

Policy Briefing: The Breast Milk Substitutes (Regulation and Control) Bill 2012, Kenya

[http://www.kenyalaw.org/kl/Uploads/bills/2012/BreastMilkSubstitutes Regulation and Control Bill 2012.doc](http://www.kenyalaw.org/kl/Uploads/bills/2012/BreastMilkSubstitutes%20Regulation%20and%20Control%20Bill%202012.doc)

Background

This Bill was Introduced by Beth Mugo, Minister for Public Health and Sanitation in Kenya, in August 2012. It is intended and advertised to cover breast milk substitutes, but also includes complementary feeding. The Bill is not currently consistent with international recommendations or Scaling Up Nutrition (SUN) Interventions for complementary feeding. The Bill has had three readings; it has now been submitted for final amendments and is likely to be presented to the President for signing in the next two weeks. This briefing is based on the 10th August version of the Bill; the Ministry has been asked and is not likely to share the amendments until after the President has signed the Bill. One of the amendments made was to ensure this Act would be superseded by specific complementary food standards, but even if adopted, it will not cover all complementary foods. There are significant concerns about the disparity between this Bill and:

- World Health Organization (WHO/PAHO) Guiding Principles for Complementary Feeding of the Breastfed Child <http://whqlibdoc.who.int/paho/2003/a85622.pdf>
- UNICEF Programming Guide for Infant and Young Child Feeding 2011 ([http://www.unicef.org/nutrition/files/Final IYCF programming guide 2011.pdf](http://www.unicef.org/nutrition/files/Final_IYCF_programming_guide_2011.pdf))
- Kenya's ability to meet its commitments as a Scaling Up Nutrition (SUN) country.

SUN Interventions that this Act would inhibit:

- Education and full access to nutritious complementary foods for infants and young children after the age of six months

SUN Interventions that this Act might inhibit:

- Multiple micronutrient powders
- Prevention of or treatment for moderate undernutrition between the ages of six and 24 months

If this Act is adopted, there is a risk of a reduction of investment in infant and young child nutrition, and deterioration of infant and young child nutritional status in Kenya, due to the breadth of the proposed prohibitions surrounding complementary feeding between the ages of 6 and 24 months.

Summary of the Bill content

The Bill addresses 'the appropriate marketing and distribution of breast milk substitutes to provide for safe and adequate nutrition for infants through the promotion of breastfeeding and proper use of breast milk substitutes, where necessary, for connected purposes.' The implementation of the

International Code of Marketing of Breast Milk Substitutes (the Code) as law in Kenya is a positive step forward for Kenya in its effort to promote and protect breastfeeding.

However, the text of the Bill addresses not just breast milk substitutes and associated products, but also complementary food products and 'things'. It proposes restrictions that do not reflect an evidence based approach or grounding in global normative guidance, and do not serve the interests of promoting optimal infant feeding. The Bill seriously limits efforts to ensure adequate and appropriate complementary feeding is available through both the use of locally available foods together with appropriate, high quality fortified complementary foods to be used to complement the currently consumed complementary diet.

Promotion: The Bill describes prohibition of advertising or promoting or causing to be advertised or promoted any breast milk substitutes or complementary foods in Kenya, including anything that encourages the buying or use of these products, including displays, publications, electronic communication, and any practices or communication that may create an association with a complementary food product.

Education: There would be a prohibition to employ anyone to provide education to health workers, pregnant women, mothers, or anyone else with education and instructions regarding infant and young child health. Any informational or educational materials that relate to infant or young child nutrition would need to be approved by the Cabinet Secretary in writing, other than research articles and public presentations that do not promote any products in any manner and disclose financiers.

Distribution: Health workers and proprietors would be prohibited from distributing or displaying breast milk substitutes or complementary food products. This may imply that complementary food products may not be sold.

Donations, research, and support: Donating (or causing to be donated) breast milk substitutes or complementary foods to a social welfare institution, orphanage or health facility unless with special written permission from the Cabinet Secretary, provided it has no branding, and includes appropriate training for infant care providers. It will be prohibited to display material referring directly or indirectly to complementary foods, and to distribute any materials to health workers either directly or indirectly referring to breast milk substitutes or complementary food products. It will be prohibited to provide any support to the general public or a health worker for the purposes of promoting these products, and it will be prohibited to 'fund any research carried out by a health worker in infant and young child health'. And it is prohibited to sponsor, facilitate or finance an event, contest, telephone counselling line or campaign directed to pregnant women, mothers of infants, and their families.

Enforcement: There will be establishment of a national committee on infant and young child feeding with senior representation from key government, nutrition, and medical bodies, and NGOs with no interest in promoting complementary food products, and authorized persons appointed to enforce the Bill who can enter anywhere they believe a breast milk substitute or complementary food product or 'thing' is or has been produced, manufactured, stored, packaged, sold or used, other than a dwelling

place (unless they have a warrant) to enforce the Act. Those contravening the Act will be subject to a fine of up to 1 million shillings, up to three years of imprisonment, or both.

Concerns with this Bill

- 1.1 The proposed name of the Act does not include Complementary Foods, yet the content covers them extensively.
- 1.2 The definition of 'advertising' is sufficiently broad as to potentially include displaying complementary foods in shops. There is no definition for 'thing' in the context of 'complementary food product or a thing referred to in 25.1. There is no definition for 'proprietor', referred to in the Bill in the context of prohibited actions. The definition of 'complementary food product' refers to 'any food suitable or presented as suitable complement to breast milk, for infants from the age of six months up to the age of twenty four months' - this definition seems to cover all types of complementary foods, regardless of how they are produced or acquired, and leads to the rest of the Bill proposing prohibitions of access and education for mothers for any foods for infants and young children in that age group, despite World Health Organization guidelines recommending complementary foods should be used during this time, and knowing they are essential for adequate nutrition, healthy growth and development as an input during the critical first 1000 days of life.
- 6.1 'A person shall not advertise or promote or cause to be advertised or promoted a designated or complementary food product' inhibits introducing, and encouraging the buying and use of complementary food products. Many caregivers in Kenya cannot access the basic ingredients to produce the necessary standard of nutritious complementary foods for their children. This prohibition would reduce the choices and options for these caregivers, disempower women and other caregivers in accessing affordable nutritious food for their children, and risk deterioration in children's nutritional status.
- 6.3b It is prohibited to distribute (or cause to be distributed) any information or educational material relating to infant and child feeding. This prohibition risks inhibiting pregnant women, mothers, caregivers, and health workers from accessing essential education and information about infant and young child feeding.
- 6.3f It is prohibited to distribute materials to health workers that directly or indirectly refer to designated or complementary food products. This risks inhibiting health workers from receiving the educational materials they need to educate caregivers on infant and young child feeding.
- 6.3i It is prohibited to fund any research carried out by a health worker in infant and young child health. This is extremely restrictive, and broad, and is likely to be detrimental to Kenya's progress in child health.
- 6.3j It is prohibited to employ a person to provide to health workers in health care facilities; pregnant women or mothers of infants and young children or any other person, with education or instructions regarding infant and young child health. This is extremely restrictive and broad.