



## IBFAN calls for reconsideration of harmful decision on baby food marketing

27th November 2020

The International Baby Food Action Network ([IBFAN](#)) [\[i\]](#) met WHO's Assistant Director-General, Dr Yamamoto and other senior staff this week to explain why there needs to be a reconsideration of a [Decision](#) (i) to end biennial reporting to the World Health Assembly on baby food marketing after 2030.

IBFAN pointed out that the obligations of WHO and Member States to report to the World Health Assembly are embedded in the [International Code of Marketing of Breastmilk Substitutes](#) (the Code) and [WHO's Constitution](#) and are one of its core strengths. The removal of these obligations will weaken the effectiveness of the Code and have harmful consequences for mothers and children. The Decision was 'noted' at the online [73<sup>rd</sup> World Health Assembly](#) on 10th November and follows a streamlining decision (EB/146/21) intended to create more space on WHO's packed agendas.

The Code is the first global consumer protection tool of its kind and in a class of its own in terms of human rights law. (Point 3) It was adopted in 1981 in response to evidence that 1.5 million babies were dying every year because they are not breastfed. Over 800,200 babies continue to die each year because they are not breastfed. [\[iii\]](#) Harmful marketing, driven by the US\$ multi-billion baby food industry, [\[iv\]](#) is constantly evolving and remains a critical factor in misleading parents and the undermining of breastfeeding. In its [statement](#) on the WHO website India says that *'biennial reporting should continue till more than 90% of Member States enact national laws and develop legal frameworks, which substantially align with the International Code and the relevant subsequent WHA resolutions.'* Clearly strong, regularly updated legislation on the Code will remain vital long beyond 2030. [\[v\]](#)

Following the meeting, Dr Yamamoto's gave an assurance of WHO's strong commitment to the Code and the protection of breastfeeding and its wish to work together with IBFAN for the protection of child health. She stated that if the unintended consequence of a broader governance issue is implied as a lack of WHO's support for the Code, that needs to be corrected.

### 10 reasons why the 'sunsetting' decision should be reconsidered:

1. **Technical problems.** The holding of such an important meeting online was a challenge for WHO and, as was mentioned during EB147, several Member States experienced technical and logistical problems. The sunsetting agenda item (15.2) was moved from Committee A to Committee B three days earlier than planned, with little more than an hour's notice and the decision was taken without full Member State participation. Indeed India was not present to read its [statement](#). Slovakia and India have called for reporting to continue beyond 2030.
2. **The Exception Clause should be used.** The [Governance documents](#) ([EB146/21](#))([EB146/32](#)) ([Resolutions16.10.2020](#)) that outline the rationale for sunsetting resolutions older than 6 years, describes criteria for possible exceptions, such as *"ongoing efforts for the eradication of diseases..."* They should be read as granting the exception to the Code as an important work in progress.

3. The [International Code of Marketing of Breastmilk Substitutes](#) is a regulation sui generis (in a class by itself”, therefore “unique”) that Member States have an obligation to implement and enforce and commercial companies to comply with as an element of the international human rights law.<sup>[vi]</sup> <sup>[vii]</sup>
4. The elimination of negative promotional practices is not a time-defined goal like the MDGs or SDGs. WHO must continue to keep a close watch on all commercial promotion that has the potential to harm health – whether on baby foods, tobacco, junk foods, alcohol or drugs.
5. Reporting to the WHA on the Code should **end only when there is convincing evidence that it is no longer needed**, for example when there is evidence that effective and independently monitored legislation to eliminate harmful marketing has been adopted in all countries.
6. Member States have **legal obligations** under the WHO Constitution<sup>[viii]</sup> and the [International Code](#) to report to WHO on progress in implementing the Code. The WHO Director General has additional obligations to report to the World Health Assembly every two years. These obligations are embedded in the [Code](#)<sup>[ix]</sup> and are its core strength as they lead to subsequent Resolutions that clarify, strengthen and update the original Code.
7. [19 Resolutions](#)<sup>[x]</sup> have been adopted since 1981 that have helped governments counter baby food industry pressure to adopt weak voluntary measures. The resolutions have resulted in legislation forbidding marketing techniques such as health and nutrition claims, free and low-supplies of breastmilk substitutes and misleading marketing of baby foods. Eight resolutions have called for conflicts of interest safeguards, not only in health care but also in monitoring. This shows that the Code is far from a dead issue and explains why baby food companies have always wanted it taken off WHO’s agenda.
8. Since the COVID-19 Pandemic, companies have exploited public fears increasing misleading marketing of baby foods.<sup>[xi]</sup>
9. The sunset decision is closely linked to an initiative launched in June entitled, [Breastmilk Substitutes Call to Action](#) (CTA). The CTA called on companies to make voluntary commitments (by September 2020) explaining how they would abide by the International Code and Resolutions by 2030. IBFAN’s [Counter Call](#), which has the support of many NGOs, including retired senior UN staff, highlights the risks and calls on WHO to distance itself from the CTA and its voluntary approach.
10. With no evidence that baby food companies will abide by voluntary codes (indeed the companies contacted by the CTA failed to meet its minimum requirements) we need to place our mothers and children at the center of our policy efforts, protect them from potential commercial harm.<sup>[xii]</sup> Strong legislation and new Resolutions that keep pace with marketing developments are needed now more than ever .

For more information: IBFAN’s Global Council and [regional offices](#) Co-Chair: Dr JP Dadhich, (India) [jpgadhich@bpni.org](mailto:jpgadhich@bpni.org), Co-Chair: Nomajoni Ntombela, (Africa), [jonanantombela@gmail.com](mailto:jonanantombela@gmail.com), Dr Marina Rea, (Brazil) [marifrea@usp.br](mailto:marifrea@usp.br), Dr Marcus Arana (Mexico) [observatoriosalud@gmail.com](mailto:observatoriosalud@gmail.com), Patti Rundall (UK) [prundall@babymilkaction.org](mailto:prundall@babymilkaction.org), +44 7786523493. For online version of this statement see: <http://www.babymilkaction.org/archives/27262>

#### Notes:

<sup>[i]</sup> [The International Baby Food Action Network](#) (IBFAN), the 40-year-old global network that protects breastfeeding and infant and young child health, has worked alongside WHO since the late 1970s. [February IBFAN statement Feb 20](#), [IBFAN statement WHA73 Nov 2020](#)

<sup>[ii]</sup> Report by the Director General ([A73/4 Add.2](#)) on Maternal, infant and young child nutrition under the section: Action by the Assembly: ..... 3. *The Health Assembly is invited to consider adopting the following draft decision, containing the amendments to the text of decision EB146(20) agreed during the informal Member State discussions... (1) to streamline future reporting requirements on maternal, infant and young child nutrition, through biennial reports to the Health Assembly, through the Executive Board, until 2026 2030 (to be issued in 2022, 2024, 2026, 2028 and 2030, respectively);*

<sup>[iii]</sup> [Breastfeeding: \(Lancet 2016\)](#)

<sup>[iv]</sup> Revenue of the smallest of Fortune’s Global 500 companies (<https://fortune.com/global500/2019/search/>)—approximately US\$25 billion annually—exceeds the Gross National Income of the entire economies of each of 106 countries, <https://unstats.un.org/unsd/snaama/Downloads>, including 78 countries designated as low- and middle-income countries by the World Bank. <https://blogs.worldbank.org/opendata/new-country-classifications-income-level-2018-2019>

<sup>[v]</sup> [2020 WHO/UNICEF/IBFAN report on the Code implementation](#), 70% of countries have some legislation based on the Code.

<sup>[vi]</sup> UN CRC General Comment no. 15 and 16 (2013) and UN ECOSOC General Comment no. 24 (2017) in combination with International Court of Justice Judgement of 30 November 2010 concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo). Also see [Extraterritorial Obligations and the Code Feb 2018](#) Discussion paper, February 2018 The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights and the International Code of Marketing of Breastmilk Substitutes.

<sup>[vii]</sup> Shubber, S.: The WHO International Code of Marketing of Breast-Milk Substitutes: History and Analysis. Pinter & Martin Ltd. 2011. Dr. Shubber is formerly Senior Legal Officer, WHO. The book was endorsed by (the late) Sir Robert Jennings, former President and Judge of the International Court of Justice and Professor of International Law, Cambridge University and Chair of the Drafting Group of the 3rd and 4th (final) drafts of the Code. <https://read.amazon.co.uk/?asin=B009YKJB6Q> <https://www.pinterandmartin.com/who-code-of-marketing-of-breast-milk-substitutes.html>

<sup>[viii]</sup> [WHO Constitution](#)

**Article 60.** (a) Decisions of the Health Assembly on important questions shall be made by a two-thirds majority of the Members present and voting. These questions shall include: the adoption of conventions or agreements; the approval of agreements bringing the Organization into relation with the United Nations and inter-governmental organizations and agencies in accordance with Articles 69, 70 and 72; amendments to this Constitution. (b) Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the Members present and voting. (c) Voting on analogous matters in the Board and in committees of the Organization shall be made in accordance with paragraphs (a) and (b) of this Article.

**Article 61** states ‘Each Member shall report annually to the Organization on the action taken and progress achieved in improving the health of its people’

**Article 62** states: “Each Member shall report annually on the action taken with respect to recommendations made to it by the Organization and with respect to conventions, agreements and regulations.”

<sup>[ix]</sup> [International Code of Marketing of Breastmilk Substitutes](#)

**Article 11.6** states “In accordance with Article 62 of the Constitution of the World Health Organization, Member states shall communicate annually to the Director-General on action taken to give effect to the principles and aim of the Code.”

**Article 11.7** states: “The Director-General shall report in even years to the World Health Assembly on the status of implementation of the Code; and shall, on request, provide technical support to Member States preparing national legislation or regulations, or taking other appropriate measures in implementation and furtherance of the principles and aim of this Code.”

<sup>[x]</sup> [WHO Code and 19 Resolutions | CDC summary of key WHA resolutions](#).

<sup>[xi]</sup> [Marketing of breastmilk substitutes during the COVID-19 pandemic](#), Lancet [Volume 396, ISSUE 10259](#), e58, October 24, 2020.

<sup>[xii]</sup> Lancet 2016. And as proposed by the WHO-UNICEF-Lancet Commission in a report *A future for the world’s children?* published in The Lancet, VOLUME 395, ISSUE 10224, P605-658, FEBRUARY 22, 2020 [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32540-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32540-1/fulltext)