

IBFAN comments on the Interim Report of the Commission on Ending Childhood Obesity:

5th June 2014

1) Are there issues or strategies that have been overlooked in the Commission's interim report?

Yes –there are many.

Promotion of Multi-Stakeholder approaches Most importantly the over-arching issue of the promotion of multi-stakeholder approaches as a 'requirement' with no evidence is for this conclusion and with minimal reference to their risks.

Conflicts of Interest safeguards: Minimal reference is given to the need for governments and UN bodies to have strong Conflict of Interest safeguards in place to ensure that policy setting processes as free as possible from commercial influence so that appropriate and effective regulations can be adopted.

Governance The report acknowledges that *"Governments have primary responsibility for establishing good governance and supporting measures through appropriate regulatory, statutory and policy"* but then goes on to say that *"an opportunity exists for constructive engagement with the private sector, while avoiding conflict of interest and ensuring appropriate safeguards, in implementing and supporting healthy lifestyle policies."*

Para 26 makes the unsubstantiated and meaningless claim that: *"Addressing the challenge of childhood obesity through integrated actions across different sectors and levels of society, including government, the private sector and civil society, will prove more effective than any stand-alone measure."* What does this mean in practice?

Failure to acknowledge the risks of such 'integration' will certainly lead to corporations – who wield far more power than many governments - being treated as equal "stakeholders" in public health policy setting and planning. This will be a real threat to governments ability to fulfil their obligations to safeguard public health and human rights. It is also contrary to the spirit behind conflict of interest regulation, obscuring the fact that corporations "primary interest" is not to act in the public interest (Jonathan H. Marks 2013). Their legal fiduciary duty is to maximise profits for their shareholders. Corporations are not *"stakeholders"* in public affairs, and should not be made so through principles of "inclusiveness" According to David Michaels, appointed by U.S. President Obama to head the Occupational Safety and Health Administration (OSHA), *"I am convinced that conflict of interest cannot be "managed". It must be eliminated. Too much is at stake."*

It is essential that this fundamental approach is rethought. The Commission should, above all else call for effective conflicts of interest safeguards and the establishment of accountability mechanisms using globally agreed upon actions and commitments, including the WHO International Code of Marketing of Breastmilk Substitutes and subsequent relevant WHA resolutions.

Monitoring and accountability. The report fails to highlight that accountability mechanisms that are led in partnership with corporations are essentially problematic. How can a remedy for abuses be effective if the commercial entity itself is both judge and party? A deterrent sanction mechanism should be put in place that ensures effective accountability of every involved party, including the private sector.

Trade: The report takes mainly a constructive approach to trade, stressing potential advantages of health promoting policies and fiscal measures and again only minimally acknowledge risks. It fails to acknowledge the risks and threats that governments are currently facing from new pacts enshrined in trade agreements such as the Transatlantic Trade and Investment Partnership (TTIP), Trans-Pacific Partnership

(TPP), and Comprehensive Economic and Trade Agreement (CETA) that are set to allow corporations to sue governments if their regulations interfere with their current and future profits.

The report needs to emphasise that young children are key targets for expensive **processed formulas foods and supplements** often containing excess sugars, and acknowledge that the pressure that governments face to control the marketing of these products, especially at Codex Alimentarius Nutrition level, where there is undue corporate influence. WHO and IBFAN are jointly struggling to ensure that health concerns are correctly integrated into Codex Standards.

Protection of breastfeeding and Health from Commercial Influences

The report does not give enough emphasis to the importance of breastfeeding and the need for its protection. Breastfeeding is the physiological norm and lifeline for millions of babies and provides an ideal window of opportunity for obesity prevention and may help in the development of taste receptors and appetite control. Parents' skills and confidence in breastfeeding and bio-diverse culturally appropriate and minimally processed family foods is undermined by misleading marketing that suggests micronutrients are 'hard to get.' *This is an absolutely critical point that cannot be stressed too strongly.*

The policy options for strategic objective 2b are far too weak – although the International Code and resolutions are mentioned –the fact that the adoption of and adherence to them is a minimum requirement for all countries is missing. This is crucially important. Since breastfeeding is the physiological norm, it is safer to talk about the risks of artificial feeding than the 'promotion of the benefits' especially through education. What's needed is for all health care systems and child care environments to be free of commercial influence so that health workers and educators can give consistent information and support that is not undermined all the time by conflicting commercially inspired messaging. Stressing the risks leads to effective controls and systems. Stressing promotion is more likely to lead to inappropriate funding of education programmes.

It would be useful to include a reference to Article 24 of the *Convention on the Rights of the Child* that calls on *governments* to provide parents with information on nutrition and breastfeeding. The CRC General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) stresses that obligations of States are defined in the 'protect, promote and support' set by the *Global Strategy for Infant and Young Child Feeding* (GSIYCF). The General Comment also urges States to implement and enforce the International Code and subsequent relevant WHA resolutions and sets a direct obligation to companies to comply with them.

The International Code and subsequent relevant WHA Resolutions are embedded in many global declarations, standards and strategies, including the ICN2 Political Declaration and Framework for Action and the *OHCHR Technical Guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age.*

2) How can your sector/entity contribute to the proposed policy options to end childhood obesity?

- **IBFAN's bottom up top down approach with 270+ groups in 160 + countries** has helped over 70 governments implement laws that to varying degree

- protect IYCF and parents rights to objective information.
- **IBFAN's focus areas:** Code monitoring, Human Rights advocacy, Trade and Codex, maternity protection, capacity building, contaminants, emergencies, HIV, Sponsorship & Conflicts of Interest.
- **IBFAN's grass roots outreach and company campaigns,** raise awareness of corporate strategies that violate basic human rights of mothers and babies, create the critical mass needed to bring about political change – showing that violations are simply unacceptable.

2) What are the important enablers to consider when planning the implementation of these proposed policy options?

- Political will to REGULATE & prevent corporations from violating basic human rights

4) What are the potential barriers to implementation to be considered for these proposed policy options?

- **'The business of malnutrition' 'PPP'.. 'multi-stakeholderisation'.. 'win win' ideologies** - UN and NGO fascination with ephemeral short term Corporate Social Responsibility schemes that bring about small incremental changes (*slightly-better-for-you-junk foods*)
- Belief that corporations (TNCs) share 'human' values and failure to recognise that they all have a fiduciary duty to maximise profits. This means that all their actions must deliver shareholder value.
- Misleading marketing information
- Conflicts at the heart of policy setting: health/consumer protection vs trade/economic growth and jobs. resulting in :
- Lack of attention to and understanding of COI
- Corporate infiltration of scientific bodies – fudging the issue
- Corporate takeover of education/ behaviour change schemes
- Chilling effect of Trade Agreements

The uncritical approach to the increasing number of PPPs and voluntary short term approaches is a major concern. The report fails to acknowledge that food and drink corporations (Big Snack) are actively opposing the adoption of essential regulations to protect child health in order to create larger markets for highly processed fortified foods, supplements and snacks. While of course they have a role –that should be confined to abiding by strategies, policies and laws set by governments and those who have a duty to protect citizens.

Voluntary commitments to reduce advertising (or change to 'responsible advertising") reformulate their products (reducing sugar, fat and salt) and sponsor health education will solve the problem of malnutrition.. Voluntary CSR approaches are not benign activities. They pose serious risks and lead to corporations not being held fully accountable for their actions.

Corporate sponsorship of 'nutrition education' blurs the boundaries between education and marketing.¹ It is an effective public relations (PR) strategy designed to prevent regulatory action

5) How would your sector/entity measure success in the implementation of these proposed policy options?

- **Increase in MSs fully implementing the IC and Resolutions**
- **Increase/strengthening of UN/Professional bodies COI policies**
- **Increase in child care settings refusing food and drink sponsorship**

¹ Baby Milk Action. *Tackling Obesity: How Companies Use Education to Build 'Trust'*. Cambridge, UK: Baby Milk Action, 2012.

- **Increase in exclusive breastfeeding & breastfeeding duration rates**
- **Reduction in Code violations**
- **Better informed, supported and Happier families**
- **Key to success – and most often forgotten – breastfeeding needs:**
- **‘PROTECTION’** rather than **‘PROMOTION’**
- **‘REGULATION’ in favour of humans** rather than **‘VOLUNTARY /SELF REGULATION’ in favour of TNCs**
- **Stress RISKS of not breastfeeding rather than BENEFITS of breastfeeding**
- The **Global Strategy for Infant and Young Child Feeding** sets out a **Protect, Promote and Support Framework** with clear roles for industry, governments, Health care system etc. It must be integrated into all policies.
- **SAFEGUARDS** for Whistleblowers
- **TRULY INDEPENDENT** UN system and governments with effective COI policies in place and implemented.
- Full attention to **PRECAUTIONARY PRINCIPLE**
- **HUMAN RIGHTS TREATY** that holds TNCs accountable for their actions

6) How would your sector/entity contribute to a monitoring and accountability framework for these proposed policy options?

IBFAN has over 35 years of monitoring and reporting of the international Code and WHA resolutions.

7) Any other comments about the interim report?

Ad-hoc Working Group on Implementation, Monitoring and Accountability on Ending Childhood Obesity. Greater care should have been taken regarding the selection of Working Group Members in relation to Conflicts of Interest and were simply assured that WHO has a “*rigorous conflict of interest policy and all external participants are screened before being confirmed for participation*” is relevant. As mentioned earlier, the public position of WHO’s DG is that transparency is a crucial and non-negotiable approach

The uncritical approach to the increasing number of PPPs and voluntary short term Corporate funding of education is a major concern and blurs the boundaries between education and marketing.² It is a public relations strategy designed to prevent regulatory action.

Other comments

Intellectual bias. In answer to our query about the ‘equal treatment’ and selection of participants, we were informed by the WHC of Conflict of Interest (COI) including financial and of ideas. We were later informed that the basis for this was “*work in progress*” a *Interest for Experts*. IBFAN is concerned that increasing focus on *Intellectual Bias* diverts attention away from financial conflicts of interest at the European Food Safety Authority (EFSA) in 2011 Jorgen Schlundt - formerly Head of Food Safety at WHO - asked whether he disqualify him from membership of an EFSA working group. He included these concerns in presentation, stating: “*It has reached the system that have previously participated in scientific assessments about a certain subject are now considered tainted (potential CoI)*” a **Lack of transparency in the Summary Notes.** Despite claims that everything would be transparent we were given no access to the summary notes on the WHO website. We were aware of any NGOs who would have refused permission to share their presentations if asked. The summary notes on the WHO website, in relation to the overall NGO message, in our opinion, represent a distorted and incomplete view. Leaving aside the one well known policy formulation, the notes ignore our call for tough marketing regulations, instead emphasising:

- the need to ‘engage’ to prevent bad practice: “*There is a need to engage companies so that they do not violate regulatory frameworks*”
- the need for ‘guidelines’ and for other parties (school directors parents etc) to act: “*it should not be left to companies to self-regulate the marketing of foods to children are still very vague*”

² Baby Milk Action. *Tackling Obesity: How Companies Use Education to Build ‘Trust’*. Cambridge, UK: Baby Milk Action, 2012.

- terms such as '*individual choice*'; '*Gradual reformulation*' and '*realistic targets*.'
- an unspecified industry voluntary commitment due in 2016 and the *Access to Nutrition Index* - with no critical analysis.

8) test

Leave this question empty if you are human: