

IBFAN calls on WHO and UNICEF to stop 10-year-licence to harm children

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The International Baby Food Action Network (IBFAN) ⁱ has denounced a new [Breastmilk Substitutes Call to Action \(BMS Call\)](#) that has been issued by WHO and UNICEF and 6 non-governmental-organisations – many substantially funded by food corporations and the Bill and Melinda Gates Foundation (BMGF). The BMS Call asks [over 20 baby food companies and industry associations](#) to make voluntary public commitments to gradually comply with the [International Code of Marketing of Breastmilk Substitutes](#) and the 18 subsequent Resolutions of the World Health Assembly (WHA) (**the Code**) for a decade and to provide a ‘roadmap’ for how they will achieve full Code compliance by 2030.

The Code was adopted by the WHA in 1981 with the key purpose of ending the unethical marketing of baby foods. It is a critically important safeguard for infant survival that protects parents’ rights to make informed decisions about infant and young child feeding free from commercial influence. The obligation of States parties to implement the Code and the companies’ obligations to comply with it has since been clarified under the international human rights law. Furthermore, the *Independent Review Panel of the UN Secretary-General’s Global Strategy for Women’s, Children’s and Adolescents’ Health* (2016-2030) recommends developing a global human rights framework to address harmful marketing of foods for and to children.

The BMS Call is the end result of a BMGF-backed-proposal, started in 2016, to involve baby food companies as *stakeholders* in a *Global Monitoring Mechanism (GMM)*. IBFAN [opposed the GMM from its inception](#) because it violated conflicts of interest principles.ⁱⁱ This BMS Call and the mechanism for compliance certification it proposes comes out of a process managed by yet another BMGF-funded-initiative - the [Access to Nutrition Index](#) - where ‘*the fox was invited to build the chicken coop*’ (see Concern No 5).

This 2020 BMS Call, is presented as a ‘*fresh*’ and ‘*industry savvy*’ strategy to achieve full Code compliance. IBFAN believes this to be a false assertion. The BMS Call is a sharp departure from the Code that is likely to usher in partnerships that will derail and delay full compliance, undermining 40 years of work by WHO and UNICEF’s member states, public interest NGOs, health professionals and parents, building up legally-binding effective regulation of marketing practices.

While IBFAN greatly values its collaboration with UNICEF and WHO in the protection of breastfeeding and child health over so many years we call on these two agencies to STOP the BMS Call and publicly disassociate from it.

IBFAN's main concerns about the BMS Call to Action:

1 It conflicts with WHA Resolutions, gives companies a 10-year-license to harm children and undermines the human rights approach to health, adequate food and nutrition. The BMS Call asks companies to publicly commit to full compliance with the Code and WHA Resolutions in all countries. However, for the last 40 years, [Nestlé](#) and other companies have regularly claimed to be Code compliant, while deliberately ignoring the resolutions and, unless forbidden by law, limiting their actions to a few products and activities in 'high risk' countries. The fact that the BMS Call allows companies 10 years to achieve full compliance means that nothing substantial can be monitored for many years and the companies can continue to expand their markets, violate children's rights and put children at risk of commerciogenic ill-health and deaths. The notion that companies should be allowed to phase compliance as they wish conflicts with decisions taken by Member States at the WHA – the world's highest health policy setting body. The WHA has never authorised delays on ending [harmful marketing that threatens child survival](#).

2 The BMS Call gives credibility to weak voluntary commitments that, unlike legislation, can be 'here today and gone tomorrow'. Until the end of 2021 the 'roadmaps' need focus only on milks for infants 0-12 months. The fast-growing market of sweetened, additive-laden milks targeting babies 12-36 months that are deceptively cross-branded with infant formula must wait until 2030 – conveniently for the companies – long after the [Codex global standard](#) on these products is finalised. These formulas for older babies have been fueling the obesity epidemic, [adding to the environmental burden](#) and are condemned as unnecessary by the WHA and public health community. Bottles, teats and baby foods are not mentioned. Cleverly written industry commitments will confuse matters and hand companies a commercially valuable public relations opportunity. If challenged about violations, a company could claim that it is 'on the road' to full compliance – with the blessing of WHO – so must be considered a worthy partner in public health

planning and possibly deserving of a reprieve from fines or other legal penalties under national law.

3 The BMS Call disregards safeguards to protect public health policy spaces from conflicts of interest, promoting instead commercial lobbying, inappropriate partnerships and commercial 'education': Companies are asked to support the adoption of *Code-aligned* legislation, with no definition of what this term means. '*Code-aligned*' can mean '*formatted vertically to improve readability*' whereas '*Code-compliant*' means '*meeting or in accordance with rules or standard*'. Terminology matters, especially when it comes to the drafting of laws. Corporate lobbying is invariably behind the scenes – hidden and powerful – and for over 40 years, the baby food industry has subverted, undermined and interfered with policy making.^{iii iv} It is not credible that companies will now, voluntarily, urge governments to fetter a highly profitable aspect of their business – unless there is a pay-off. The potential for partnerships with governments could be enough to prompt a cleverly written 10-year promise. This BMS Call undermines previous repeated calls of [WHO](#), [UNICEF](#) and the WHA that funding and involvement of the baby food industry in infant and young child feeding policy development and programme delivery is an unacceptable conflict of interest – whether they violate the Code or not. [Background materials](#) and Q9 of the [Q&A](#) explain [why companies need the Call](#) and [the extra 10 years](#) and outline the [advantages if they respond positively](#): '*stronger consumer trust and loyalty*', eligibility for '*partnerships*' and involvement in nutrition initiatives and '*consumer education*'.^v

4 The COVID-19 pandemic presents added risks. Not surprisingly, baby food companies have been [exploiting the pandemic](#), donating formulas and baby foods, setting up 'advice' forums, offering training (thinly disguised product promotion) to medical students and presenting themselves as trusted partners. Governments are now under acute financial pressure and more vulnerable than ever to offers of 'assistance' from the baby food industry.

5 The BMS Call promotes the commercially influenced BMGF-Funded [Access to Nutrition Foundation](#) (ATNF) and its [Access to Nutrition Initiative](#) and Index (ATNI). These initiatives were designed from the outset to whitewash company promotional activities and encourage investments. ATNI claims to be ‘independent from the companies it assesses’ yet it works closely with them on the methodology and presentation of its results as they [described in June 2020](#): “Like with all ATNI’s work, extensive stakeholder consultations were carried out to help guide our methodology. This was done to ensure the perspectives and expertise of companies, CSOs, investors and ATNI’s expert group were integrated into this rigorous and comprehensive methodology.” Such collaboration is in direct conflict with [WHA Resolution 49.15](#) that calls for monitoring to be “...carried out in a transparent, independent manner, free from commercial influence.” ATNI’s monitoring has inevitably revealed a high level

of violations over the years – none of the companies are Code compliant and all score poorly – but its criteria are weak and monitoring is not continual like IBFAN’s which is able to, for example, quickly expose and curb [the exploitation of Covid-19](#). Nestlé and Danone use ATNI’s flattering analyses repeatedly in their claims of Code compliance.^{vi}

6 Baby food companies such as [Nestlé](#) falsely claim that the Code is only directed at governments.^{vii} Since 1981 [Article 11.3 of the Code](#) has called on manufacturers and distributors to ensure that ‘independently of any other measures taken for implementation’ they should monitor their marketing practices according to the principles and aims of the Code and ‘ensure that their conduct at every level conforms to them.’ Similar calls were made in [Para 2 of WHA 63.23](#) in 2010 and in [Para 3 of WHA 69.9](#) in 2016.

IBFAN values its collaboration with UNICEF and WHO. Strong UN agencies focused on advancing human rights and people’s interests are needed now, more than ever, to guide country responses on the host of global threats that children face – not least climate change, new viruses, anti-microbial resistance and harmful marketing. The best tried-and-tested way to protect children from such marketing is to help governments adopt effective legislation.^{viii,ix}

Ironically this is also the conclusion of the BMGF-funded paper in 2015 on the impact of marketing on breastfeeding practices. The authors compared the positive impact India’s strong law and monitoring system has had on breastfeeding rates and the much lower breastfeeding rates in China where such controls are missing: “Adoption of stricter regulatory frameworks coupled with independent, quantitative monitoring and

compliance enforcement are needed to counter the impacts of formula marketing globally.”^x

“Harmful marketing will not stop until every country has strong laws that are independently monitored and enforced. We fear this BMS Call will give corporations the PR cover they need to gain access to policy setting. 40 years is more than enough time and it is naive to believe that they will suddenly change voluntarily now.”

Dr JP Dadhich, Co-Chair, IBFAN’s Global Council

IBFAN’s appeal to UNICEF and WHO echos the words of Peter Utting, formerly of the UN Research Institute for Social Development (UNRISD): “You have a choice. You can either be a party to corporate strategies of reputation management or an ally of the global corporate accountability movement ...”^{xi}

IBFAN calls on WHO and UNICEF to publicly distance themselves from the BMS Call because it departs sharply from decisions made at the WHA – the world’s highest health policy setting body. These decisions should be guiding WHO in its actions. Member States, public interest NGOs and the public health community have reason to be concerned and are invited to join IBFAN’s call.

Footnotes

i. IBFAN, the global network of over 270 groups 160 countries, has worked with the WHO, UNICEF and governments for over 40 years, [monitoring and reporting violations](#) of the Code and [assisting governments in drafting or strengthening national legislation](#).

ii. The secretariat of the 'BMS [Call to Action](#)' is the [Meridian Institute](#), funded by the [Bill and Melinda Gates Foundation](#) (BMGF), who in 2017 proposed a public-private monitoring mechanism (Global Coordinating Mechanism (GCM). The GCM was abandoned after being [strongly opposed with a Note of Dissent by IBFAN and over 60 civil society organisations](#) and losing the support of WHO and UNICEF. The GCM idea followed the establishment of WHO and UNICEF's [NetCode: Network for Global Monitoring and Support for Implementation of the International Code of Marketing of Breast-milk Substitutes and Subsequent relevant World Health Assembly Resolutions](#). IBFAN has actively participated in it since its beginning, in 2015. NetCode is not open to individuals working for the private sector, to public-private partnerships or to multi-stakeholder initiatives. WHO explained that this was because its members must not have Conflicts of Interests which could interfere with their work towards the vision, goal and objectives of the NetCode.

The BMS Call to Action uses the same criteria and end date as that used by the [Nutrition 4 Growth Summit](#). The Government of Japan is seeking financial and policy commitments to focus the world's attention on SDG 2: Zero Hunger – to end all forms of malnutrition by 2030 and ensure that all people have access to safe and nutritious diets all year round.

iii. [The WHO/UNICEF/IBFAN national implementation of the Code Status Report \(2020\)](#). 70% of countries have implemented the Code to some extent.

iv. [Interference in public health policy: examples of how the baby food industry uses tobacco industry tactics](#) World Nutrition, 2017.

v. Advantages for companies: [The BMS Call has a pull down Q&A](#): Question 9 asks: *How will companies who reply positively to the CTA be acknowledged?* "Better Code compliance will result in better corporate reputation, potentially stronger customer trust and loyalty, and generate additional dividends such as better ATNI scores. Code-compliant companies may also become eligible to participate

in programs with NGOs and other agencies that they have to date been excluded from because of their poor policies and record on this issue." [BMS Call to Action Powerpoint](#) (used to promote but not on the website) makes no mention of the Code's ban on sponsorship and conflicts of Interest. [Slide 7](#) refers to the need to allow corporations to be involved in partnerships, sponsorship and education: *"The controversy over BMS marketing is holding back private sector from making a more positive contribution to global nutrition challenges. Formula companies are prohibited from joining many global initiatives and partnerships. The issue contributes to general distrust of private sector among global nutrition stakeholders. To further progress, the Call to Action takes an approach to directly appeal to companies to take action, supplementing advocacy, social behavior change, and consumer education."* [Slide 17](#) gives the rationale for the 10-year delay: *"The timeline aligns with the timeframe of the Sustainable Development Goals (SDGs) and allows time for companies to make the necessary adjustments in business models and meet training and monitoring needs... Proposing a shorter time frame that does not factor in the complexity of internal business systems poses a greater risk that companies will walk away from the Call to Action and not take any steps at all toward full Code compliance."*

vi. [Nestlé's Breastmilk substitute marketing: Compliance record refers to the ATNI India Index, 2016](#). "With respect to BMS marketing, Nestlé India demonstrated a high level of compliance with the Indian IMS Act and the Code." [India ranked Joint 1st Nestlé USA](#) Nestle FB page [Nestle using ATNF reports as 'Transparency and Accountability' documents](#) [Danone -highlighting its top BMS company status](#) [Danone using it as an example of external evaluation](#) [Danone UK engaging HSG to launch a consumer care line and referring to ATNI as a positive thing for Danone](#)

vii. [June 25 2012 Nestlé welcomes the Call to Action by WHO, UNICEF and civil society organizations](#) "We comply with the Code and relevant resolutions of World Health Assembly (WHA) as implemented by national governments everywhere in the world, as a minimum... The Call to Action recognizes that a level playing field for all companies is essential. In the absence of legislation, achieving such a level playing field will require everyone to work together, including us. Nestlé is committed to leading the way and encourages all stakeholders to work together to achieve this important goal"

viii. [India's Infant Milk Substitutes Act, Monitoring, and Enforcement, May 30, 2018](#).

ix. [IMS Act Monitoring and Implementation Articles relating successes in implementing to India's legislation](#).

x. The BMGF-funded-paper: [The Impact of Marketing of Breast-Milk Substitutes on WHO-Recommended Breastfeeding Practices](#) Piwoz et al Food and Nutrition Bulletin 1-14 2015 also states: "The Indian Code restricts the marketing of MF and infant foods up to age 2, while the Chinese Code applies only to infants <6 months of age. The WHO reports that India has a functioning Code implementation and monitoring mechanism and China does not, although this assessment is unverified. Breastfeeding patterns are significantly different in the 2 countries: exclusive breastfeeding was 46% and 88% of infants were still breastfed at 1 year in India, whereas the corresponding figures for China were 28% and 37%, respectively".

xi. Peter Utting: [UN-Business Partnerships: Whose Agenda Counts?](#) Seminar on Partnerships for Development or Privatization of the Multilateral System? 8.12.2000.

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