

# CONFLICTS OF INTEREST AND THE WHA RESOLUTIONS

IBFAN Africa Regional Webinar

16<sup>th</sup> November 2021. Johannesburg South Africa

Patti Rundall, Baby Milk Action, IBFAN Global Council



*The top strategic priority of the food industry is to change traditional food patterns and cultures in lower and middle-income countries.”*

Prof Philip James, the founder of the Obesity Task Force

*“....international capital at the top is mobile  
and is running circles around  
governments....”*

Jeffrey Sachs quoting a CEO and talking about *The Price of  
Civilisation* BBC Radio 4 Today :

*“The secret of success is  
sincerity. Once you can fake that  
you’ve got it made”*

Jean Giraudoux (1882-1944)



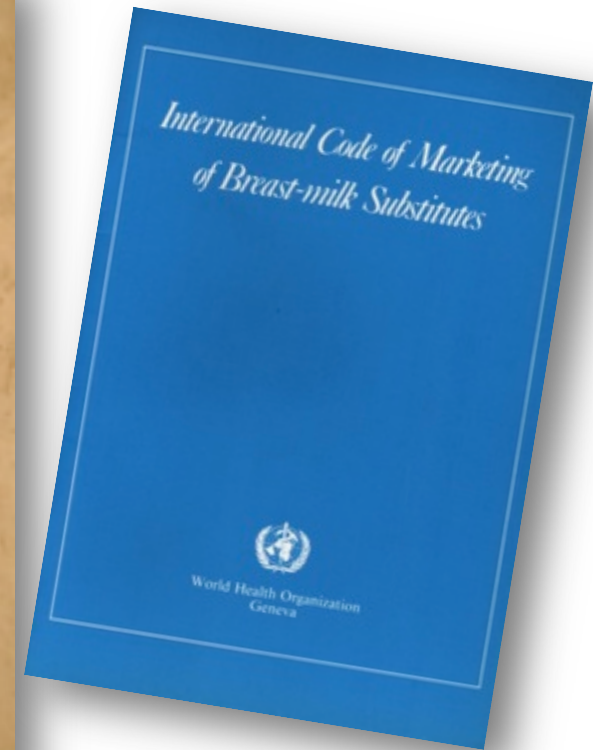
# The baby food market was built on 'trust'

- Companies have always known that sponsorship generates good will and trust.
- **Nestlé Milk Nurses** – sales reps dressed as nurses – are trusted to run infant feeding classes
- In the 80s **Abbott Ross** paid for architectural services - facilitating separation of mothers and babies
- 
- This is how bad practices (separation, timed feeds, routine 'topping up,' test weighing etc) have been exported all over the world.



Photo taken from the promotional booklet  
*Nestlé in Developing countries 1970*

# The International Code – the first consumer protection tool of its kind



The Code was adopted in 1981 with 118 countries in favour and 1 – the US – against.

# Corporate personhood concept

- As the only country to vote against the Code's adoption the USA caused outrage and its opposition has been a problem ever since.
- The 'corporate personhood' legal concept has been used in the US to argue that attempts to restrict company activity infringes on their rights - taking away 'life liberty and property'
- Corporates do NOT have human rights – **they just steal them!**



# 19 Resolutions strengthen and update the code – 8 address conflicts of interest.



The Code and Resolutions have equal status and must be read and implemented together.

# WHO/UNICEF/IBFAN status report 2020

- **70%** of countries (136 of 194) have laws based on the Code – although most are far from strong enough
- **44** countries have strengthened their regulations in the past two years.
- **Congratulations Kenya and Ethiopia!**



# Why COI matters in the Multi-Stakeholder world

# First: Why are the SDGs so problematic?



SUSTAINABLE DEVELOPMENT GOALS

17 GOALS TO TRANSFORM OUR WORLD

Unlike the 8 Millennium Development Goals, the 17 Sustainable Development Goals, adopted in 2015, were substantially influenced by the Private Sector, frequently using the business term 'stakeholder'.

SDG 17 is mainly about strengthening partnership between governments to implement the 2030 agenda through trade etc.

Its reference to multi-stakeholder-partnership is frequently over-emphasised in the context of WHO.



- **Goal No 17 *Partnership for Development***
- *17.16. Enhance the **global partnership** for sustainable development, complemented by **multi-stakeholder partnerships** that mobilize and share knowledge, expertise... and **financial resources** to support the achievement of sustainable development goals in all countries, in particular developing countries*
- *17.17. Encourage and promote ... **public-private partnerships**. <https://sustainabledevelopment.un.org/sdg17>*

# Multi-stakeholderism leads to:

- **Public Private Partnerships (PPPs)** that are, by definition, arrangements for **'shared governance'** to achieve **'shared goals'**
- (shared decision-making is a unifying feature that implies **'respect, trust, shared benefits'**)
- The **'image transfer'** from UN or NGO **'partners'** has strong emotional and financial value



# The SDGs, Multi-stakeholderism and the new governance approach

- Transnational corporations (TNCs) admit that there are problems – but claim they can *only* be solved if they have a seat at the table.
- They claim they are '**socially responsible**' and willing to **self-regulate** through **voluntary codes**.

**'Trust'** is the most valuable word

## SELF REGULATION - '*HERE TODAY - GONE TOMORROW*'

- works *only* as long as companies want it to and *only* while they are being watched.
- *doesn't* reduce the extent and impact of harmful marketing – It invariably increases if companies are granted nutrition education roles)
- *undermines* governments' will to legislate

# Multi-stakeholderism - those with the biggest steak do best



From an idea by Lida Lhotska

- Without **effective COI safeguards** the SDGs could fundamentally change the global health and nutrition governance structure and threaten WHO's capacity to fulfill its unique constitutional core functions.
  - It could affect WHO's role in proposing health conventions and regulations. The building of the international Rule of Law will be fundamentally undermined.
- 
- Defending and Reclaiming WHO's Capacity to Fulfil its Mandate. Richter <http://www.peah.it/2021/01/9249/>



*“Tying corporations up in regulatory straightjackets is unnecessary when companies such as Nestlé already have sound principles and core values.”*

Peter Brabeck, Nestle Chair and CEO, Nestlé AGM in Lausanne 2010. Vice-Chairman, Foundation Board, World Economic Forum.

# Taking Code reporting off the WHA agenda

- Since 1981 – with US support the industry has tried to convince governments that international codes, legally-binding regulations or conventions are not necessary – to take the Code off the agenda.
- In 2020 a LLLi petition attracted 22,000 signatures to keep Code reporting on the WHA Agenda



change.org Start a petition My petitions Browse Subscription

Welcome back to Change.org! A new petition wins every hour thanks to signers like you.

What's new **Petition details** Comments Updates Discover

## Apoya a IBFAN en oposición a decisiones de OMS y UNICEF



9,287 have signed. Let's get to 10,000!

Cinthia Chiriboga signed this petition

Katherine De Gracia Mantovani signed this petition

Thanks to your support this petition has a chance at winning! We only need 699 more signatures to reach the next goal - can you help?

Take the next step!

Veronique Lasolne started this petition to Organización Mundial de la Salud and 2 others



# Baby food companies use the tobacco playbook

1. **Hijack/manipulate** the political
2. and legislative process;
3. Exaggerate the economic importance of the industry;
4. **Manipulate public opinion** /look respectable;
5. **Use front groups**;
6. **Discredit science/fund science**, infiltrate food safety systems
7. **Intimidate governments** – threaten litigation



*Interference in public health policy: examples of how the baby food industry uses tobacco industry tactics*

<https://doi.org/10.26596/wn.201782288-310>

# Scaling up Nutrition (SUN) –a multi-stakeholder hybrid entity

SUN pretends to be a broad and inclusive people's 'movement' but legitimizes more corporate influence in public affairs **SUN lacks:**

- accountability procedures (and promotes instead the concept of '*mutual accountability*')
- democratic scrutiny
- Undermines the efforts of those calling for effective conflict of interest regulations.
- promotes short-term medicalized and technical solutions(UPFs)
- fails to meaningfully address the concerns of communities most affected by hunger and malnutrition



*When the SUN casts a Shadow*  
IBFAN, SID, FIAN 3-country report:  
[/www.babymilkaction.org/archives/24042](http://www.babymilkaction.org/archives/24042)



# SUN's faulty COI

- In 2013 – after critiques from IBFAN and others, SUN hired the corporate-funded Global Social Observatory (using \$1m Gates funding) to develop a COI process. The GSO has poor understanding of COI concepts.
- For example, they:
- focus on **trust** and **collaboration** rather than **caution** or **arm's length** approaches.
- confuse **conflicts of interest** with **disagreements** and **differences in opinions**.
- **Confuse COI within** an institution or person with conflicts **between** actors who have diverging or fiduciary duties.
- At a fundamental level WHO's approach to Conflicts of Interest now **mirrors** [SUN's Ethical Framework](#)

# Conflicts of Interest are **Internal** not **external**

- *‘[Individual] conflicts of interest are defined as circumstances that create a risk that professional judgments or actions regarding a primary interest will be unduly influenced by a secondary interest.’*
- *‘Institutional conflicts of interest arise when an institution’s own financial interest or those of its senior officials pose risks of undue influence on decisions involving the institution’s primary interests.’*
- 1 Lo, B. and M. Field, Inst of Med. (US) Committee on Conflict of Interest in Medical Research, Education and Practice, Eds. (2009) Conflict of interest in medical research, education and practice. Washington DC, National Academics Press, cf.

# Some key WHA Resolutions

# 1994: Resolution 47.5 Free and low-cost supplies

- Consensus reached for the first time when Kenya called for a roll call - US backs down
- *Reiterates earlier calls in 1986, 1990 and 1992 to end “free or low cost supplies” and extends the ban to all parts of the health care system; effectively superseding the provisions of Art.6.6 of the Code.*
- *Provides guidelines on donation of breastmilk substitutes in emergencies.*

# 1996 WHA Res 49.15 - the first of 8 COI resolutions

- Preamble para: *“Concerned that health institutions and ministries may be subject to subtle pressure to accept, inappropriately, financial or other support for professional training in infant and child health”.*
- *“urged Member States to ensure that: Complementary foods are not marketed for or used to undermine exclusive and sustained breastfeeding;*
- *financial support to health professionals does not create conflicts of interests;*
- *Code monitoring is carried out in an independent, transparent manner free from commercial interest.”*

- 1996: 1st WHA Resolution on COI (WHA 49.15)



## 2001 WHA Res 54.2. safeguards for HIV

*2(10) to recognize and assess the available scientific evidence on the balance of risk of HIV transmission through breastfeeding compared with the risk of not breastfeeding, and **the need for independent research in this connection;** ...otherwise, exclusive breastfeeding is recommended during the first months of life; **and that those who choose other options should be encouraged to use them free from commercial influences***



# 1989: Nestle uses AIDs to mislead UK schoolchildren

## Baby Milk Action (BMAC)

Head Office: 6 Regent Terrace, Cambridge, CB2 1AA  
Tel: (0223) 464420. Tel/Fax: (0223) 464417



### PRESS RELEASE.

21st Nov 1989

#### Nestlé uses scare story on AIDS to mislead schoolchildren.

Last Friday, 17th November, Mr Allan Allbeury, the Nestlé Company's UK Public Relations Chief, and Mr Ron Hendey, Manager of Nestlé Dietetics, and Chair of IDFA and IDACE\*, knowingly misled over 200 sixth formers with a false scare story about AIDS and breastfeeding in a Buckingham Comprehensive School.

Following a decision by students in the Green and Peace groups to boycott their products, Nestlé had been invited to debate the growing controversy over the damage caused to babies in developing countries by their promotion of artificial milk. The two top Nestlé executives were welcomed to the school by the headmaster, Mr Malcolm Cole, who was keen to encourage a healthy debate on the issue and the school's Young Enterprise group.... who were keen to make a healthy profit from the Nestlé chocolate vending machine.

Representatives of Baby Milk Action (BMAC) the pressure group, who are coordinating the rapidly growing boycott in the UK, were also invited to speak. Prepared to counter a sophisticated argument about the technical complexities of the controversy, BMAC were shocked to hear Mr Allbeury open his case with statements that entirely contradicted World Health Organisation and UK government health recommendations. Amongst several misleading statements about babies needing artificial milk, Mr Allbeury said, *"there's a need [for infant formula] when mother's are ill. This is a problem in many African countries particularly, because of the spread of AIDS. Because it is possible for mothers to give birth to perfectly healthy babies when they're HIV positive, but they can't then breastfeed because the baby will run the risk of getting AIDS. Sometimes up to about 50% of people in some African countries are actually HIV positive."* This is in complete contradiction to WHO guidelines (WHO/SPA/INF/87.8) which state that HIV + mothers in developing countries should be strongly encouraged to continue breastfeeding. The UK government is also clear that where bottle feeding is a grave risk, as in most developing countries, breastfeeding by HIV + mothers should continue.

In response Dr John Seaman, Senior Medical Officer of Save the Children (UK) has said, *"It is not only SCF's position but WHO's, that it is much safer for babies in developing countries to continue to be breastfed regardless of their mothers' HIV status. It disturbs me that Nestlé have tried to create the view in the minds of these youngsters that bottlefeeding can be a creditable option for these babies. Also I know of no country where 50% of people are HIV +."*

Prof. Catherine Peckham, Epidemiologist at the Institute of Child Health, London, who is coordinating the European Collaborative Study on Paediatric HIV infection also supported the WHO guidelines saying that, *"The case for breastfeeding by HIV + mothers in the developing world is as strong now as it has ever been."*

Mr Hendey, who did not dispute Mr Allbeury's claims, went on to say that it made *"absolutely no difference"* if a baby were given bottles in the neo-natal period.

Page 1 of 2

Baby Milk Action (BMAC) or Baby Milk Action Coalition, is a not-for-profit company limited by guarantee that aims to halt the commercial promotion of bottle feeding and to protect and promote good and appropriate infant nutrition. BMAC is a member of the International Baby Food Action Network (IBFAN) a network of over 100 citizens groups in more than 60 countries. Registered in Wales, Company No. 150425. Registered address: 24 Wilton Grove, Cambridge, CB1 4TS.

Printed on Recycled Paper



# 2003 Global Strategy outlines 2 roles for companies

- **Paragraph 44 Commercial enterprises:**

"Manufacturers and distributors of industrially processed foods intended for infants and young children also have a constructive role to play in achieving the aim of this strategy. They should **ensure that processed food products for infants and children, when sold, meet applicable Codex Alimentarius standards** and the Codex Code of Hygienic Practice for Foods for Infants and Children. In addition, all manufacturers and distributors of products within the scope of the International Code of Marketing of Breast-milk Substitutes, including feeding bottles and teats, are responsible for monitoring their marketing practices according to the principles and aim of the Code. They **should ensure that their conduct at every level conforms to the Code**, subsequent relevant Health Assembly resolutions, and national measures that have been adopted to give effect to both."

## 2005: WHA 58.32

- **1.4** urged Member States: *“to ensure that financial support and other incentives for programmes and health professionals working in infant and young child health do not create conflicts of interest”*
- **1.5 (5)** *“to ensure that research on infant and young child feeding, which may form the basis for public policies, always contains a declaration relating to conflicts of interest and is subject to independent peer review.”*

## 2010 WHA 63.23 – bans claims

- Member States are urged to:
- *"end inappropriate promotion of food for infants and young children and to **ensure that nutrition and health claims shall not be permitted for foods for infants and young children**, except where specifically provided for, in relevant Codex Alimentarius standards or national legislation".*

# 2016 WHA Res 69/9 WHO Guidance on ending inappropriate marketing

- **16. Recommendation 6** *Companies ... should not create conflicts of interest in health facilities or throughout health systems. Health workers, health systems, health professional associations and nongovernmental organizations should likewise avoid such conflicts of interest.”*
- and at last, clarity on Follow-up formulas.

# 2004 Global Strategy on Diet - mentions COI

- **WHA Res 57.17 Global Strategy on Diet, Physical Activity and Health** 5. REQUESTS the Director-General: **(6)** to cooperate with civil society and with public and private stakeholders committed to reducing the risks of noncommunicable diseases in implementing the Strategy and promoting healthy diet and physical activity, **while ensuring avoidance of potential conflicts of interest;**

# Why COI safeguards are essential



# 1991 BFHI and COI. Boycott leaders warn UNICEF



# Why Codex is important

- Strong health protective Codex standards make the adoption and retention of good national laws easier and reduce the likelihood of challenges. IBFAN helps bring Codex Standards into line with the WHA recommendations.
- However, Codex bases its decisions - not on independent and convincing evidence and science – but on politically and commercially influenced consensus. In the case of infant formula – nonsensical claims of '*history of safe use*'.
- **Beware FAO is now in partnership with Danone!**



# Exposing undue influence at Codex

In 2019 44% (164) of the 370 delegates represented food and related industries.

They fund dinners, receptions and meetings. 67 sat on government delegations.

There were more industry than government delegates in the room.

In 2011 all 4 Mexican delegates we from industry.



Food industry sponsors of the 19th Session of the FAO/WHO Coordinating Committee for Africa 2011.

# Conflicts at the heart of policy making

- New Zealand instigated the revision of the 1987 follow up milk standard. It was not needed.
- *“a kilo of infant formula is worth ten times the value of a kilo of milk powder, so it's obvious which product New Zealand should be selling”*
- Gerry Brownlee, New Zealand Minister for Economic Development 2011



US, EU, New Zealand and Canada – large exporting countries Photo credit: Codex Alimentarius



## Rich exporting countries and corporations dominate Codex

Nigeria: *“if anything the situation with cross-promotion is on the increase just as malnutrition of infants and young children continues to be a challenge.”*

African countries over-riden over the words *Cross Promotion*’ – a deceptive marketing technique used to expand the sale of products such as alcohol, tobacco, soft drinks and baby formulas.



Codex Secretariat, the Chair of the meeting and UN delegates. Photo credit: Codex Alimentarius

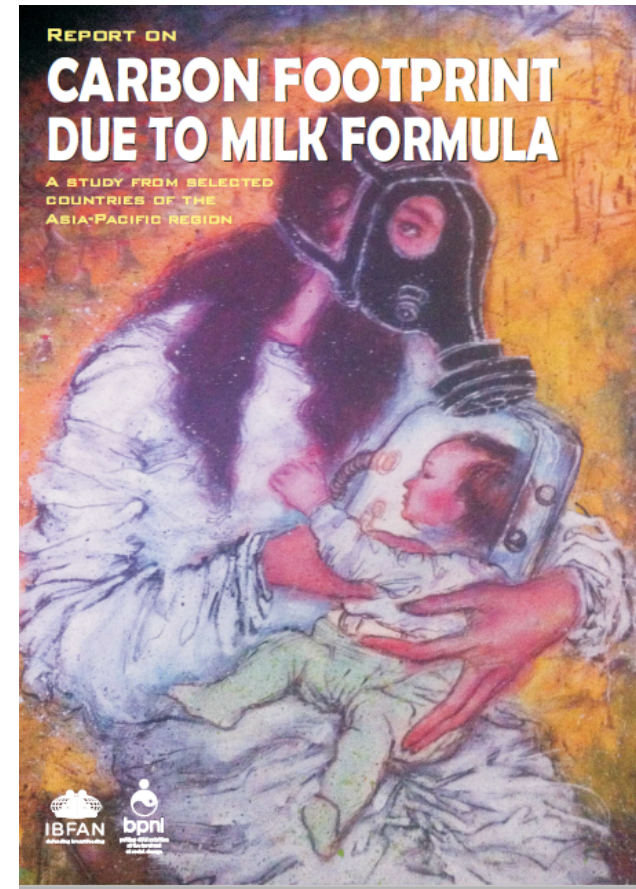
Exporting countries put trade before the health of the planet and children

41<sup>st</sup> Codex Nutrition meeting (CCNFSDU) 23 – 29th November 2019, Dusseldorf, Germany



# Codex and Climate Crisis

- The Code protects breastfeeding, the most sustainable, environmentally friendly way to feed babies.
- The UN Intergovernmental Panel on Climate Change (IPCC) attributes **21–37%** of total greenhouse gas (GHG) emissions to the food system.
- Because of its weak COI safeguards, Codex often 'green-lights' unnecessary, ultra-processed, excessively packaged products – such as follow-up formulas and baby drinks - that increase environmental degradation.



# Nestlé Whistleblower exposes COI in the medical profession





# Infiltrating food safety systems: UK/India



## Further information for consumers on Maggi Noodles

Last updated: 5 June 2015

The FSA is aware of the recent incident in India involving Maggi Noodles. We are currently working with Nestlé UK and the European Commission to investigate the issue.

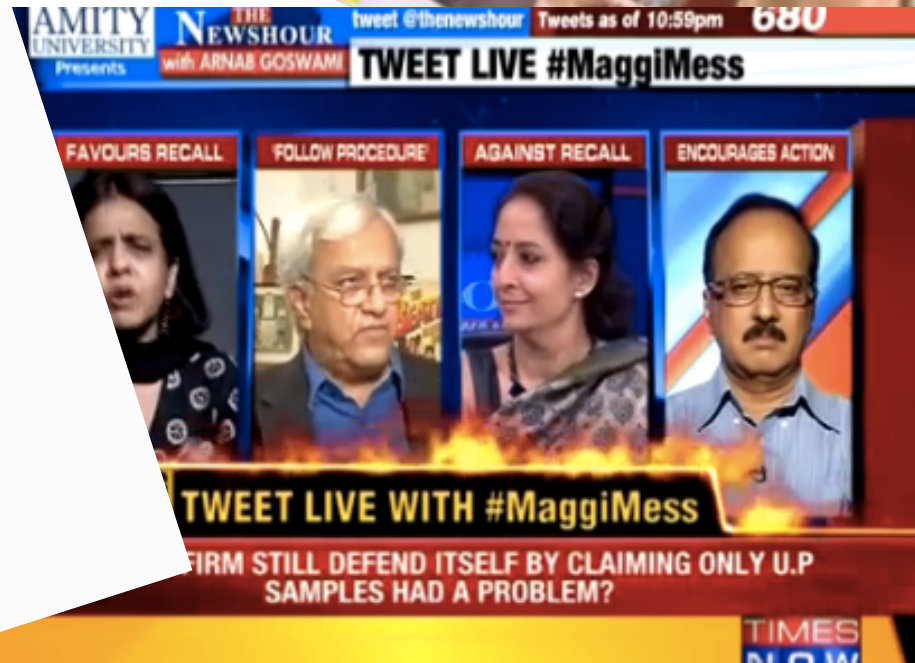
## Post Maggi row, Nestle offers to set up Food Safety Institutes for FSSAI

Company has proposed to collaborate with the food regulator on the same contentious issue of food safety

ETBrandEquity | 24 March 2016, 9:00 AM IST

After a bitter fallout with the Food Safety &

Standards Authority of India (FSSAI) following the ban on Maggi noodles, Nestle has proposed to collaborate with the food regulator on the same contentious issue.





# Building COI coalitions



- The **Conflict of Interest Coalition** launched at the UN in 2011, and very soon 161 NGOs, national, regional and global networks (in all some 2,000 NGOs) signed on, including 4 Royal Colleges in the UK. **COIC aim**: to safeguard public health policy-making from commercial influence.
- **UK: Baby Feeding Law Group**: leading UK health professional and lay organisations – meet quarterly to strengthen UK and EU marketing legislation and discuss COI.
- **India: The Alliance Against Conflict of Interest (AACI)** works in various sectors – doctors, lawyers, women's and children's health groups, activists and media. AACI takes up cases with clear conflict of interest and brings them to the notice of the parties involved, the government and media. AACI aims at having a legal protection from conflicts of interests in all sectors in public policy.

# Non-Communicable Diseases (NCDs) - a key entry point for corporate partnerships

- WHO Tool for engagement:
- *IBFAN Comments on the Outline of the Decision-Making Tool to Support Member-States on Private Sector Engagement for the Prevention and Control of NCDs – Nov 2021*
- Fundamental changes are needed to the COI understanding – if this was done everything would have to change - a much clearer list of exclusions is essential.

•

# Recognising industry front groups: Astroturfing

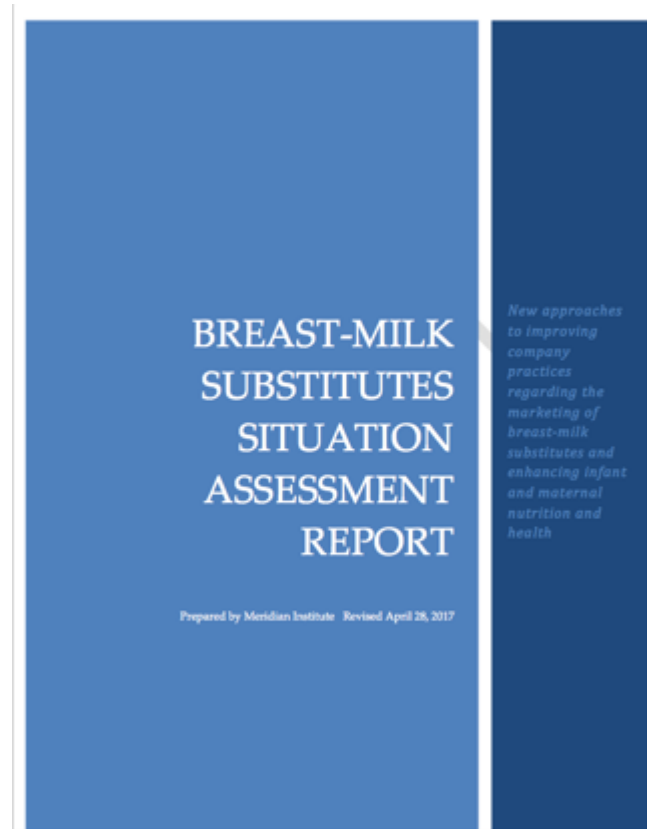
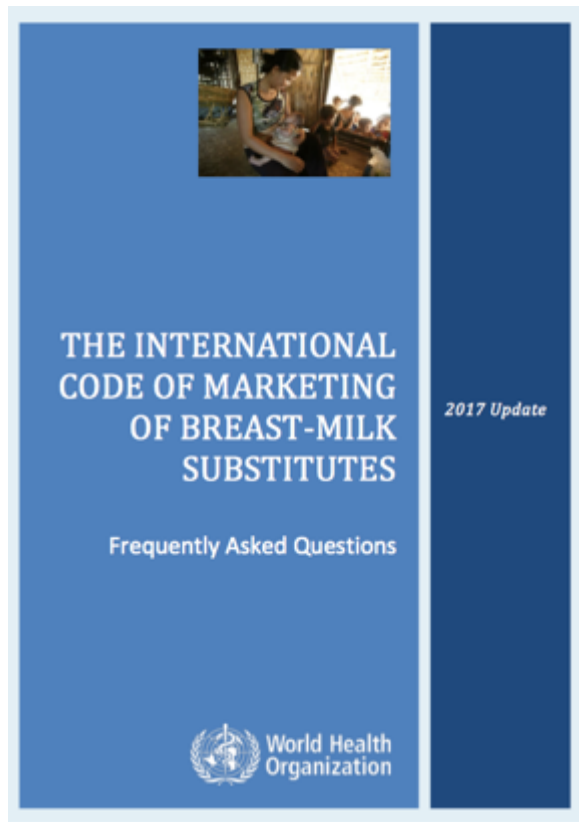
- Astro-turfing is the practice of masking the sponsors of a message or organization to make it appear as though it originates from and is supported by grassroots participants. Companies use it to give credibility to their position statements or organizations
- AstroTurf, is a brand of synthetic carpeting designed to resemble natural grass, as a play on the word “grassroots”



# Establishing COI and transparency policies

- The Infant Feeding in Emergencies (IFE) Core Group is a [global collaboration of agencies and individuals](#) that formed in 1999 to address policy guidance and training resource gaps hampering programming on [infant and young child feeding support in emergencies](#).
- **The IFE now has Declarations of Interest policy**

# Expose the infiltration of monitoring systems



The Meridian Institute report on the right is funded by the Bill and Melinda Gates Foundation. In 2017 it proposed a multi-stakeholder **Global Monitoring Mechanism**. This was abandoned after [IBFAN's Note of Dissent](#):  
<https://tinyurl.com/1laz8bx0>

# Commercially influenced monitoring systems

- The **Access to Nutrition Index** (ATNI) was initiated by the Gates-sponsored **Global Alliance for Improved Nutrition** (GAIN) in 2012. ATNI rewards a select group of actions. Several are problematic when left to companies whose marketing needs to be controlled. For example:
- The promotion of fortified foods
- consumer 'education' about healthy diets and active lifestyle
- engagement with 'stakeholders' in public private partnerships

**ACCESS TO  
NUTRITION  
INDEX**

**GLOBAL INDEX  
2016**





# Key messages: be careful with terminology

- Avoid business terms such as **STAKEHOLDER**
- **'Partnerships'** by definition are arrangements for **'shared governance'** to achieve **'shared goals.'** *Shared decision-making is their single most unifying feature.*
- They imply **'respect, trust, shared benefits'**
- The **'image transfer'** from UN or NGO 'partners' has strong emotional and financial value.
- Call a spade a spade - use **Interactions - citizens - industry funding**
- Monitor what companies **DO** not what they **SAY** they do
- **Protect rather than Promote Breastfeeding**
- **Governments must not forget to GOVERN!**

# lastly

- Ensure monitoring is truly independent
- Support Whistleblowers (ask to show Tigers)
- **Thank you!**

- [prundall@babymilkaction.org](mailto:prundall@babymilkaction.org)

- @pattirundall

- [www.babymilkaction.org](http://www.babymilkaction.org)

- [www.ibfan.org](http://www.ibfan.org)

- [www.babymilkaction.org/tigers](http://www.babymilkaction.org/tigers)