

## Appendix C – Note of Dissent

### IBFAN Note of Dissent

12 May 2017

We are representatives of the International Baby Food Action Network (IBFAN) in the WHO/UNICEF NetCode initiative. We were approached by the Bill and Melinda Gates Foundation (BMGF) to participate in a confidential interview by the Meridian Institute (MI). From the outset, we understood MI's role in convening actors from public and private sectors and facilitating dialogue "to identify common interests and goals that could underpin the creation of a global monitoring mechanism (GMM)". Our participation in the interview was authorised by IBFAN's Global Council. To date, we have participated in two interviews and made several written comments and exchanges with both MI and BMGF.

From the beginning, based on the BMGF's Concept Note for GMM, we expressed serious concerns about yet another initiative to achieve Code compliance, one which is framed as a multi-stakeholder partnership and which would depend on the goodwill of companies. We highlighted the inherent conflicts of interest in the GMM process when corporations are party to it. IBFAN is opposed to any monitoring system that includes the party to be monitored. Such inclusion is contrary to the well accepted principles of conflicts of interest that "no-one should be a judge in his own cause". Furthermore, it violates Resolution WHA 49.15 [1996] which requires that monitoring be carried out in a transparent and independent manner, free of commercial influence.

IBFAN asserts that only enforceable measures can reduce Code violations as voluntary measures have been clearly exposed as fruitless (WHA 2010). For decades, IBFAN has been involved in country Code implementation efforts and understands that law making is a time consuming process. In many countries, the lack of political will, coupled with corporate interference, are towering barriers. We maintain that increased resources and concerted endeavor of the international community towards regulatory efforts are needed to accelerate progress, not voluntary efforts where corporations are party to the process.

Having now reviewed the last version of the report (revised 28 April 2017), we conclude that IBFAN cannot support this specific concept of a global monitoring mechanism as it is unlikely to achieve better infant and young child nutrition and health. The rationale for moving ahead with the GMM has not been based on a thorough and impartial analysis which takes into account past and ongoing monitoring and policy struggles, and the reasons behind these. We are concerned that a public relations company, Weber Shandwick, seems to be the main authority MI relied on to articulate the GMM process and goals. This represents a failure to recognize that commercial interests inevitably diverge from those of the public sector. Keeping industry at arm's length is not tantamount to "demonizing" it; rather, it is a crucial safeguard. The solutions the report offers to address concerns about conflicts of interest would not correct a model like GMM that is inherently flawed at its foundation.

The report failed to consider the fact that countries have different legal and social frameworks. Nothing GMM can evoke will change that. Industry is supposed to comply with the Code and resolutions as a minimum standard (WHA 34.22 [1981]; Code Article 11.3; Global Strategy para 44; and human rights instruments). This is where the GMM focus on finding common ground becomes problematic. The idea that the UN, public interest NGOs and companies could have a shared focus is incongruous. We do not see how circumventing the decisions of WHA and human rights bodies, and giving companies more room for manoeuvre, will help the poor and hungry other than to give rise to an unsustainable desire for products they can hardly afford and which mostly bring net harm to health.

We see no potential benefits to be gained from GMM in terms of adding to the efforts of existing independent monitoring and reporting mechanisms. It rather risks undermining them and diverting attention and resources from sustainable efforts by national groups, and it risks undermining the work of NetCode.

In this Note of Dissent, we thus identify ourselves as the “few who expressed direct opposition” to GMM. We acknowledge MI’s sincere attempts to incorporate our comments and views into the report but regret that MI, in its earnestness to maintain impartiality, has chosen to “map” the divergent views and positions expressed by interviewed parties without verification. In the field of infant and young child feeding, we need political courage. The best interests of children cannot be served if public interest actors are bending over backwards to reach compromises.

The IBFAN Global Council, based on our input, has decided that IBFAN would disengage from the GMM process. IBFAN will take the necessary steps to apprise our groups and other public interest actors working on the right to health, and the right to adequate food and nutrition about our position.

Yeong Joo Kean

Legal Advisor

IBFAN-ICDC

Dr Lida Lhotska

IBFAN Global Advocacy Task Force