



International Baby Food Action Network IBFAN  
1998 Recipient of the Right Livelihood Award



Geneva Infant Feeding Association - GIFA



FoodFirst Information and Action Network

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# *Submission to the General Comment on Child Rights and the Business Sector*

## Contents

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Executive Summary.....	2
I. Background.....	3
II. Protecting child health and right to adequate food and nutrition from commercial pressures .....	4
a. The International Code of Marketing of Breast-milk Substitutes.....	4
b. Marketing of complementary foods <b>for</b> older infants and young children.....	5
c. Marketing of foods and beverages <b>to</b> children .....	5
d. Marketing of Ready-to-use commercial foods.....	6
III. Domestic legislation and effective enforcement .....	6
IV. Defining a clear role for business and safeguarding for conflicts of interest.....	7
V. Application of the Extraterritorial Obligations of States.....	8
a. The duty to hold business accountable worldwide.....	8
b. The duty to create an international environment where human rights are realized .....	9
VI. Comments on the Annotated Outline .....	9

## Executive Summary

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IBFAN and FIAN make the following recommendations. The General Comment should:

- Clearly establish the obligation of states to effectively implement and enforce the International Code of Marketing of Breastmilk Substitutes and relevant subsequent WHA resolutions.
- Reflect the recommendation of the WHA and thus emphasize the obligation of the States to end inappropriate promotion of food for infants and young children and to ensure that nutrition and health claims<sup>1</sup> shall not be permitted for foods for infants and young children.
- Clearly establish the obligation of states to regulate marketing of foods and non-alcoholic beverages to children, through an international framework as well as through domestic legally binding measures; to regulate marketing, distribution and use of commercial ready-to-use foods; to give higher priority to and support research into opportunities for local production of alternative forms of commercial fortified foods (if they are needed), and to decrease local dependency on external international markets and aid.
- Establish that legally binding measures are the most effective means for the implementation of State Parties obligation to ensure that the child right to health, adequate food and nutrition are protected from marketing practices of the food and beverage industry. In particular, the general comment should argue for transposition into domestic legislation of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant WHA resolutions.
- Include as a key component the clarification of the appropriate relationship between government bodies and the private sector, as these two sets of actors are ever more intertwined. This relationship shall always be defined and regulated in line with human rights obligations and principles.
- Establish the responsibility of States to adopt effective measures to address conflicts of interest in order to ensure the *integrity of their decision making processes* at national as well as at the international level, and as members of various international institutions and organizations.
- Build upon the Extraterritorial Obligations Principles when defining government obligations to protect, respect and fulfill children's rights.
- Establish the obligation of States to ensure compliance of baby food companies, domiciled or registered in their territory, with the International Code of Marketing of Breast-milk Substitutes and subsequent relevant WHA resolutions, anywhere where they operate.
- Establish the responsibility of States, in their international capacity and as expression of international solidarity, to ensure:
  - Development of a comprehensive ethical and policy framework at the UN level to adequately deal with conflicts of interest, in order to prevent their harmful impact on public policy-making and programmes.
  - Promotion, development and adoption of policies which facilitate creation of an enabling environment conducive to the universal realization of the rights of the child.

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<sup>1</sup> Nutrition, health and related claims are voluntary statements made by manufacturers on labels and in advertising about the nutrient content of a food, or a relationship between a food and health. Claims are different from required *nutrition information*. They are used primarily as promotional marketing tools and thus violate the International Code of Marketing of Breastmilk Substitutes and subsequent WHA resolutions. If new ingredients are found to be essential, they should be in all formula and all infant foods and not give the impression that the products with additives are like breastmilk. <http://www.ibfan.org/art/333-1.pdf>

## I. Background

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The International Baby Food Action Network (IBFAN) is a 33-year old coalition of more than 200 not-for-profit non-governmental organizations in more than 100 developing and industrialized nations. The network works for better child health and nutrition through the protection, promotion and support of breastfeeding and the elimination of irresponsible marketing of breastmilk substitutes. IBFAN is committed to the Global Strategy on Infant and Young Child Feeding (2002)<sup>2</sup> – and thus to assisting governments in implementation of the International Code of Marketing of Breastmilk Substitutes (International Code) and relevant resolutions of the World Health Assembly (WHA)<sup>3</sup> to the fullest extent, and to ensuring that corporations are held accountable for Code violations. In 1998 IBFAN received the Right Livelihood Award "*for its committed and effective campaigning for the rights of mothers to choose to breastfeed their babies, in the full knowledge of the health benefits of breastmilk, and free from commercial pressure and misinformation with which companies promote breastmilk substitutes*".

FIAN International is a human rights organization working for the promotion and defense of the Human Right to Adequate Food worldwide. FIAN has sections and coordinations in 20 countries and works with partners in more than 50 countries. FIAN's International Secretariat is based in Heidelberg – Germany, moreover FIAN has a Permanent Representation in Geneva, which allows it to exercise its consultative status at ECOSOC. FIAN has mainly been working in the standard setting processes on the Right to Food in the framework of the Committee on Economic, Social and Cultural Rights, and works close t the CEDAW on the topic of its mandate. Moreover FIAN has contributed to bring the opinions of civil society organizations and social movements to the process of adoption of the FAO Voluntary Guidelines on The Right to Food in the context of national Food Security and other human rights standards at international, regional and national level.

Breastfeeding makes a major contribution to child survival and realization of the child's right to health, adequate food and nutrition. Almost 20% of all under 5 deaths could be prevented if children's mothers could follow the WHO feeding recommendations: "*exclusive breastfeeding for the first six months of life, and with nutritionally adequate and safe complementary feeding through introduction of safe and adequate amounts of indigenous foodstuffs and local foods while breastfeeding continues up to the age of two years and beyond.*"<sup>4</sup>

Commercial marketing practices that interfere with breastfeeding are a key cause for low and stagnating breastfeeding rates globally. It is IBFAN's position that any corporate conduct that is in violation of the International Code is a human rights violation<sup>5</sup>, particularly of the right to health, adequate food and nutrition. IBFAN members continuously monitor marketing practices of the baby food industry and report any such violations.<sup>6</sup> IBFAN's global campaign is considered a case study in attempting to control abuses of corporate power.<sup>7</sup>

The International Baby Food Action Network (IBFAN) and FoodFirst Information and Action network (FIAN International) would like to contribute to the elaboration of the upcoming General Comment on Child Rights and Business, through this submission. We commend the initiative of the CRC Committee to develop this General Comment that aims at providing "States Parties with a framework for implementation of the Convention as a whole with regard to the business sector". It is a timely initiative needed today more than

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<sup>2</sup> World Health Assembly and the UNICEF Executive Board adopted this key policy "to improve – through optimal feeding – the nutritional status, growth and development, health, and thus the survival of infants and young children." WHA Resolution 55.25, § 6.

<sup>3</sup> Subsequent related WHA Resolutions have equal status to the International Code, thus, all references to the International Code herein include these resolutions.

<sup>4</sup> Global Strategy for Infant and Young Child Feeding, adopted under WHA Resolution 55.25, 2002.

<sup>5</sup> UNICEF's former Deputy Executive Director, Stephan Lewis clearly expressed this view already in 1999: "*Those who make claims about infant formula that intentionally undermine women's confidence in breastfeeding are not to be regarded as clever entrepreneurs just doing their job but as human rights violators of the worst kind.*"

<sup>6</sup> IBFAN-ICDC, "Breaking the Rules, Stretching the Rules 2007", available at [www.ibfan.org/code\\_watch-btr.html](http://www.ibfan.org/code_watch-btr.html).

<sup>7</sup> See, e.g., Richter, J. *Holding Corporations Accountable*. London: Zed Books 2001.

ever because of the current trend of public-private partnerships (PPPs) and multi-stakeholder initiatives (MSIs), which leads to blurring of the lines between public and private sectors and their respective roles, in particular in policy-making.

## II. Protecting child health and right to adequate food and nutrition from commercial pressures

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### a. The International Code of Marketing of Breast-milk Substitutes.

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Baby food companies reap profits from aggressive promotion of their products. This commercial malpractice has a direct, negative impact on the realization of the rights of children and women, in particular on the right to health and to adequate food and nutrition.

To stop these practices, the World Health Assembly adopted in 1981 the *International Code of Marketing of Breastmilk Substitutes* (International Code), which represents the first attempt to regulate an entire industry sector at a global level.<sup>8</sup> The International Code aims "to contribute to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding and by ensuring the proper use of breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution." Subsequent WHA resolutions and initiatives, such as the *2002 Global Strategy for Infant and Child Feeding*, have clarified and amplified the International Code and carry equal status.

Currently, the World Health Organisation (WHO) recommends "*exclusive breastfeeding for the first six months of life, and with nutritionally adequate and safe complementary feeding through introduction of safe and adequate amounts of indigenous foodstuffs and local foods while breastfeeding continues up to the age of two years and beyond.*"<sup>9</sup>

Article 24 of the Convention on the Rights of the Child (CRC) affirms the right of the child to the "enjoyment of the highest attainable standard of health". Under this right (Art. 24.2(c)), State parties have the obligation to "combat disease and malnutrition" including through "the provision of adequate nutritious foods and clean drinking water". The Article 24.2 (e) explicitly states the importance of breastfeeding as part of the child's right to the highest attainable standard of health. The CRC Committee has recognized that "*implementation of the [International Code] by State Parties is a concrete measure towards the realization of parents' right to objective information on the advantages of breastfeeding.*"<sup>10</sup> **In the past 5 years, the CRC Committee has recommended to 50 countries (56% o countries reviewed) to fully implement and effectively enforce the International Code.**

At international level, the governments make commitments to Code implementation and urge industry compliance with it all the time. Only as recently as in 2010 they adopted another World Health Assembly resolution (WHA63.23) which "*CALLS UPON infant food manufacturers and distributors **to comply fully** with their responsibilities under the International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly resolutions.*"

Companies are obliged to comply with the International Code independent of whether states have taken any national action to give effect to it (Code Article 11.3). Compliance with the International Code is recognized as one measure for industry to fulfill their responsibility to respect the child right to health, adequate food and nutrition<sup>11</sup>.

In the area of infant and young child feeding, the State party obligation to protect the right of the child to health and to adequate food translates into the obligation to regulate the marketing practices of baby food companies through implementation and effective enforcement of the International Code. This has been

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<sup>8</sup> WHO, *International Code of Marketing of Breastmilk Substitutes*, WHO Geneva, 1981.

<sup>9</sup> *Global Strategy for Infant and Young Child Feeding*, adopted under WHA Resolution 55.25, 2002.

<sup>10</sup> Hodgkin, R. and Newell, P. *UNICEF Implementation Handbook for the Convention on the Rights of the Child*, UNICEF 2007, p. 356.

<sup>11</sup> [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/CRBP/Childrens\\_Rights\\_and\\_Business\\_Principles.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf)

highlighted recently also by the UN Special Rapporteur on the Right to Food<sup>12</sup> and by the newly adopted Children's Rights and Business Principles<sup>13</sup>.

**The General Comment should clearly establish the obligation of states to effectively implement and enforce the International Code of Marketing of Breastmilk Substitutes and relevant subsequent WHA resolutions.**

### b. Marketing of complementary foods for older infants and young children

Complementary foods complement breastmilk for infants and young children from 6 months up to 2 years of age. The International Code does not cover them, unless these are *"marketed or otherwise represented to be suitable with or without modification, for use as a partial or total replacement of breastmilk"* (Article 2: Scope of the Code).

The manufacturers take advantage of the lack of regulation for marketing of these products and promote commercial complementary foods sourced through global markets. This undermines communities' capacity to sustain themselves with adequate local foods and to provide sustainable solutions to adequate complementary feeding. Policies and programmes, focusing on nutritional requirements associated with the intertwined food and nutritional rights and needs of mothers and children during pregnancy, infancy and the first two years of a child's life must not result in trade or technical product dependencies that erode or supplant local capacity.

Moreover commercial complementary foods are marketed in a manner that undermines 6 months of exclusive breastfeeding as they are more often than not promoted for use from 4 months of the child age<sup>14</sup>.

The 2010 WHA called on States *"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."*<sup>15</sup>

However, national measures to address inappropriate marketing of foods for infants, young children and children more generally are lacking.

**The General Comment should reflect the recommendation of the WHA and thus should emphasize the obligation of the States *"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"*.**

### c. Marketing of foods and beverages to children

Little attention is paid to the marketing of unhealthy foods and beverages (junk food) **to** children despite the strong scientific rationale that links commercial promotion of foods and beverages to poor children's diets. Research shows that food promotion is overwhelmingly for energy-dense, micronutrient-poor foods which undermine healthy diets. It also shows that children are aware and engage with the extensive food and beverage promotion and that it has a deleterious effect on their food knowledge, behavior and consumer attitudes<sup>16</sup>.

The Special Rapporteur on the Right to Food has acknowledged that *"significant concerns are expressed today about the marketing practices of the agrifood industry, particularly as regards marketing to children. [...] The ability of these marketing practices to change consumer behavior is remarkable in developing countries; in part because of North-based global companies carry positive connotations"*<sup>17</sup>.

<sup>12</sup> Special Rapporteur on the Right to Food to Food, "Report on the right to nutrition", available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.59\\_English.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.59_English.pdf), last accessed at 18 April 2012.

<sup>13</sup> See supra note 10

<sup>14</sup> See for example IBFAN-ICDC, "Breaking the Rules, Stretching the Rules 2007", available at [http://www.ibfan.org/code\\_watch-btr.html](http://www.ibfan.org/code_watch-btr.html), accessed at 18 April 2012.

<sup>15</sup> WHA resolution 63.23, available at [http://apps.who.int/gb/ebwha/pdf\\_files/WHA63/A63\\_R23-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA63/A63_R23-en.pdf), accessed at 18 April 2012.

<sup>16</sup> Marketing of Food and non-alcoholic Beverages to Children, report of a WHO Forum and Technical Meeting, Oslo, 2-5 May 2006.

<sup>17</sup> Special Rapporteur on the Right to Food to Food, "Report on the right to nutrition", see supra note 10

The 2010 WHA adopted a Set of recommendations on the marketing of foods and non-alcoholic beverages to children<sup>18</sup>. A few member states have taken strong steps to implement these at national level. Industry's own "voluntary" measures, often introduced to counter any pressure for legally binding regulation, are inadequate to address the problem.

The SR recommends "*an international framework, in the form of an international code of conduct regulating marketing food and beverages in support of national efforts, might be desirable in order to take into account the international nature of commercial promotion of energy-dense, micronutrient-poor food and beverages.*"<sup>19</sup>

This echoes the recommendations from public-interest NGOs, such as Consumers International, the International Association for the Study of Obesity and the International Obesity Taskforce, who proposed in 2008 the International Code on Marketing of Foods and Non-Alcoholic Beverages to Children<sup>20</sup>.

**The GC should reflect the recommendations of the SR and of public-interest civil society organisations. It should clearly establish the obligation of states to regulate the marketing of foods and non-alcoholic beverages to children, through an international framework as well as through domestic legally binding measures.**

#### d. Marketing of Ready-to-use commercial foods

While we recognize that the prevention and control of the double burden of malnutrition worldwide constitute a major challenge, we are concerned that solutions for child malnutrition are inadequate and those promoted today are becoming increasingly medicalized with the use of *fortified commercial foods*.

One such class of products is the Ready-to-Use Foods (RUFs). The original products have been developed and used in emergency situations to cure acute malnutrition under medical supervision and are known as Ready-to-Use Therapeutic Foods (RUTFs). However, the development of other RUFs has moved beyond the realm of responding to emergencies of extreme hunger, food deprivation, and illness to the realm of less severe forms of malnutrition and/or its prevention. RUFs are marketed as the best solution for young child nutrition and malnutrition prevention without mentioning the best practice of *continued breastfeeding* through age two and from 6 months only a *gradual introduction* of semi-solid and solid foods, ideally from the traditional foods the family eats. Thus RUFs continue a market pattern of interrupting breastfeeding practice and additionally interfering with traditional family and community foods and eating patterns<sup>21</sup>.

At the onset, these products are usually distributed free of charge, creating demand and undermining traditional and sustainable nutrition practices. Once product dependency is secure, the full cost is reinstated, burdening households<sup>22</sup>.

**The General Comment should clearly establish the obligation of States to regulate the marketing, distribution and use of the commercial ready-to-use foods; and the responsibility of States to give higher priority to and support research into opportunities for local production of alternative forms of commercial fortified foods (if they are needed), and to decrease local dependency on external international markets and aid.**

### III. Domestic legislation and effective enforcement

FIAN experience has shown that in general binding regulations, when accompanied by effective and accessible monitoring and claim mechanisms, are more effective than mere voluntary regulations. IBFAN experience has shown that legally binding regulation at national level can make a difference to the

<sup>18</sup> WHO, "Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children", available at: [http://whqlibdoc.who.int/publications/2010/9789241500210\\_eng.pdf](http://whqlibdoc.who.int/publications/2010/9789241500210_eng.pdf) accessed at 18 April 2012

<sup>19</sup> Special Rapporteur on the Right to Food to Food, "Report on the right to nutrition", see supra note 10

<sup>20</sup> <http://www.consumersinternational.org/media/314595/recommendations%20for%20an%20international%20code%20on%20marketing%20of%20foods%20and%20non-alcoholic%20beverages%20to%20children.pdf>

<sup>21</sup> Arie S., "Hungry for Profit", in *BMJ*, 341:c5221, 2010

<sup>22</sup> Sachs J., Fanzo J., Sachs S. (2010) Saying "Nuts" to hunger. The Huffington Post Available online: [http://www.huffingtonpost.com/jeffrey-sachs/saying-nuts-to-hunger\\_b\\_706798.html](http://www.huffingtonpost.com/jeffrey-sachs/saying-nuts-to-hunger_b_706798.html). Accessed at 1 November 2011



marketing of breastmilk substitutes and thus breastfeeding rates. In order to ensure effective enforcement, such legislation should be accompanied by effective enforcement mechanisms with designated authorities that carry out systematic monitoring, and with clear procedures for redress in case of violations.

In Brazil, where progressively stronger legislation has been introduced since 1985, median breastfeeding duration has increased from less than 3 months in the 1970s to over 10 months at the beginning of this century. In India, where the International Code has been transposed into a national criminal law with civil society playing a key role in monitoring compliance, many companies soon conformed their marketing practices of breastmilk substitutes to the law.<sup>23</sup>

The efforts to implement the International Code in effective national legally-binding measures are opposed by the baby food industry. Euromonitor, the strategy research for consumer markets which serves the industry, stated in their 2008 report, *Global Packaged Food: Market Opportunities for Baby Food to 2013*: "The industry is fighting a rearguard action against regulation on a country-by-country basis."<sup>24</sup>

In order to regulations, companies have pressed for 'self-regulation' through the so-called 'voluntary', i.e. legally non-binding, codes of conduct. However, as the Special Rapporteur on the Right to Food concludes, "[s]elf-regulation by the agrifood industry has proven ineffective" and therefore States are urged to "[t]ranspose into domestic legislation the International Code of Marketing of Breast-milk Substitutes and the WHO recommendations on the marketing of breast-milk substitutes and of foods and non-alcoholic beverages to children, and ensure their effective enforcement"<sup>25</sup>

**The General Comment should establish that legally binding measures are the most effective means for the implementation of State Parties obligation to ensure that the child to health, adequate food and nutrition are protected from marketing practices of the food and beverage industry.**

**In particular, the General Comment should argue for transposition into domestic legislation of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant WHA resolutions. Claim and monitoring mechanisms regarding its implementation shall be included in the national framework.**

#### **IV. Defining a clear role for business and safeguarding for conflicts of interest**

30 years of IBFAN's experience show that baby food companies have no genuine intention of complying with the International Code and will resist any attempt to push them to do so. At best they say they 'agree with the aims and principles' of the International Code.

One of the major reasons why they still – and perhaps more than ever- get away with their unethical practices is the increasing influence of companies over policy-makers and key institutions. This is facilitated by the trend that, at the international and national level, made it possible for companies to enter the policy-making arena and implementation: the trend of public-private partnerships (PPPs) and multi-stakeholder initiatives (MSIs)<sup>26</sup>. Governments and the UN have increasingly entered into 'close' rather than 'arm's length' relationships with business through PPPs and MSIs, without paying sufficient attention to questions of business power and influence in shaping public policy. While the 'good governance' agenda has promoted multi-stakeholder dialogues and participation of private sector in the policy processes, the question of power relations and power imbalance has remained unanswered and so did the need to develop adequate safeguards that would adequately deal with conflicts of interest and protect public interest.

States, UN agencies and numerous respectable NGOs have entered into PPPs and MSIs with major food transnational corporations (TNCs), without setting criteria for business engagement and without safeguards

<sup>23</sup> Radha Holla Bar, Arun Gupta, and Raj K. Anand, Protecting, Promoting and Supporting Breastfeeding: The Indian Experience. Breastfeeding Promotion Network of India, New Delhi, 2003

<sup>24</sup> Euromonitor International, *Global Packaged Foods: Market Opportunities for Baby Food to 2011*, Euromonitor International, London, 2008.

<sup>25</sup> Special Rapporteur on the Right to Food to Food, "Report on the right to nutrition", see supra note 10

<sup>26</sup> As Zammit explains the term 'partnerships' "covers a multitude of activities and relationships, perhaps best conceptualized as a special case of 'close' rather than 'arms-length' relationships" between public and private sector actors. Zammit, A. (2003): Development at risk: rethinking UN-business partnership. Geneva, United Nations research institute for Social Development (UNRISD) in collaboration with the South Center.

against conflicts of interest. Many of these TNCs are well-known violators of the International Code, and while the benefits for the business actors are numerous (public image, reducing risks, accessing new markets and intelligence information), the social benefits of these PPPs and MSIs have been quite limited. The gaining of political attention ostensibly for promoting the human right to adequate food while marketing products that undercut known best practices for infant feeding, unequivocally reflects inappropriate influence and presents increased risks of conflicts of interest.

"A [individual] conflict of interest is a set of conditions in which professional judgment concerning a *primary interest* ...tends to be unduly influenced by a *secondary interest*." <sup>27</sup>

"Institutional conflicts of interest arise when an institution's own financial interest or those of its senior officials pose risk of undue influence on decisions involving the institution's primary interest." <sup>28</sup>

The primary interest in our field is protecting, respecting and fulfilling the human right to adequate health, adequate food and nutrition for women and children. Other primary interests are to ensure the respect of women and children's dignity, self-determination. If professional, legal or political judgments of public officials or health professionals responsible for working towards the realization of women's and children's human rights are unduly influenced by financial motivations, political or other ties, etc., then there is a conflict of interest with important risks to the realizations of these rights. The same logic applies to public institutions. Unless the governments require them to ensure effective procedures for identification, disclosure, management and promotion of appropriate resolutions of conflicts of interest situations, may adopt decisions which are not in the best interest of the child.

**Exploring the appropriate relationship between government bodies and the private sector should be a key component of the General Comment, as these two sets of actors are ever more intertwined.**

**States should ensure that effective measures to address conflicts of interest are in place in order to ensure the *integrity of their decision making processes* at national as well as at the international level, and as members of various international institutions and organizations.**

## V. Application of the Extraterritorial Obligations of States

The Maastricht Principles on Extraterritorial Obligations of States (ETO Principles) in the area of Economic Social, and Cultural Rights<sup>29</sup> were adopted in September 2011 by a group of 40 distinguished experts in international law and human rights. These international legal principles clarify the human rights obligations of states beyond their borders, based on the interpretation of existing human rights instruments. These principles are an important step to address gaps in human rights protection created in the context of the past 20 years of globalization.

### a. The duty to hold business accountable worldwide

Business corporations are no longer territorially confined: they source their primary input in one country, produce in another, and sell their products in many different countries, sometimes worldwide.

The ETO Principles emphasize the human rights obligation of states to regulate the conduct of non-State actors (transnational corporations and business enterprises) domiciled on their territory, to ensure that their conduct which takes place outside of the state's territory does not abuse human rights in other countries where these companies operate.

Principle 25 'Bases for protection' clearly establishes that "States must adopt and enforce measures to protect economic social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: [...] b) where the non-state actor has the nationality of the state

<sup>27</sup> Thompson, D F: Restoring responsibility: ethics in government, business and health care. Cambridge, UK: Cambridge University Press, p. 290

<sup>28</sup> Lo, B & Field, MJ, editors. Institute of Medicine (US) Committee on Conflict of Interest in Medical Research, Education and Practice; (2009). Conflict of interest in medical research, education and practice. Washington DC: National Academics Press

<sup>29</sup> ETO Principles, available at <http://www.icj.org/dwn/database/Maastricht%20ETO%20Principles%20-%20FINAL.pdf>



concerned; c) as regards business enterprises, where the corporation or its parent controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activity, in the State concerned”<sup>30</sup>.

Moreover, principle 26 ‘Position to influence’ reflects on the fact that many other states that may not have a bases for protection are still in a position to influence the behavior of non-State actors and should exercise such influence in order to protect economic, social and cultural rights.

**The General Comment should build upon these principles when defining government obligations and encourage States to their application.**

**In the area of infant and young child feeding. , States in which baby food companies are domiciled or registered should take responsibility for ensuring compliance of these business enterprises with the International Code anywhere where they operate.**

## b. The duty to create an international environment where human rights are realized

The ETO Principles also highlight the obligations of States to take steps “separately and jointly through international cooperation to create an international enabling environment conducive to the universal fulfillment of economic, social and cultural rights”, including in matters related to trade<sup>31</sup>.

Thus States, when acting jointly through multilateral institutions, such as UN agencies, must take steps to address the impediments to the realization of women’s and children’s right to health, adequate food and nutrition.

They can comply with this obligation through “a) elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards...” The above mentioned International Code and the other relevant WHA resolutions fall under this obligation, and thus its application should be enforced.

Protection, promotion and support for breastfeeding must be guaranteed for every mother and child; a necessary step in this direction is the creation of enabling environments which makes it possible for mothers to breastfeed and to adequately feed their children. An international environment with adequate safeguards on conflicts of interest will enable policy makers to take decisions in the best interests of the child.

**The General Comment should establish the responsibility of States, in their international capacity and as expression of international solidarity, to ensure:**

- **Development of a comprehensive ethical and policy framework at the UN level to adequately deal with conflicts of interest, in order to prevent harmful impact of profit-motivated conflicts of interest on public policy-making and programmes.**
- **Promotion, development and adoption of policies which facilitate creation of an enabling environment conducive to the universal realization of the rights of the child.**

## VI. Comments on the Annotated Outline

As regards section 3.4 on Policy, the second point in relation to communication promotes “*corporate communication*” on the impact of corporate activity on children’s rights. In our view this part should rather focus on public policies that promote effective and independent monitoring and impact assessment of corporate activities on child rights. The results of such monitoring can then be used to corroborate or refute corporate communication and assess its validity. As the experience shows the corporate self- reporting, for example the one within the UN Global Compact<sup>32</sup>, is often used by companies as a window dressing and has failed to properly address human rights impact of corporate activities.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> “United Nations Corporate Partnerships: The Role and Functioning of the Global Compact” (JIU/REP/2010/9):

[http://www.unjiu.org/data/reports/2010/JIU.REP.2010.9\\_For%20Printing\\_17%20January%202011.pdf](http://www.unjiu.org/data/reports/2010/JIU.REP.2010.9_For%20Printing_17%20January%202011.pdf), accessed at 18<sup>th</sup> April 2012.