusual given that tobacco control is a health issue and not an economic issue. The composition and structure of the IAC-T provides evidence that structure matters for WG to health policy, while also demonstrating that an entrenched institutional culture that attempts to 'balance' health with tobacco industry interests creates an interagency arrangement that perpetuates a tenuous and often crippling context from a health policy perspective. This emphasis on 'balance' appears to be more of an attempt to insert and protect industry interests in a health measure that should necessarily restrict their commercial activity. Tobacco control is logically oriented to regulate industry activity, not to balance its interests with health objectives. The fact that this emphasis on balance is explicit in RA 9211 legitimizes the orientation of the IAC-T towards protecting the tobacco industry from harm and again the reinforcing nature of the Act and the IAC-T is visible. To restate, the text of RA 9211 decenters health objectives while at the same time foregrounding industry interests. This text is then used as justification for the inclusion of the tobacco industry on the IAC-T, the leadership of the IAC-T being situated with DTI and the overt agenda of the IAC-T to protect the economic viability of the industry.

Despite these overt challenges, we found other subtle challenges that arise in the different 'theories' held by different key actors about the roles of government sectors and their responsibilities

to society. The difference in perspectives is a common challenge of WG to health policy, particularly if the objective is policy coherence. For example, it was a common sentiment by all key informants that each department was guided by different rules both domestically and internationally. DTI noted that they are guided by the rules of the World Trade Organization and free trade agreements. DTI, the Department of Agriculture (DA) and the National Tobacco Administration (NTA) indicated that they are responsible to protect the interests of both industry and tobacco growers. DTI pointed out that the tobacco industry is a legal entity and therefore one of its legitimate constituents. They noted that they have a difficult time reconciling their responsibilities as the chair of the committee while being responsive to a major industry. They suggest that they understand the spirit of Article 5.3 of the FCTC, which is meant to protect tobacco control policies from tobacco industry interference, but point out that it directly contradicts their official mandate.

It is not surprising that both the DOH and tobacco control non-governmental organizations (NGOs) found this responsibility in conflict with their own mandates to protect Philippine citizens from the harms of tobacco consumption and to implement the provisions of the FCTC. Many of the tobacco control advocates from civil society noted that they refused to meet with the IAC-T when the industry representative was present. Key informants from the DOH expressed that they were frustrated with the IAC-T arrangements, and have even refused to attend some meetings on suspicion that the industry representative uses information from the IAC-T meetings to counter the DOH. A participant from DTI noted that they found it 'strange that NGO health advocates have this policy of not sitting at the table with cigarette companies, but because we are a trade department, it is natural for us to consult all stakeholders ... One of the stakeholders is the industry'.

The different theories of multisectoral governance held by the different sectors of government are best characterized as (1) public health should take precedence over private interests, (2) private interests should take precedence over public health, and (3) there should be a balance between public health and private interests objectives. RA 9211 clearly rejects the first theory by legislating the inclusion of industry representation on the IAC-T, providing the chair position to DTI, and making a commitment to balance industry

interests and health objectives. This same conflict of theories is likely to occur when WG are applied to food and alcohol governance. As mentioned in the introduction, the food industry has made efforts to present their products as risk-neutral or even free of risk in relation to NCDs. This framing is clearly meant to protect the viability of their business amidst threats from those who seek to regulate and thus mitigate the consumption of such products on health grounds. It is important to note that economics and health are not inherently in opposition; in fact, one can facilitate the other, and thus policy coherence is a reasonable objective of WG. It is clear that many of the social determinants of health are rooted in economic prosperity, such as employment or public services that receive their funding in part from the revenue generated from the private sector.

It is crucial to disentangle the concept of private interests from economic policy. These two are often conflated, creating a situation where a dichotomy between economics and health is easily perpetuated. It is possible, for example, for the DTI to discourage tobacco production while supporting economic development in other industries. In other words, economic development does not necessarily require the uniform support of all private commercial activity, specifically when such activity poses a threat to broader public welfare (the principal rationale used to support public regulations). This distinction is fundamental when confronting the argument that the commercial activity of tobacco, food or alcohol companies must be balanced with health objectives. The protection and promotion of industry interests by the DTI and other departments is not a necessary consequence of having a WG to tobacco control. Rather the idea of 'balance' supported by the DTI and other departments perpetuates an IAC-T structure that protects and promotes the tobacco industry to the direct detriment of public health. The separation of health and industry interests may serve as a precondition for successful interagency arrangements. In other words, tobacco legislation that brings together industry interests and health objectives in order to 'balance' the two, as RA 9211 does, leads to a space of competing objectives rather than a space that can foster coherence.

The DOH has responded to the unfavourable composition of the IAC-T using two strategies: (1) attempting to denormalize industry representation and (2) creating new distinct forums where the DOH

can act autonomously from the IAC-T. The first strategy is represented by the action taken by the DOH to produce a Memorandum in 2010 on tobacco industry interference and means to protect against such interference (DOH 2010). This Memorandum provides guidelines for industry interactions and the denormalization of industry activities in line with the provisions of Article 5.3 of the FCTC. The DOH has had to navigate the presence of the industry on the IAC-T while attempting to limit their power as reflected in the following statement: 'The Department of Health does **NOT** deal with the tobacco industry or individuals or entities that work to further the interests of the tobacco industry, except to the extent strictly necessary to effectively regulate, supervise, or control the tobacco industry and tobacco products' (original emphasis) (DOH 2010).

The DOH has attempted to create alternative forums to the IAC-T in order to move towards FCTC commitments. In 2011, DOH led the drafting of the National Tobacco Control Strategy (NCTS) and the Tobacco Control Action Plan 2011–16. The NCTS 'reflects the government's political commitment for the complete implementation of the WHO-FCTC' (National Tobacco Control Strategy (2011–16) 2010), apparently an initiative to move towards implementing the provisions of the FCTC and phase out the limitations of RA 9211. The DOH established a Sector-Wide Anti-Tobacco (SWAT) committee and 11 sub-committees meant to address the provisions of the FCTC. Here the DTI is a member, and always attends meetings, but there is no industry representative. SWAT is an attempt at interagency relations, minus the tobacco industry, as envisioned in the FCTC. Although SWAT has fully rolled out committees with responsibilities, it does not have legal standing. In fact, proponents are seeking an Executive Order to mandate the SWAT Committee.

In 2008, there was hope that the DOH had achieved some autonomy from the IAC-T proper when the IAC-T produced a memorandum establishing 'Pilot Agencies' (DTI 2008). The Memorandum divides responsibility between the DTI and the DOH. According to the Memorandum, the DTI is responsible for access restrictions including issues such as minimum age sales, proof of age verification and sale of tobacco products within school perimeters, among others, and the DOH is responsible for the administration of Healthful Environment (e.g. smoking ban in public places, etc.) and

Advertising and Promotions (e.g. package warnings, restrictions on advertising and promotions, etc.). The establishment of Pilot Agency authority appeared to strengthen the autonomy of the DOH to monitor and enforce key facets of the Philippines tobacco control strategy. However, the above-mentioned case between PMPMI and the DOH resulted in a judicial decision that denounced the autonomy of DOH from the IAC-T and ultimately ruled that the DOH does not have the delegated authority to administer RA 9211 outside of the IAC-T (Philip Morris Philippines Manufacturing, INC. v. The Department of Health, n.d.). PMPMI claimed that the *carte blanche* decision not to accept tobacco industry applications for promotional activities was unlawful given that the authority to implement RA 9211 was housed with the IAC-T. The Court of Appeals decided that 'importantly, the DOH, by itself, is without any authority to enforce any provision of *R.A. No. 9211*', and went further to state that 'without a doubt, the DOH arrogated to itself the authority given exclusively to the IAC-Tobacco to administer and implement the provisions of the Tobacco Regulation Act allegedly violated by petitioner' (Philip Morris Philippines Manufacturing, INC. v. The Department of Health, n.d.). This judicial decision confirms again the finding that RA 9211 has served in a way to tie the hands of those seeking to implement FCTC-compliant measures and has located the authority for tobacco control in the IAC-T. The DOH continues to attempt the second strategy of autonomous action; however, this case demonstrates the challenges DOH has had in establishing authority and autonomy to act outside of the purview of the IAC-T.

Conclusion

The IAC-T has clearly created challenges for those attempting to strengthen tobacco control in the Philippines. RA 9211 and the IAC-T have become negatively reinforcing from the perspective of tobacco control. In sum, what lessons can be drawn from the Philippine tobacco control case that can be applied to the future of WG to NCD prevention and control?

In the future, WG to NCD prevention and control should exclude tobacco, food and alcohol industry representatives from mandated interagency arrangements. The principal rationale to support this

position is that horizontal collaboration between the regulator(s) and the regulated industry risks co-option by private interests (regulatory capture). This is not to say that the inclusion of industry representatives necessarily leads to capture, but such an arrangement logically increases the chance of this happening. We noted that generally private interests resist regulation and this is true of the tobacco, food and alcohol industries (Moodie *et al.* 2013). This industry penchant against regulation creates a difficult dynamic for those seeking industry regulation to achieve health objectives. Chaiton *et al.* (2006) argue that 'the corporate nature of tobacco companies is a structural obstacle to reducing harm caused by tobacco use', which could also arguably be applied to the production of prepackaged food and alcohol. Systemic exclusion of industry from mandated interagency arrangements would still allow appropriate government departments to interact with industry, but not as partners in a mandated institutional arrangement around the development of health policy. For example, interagency arrangements can host public consultations with industry stakeholders. Such interactions should still require standards of transparency and accountability by ensuring that such meetings are in the public record and meeting minutes are recorded. In sum, proponents of WG to NCD prevention and control should not be distracted by purported differences between the three industries but should establish a common standard that protects against the inclusion of private interests in formal government decision-making/enforcing structures. To reiterate, a mandated interagency arrangement is a public institution and the implications of relegating power to the members from the commercial sector must be considered in light of the policy goals guiding the function of the institution. The Philippine case highlights the problems that arise when a policy creates space for the policy preferences of private commercial interests to be weighed against health objectives.

The Philippine case demonstrates that a policy of 'balance' can create a problematic situation for those seeking enhanced industry regulation towards health ends. The emphasis on 'balance' can be particularly problematic when other department objectives contradict health objectives (Gould 2005; Jarman *et al.* 2012; Gleeson and Friel 2013; Drope and Lencucha 2014). Similar clashes in objectives are likely to emerge in the control of unhealthy foods or alcohol, and may be more complicated by the fact that the food industry has been

working to project itself as a legitimate partner in efforts to address obesity, diabetes and other NCDs (Ludwig and Nestle 2008; Brownell and Warner 2009). In the case of the Philippines, some department objectives were justified by a policy of 'balance'. This so-called 'balance' between industry interests and health objectives is explicitly written in the legislation and must be avoided in future legislation pertaining to product regulation and NCD prevention and control. The case of RA 9211 and the IAC-T demonstrates how policy precedes institutional arrangements and thus sets the direction of the function of these arrangements. The transferable lesson is that policy for NCD prevention and control must be clearly and explicitly oriented to health objectives. A genuinely balanced policy can be fostered at the macro-level of whole-of-government, whereby a government pursues objectives of economic prosperity parallel to objectives of health and welfare. This type of balance is possible. Problems occur when a policy of balance is promoted at the micro-level of a particular health-harming product, such as tobacco. For example, tobacco consumption is harmful and tobacco must be regulated for the public good and this regulation must take precedence over industry interests. In other words, the nature of tobacco is harmful to health and a policy of balance is untenable. This same logic can and should apply to the food and alcohol industry. The logic returns to the importance of disaggregating private commercial interests from public policy that fosters economic prosperity. A government is not obligated to regulate all commercial activity in the same way, particularly when that activity is a threat to public health.

A more nuanced lesson is that health advocates must be sensitive to the institutional constraints imposed on economic agencies to represent all stakeholders. Given the tenuous environment of interagency relations it is necessary to approach this issue not with reproach but with understanding of the constraints imposed on the different economic agencies to consult with all stakeholders (Drope and Lencucha 2013). As noted above, such consultation must be open and transparent. Advocates of WG to NCD prevention and control must find creative strategies that protect consultations from industry interference while respecting the possibility that some agencies might be compelled to interact with the tobacco industry. This context supports the need to have leadership of mandated interagency arrangements situated in health departments. For example, health

agencies can operate independent of the (real or perceived) need to consult with the industry. This independence can support a more specifically health-focused orientation in interagency arrangements and can provide the authority to steer the group towards health goals. In addition to the issue of leadership, it may be necessary to create arrangements that include some sectors and exclude others. This may not represent the WG ideal in the true sense of all-inclusiveness, but rather establishes a selective group of members who are aligned on the foundational health objectives. This type of arrangement might be necessary in the case of intractable conflicts of perspective (i.e. theories of intersectoral governance) across sectors. For example, this might be needed in countries that are only beginning to address tobacco, food and alcohol control and have departments or agencies that are deeply enmeshed with commercial interests. In many ways, the Philippines experience with tobacco control is a cautionary tale for countries seeking to develop new policies and institutional arrangements for NCD prevention and control. With new global strategies at the WHO on harmful use of alcohol, diet and physical activity, it is plausible that governments will soon face these challenges in other areas of health if they do not already (Gould 2005; Gleeson and Friel 2013).

Governments are far from monolithic and within each one there exist discrete agencies and actors with different and sometimes contradictory mandates. WG can offer a useful forum to create and implement policy for NCD prevention and control. There is a pressing need to interrogate how these arrangements are designed, who is included and what is the nature of the policy that is guiding the function of these arrangements. In fact, as we observe in this critical case, the chosen WG structure continues to shape the ultimate outcomes. In this scenario, the proponents of tobacco interests appeared to have gained a distinct advantage by enshrining an interagency arrangement that over-privileges private commercial interests over health concerns. Thus, the choices that governments make when structuring WG to NCD prevention and control are crucial. Intergovernmental organizations and governments must consider the implications and nuanced forms of WG when advocating for their establishment.

Ethics approval

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