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# Realising Children's Rights to Adequate Nutrition through National Legislative Reform

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# REALISING CHILDREN'S RIGHTS TO ADEQUATE NUTRITION THROUGH NATIONAL LEGISLATIVE REFORM

Inadequate nutrition early in life can cause irreparable damage to the developing brain and body. Among other ills, results can include improper mental and physical development, diminished mental and physical capacity, mental retardation, blindness, impaired ability to fight infections and increased risk for obesity and the chronic diseases associated with it. Malnutrition underlies and contributes to approximately 53 percent of all child deaths.<sup>1</sup> The right to adequate nutrition, therefore, is a fundamental, foundational right for children. Its fulfillment is essential for life, health, development and dignity. Without these, a child will have difficulty learning, playing, engaging in other childhood activities, becoming a productive member of society in later years and enjoying the full range of human rights to which all humans are entitled.

General Comment No. 12 to the International Covenant on Economic, Social and Cultural Rights (ICESCR) clarifies that every state is obligated to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe to ensure freedom from hunger. The right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. General Comment No. 12 recognizes, however, that the right to adequate food will have to be realised progressively in many countries.

A comprehensive solution to achieving adequate nutrition for children calls for multiple strategies involving interventions for the whole population. As proclaimed in the Universal Declaration on

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<sup>1</sup> Bryce, J. et al. Child Health Epidemiology Reference Group, "WHO estimates of the causes of death in children." *Lancet* vol. 365 (2005); p. 1147-52.

the Eradication of Hunger and Malnutrition,<sup>2</sup> governments should integrate appropriate food and nutrition policies within socio-economic and agricultural development plans, stressing the importance of human milk in this connection. Paragraph 4 of the Declaration provides that each State has the responsibility to: provide effective measures for socio-economic transformation by agrarian, tax, credit and investment policy reform, reorganisation of rural structures, such as reform of the conditions of ownership, encouragement of producer and consumer co-operatives, mobilisation of the full potential of both male and female human resources, involving small farmers, fishermen and landless workers, and ensuring that appropriate education, extension programmes, and financial facilities are made available to women on equal terms with men.

A thorough discussion of the full range of measures and legislative interventions in these spheres is beyond the scope of this chapter subchapter. Instead, the subchapter addresses four focused nutrition interventions that are crucial components of the mix that guarantees children the right to adequate nutrition: 1) combating micronutrient malnutrition, primarily through food fortification; 2) protecting, promoting, and supporting breastfeeding; 3) enacting or strengthening accompanying social policies to enable women to breastfeed; and 4) promoting healthy diets and physical activity to reverse the alarming trend of childhood obesity and resulting chronic diseases in developed and developing countries alike.

These interventions were chosen because they are critical for preventing the irreparable harms that can result from inadequate nutrition during the most critical period of child development, they are clearly achievable over the shorter term and are inexpensive, and they require legislative measures for implementation. According to the WHO/UNICEF Global Strategy for Infant and Young Child Feeding, the majority of children's deaths from malnutrition could be prevented through low-cost interventions like these.<sup>3</sup>

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<sup>2</sup> The Declaration was adopted and endorsed by General Assembly Resolution 3348 (1974).

<sup>3</sup> Global strategy for infant and young child feeding, WHO and UNICEF, Geneva (2002).

## *Socio-economic Benefits of Realising Children's Right to Adequate Nutrition*

In addition to grossly violating human rights, inadequate and improper nutrition have profound negative effects on nations' economic growth and poverty rates. Results can include low productivity as a result of poor physical condition, poor schooling as a result of low cognitive function, and significant care costs resulting from poor health.<sup>4</sup> Economic costs can include more than 10 per cent losses in productivity in lifetime earnings and up to 3 per cent losses in gross domestic product. Fulfilling the right to nutrition, therefore, has a direct effect on reducing poverty. It is essential to reducing extreme poverty,<sup>5</sup> as called for in the Millennium Development Goals (MDGs).

Giving effect to children's right to adequate nutrition begins with ensuring proper nutrition in utero and during the first two years. It also means ensuring the nutritional needs of girls and women of childbearing age and pregnant and lactating women are met. These groups are entitled to adequate nutrition and health for their own well-being, as reflected in Article 12 of the Convention on the Elimination of Discrimination against Women (CEDAW). Due to persistent status inequities, however, girls and women are more likely to suffer from inadequate nutrition. Their children bear the burden with them and all of society suffers.

### *Children's Right to Adequate Nutrition in International Law*

The right to adequate nutrition is established in numerous international instruments, from the Universal Declaration of Human Rights (UDHR) to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Right of the Child (CRC), and CEDAW. Breastfeeding is an essential component of children's right to adequate nutrition and to other human rights and is protected and supported in several international instruments. These include the ICESCR, CEDAW, the International Code of Marketing of Breastmilk Substitutes (the Code) and subsequent World Health Assembly (WHA)

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<sup>4</sup> *Repositioning nutrition*. World Bank, Washington DC (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

<sup>5</sup> *Ibid.*

Resolutions,<sup>6</sup> the 1990 Innocenti Declaration on the Protection, Promotion, and Support of Breastfeeding and the 2005 Innocenti Declaration on Infant and Young Child Feeding (Innocenti Declarations), the Global Strategy on Infant and Young Feeding (Global Strategy), and the ILO Maternity Protection Conventions and Maternity Recommendations (1919, 1952, and 2000) (Maternity Protection Convention).

Together these instruments establish a web of nutrition, health, social and economic human rights protections that obligate governments to ensure the right of every woman, child and person to adequate nutrition. Relevant provisions of these instruments are summarized below.

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<sup>6</sup> References in this sub-chapter to ‘the Code’ include subsequent WHA resolutions.

<b>International legal instrument</b>	<b>What it provides</b>
<b>UDHR, Art. 25:</b>	right of everyone to a standard of living adequate for health and well-being, including the right to food
<b>ICESCR, Art. 11:</b>	fundamental right of everyone to be free from hunger
<b>Art. 12:</b>	right of everyone to the enjoyment of the highest attainable standard of physical and mental health
<b>Art. 10:</b>	special protection should be provided to mothers during a reasonable period before and after childbirth; working mothers should be accorded paid leave or leave with adequate social security benefits
<b>CRC, Art. 24:</b>	right of the child to the enjoyment of the highest attainable standard of health
	states must take appropriate measures to diminish infant and child mortality and combat disease and malnutrition through, among other things, the provision of adequate nutritious foods and clean drinking water
<b>CEDAW, Art. 3 :</b>	Parties must take appropriate measures to ensure the development and advancement of women.
<b>Art. 11 and 12:</b>	States must take measures to eliminate discrimination against women in employment, with regard, in particular, to sanctions or dismissal on the grounds of pregnancy or maternity leave, and to introduce paid maternity leave. Article 12 requires states to ensure appropriate services in connection with pregnancy as well as adequate nutrition during pregnancy and lactation.
<b>The Code</b>	specific provisions for protecting, promoting, and supporting breastfeeding (discussed in detail in the section on breastfeeding)
<b>ILO Convention and Recommendations</b>	standards for maternity leave and benefits, employment protection and non-discrimination, and breastfeeding opportunities during work to support the ability of working pregnant women and mothers to breastfeed and otherwise care for their children and themselves without jeopardizing their employment

Strategies and targets for attaining children’s right to adequate nutrition are contained in the Plan of Action for Implementing the

World Declaration on the Survival, Protection and Development of Children (1990) and other documents. The Plan of Action, endorsed by signing governments, sets out strategies and measurable, time-bound targets for addressing nutrition. These include reducing the rate of low birth weight, eliminating or reducing specified micronutrient deficiencies, empowering women to breastfeed, promoting growth and its regular monitoring, disseminating knowledge and supporting services to increase food production and ensure household food security.

Finally, the UN General Assembly's Millennium Development Goals (MDGs) call for, among other things, reducing by half the proportion of people who suffer from hunger (MDG 1) and reducing by two thirds the mortality rate among children under five (MDG 4). Because malnutrition is a significant cause of under-five child mortality, this goal cannot be achieved without ensuring adequate nutrition to infants and young children, girls and women of childbearing age, and pregnant and lactating women.

### *Legislative Reform: Realising the Right to Adequate Nutrition*

While many international instruments either establish the right to adequate nutrition or reflect agreement on strategies to give effect to that right, legislative reform will be needed in most countries to implement and enforce the right. Engaging in a participatory process, governments should establish applicable legal requirements for:

- nutrition interventions, including duties (e.g., on governments, food companies, employers) to ensure their proper implementation;
  - systems for monitoring nutrition goals and targets and for enforcing legal requirements;
  - mechanisms of accountability and a legal right of redress in national courts (both with respect to the failure of the government to meet its legal obligations and to violation of specific obligations imposed by law upon non-state actors); and
  - the commitment of necessary resources.
- Each of these elements is discussed in the sections on Specific Interventions to Fulfil Children's Right to Adequate Nutrition, below.

## **1.1 Technical Considerations in Establishing Legal Requirements: Legislation or Regulations (Subsidiary Legislation)?**

Where there is broad legal authority under an existing food control, public health, and labour, or similar law, legislative reform to establish appropriate legal requirements for nutrition interventions may take the form of ministerial regulations or other subsidiary legislation. Establishing requirements through regulations has some advantages. It usually is less time consuming to establish regulations than to enact new legislation. Where technical requirements for nutrition interventions are likely to change due to changes in nutritional status of the population, changes in industry practices, or other factors, it will be easier and more efficient to update regulations than legislation.

Where, however, there is not adequate authority in existing legislation to address the full range of nutrition interventions, it will be necessary to enact new legislation. In addition, where there is concern that future Ministers may not fully support these nutritional programmes and requirements, it may be better to enact legislation so that the legal requirements cannot be as easily undone.

In conducting the legislative review discussed in Chapter 2 of the Handbook, these factors should be assessed to determine whether legislative reform for nutrition is better achieved through legislation or regulations, or a combination of both. The law might require, for example, that labels on breastmilk substitutes carry specified warnings and messages, with the details of exact wording, placement, size, font characteristics, and other details left to regulations. Detailed provisions to implement express legislative objectives are almost always better left to regulations to allow for flexibility to make changes as they become necessary.

As governments establish legal requirements, the framework for implementing the Convention on the Rights of the Child (CRC) should be applied. This framework ensures: 1) non-discrimination - nutrition interventions must ensure that all children have access to adequate nutrition, regardless of gender and other status; 2) best interest of the child - legal provisions must ensure that children's

rights to adequate nutrition prevail over corporate profits, for example; 3) right of life, survival development, and protection - protecting the right to adequate nutrition is a precondition for life, survival and development; and 4) respect for the views of the child.

### *1.1.1 Content Areas for Legislative Reform for Nutrition*

#### **1. Addressing micronutrient malnutrition**

Ensuring access to foods containing essential micronutrients<sup>7</sup> is a critical component of legislative reform to fulfill the right to adequate nutrition. Micronutrients, such as iodine, iron, and Vitamin A, are necessary in the diet for the proper mental and physical development and health of the fetus and young child. In the best case, children without these and other critical micronutrients in their diets may not develop to their full potential. In the worst case, they may suffer unnecessary severe disability, sickness, and death, discussed in more detail in the section, *Combating Micronutrient Malnutrition*. Therefore, the right to access foods containing essential micronutrients must be assured if the right to adequate nutrition is to be achieved.

A large proportion of people worldwide lack such access, however. As stated in General Assembly Resolution 58/186 on the Right to Food (2004), Para. 3, it is “intolerable that ...more than 2 billion people worldwide suffer from hidden hunger or micronutrient malnutrition.” Para. 7 stresses that governments need to make efforts to mobilise and optimise the allocation and utilisation of technical and financial resources from all sources. Micronutrient fortification is one such technical resource. It is a practical, cost-effective way to address micronutrient deficiencies, employing a strategy clearly within reach of governments. Fortification is, along with iron and Vitamin A supplement (capsule) distribution and other micronutrient programming (e.g., improving access to and encouraging people to eat foods naturally rich in micronutrients and nutrition education), an important strategy for realising children’s right to adequate nutrition.

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<sup>7</sup> Essential micronutrients are nutrients required in tiny amounts over a lifetime for proper physical and mental development and health.

Since gender inequality subjects girls and women disproportionately to hunger, food insecurity, and poverty, it is no surprise that a large percentage of adolescent girls and women across the globe suffer also from iron deficiency and anaemia. Micronutrient programmes are important, therefore, for realising their rights to adequate nutrition and health and to improving the quality of their lives, as well as those of their children. Although a diet that provides necessary micronutrients alone will not fulfill the right to adequate nutrition, the right to adequate nutrition cannot be fulfilled without it.

Technical aspects of food fortification legislation are discussed in the section, Combating Micronutrient Malnutrition.

## **2. Protecting, Promoting and Supporting Breastfeeding**

Breastmilk provides the ideal exclusive source of nutrition for babies up to the age of six months, offering health-protective effects that cannot be matched by any other food source. Exclusive breastfeeding during the first six months is the best way to strengthen infants' immunity, reduce exposure to infectious agents, reduce the risk of obesity and other factors related to heart disease, help overcome low birth weight and reduce stunting.<sup>8,9</sup> Breastfed babies have lower rates of diarrhoea, respiratory infections, ear infections and other infections. Breastfeeding remains a critically important source of nutrition and health up to the age of two years, along with appropriate complementary foods.

There is also an important link between breastfeeding and Vitamin A. Babies who are not breastfed cannot maintain optimal Vitamin A status for more than a few weeks.<sup>10</sup> Benefits of breastfeeding extend to the mother as well, including bonding between mother and child, improved postpartum recovery, reduced iron loss, reduced risk of breast and ovarian cancers and increased child spacing.

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<sup>8</sup> *Quantifying the benefits of breastfeeding: A summary of the evidence*, PAHO, Washington, D.C., undated; available at [www.paho.org/English/ao/fch/bobcontents.pdf](http://www.paho.org/English/ao/fch/bobcontents.pdf) (English)/www.

<sup>9</sup> 1990-2005 Celebrating the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding: Past achievements, present challenges and priority actions for infant and young child feeding, UNICEF, New York (2003).

<sup>10</sup> Cervinkas, J. and Lotfi M. *Vitamin A deficiency: Key resources in its prevention and elimination*. The Micronutrient Initiative Information Paper 1 (Second ed.), Micronutrient Initiative, Ottawa (1996); available at <http://www.micronutrient.org/resources/publications/pub21.htm>.

As recognised in the 2005 Innocenti Declaration, “Exclusive breastfeeding is the leading preventive child survival intervention. Nearly two million lives could be saved each year through six months of exclusive breastfeeding and continued breastfeeding with appropriate complementary feeding for up to two years or longer.”<sup>11</sup> Legislation is necessary to protect breastfeeding from practices that undermine it and support working mothers’ ability to both work and breastfeed their babies. These protections are essential for realising children’s right to adequate nutrition.

### **3. Promoting Healthy Diets and Physical Activity**

Childhood obesity is an alarming global trend that will cause significant health (e.g., diabetes) and social problems during childhood and adolescence, and chronic diseases such as heart disease and cancer in adult life. Legislative reform can create a policy environment that supports healthy eating and increased physical activity. Legislative measures can change the environment in schools and in the community that have tended to promote the consumption of unhealthy foods. It also can establish fiscal policies and other measures to encourage healthy eating and increased physical activity to counteract the adverse trends that have contributed to the growing global problem of childhood obesity.

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<sup>11</sup> 1990-2005 Celebrating the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding: Past achievements, present challenges and priority actions for infant and young child feeding,. UNICEF, New York (2003).

## 1.2 Specific Interventions to Fulfill Children's Right to Adequate Nutrition: Combating Micronutrient Malnutrition

### 1.2.1 Health Effects of Micronutrient Deficiencies

Mild or moderate levels of micronutrient deficiencies are extremely common in almost all countries.<sup>12</sup> Iodine deficiency carries the risk of neurological, neural, and intellectual impairments, spontaneous abortion, and other health effects. The single largest cause of mental retardation and brain damage worldwide, even sub-clinical levels of Vitamin A deficiency can result in reduced IQ of 10-15 points.<sup>13</sup> It is the leading cause of blindness throughout the world. At sub-clinical levels, it impairs the body's ability to fight infection. Deficiencies in Vitamin A significantly increase illness and death from measles, respiratory infections and diarrhoea.<sup>14</sup> Children with mild Vitamin A deficiency in some countries have been found to have 25-30 per cent higher death rates.<sup>15</sup>

Iron deficiency is widespread across the globe, with women and young children the most at risk. Fifty per cent of pregnant women and up to 50 per cent of children under the age of five in developing countries are iron deficient.<sup>16</sup> Iron deficiency and anaemia are associated with low birth weight, impaired cognitive functioning, lower school achievement and lower physical capacity. It is estimated that in most developing countries, iron deficiency prevents 40-60 per cent of children from reaching their mental potential.<sup>17</sup> Iron deficiency also increases the risk of haemorrhage

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<sup>12</sup> Andersen, P. Vitamin and mineral deficiency: A global progress report. Micronutrient Initiative, Ottawa, undated; available at <http://www.unicef.org/media/files/vmd.pdf>. Accessed August 23, 2006.

<sup>13</sup> Enriching lives: Overcoming vitamin and mineral malnutrition in developing countries, World Bank, Washington D.C. (1995).

<sup>14</sup> *Repositioning Nutrition*. World Bank, Washington, D.C. (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

<sup>15</sup> Andersen, P. *Vitamin and mineral deficiency: A global progress report*. Micronutrient Initiative, Ottawa, undated; available at <http://www.unicef.org/media/files/vmd.pdf>. Accessed August 23, 2006.

<sup>16</sup> 'Micronutrients: Iodine iron and vitamin A', UNICEF web site. Available at [http://www.unicef.org/nutrition/index\\_iodine.html](http://www.unicef.org/nutrition/index_iodine.html). Accessed June 20, 2006.

<sup>17</sup> Andersen, P. *Vitamin and mineral deficiency: A global progress report*, Micronutrient Initiative, Ottawa, undated; available at <http://www.unicef.org/media/files/vmd.pdf>. Accessed August 23, 2006.

and sepsis in the mother during childbirth. Iron deficiency anaemia is the largest cause of maternal death during childbirth.<sup>18</sup>

Given the effects of micronutrient deficiencies, it is clear that the rights to adequate nutrition and health cannot be fulfilled in the face of widespread global or national prevalence of these deficiencies. Micronutrient deficiencies are a huge contributor, also, to the economic losses and poverty effects of inadequate nutrition discussed above.

### ***1.2.2 Socio-economic Benefits of Addressing Micronutrient Deficiencies***

In terms of cost-benefits, micronutrient interventions are a bargain. The World Bank has estimated that at the cost of 0.3 % of gross domestic product (GDP), sustained elimination of iodine, iron, and Vitamin A deficiencies could contribute more than 5 per cent to GDP in terms of economic, socio-economic, and health benefits.<sup>19</sup> According to the Bank, “no other technology offers as large an opportunity to improve lives... at such low cost and in such a short time...”<sup>20</sup> The returns on investing in micronutrient programmes are second only to addressing HIV/AIDS in meeting the world’s development challenges.<sup>21</sup> The World Bank suggests that governments, in their approach to addressing malnutrition, pay special attention to, among other things, “scaling up micronutrient programs because of their widespread prevalence, their effect on productivity, their affordability, and their extraordinarily high cost-benefit ratios.”<sup>22</sup>

### ***1.2.3 The Case for Food Fortification***

Fortification of foods regularly consumed by a large portion of the population is a primary, sustainable, successful and inexpensive way to address micronutrient malnutrition. Fortification, therefore,

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<sup>18</sup> Ibid.

<sup>19</sup> *Enriching lives: Overcoming vitamin and mineral malnutrition in developing countries*, World Bank, Washington, D.C. (1995).

<sup>20</sup> Ibid.

<sup>21</sup> *Repositioning Nutrition*, World Bank, Washington, D.C. (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

<sup>22</sup> Ibid.

is an important part of any micronutrient programme. The cost of fortification can be as little as a few cents per person per year.<sup>23</sup>

Supplementation will remain an essential part of a comprehensive micronutrient strategy, however, especially for those not reached by fortified foods. Even when there is broad access to iron-fortified foods, these alone often cannot fulfill total iron needs of adolescent girls and women. As a result, iron supplements will likely continue to be necessary for them. Public education and health programmes for controlling malaria, measles, diarrhoea, parasitic infections and other diseases that interfere with the absorption and use by the body of micronutrients also are necessary strategies to complement fortification.<sup>24</sup>

Vitamin A fortification of sugar has virtually eliminated Vitamin A deficiency in Guatemala and has substantially reduced it in El Salvador and Honduras, in combination with supplementation. Iron fortification of flour has substantially reduced iron deficiency in all of Chile and Venezuela, and iron fortification of rice in the Philippines has improved the iron status of schoolchildren.<sup>25</sup> Iodised salt is the primary source of iodine in many countries across the globe. Since the initial push in the early 1990s to iodise all salt for human and animal consumption, 70 per cent of households in the developing world now consume iodised salt, up from 20 per cent. Iodine deficiency has been virtually eliminated in many countries as a result of salt iodization. There are many other fortification success stories across the globe.

#### **1.2.4 Fortification Issues**

Food fortification generally has been accepted globally as an important, cost-effective, and safe strategy for addressing micronutrient deficiencies. Because some concerns have been raised, however, it is good to be aware of them and prepared to address them when undertaking legislative reform for food fortification.

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<sup>23</sup> Andersen, P., *Vitamin and mineral deficiency: A global progress report*, Micronutrient Initiative, Ottawa, undated; available at <http://www.unicef.org/media/files/vmd.pdf>. Accessed August 23, 2006.

<sup>24</sup> Ibid.

<sup>25</sup> *Repositioning Nutrition*, World Bank, Washington, D.C. (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

## **1. Fortified Foods Not Reaching the Entire Population**

Fortified foods have the potential in many countries to reach large segments of the population. While the whole population may not be reached, including the poorest, *supplementation* and other programmes can fill in the gaps. Because the minimal costs of fortification are absorbed by the consumer, government resources are freed up to concentrate on those segments of the population that do not have access to fortified foods and whose micronutrient needs cannot be satisfied by fortified foods alone.

## **2. The 'Right' of Consumers to Choose Non-fortified Foods over Fortified Foods**

This is a misplaced argument for several reasons. First, an essential requirement for making an informed choice is an understanding of the devastating consequences of micronutrient deficiencies and the benefits of fortified foods. Most individuals do not have this understanding. Second, free choice depends on the availability and accessibility of foods containing micronutrients in their natural state. In areas where micronutrient deficiencies are prevalent, it usually is because such foods are not available or accessible. For example, in places where iodine deficiency is widespread, it is usually because iodine has leached out of the soil and crops grown in iodine deficient soil fail to contain adequate levels of iodine. There usually is not a sufficient 'natural' source of iodine in foods in such cases.

Finally, an individual's 'right' to choose non-fortified foods, when that choice is knowingly made, must be balanced against the human right to adequate nutrition of underserved and marginalized groups. When analysing this issue using the 'best interest of the child' principle of the CRC Framework, mandatory fortification under appropriate conditions would almost always be the result. Finally, there are many examples worldwide, like mandatory vaccination and primary education, where individual choice is balanced against and cedes to the public good.

### **3. Trade Concerns**

Some concerns have been raised about whether mandatory fortification could violate the World Trade Organization Agreements or regional trade agreements. Mandatory fortification should not create a trade problem as long as: 1) regulatory measures do not treat imported foods less favourably than domestically produced foods; 2) there is sound scientific health justification for the regulatory requirements; and 3) regulations are not more trade restrictive than necessary to achieve the government's health and nutrition objectives. Most governments have adopted mandatory salt iodization requirements and many have mandated iron or Vitamin A fortification without being challenged by other governments on trade grounds. Folic acid fortification also has been required in some countries without giving rise to a trade challenge.

#### ***1.2.5 Content of Food Fortification Legislation***

##### **1. Establishing Fortification Policy**

The government must decide which foods should be fortified with which micronutrients. This decision will need to take into consideration the scope and severity of the micronutrient deficiency, other sources of the micronutrient in the diet, if any, accessibility of those sources, dietary consumption patterns and the requirements of other countries in the region (in order to support trade in fortified foods).

There has been global consensus for mandatory iodization of salt since the World Summit for Children. Consensus for mandatory iron fortification has also gained strength, and with it, folic acid (to prevent neural tube defects) and zinc (to reduce the incidence and severity of childhood infections and stunting). Where fortification will be safe for the vast majority of the population and the particular micronutrient deficiency is widespread, mandatory fortification of a specified staple food or foods will provide protection for the most people. A requirement for mandatory fortification also will make monitoring and enforcement easier.

Having a law that authorises the appropriate ministry to establish both mandatory and permissive fortification will prevent the government from having to enact a new law for each fortification activity determined to be appropriate. For example, the Philippines' Food Fortification Act of 2000, Sec. 6, requires fortification of rice (with iron), wheat flour (with Vitamin A and iron), and sugar and cooking oil (with Vitamin A). The law then authorises the National Nutrition Council to create mandatory regulations for the fortification of other staple foods and to allow fortification of other foods.

## **2. Public Education**

Imposing a requirement on the government to develop, disseminate and fund a public education programme will help ensure that such activities are carried out. The programme might include information on the importance of consuming micronutrients, the role of fortified foods, supplementation and other strategies. The law can require that this information be targeted to vulnerable groups, be culturally appropriate and address other particular concerns. Inclusion of micronutrient education in school curricula has also been popular in many countries. Public education and curriculum requirements can be decided as a matter of policy, without the need for a legal mandate; however, imposing a requirement in the law should make adoption of the policy more sustainable.

## **3. Incentives**

Government sponsored and funded public awareness and media campaigns on the benefits of fortified foods can be a powerful incentive for fortified food producer because these activities help create demand for fortified products. Other incentives, such as reduced tariffs and taxes on fortificants, fortified foods and equipment, public investment, sharing of some start up costs (e.g., equipment and fortificant premixes for an initial period), and any other appropriate local strategies should be explored. Guatemala's law, for example, exempts machinery, laboratory equipment, accessories, spare parts, specific micronutrients and chemicals needed for food fortification from import duties.<sup>26</sup>

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<sup>26</sup> Decree Number 44-92 (1992).

#### **4. Product Standards**

Standards for the food (for example, salt) to which a fortificant (for example, iodine) will be added should be based on Codex Alimentarius standards. The Codex Alimentarius (Codex) is the food code established by the Codex Alimentarius Commission of the World Health Organization (WHO) and Food and Agriculture Organization (FAO). Food that will be fortified generally must meet certain quality standards in order to retain the nutrients added or restored through fortification. For example, moisture content, particle size and impurities in salt can affect the retention of added iodine. Following the Codex standards for food grade salt will address these issues.

##### **Box 39: The Role of the Codex Alimentarius**

The Codex Alimentarius is a collection of food standards, codes of practice, guidelines and other recommendations developed by the WHO and FAO. The standards in the Codex are developed by the Codex Alimentarius Commission, created in 1963 by FAO and WHO to develop food standards, guidelines and codes of practice under the Joint FAO/WHO Food Standards Programme. The main purposes of this Programme are to protect the health of the consumers, ensure fair practices in the food trade, and promote coordination of all food standards.<sup>27</sup>

Under the agreements of the World Trade Organization (WTO), Codex standards serve as the 'international standards' upon which national food regulations should be based in order to fall within requirements of applicable WTO agreements. The Codex Alimentarius is available at [http://www.codexalimentarius.net/web/standard\\_list.do?lang=en](http://www.codexalimentarius.net/web/standard_list.do?lang=en).

Standards for fortificant levels in the final product will depend on factors like the scope and severity of the micronutrient deficiency, dietary intake and food consumption patterns in the country and climatic conditions affecting micronutrient retention, among others. Because these may vary among countries or regions, the Codex does not elaborate standards for levels of fortificants in foods.

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<sup>27</sup> Codex Alimentarius website homepage. Available at [http://www.codexalimentarius.net/web/index\\_en.jsp](http://www.codexalimentarius.net/web/index_en.jsp). Accessed August 23.

## **5. Labeling Requirements**

Labelling is important for informing consumers about the product, like the fortificant content, directions for use and storage, the date by which the product should be used and similar matters. The name of the manufacturer, lot/batch number, place of manufacture, and similar items also are important components of labelling. This information helps governments with inspections and enforcement functions, allowing them to track and trace foods products. The Codex standards for labelling should be followed.

The label also can be a good source for informing consumers of the importance of the micronutrient or micronutrients supplied. Health claims about fortified foods, however, should be carefully regulated. For example, the labels of fortified beast milk substitutes, if allowed to include health claims about their fortified properties, could undermine breastfeeding. This would be detrimental to infant and young child nutrition and health and would run counter to the Code.

Guatemala's regulations require labels on packages of sugar, which must be fortified, to include the designation: VITAMIN A-FORTIFIED SUGAR and a symbol - a green or red eye in the middle of the package - that allows people who cannot read to recognise it. The regulations also prohibit advertising that attributes therapeutic properties to fortified sugar or that presents sugar as the only source of vitamin A.<sup>28</sup> Products manufactured using fortified sugar must not indicate it as a special quality of that product. South Africa's flour fortification regulations authorise the use of the claim 'Fortified for better health' along with a government logo only on the foods specified in the regulations.<sup>29</sup>

## **6. Packaging Requirements**

Packing can be important for retention of micronutrients, protecting them from moisture, direct light, and other elements that might cause their loss. Regulations should provide details for packaging material, size, and similar requirements that will help protect micronutrient content, as applicable. For example, iodised salt

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<sup>28</sup> Regulation for Vitamin A Sugar Fortification, Government Agreement 497-93 (1993).

<sup>29</sup> Regulations Relating to the Fortification of Certain Foodstuffs (2003), Sec. 12.

usually is required to be packaged in high density polyethylene or polypropylene bags or low density polyethylene lined jute bags no larger than 50kg (so that they can be lifted without hooks which might tear the bags and expose the iodine to damaging elements). The Codex Standard for Food Grade Salt, Codex Stan 150, specifically addresses packaging for iodised salt, recommending essentially the above requirements.

### **7. Requirements for Storage, Sales and Distribution Practices**

Storage conditions also can affect micronutrient retention based on exposure to the elements. Therefore, legal provisions should specify storage conditions. As a general rule, the 'First In-First Out' principle should apply to dispatch, distribution, and sale of fortified foods. South Africa's regulations require that manufacturers follow strict stock rotation procedures to prevent old stock from losing potency and to comply with the shelf life expiry date.<sup>30</sup>

### **8. Requirements for Quality Assurance Practice**

Routine practice of quality assurance (QA) procedures will help ensure the efficacy and safety of fortified food products. Therefore, the law should require that manufacturers establish a QA Programme and maintain records of their QA activities, making them available to the government on request. These records can help inform the government's monitoring and inspection processes and help the government identify problem areas where assistance may be needed.

#### **Box 40: Steps in Quality Assurance Programmes**

- 1) *Product specifications*: For fortificants, food vehicle, and any other ingredients, specifications must be documented as met, as well as acceptable deviations. These include specification of particle size, colour, potency, and level of fortification, as well as any other requirement which might be deemed necessary.
- 2) *Product safety assessment*: The assessment should address microbiological, chemical and physical hazards for all ingredients and of the finished product.
- 3) *Product analysis*: Sampling and testing procedures for all ingredients and the finished product must be explicitly stated.
- 4) *Determination of critical and quality control points*: Based on first-hand knowledge of the total process (including the plant facility, equipment and environment), stages at which inadequate control could lead to unacceptable health risk or adversely affect

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<sup>30</sup> Regulations Relating to the Fortification of Certain Foodstuffs (2003), Annexure 1(3).

product quality are identified. The system of controls and actions to be taken at each control point is documented.

5) *Recall system*: The mechanism for product recall is outlined, if necessary.

6) *QA audit*: Periodic checks are necessary to verify that the QA system is effective and product quality is maintained to the time of consumer purchase.

7) *Feedback mechanism*: There should be an established mechanism to respond to consumers and other relevant groups and correct any deficiencies discovered.

8) *Documentation of QA system*: Details of the QA programme used in the production of the fortified food must be readily available to relevant individuals and organisations.

*Source*: FAO. *Micronutrient fortification of food: technology and quality control*. Available at <http://www.fao.org/docrep/w2840e/w2840e0b.htm#5.%20quality%20assurance%20and%20control>.

## **9. Licensure or Registration**

The law should require licensure or registration of all manufacturers and importers of the food that must or may be fortified. Licensure of manufacturers and importers of fortificants also should be required. These requirements will help the government keep a record of businesses it needs to monitor and trace non-complaint foods through the licensure or registration number on the label. Legal authority to suspend or revoke the license or registration in appropriate cases can be an effective enforcement tool.

South Africa's regulations require registration by any person who manufactures, imports, or supplies a fortification mix. Food manufacturers and importers may only purchase fortification mixes from registered companies.<sup>31</sup> Guatemala's law requires sugar importers, sub-dividers, and marketers to obtain a health registration number and a license from the Ministry of Health to operate. The money collected is deposited in the Ministry of Health's Food Registration and Control Department account and must be used only for Vitamin A sugar fortification control activities and costs.<sup>32</sup>

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<sup>31</sup> Regulations Relating to the Fortification of Certain Foodstuffs (2003), Sec. 8(a).

<sup>32</sup> Regulation for Vitamin A Sugar Fortification, Governmental Agreement No. 497-93, Article 2.

## **10. Inspection and Enforcement Powers and Duties**

Broad inspection powers and clear duties of enforcement in the law will help with ensuring compliance, especially where multiple ministries or agencies will have inspection and enforcement roles. Inspection powers might include the right to enter premises during reasonable hours, examine and copy documents and seize goods and test products, among others. For effective enforcement, the law should provide a range of appropriate penalties for violations, including, for example, licensure or registration suspension or cancellation, fines, adverse publicity, and confiscation of non-compliant products, materials, equipment, or other items. In cases where the government takes an enforcement action and wins, the law can provide for recovery of the costs of taking the action.

Guatemala's Decree provides for a broad range of penalties. These include: a written warning; a fine which can range from 2 to 150 times the monthly minimum wage, up to 100 per cent of the value of the goods or services; for repeat violations, publication of the reason for the sanction in at least two newspapers with a high circulation; suspension of business or commercial activities and suspension of licenses and health registrations; closure of the establishment, business, or enterprise with annulment of registrations and health licenses; and confiscation of raw materials, foods, tools, materials, and objects related to the violation committed. Sugar that does not meet regulatory requirements will be auctioned for industrial use in products for export. Funds raised through this process will become part of the Food Registration and Control Department's private funds to be used exclusively for the sugar fortification control process.<sup>33</sup>

Legal requirements related to micronutrient interventions also should include funding and a mandate to implement supplement programs to target populations not reached by fortified foods. Alternatively, supplement programmes can be implemented based on a policy decision.

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<sup>33</sup> Regulation for Vitamin A Sugar Fortification, Governmental Agreement No. 497-93, Article 17.

## **1.3 Promoting Optimal Nutrition and Health during Infancy and Early Childhood: Adopting and Strengthening the International Code of Marketing of Breastmilk Substitutes**

### ***1.3.1 Health Benefits of Breastfeeding***

Exclusive breastfeeding during the first six months and the appropriate use of complementary foods have the potential to prevent more than twice as many deaths in children under five as any other intervention.<sup>34</sup> The benefits of breastfeeding to both the child and mother have been highlighted earlier in the sub-chapter.

### ***1.3.2 Risks with Bottle-Feeding***

Because breastfeeding provides unrivalled nutritional, health, and developmental benefits, bottle-feeding is a clearly inferior infant and young child feeding practice. In addition, bottle-feeding can be dangerous and deadly. In many parts of the world where water is unsafe, mixing it with powdered formula can cause infection, diarrhoea, and resulting dehydration, malnutrition and death. Improper sterilization of bottles and teats, a problem compounded by low levels of literacy, can also cause infection with serious and potentially deadly results. Additionally, powdered formula can contain microbiological contaminants (e.g., *E. sakazaki*, *Salmonella*) that can cause sickness and death.

Since formula is expensive, poor families may not be able to afford adequate amounts of it and may add water to make it last longer. Where the water is unsafe, the bad health effects discussed above will be compounded. Even where the water is safe, diluted formula will not provide the baby with adequate nutrition, potentially leading to malnutrition. Income spent on formula, when breastmilk is a more nutritious resource that is freely available, potentially diverts resources away from other foods or needed items.

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<sup>34</sup> *Repositioning Nutrition*, World Bank, Washington, D.C (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

### *1.3.3 The Need for the Code:<sup>35</sup> Practices Undermining Breastfeeding*

When infant formula companies began aggressively marketing their products in the early- and mid-1900s, worldwide declines in breastfeeding followed. Medical professionals at the time lacked adequate knowledge of the enormous benefits of breastfeeding. As a result, they undermined breastfeeding through their own practices, for example, by separating mother and baby after birth and limiting breastfeeding times. This helped set the stage for mothers' receptiveness to breastmilk substitutes and their intensive marketing.<sup>36</sup>

To address the practices contributing to the declining rates of breastfeeding and the resulting increasing rates of infant and young child malnutrition, morbidity and mortality, the World Health Assembly adopted the Code in 1981. The Code aims to limit companies' marketing practices that interfere with the protection and promotion of breastfeeding by prohibiting advertising and all other forms of promotion of breastmilk substitutes, feeding bottles and teats. It also aims to prevent inappropriate health system practices that amount to endorsements of bottle feeding, among other things.

Marketing practices at the time the Code was developed were and continue to be aggressive, misleading and deceptive. A particularly popular and successful marketing strategy has been to promote breastmilk substitutes through the health care system. Some of these marketing practices are discussed below.

**1. Donating free or reduced cost supplies and samples of infant formula.** Donated products are used in facilities and health workers pass the samples on to mothers. This tends to serve as a health system endorsement of formula feeding in general and of the brand used in the facility in particular. Babies that are bottle fed in the hospital are unlikely to be breastfed at home because breastmilk production is dependent on suckling, which bottle feeding prevents. Additionally, bottle use can cause nipple confusion. These things make breastfeeding more difficult, potentially causing

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<sup>35</sup> References to the Code include subsequent WHA resolutions.

<sup>36</sup> Ibid.

mothers to lose confidence in their ability to breastfeed and making bottle feeding the more attractive option.

**2. Employing 'mother craft nurses.** These were employees of formula companies working in hospitals to teach new mothers about infant care and to hand out samples and sell formula. This practice was stopped after a successful campaign in the 1970s, but it has evolved into other strategies by which companies provide mothers with infant care and nutrition advice, such as through 'baby clubs,' discussed below.

**3. Making gifts to health workers.** Gifts such as office supplies and other items bearing the brand or company name or logo get displayed in health facilities, serving to promote the product. This practice continues today.

**4. Sponsoring health workers.** Paying health workers' expenses to attend professional conferences, providing research grants and giving other perquisites is another popular practice that the Code seeks to limit, but fails to prohibit. This practice is increasing in intensity and is of serious concern because it constitutes a conflict of interest.

Labelling also has been and continues to be another popular way of promoting the use of breast milk substitutes. Common labelling practices at the time the Code was adopted included, among other things, idealising breastmilk substitutes by comparing them favourably to breastmilk, making claims about their benefits to health, printing pictures of healthy, thriving babies on labels, and similar practices. More sophisticated practices have followed, including making misleading health claims, such as the benefits of fatty acids added to formula to enhance intelligence.<sup>37</sup>

A summary of the Code's provisions to address these and other practices is contained in Annex 1.

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<sup>37</sup> *Breaking the rules, stretching the rules.* IBFAN, Penang, Malaysia (2004); available at <http://www.ibfan.org/english/codewatch/btr04/btr04contents.html>. Accessed August 23, 2006.

### 1.3.4 *Issues Related to the Code*

#### **1. HIV and Breastfeeding**

It is estimated that 5-20 per cent of children who breastfeed from HIV-infected mothers become infected through breastfeeding.<sup>38</sup> While avoiding breastfeeding might lower the risk of HIV transmission through this channel, bottle-feeding can increase the risk of illness and death due to higher rates of other infections, as already discussed. A six-fold increase in child mortality can result from artificial feeding in some countries and this must be weighed against the risks of HIV transmission through breastmilk.<sup>39</sup>

UN policy on HIV and breastfeeding recommends exclusive breastfeeding by HIV-infected mothers for the first months of life where artificial feeding is not acceptable, feasible, affordable, sustainable and safe. Where these conditions cannot be met, avoidance of all breastfeeding is recommended. The policy also recommends that HIV-positive mothers be counselled about the risks and benefits of feeding options based on local assessments. Mothers also should have access to information on follow-up care and support, including nutritional and family planning support. Exclusive breastfeeding for six months is recommended for women who do not know their HIV status.<sup>40</sup>

#### **2. The Code and World Trade Agreements**

National laws or regulations incorporating the Code should not be considered illegal trade barriers for similar reasons mandatory fortification laws or regulations would not (discussed in the micronutrient malnutrition section above). In addition, the relevant provisions of the Code would likely be considered to establish 'international standards.' Since the relevant WTO Agreement on Technical Barriers to Trade requires that international standards serve as the basis for domestic regulations, regulatory provisions based on the Code should not violate trade rules.<sup>41</sup> It is not as clear

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<sup>38</sup> *1990-2005 Celebrating the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding: Past achievements, present challenges and priority actions for infant and young child feeding*, UNICEF, Florence (2005).

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Mathis, J. *WTO trade issues related to the International Code of Marketing Breastmilk Substitutes: Labeling and marketing restrictions* (unpublished) (2003).

that exceeding the minimum standards of the Code would enjoy this protection. Here again, as with fortification requirements, there should be a sound basis for demonstrating that any trade-restrictive measure is necessary to promote a legitimate purpose of the government. With regard to advertising restrictions, the WTO judicial body in an earlier case, the Thai Cigarette Case,<sup>42</sup> suggested that advertising restrictions did not violate the General Agreement on Tariffs and Trade.

### **3. Content of Legislative Provisions to Adopt the Code**

The Code represents a significant global public health policy achievement. Still, it is only a recommendation from the World Health Assembly. As a result, it must be implemented through national legislation or regulations to give it the force of law. It is worth noting that the Code was adopted as a minimum standard and countries can adopt and have adopted legislation going beyond this minimum standard in order to protect breastfeeding adequately. This section concentrates on making recommendations to prevent known or anticipated evasion tactics at the national level. Examples of strong provisions from different countries' laws also are presented as possible guidance, as applicable. *A Model Law*, developed by the International Code Document Center for implementing the Code, is an excellent resource for legislative drafting and is contained in Annex 1.

### **4. Scope of the Law**

The Code applies to products 'for use as a partial or total replacement of breastmilk.' Some companies claim to interpret this phrase to mean that the Code applies only to infant formula.<sup>43</sup> Companies also exploit the Code's definition of 'infant formula,' which refers to breastmilk substitutes formulated to satisfy 'normal nutritional requirements' of infants. Companies exploit this definition by making 'specialised' formulas marketed, for example, as high energy formula or low birth weight formula. They claim these are not subject to the Code's restrictions. Another tactic is marketing products as 'growing up milk' suitable for older children

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<sup>42</sup> *Breaking the rules, stretching the rules*, IBFAN, Penang, Malaysia (2004); available at <http://www.ibfan.org/english/codewatch/btr04/btr04contents.html>. Accessed August 23, 2006.

<sup>43</sup> *Ibid.*

and, therefore, falling outside of the scope of the Code. Another product, 'mothers milk,' is marketed to pregnant and lactating women, so it clearly does not fall within the scope of the Code. The problem with these products is that they often create an association with products that are covered by the Code by using the same or similar brand names and logos, or similar techniques.<sup>44,45</sup>

Botswana's Marketing of Foods for Infants and Young Children Regulations (2005) provide a good example for addressing these tactics by defining coverage of the law broadly. The regulations apply to 'designated products,' defined broadly as: infant formula; formulas for special medical purposes intended for infants; follow-up formulas; complementary foods; beverages for infants and young children; any product marketed or otherwise presented as suitable for feeding infants and young children; feeding bottles; teats; pacifiers and dummies; breast pumps, cups with spouts or similar receptacles for feeding infants and young children; and such other products designated by the Minister.<sup>46</sup> Giving the Minister authority to designate other products is an effective safeguard, providing the government with flexibility to respond relatively quickly to improper marketing practices. Brazil's provisions also provide broad coverage. They apply to infant formulas, follow up formulas for infants and young children, milks, transitional foods and cereal based foods when marketed or presented as suitable for infants and young children, nutrient formulas presented as suitable for high-risk newborns, feeding bottles, teats, and dummies.<sup>47</sup>

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<sup>44</sup> Ibid.

<sup>45</sup> Sokol, E., *The Code Handbook*, International Code Documentation Centre, Penang, Malaysia (2005).

<sup>46</sup> Marketing of Foods For Infants and Young Children Regulations, 2005, Sec. 2.

<sup>47</sup> Decree No. 2051 of 8 November 2001 and Resolution RDC No. 222, 5 August 2002, Art. 1.

**Box 41: Suggestions for Provisions on the Scope of the Law**

National legislation or regulations could strengthen the Code's provisions by applying to:

- all types of infant formulas (not just those for meeting 'normal' nutritional needs) ;
- all other foods marketed as suitable for infants or young children (under a specified age) and foods that are likely to create an impression of such suitability or that are commonly used to feed infants or young children;
- any foods that are marketed in a way that create an association with foods covered by the Code, for example, by using the same or similar logo, package design, or other product indicia;
- teats, pacifiers, and items used for feeding infants and young children and
- other foods or items designated by the relevant Minister.

## **5. Information and Education**

The Code does allow companies to provide 'scientific' or 'factual' information to health professionals, creating a significant loophole. Brazil's measures largely avoid this pitfall by prohibiting manufacturers, importers, and distributors from producing or sponsoring educational materials that deal with infant feeding.<sup>48</sup> They also prohibit educational and technical-scientific materials, including those of health professionals or health authorities, from containing any pictures or text that recommend the use of dummies, teats and feeding bottles or the use of breastmilk substitutes, or that may lead to their use.

The regulations in Botswana and Ghana include a requirement for government approval of informational and educational materials prior to their distribution.<sup>49,50</sup> Botswana's regulations also include a prohibition on any reference or inclusion in informational or educational materials to the brand name, name, logo, trademark or other words or graphic associated with the product, brand, manufacturer or distributor. Yemen's law prohibits any authority or institution from issuing any information or educational materials

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<sup>48</sup> Decree No. 2051, Art. 9.

<sup>49</sup> Marketing of Foods For Infants and Young Children Regulations (2005), Sec. 15(1).

<sup>50</sup> Breastfeeding Promotion Regulations, 2005, Sec. 7(3).

on infant and young child nutrition or on covered products. The regulations also prohibit information on nutrition for pregnant and lactating women unless they have been previously cleared by the Ministry.<sup>51</sup>

**Box 42: Suggestions for Provisions on Information and Education**

National law could strengthen the Code's provisions by prohibiting manufacturers and distributors of covered products or anyone acting on their behalf from publishing, distributing, or otherwise providing to or through any health facility, health worker, community worker, or similar person or entity any:

- information that addresses or includes nutrition, diet, or feeding during pregnancy or preparation for pregnancy, after birth in relation to either the mother or the child, or to children below a specified age; additionally, any information that includes nutrition, diet, or feeding related to older children must specify that it does not pertain to children under that age, in a manner specified by the Minister;
- promotional, scientific or educational information or materials of any kind that contain any reference to a covered product, brand, logo, trademark, or other indicia of the product, brand, manufacturer or distributor; and
- using any person or method, other than specified information on labels, to provide any person with information or instructions about the use of a covered product.

## 6. Marketing

While the Code allows 'appropriate marketing' of breastmilk substitutes, bottles and teats, it prohibits all forms of promotion or advertising of these products. It is, thus, vital that national legislation or regulations carefully define 'advertising', 'promotion', 'marketing', and similar terms to avoid any misunderstanding or confusion.<sup>52</sup> In developing provisions to address marketing and

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<sup>51</sup> Prime Minister Decree No. 18/2002 on Regulation of Breastfeeding Promotion and Protection, Art. 21.

<sup>52</sup> Drawing from the field of tobacco control, where evasion of legal requirements, especially those related to advertising, sponsorship, and promotion, has been perfected to an art by an industry very skilled at evading regulation, definitions suggested for tobacco control regulation might provide guidance, for example:

*"advertising"*: any commercial communication through any media or means, that is intended to have, or is likely to have, the direct, indirect, or incidental effect of:

promotion, drafters should keep in mind less overt forms of promotion, like ‘mother’s clubs’ and ‘baby clubs,’ formula logos or trademarks on non-formula products, and other tactics highlighted in Code monitoring reports and publications like *Breaking the Rules, Stretching the Rules*.<sup>53</sup>

Botswana’s regulations define ‘marketing’ comprehensively, as promoting, distributing, selling, or advertising a designated product. Also included in the term are product public relations and information services, including the use of professional service representatives or any person acting on behalf of a manufacturer or distributor. ‘Promote’ is defined as including:

(a) any direct or indirect method of introducing a designated product or encouraging the purchase or use of a designated product; (b) sale devices such as rebates, special displays to promote sales, tie-in sales, loss leaders, grant of rewards, discount coupons, premiums, special sales, prizes, gifts, and giving of samples to mothers; (c) direct or indirect contact between marketing personnel and members of the public in furtherance of or for the purpose of promoting the business of designated products, including television and radio, telephone or internet help lines, mother and baby clubs, and baby

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- (i) creating an awareness of a tobacco product, brand, manufacturer, or seller, or
  - (ii) promoting the purchase or use of a tobacco product or brand.

An advertisement includes, but is not limited to, words, names, messages, mottos, slogans, letters, numbers, pictures, images, colors, trademarks, and other graphics, sounds, and any other auditory, visual, or sensory matter, in whole or part, that is or are:

- (i) commonly identified or associated with a product, brand, manufacturer, or seller, or
- (ii) otherwise an indicia of product, brand, manufacturer, or seller identification.

“*brand stretching*”: any non-tobacco product or service that contains, either on the product, or in any advertisement of the product, any writing, picture, image, graphic, trademark, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with a tobacco product, brand, or manufacturer.

“*promote*” includes any commercial act or practice that is intended to or is likely to encourage, directly or indirectly, the purchase or use of any tobacco product or brand or create an awareness of or association with a tobacco product, brand, manufacturer or seller.

(Source: Nathan, R., *Model Legislation for Tobacco Control: A Policy Development and Legislative Drafting Manual*; available at [www.fctc.org](http://www.fctc.org) and [www.gphls.org](http://www.gphls.org)).

<sup>53</sup> *Breaking the rules, stretching the rules*, IBFAN, Penang, Malaysia (2004); available at <http://www.ibfan.org/english/codewatch/btr04/btr04contents.html>. Accessed August 23, 2006.

competitions; (d) electronic communication, including website, internet and electronic mail; (e) promotional items such as clothing, stationery, or items that refer to a designated product or to a brand name of a designated product; (f) outdoor advertisements such as billboards; (g) placard and newspaper or magazine inserts; (h) practices that create an association between a manufacturer or distributor and breastfeeding.<sup>54</sup>

Brazil's measures include a ban on the commercial promotion of infant formulas and follow-up formulas for infants, special nutrient formulas, dummies, teats, bottles, and nipple shields, by any means of communication, including merchandising, electronic, written, or audio-visual means, promotional strategies aimed at increasing retail sales, such as special displays, discount coupons, below cost pricing, prizes, gifts, sales linked to products not covered by the regulation, and special presentations.<sup>55</sup>

**Box 43: Suggestions for Provisions on Marketing**

National laws should, at a minimum:

- carefully and comprehensively define 'advertising', 'promotion', 'marketing', and similar terms
- prohibit all direct and indirect forms of promotion, including advertising and marketing, in all forms of media, using any means, and in any place in relation to covered products, brands, manufacturers, and distributors (keeping in mind indirect forms of promotion, such as those covered in the Botswana's and Brazil's laws, especially the popular forms of direct mail, telephone help lines, newsletters associated with baby clubs, and similar methods)<sup>56</sup>

If a ban is not possible on all covered products, national measures should impose stringent restrictions on marketing and promotion of foods that complement breastfeeding after six months of age to ensure that promotion of these products does not undermine exclusive or sustained breastfeeding.<sup>57</sup>

<sup>54</sup> Marketing of Foods For Infants and Young Children Regulations, Sec. 8.

<sup>55</sup> Decree No. 2051, Art. 4, and Resolution RDC No. 222, Art. 4.1.

<sup>56</sup> Sokol E., *The Code Handbook*, International Code Documentation Centre, Penang, Malaysia (2005).

<sup>57</sup> Some laws, such as India's Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, No. 41 of 1992 (as amended 2003), No. 41 of 1992, prohibit the promotion of complementary foods.

Restrictions on these products might include, for example, limits on content,<sup>58</sup> where promotion is allowed,<sup>59</sup> and the medium or form of promotion.<sup>60</sup>

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<sup>58</sup> For example, they must not be promoted as suitable for infants under six months and must include a statement to this effect. In addition, they should include a statement on continued breastfeeding (the government should prescribe the required statements). The IBFAN model law provides two options for provisions on the marketing of complementary foods: One that prohibits their marketing and one that places restrictions on their marketing.

<sup>59</sup> For example, no promotion should be allowed in health facilities.

<sup>60</sup> For example, no samples or promotional gifts should be allowed.

## 7. Obligations of Health Care Systems

In response to marketing and improper practices in health facilities, UNICEF and WHO introduced the 'Baby-Friendly Hospital Initiative' in 1989 to educate health workers and promote and support breastfeeding in hospitals. A few years later, after adopting two previous resolutions on the subject, the World Health Assembly adopted Resolution WHA 45.34 (1992), calling on companies to stop giving free or low cost supplies of formula to health facilities providing maternity services. Because the practice continued and expanded to providing free supplies to paediatric wards and other health services, the WHA adopted another resolution, WHA 47.5 (1994), calling on Member States to ensure no donations of free or subsidised supplies of breastmilk substitutes and other products covered by the Code in *any part* of the healthcare system.<sup>61</sup> Despite these efforts, companies continue to provide free or low cost formula where national provisions do not prohibit the practice.<sup>62</sup> It is, therefore, important for national measures to ban free and low cost supplies.

To address gifts and sponsorships, WHO adopted WHA Resolution 49.15 (1996), stating that financial support to health workers should not create a conflict of interest. This Resolution is not strong enough, however, and the practice is increasing in intensity. Concern remains that these substantial benefits influence health workers to endorse companies' products. Resolution 58.32 of 2005 urged governments 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. Banning gifts and donations to health and community workers, where enforced, should eliminate the practice, and with it, the conflict of interest.

The Code also addresses company practices of giving health workers office supplies and other items bearing the brand or company name or logo, but not in a way that prevents promotion of products covered by the Code. Article 6.3 provides that health

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<sup>61</sup> Until these Resolutions, the Code allowed free supplies but placed restrictions on the practice.

<sup>62</sup> *Breaking the rules, stretching the rules*, IBFAN, Penang, Malaysia (2004); available at <http://www.ibfan.org/english/codewatch/btr04/btr04contents.html>. Accessed August 23, 2006.

system facilities should not be used to display covered products, posters of these products, or the distribution of material provided by companies. However, Art. 6.8 allow companies to donate equipment and materials to health care systems that bear a company's name or logo, so long as these items do not include reference to a proprietary product. Because advertising, labelling, and other forms of promotion tend to associate products with their manufacturers and/or a brand-identifying logo, this Code provision allows a huge avenue for evasion. Displays of product trademarks, mascots, and the like continue to be seen health facilities.<sup>63</sup> Banning these donations is the only effective way to prevent continued displays in health facilities.

Art. 7.2 contains another big loophole by permitting companies to provide information on their products to health professionals. Although this information should be restricted to scientific and factual matters, and should contain information on the benefits and superiority of breastfeeding and warnings about the negative effect of bottle feeding, this rarely is the case. The materials tend to be highly promotional, often containing pictures of happy, healthy, 'more intelligent' babies and are not restricted to scientific and factual information. Health professionals often pass these materials on to the true intended audience - pregnant women and mothers. By allowing these materials, the Code provides a legitimate avenue for companies to promote their products to health workers under the pretence of scientific or factual information. Indeed, companies provide large volumes of attractive materials to health facilities.<sup>64</sup> To stop this practice, this type of distribution of information to health professionals or anyone else should not be permitted.

Botswana's regulations address the conflict of interest created by sponsorships of health workers comprehensively. They prohibit health workers from accepting any gift, financial assistance, fellowships, study tours, research grants, funding for conference attendance, samples of covered foods, or quantities of food for infants and young children priced at less than wholesale or 80 per cent of retail price.<sup>65</sup> The regulations also prohibit displaying designated products in any health facility and impose corresponding obligations on manufacturers and distributors. In

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Marketing of Foods for Infants and Young Children Regulations, Art. 9(2).

addition, they prohibit manufacturers and distributors from selling, donating, or distributing, or causing the distribution of any equipment, materials, or other services with any reference to a designated product or containing the name or logo of any manufacturer or distributor in any health facility.<sup>66</sup>

Ghana's regulations prohibit free distribution of samples of a designated product to any person. They also prohibit, among other things, donating any equipment or material that bears the name, logo, graphic, trademark or any other description of a designated product for use within a health care facility.

**Box 44: Suggestions for Provisions Addressing Obligations of Health Care Systems**

National law could strengthen the Code's provisions by prohibiting any manufacturer or distributor of any covered product, or anyone acting the behalf of either, from:

- donating supplies or providing discounted supplies of any covered product to any part of the health system;
- providing samples of any covered products in health facilities or to health or community workers for any purpose, including for professional evaluation or research; and
- giving, offering, or sponsoring, any gift, grant, sponsorship or any other contribution, loan, or perquisite to any facility of the health system or to any health or community worker.

National law could further prohibit any health or community worker, or any representative of any facility of the health system from:

- accepting any donations, discounted supplies, or samples of any covered product;
- distributing or displaying any covered product in any health care facility;
- accepting any gift, grant, sponsorship, or any other contribution from any manufacturer or distributor or any person acting on behalf of either; and
- accepting, displaying, or distributing any materials, equipment, or items of any kind from a manufacturer or distributor, or anyone acting on their behalf, including informational and educational materials, utensils, equipment and similar items.

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<sup>66</sup> Marketing of Foods for Infants and Young Children Regulations, Art. 8.3.

The law also could require health and community workers and any representative of any health facility to report in writing the provision or offer of the same by any manufacturer, distributor or any person acting on behalf of either.

## **8. Employees of Manufacturers and Distributors**

Although the days of ‘mother craft nurses’ have passed, companies’ employees still find ways to have direct contact with pregnant women, new mothers, their families, and others who might influence them. The Code’s restrictions on contact with the public and the provision prohibiting educational functions apply only to companies’ marketing personnel. Companies get around these restrictions by creating ‘educational departments’ to handle questions and develop materials for mothers’ and babies’ clubs.<sup>67</sup>

### **Box 45: Suggestions for Provisions Addressing Employees of Manufacturers and Distributors**

National laws could strengthen the Code’s provisions by prohibiting any employee or other person acting on behalf of a manufacturer or distributor, from directly or indirectly soliciting or initiating contact with any:

- member of the public
- any employee of the health system
- or any community worker

to promote a covered product or provide any educational, scientific, or similar information related to a covered product or to feeding or nutrition of infants, young children (under a specified age), or pregnant or lactating women.

## **9. Labeling**

The Code addresses the type of information that should be part of labelling on infant formula containers. These include notice about the superiority of breastfeeding and related information, preparation instructions, warning about the hazards of inappropriate preparation, and, where applicable, risks of contamination with micro organisms. It is necessary, however, for national regulations to prescribe details as to precise wording, placement of the information on the container, size of messages in relation to the size of the container, details on font size, colour, and style, and contrast of text colour in relation to background colour.

Specifying the detailed wording and graphics that must be used for messages is one way to be sure the information is properly conveyed. For example, India’s law requires that the statement, ‘MOTHER’S MILK IS BEST FOR YOUR BABY’ must appear on all

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<sup>67</sup> Ibid.

infant foods.<sup>68</sup> Yemen's regulations require a label that states "Breastmilk is a complete food containing all the essential elements for infants and it improves the immunity of infants against diseases, especially diarrhoea."<sup>69</sup>

Brazil's law requires follow-up formula for young children and specified milks to include the following: 'Breastfeeding prevents infections and allergies and is recommended up to two year of age or more.'<sup>70</sup> It also requires that transition foods and cereal based foods and other foods or beverages marketed as suitable for infants or young children state, "After the first six months continue breastfeeding your baby in addition to giving new foods."<sup>71</sup>

Prescribing in national regulations the particulars as to the placement, font type, size, and colour, background colour, size of the message in relation to the size of the package panel, and other matters will help assure the messages truly are 'conspicuous,' as required by the Code. Without these specifications, what is 'conspicuous' is a subjective judgment that is difficult to enforce. By analogy, the Framework Convention on Tobacco Control (FCTC) requires that tobacco product packages contain a warning comprising at least one third of the main display panels of the package. The FCTC urges ratifying parties to require warnings that comprise 50 per cent of the main panels.

National governments should consider prohibiting labels from containing nothing other than the labelling information provided in the Codex Alimentarius and any required messages and warnings. Prohibiting additional text or images will give full force to the Code's prohibition against text that idealises the use of formula. Accompanying this prohibition should be a ban not only on pictures of infants, as required by the Code, but on any images or designs. Iran's law, for example, allows only generic labelling.<sup>72</sup> Although the laws of Brazil and Bangladesh do not impose a generic labelling requirement, their prohibition on photographs,

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<sup>68</sup> Infant Milk Substitutes, Feed Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (as amended), Sec. 6(1)(a).

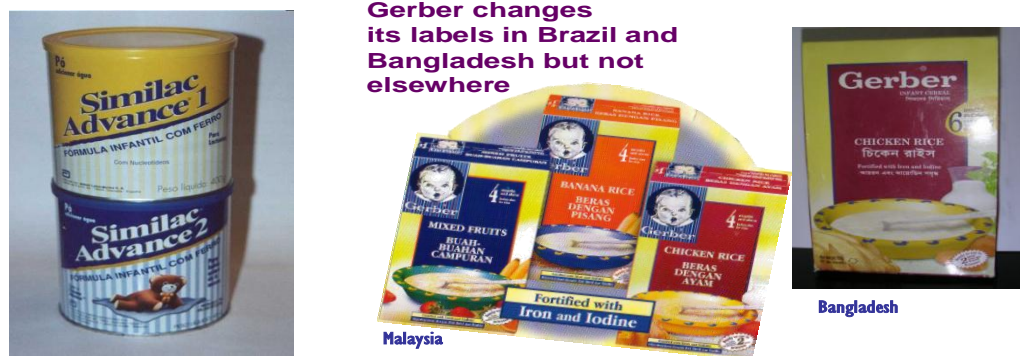
<sup>69</sup> Prime Minister Decree No. 18 on Regulation of Breastfeeding Promotion and Protection, Art. 7(1)(a).

<sup>70</sup> Resolution RDC No. 222, Art. 4.2.

<sup>71</sup> Resolution RDC No. 222, Art. 4.2.2.

<sup>72</sup> *The International Code*, UNICEF, New York, undated; available at <http://www.unicef.org/programme/breastfeeding/code.htm>. Accessed August 23, 2006.

illustrations or other graphic representations has been successful in getting the Gerber baby and the Isomil and Similac bear off labels of covered products.<sup>73</sup>



Slides provided by the International Code Documentation Centre.

Labelling requirements under national law for complementary foods and other similar foods will be different than those for infant formula since proper use of complementary foods plays an important role in young child nutrition. Botswana’s regulations require that labels on follow-up formula state that the product shall not be used for infants younger than six months.<sup>74</sup> They also provide that milks must contain the statement, “THIS PRODUCT IS NOT SUITABLE FOR FEEDING BABIES.”<sup>75</sup> A requirement like Botswana’s could be strengthened even further with a warning of the harmful effects of feeding these products to infants under a certain age.

**Box 46: Suggestions for Provisions on Labeling**

National regulations could strengthen the Code’s provisions by:

- prescribing the precise size and placement of the warnings and messages (e.g., on the top on-half of the main panel, or each main panel, if more than one), and requiring them to be in the language or languages specified in regulations;
- prescribing colour(s) of the text in relation to the background and the size and style of the font;
- prohibiting the label or package from containing any text, pictures, drawing, logo, trademark, or graphics of any

<sup>73</sup> Resolution RDC No. 222, 5 August 2002, Art. 4.3.1.

<sup>74</sup> Marketing of Foods for Infants and Young Children Regulations, Art. 11.

<sup>75</sup> Marketing of Foods for Infants and Young Children Regulations, Art. 13.

- kind, other than that prescribed or allowed;
- prescribing labelling requirements for covered products like follow-up formulas, complementary foods, foods marketed for pregnant and lactating women, bottles, teats, and dummies;
  - for complementary foods, clearly stating the age of proper use, with a warning about the health effects of use at earlier ages or as a replacement for breastmilk;
  - prohibiting any health claim or claims with regard to any covered product, or alternatively, requiring approval by the Ministry of any claims and providing the evaluation criteria the Ministry should use in granting approval; and
  - prohibiting any misleading claims by manufacturers or distributors.

Additionally, governments might consider providing a template that must be used for all covered warnings and messages.

## **10. Implementation and monitoring**

The law should impose clear authorities and responsibilities on the government, on manufacturers and distributors, health facilities and workers, and on agents of any of these and anyone working on their behalf. Additionally, it is important to ensure that each requirement under the law has a corresponding penalty or penalties for its violation. The authorities and duties related to inspections and enforcement also need to be clearly spelled out. (See discussion on inspections and enforcement in the section on food fortification, above.)

Monitoring is critical because it allows the government to take action to enforce the law. Through monitoring, the government and interested organizations also will be aware of the latest industry practices that violate or evade the law in their countries. With this knowledge, the government can, where necessary, amend legal requirements to close loopholes as well as take enforcement action in response to clear violations. NGOs can play an important monitoring role, enhancing the government's ability to monitor and enforce the law.

Botswana and India, for example, created a role for such organizations in their legal frameworks. Botswana's Regulations<sup>76</sup> gave the Permanent Secretary power to designate specially trained monitors to investigate, observe and record information regarding marketing practices at points of sale, in health care facilities, border posts and offices, through the media, and elsewhere. Monitors are vested with inspection and investigative authority and their reports can serve as evidence in court. India, through Ministerial regulations,<sup>77</sup> authorized specified voluntary organizations engaged in the field of child welfare, development, and nutrition to make a complaint in writing under national law adopting the Code.

### **11. Additional measures**

Additional provisions to protect, promote, and support breastfeeding might include such things as:

- registration of covered products, as is required in Nigeria, or licensure of manufacturers and distributors of covered products;
- a specific requirement for the government to both fund, as well as implement, programmes for public education and training of community and health workers on appropriate infant and child feeding practices; and
- a requirement for inclusion of such information in the curriculum of appropriate educational institutions, especially in the curriculum for medical professionals. These, alternatively, could be taken as a policy decision without necessarily incorporating the requirement into law.

### **1.4 Accompanying Social Policies to Protect, Promote and Support Breastfeeding**

The 1990 Innocenti Declaration affirmed improved breastfeeding practices as a means to fulfil children's right to the highest attainable standard of health, calling on governments to implement the Baby-Friendly Hospital Initiative and the Code, appoint a Breastfeeding Coordinator and establish a multi-sectoral

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<sup>76</sup> Marketing of Foods for Infants and Young Children Regulations, Art. 4.

<sup>77</sup> Ministry of Human Resource Development (Department of Women and Child Development) Notifications of 27 June 1994 and 27 July 1995.

Breastfeeding Committee, and enact legislation protecting the breastfeeding rights of working women and establish a means for its enforcement. The Global Strategy for Infant and Young Child Feeding, adopted by the World Health Assembly and endorsed by UNICEF's Executive Board in 2002, expands the Innocenti targets and incorporates the latest scientific evidence. This includes the optimal duration of exclusive breastfeeding for six months and the minimal duration for continued breastfeeding, accompanied by safe and appropriate complementary foods, for two years or longer.

The Innocenti Declaration 2005 reinforces the 1990 Declaration and Global Strategy targets as the foundation for action to improve infant and young child feeding practices and expands on them. For example, the 2005 Declaration calls on parties to also ensure the health and nutritional status of women throughout all stages of life and to give urgent attention to facilitating breastfeeding for women employed in the non-formal sector, among other supports. These documents together provide the framework for social policies for the protection, promotion and support of breastfeeding.

#### ***1.4.1 The Need for Maternity Protection as an Accompanying Social Policy***

Unless maternity protection rights are provided in national law, women in paid employment who decide to breastfeed face competing demands that can make breastfeeding impossible. Additionally, a return to work too early can jeopardise the mother's health. Consequences can include anaemia, malnutrition, urinary tract infections, uterine prolapse, and physical and emotional stress.<sup>78</sup> Maternity protection as a matter of right, therefore, is a necessary component of legislative reform to protect children's and women's rights to adequate nutrition and health. It also reflects recognition that breastfeeding is a social function and its protection, promotion and support are a social responsibility.

Essential elements of maternity protection include, at a minimum, eliminating workplace discrimination on the basis of pregnancy

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<sup>78</sup> Maternity protection coalition statement. IBFAN Press Release 5 June 2000, IBFAN, Penang, Malaysia, 200. Available at <http://www.ibfan.org/english/news/press/press5june00.html>. Accessed August 23, 2006.

and maternity, ensuring income and job security and providing adequate facilities for breastfeeding and expression of milk.<sup>79</sup>

#### ***1.4.2 The Maternity Protection Convention and Recommendations***

The ILO adopted the Maternity Protection Convention in 1919, and amended it in 1952 and 2000. Although the majority of countries have not ratified the Convention, the vast majority have adopted maternity protection legislation that meets or exceeds the levels of protection elaborated in the Convention and Recommendations. A summary of the Maternity Convention and Recommendations is contained in Annex 2.

#### ***1.4.3 Incorporating the Maternity Convention and Recommendations into National Law***

Legislative provisions implementing the Maternity Protection Convention and Recommendations will be concerned mainly with providing sufficient scope, quantity and quality of benefits to protect and support breastfeeding, along with strong provisions for non-discrimination.

##### **1. Scope**

A glaring gap in the Convention and Recommendations is that they do not apply to women working in the informal economy and in rural farming who often lead the most economically fragile lives. It is important, therefore, for governments to ensure mechanisms for protecting, promoting and supporting the breastfeeding rights of women in informal, rural and domestic employment. This might be accomplished, for example, through the provision of social security, public assistance, or other government funds to women working in these sectors. The government also could fund benefits for such workers thorough programs like cooperatives and mutual benefit societies.<sup>80</sup>

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<sup>79</sup> Without frequent expression of milk, a sufficient milk supply becomes jeopardised.

<sup>80</sup> *Key elements of maternity protection at work: Maternity Protection Campaign Kit*. WABA, Penang, Malaysia; undated; available at [www.waba.org.my/womenwork/mpckit.htm](http://www.waba.org.my/womenwork/mpckit.htm). Accessed June 25, 2006.

For example, the Indian government subsidises the Self Employed Women's Association (SEWA) Integrated Insurance Scheme, which provides a range of social benefits, including a small maternity benefit. SEWA is a membership organisation for women who are self-employed, regular wage earners and casual labourers. In Bangladesh, social security coverage is extended to difficult-to-reach workers through micro-health insurance schemes, promoted through partnerships with voluntary organisations and the government.<sup>81</sup>

## **2. Maternity Leave**

Guaranteed leave is necessary to allow women to take time off around a birth event without fear of losing their jobs or suffering discrimination. Nearly one half of countries for which data are available meet the Convention's requirement of 14 or more weeks of leave.<sup>82</sup> In some countries, leave is provided for extended periods of time. Twelve countries provide 26 or more weeks of maternity leave.<sup>83</sup> Korea's law mandates the availability of a maternity leave of up to one year and requires the provision of nursing facilities for infants.<sup>84</sup> Iraq's law provides maternity leave for an official to be fully paid for the first six months and half-paid for the second six months.<sup>85</sup> Slovakia's law grants maternity leave for 28 weeks (37 weeks if the woman gave birth to two or more children at the same time or if she is a single mother).<sup>86</sup>

Governments should consider scaling up leave over time, if not immediately, to six months, with full payment and continuation of all benefits to accommodate and support exclusive breastfeeding for the Code-recommended period of six months. At the least, R 191's recommendation of a minimum of 18 weeks should be required.

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<sup>81</sup> Social Protection Sector implementation report 2000-2001, ILO, Geneva (2001); available at [www.ilo.org/public/english/protection/info/imp2k-01/1c.htm](http://www.ilo.org/public/english/protection/info/imp2k-01/1c.htm). Accessed August 19, 2006.

<sup>82</sup> *Maternity at work: A review of national legislation*, ILO, Geneva (2005); available at <http://www.ilo.org/public/english/protection/condtrav/pdf/wf-iogpt-05.pdf>. Accessed June 25, 2006.

<sup>83</sup> *Status of maternity protection by country*, WABA, Penang, Malaysia (2006); available at <http://www.waba.org.my/womenwork/MaternityProtectionChart21May2006.pdf>. Accessed August 23, 2006.

<sup>84</sup> Equal Employment Act No. 3989 (1987) (as amended).

<sup>85</sup> Revolutionary Command Council Resolution No. 882 (1988).

<sup>86</sup> Notification No. 190/2002 of the Ministry of Foreign Affairs on the Adoption of the Convention of the International Labour Organization No. 183/2000 concerning the Revision of the Maternity Protection Convention (Revised), 1952.



### **3. Benefits**

Ninety-seven percent of countries studied by the ILO provide that women must be paid during maternity leave.<sup>87</sup> Thirty-six percent of 153 countries studied meet the minimum requirement of two thirds of earnings paid for a minimum of 14 weeks. Twenty-seven percent pay at 100 per cent of previous earnings. Norway's law, for example, provides for 100 per cent pay for up to 44 weeks of parental leave or 80 per cent of pay for 52 weeks up to a maximum based on parental income.<sup>88</sup> Senegal's law requires 100 per cent payment based on the daily wage paid on the last payday prior to maternity leave. In Peru, the rate of payment is based on the average daily wage for the four months preceding the start of benefits. Peru, Finland, Ireland, and Portugal provide a minimum compensation for low wage earners.<sup>89</sup>

In 91 of 165 countries surveyed by the ILO, benefits are paid by national social security schemes, as called for by R 191, to prevent discrimination by employers based on having to bear the cost of the payment. There is a mixed system of payment in about 26 countries.<sup>90</sup> Unless the leave is paid or covered by social security, coverage has been shown to be ineffective.<sup>91</sup> Governments also should strive to require paid leave at a rate of 100 per cent of earnings for the previous period, as provided in R191.

### **4. Employment Protection and Non-discrimination**

All but three of the 56 countries for which ILO has information on this matter protect employment during maternity. Countries prohibit dismissal during pregnancy and leave and for a prescribed period after leave. Mongolia and Estonia prohibit dismissal from the time of pregnancy until the child is three years old.<sup>92</sup>

Some countries prohibit dismissal during maternity without exception while others allow dismissal for cause unrelated to maternity. The most common grounds for dismissal include: serious fault, reasons stipulated in law, cessation of the undertaking

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<sup>87</sup> *Maternity at work: A review of national legislation*, ILO, Geneva (2005); available at <http://www.ilo.org/public/english/protection/condtrav/pdf/wf-iogpt-05.pdf>. Accessed June 25, 2006.html.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

or the work, cause for dismissal that pre-dates the pregnancy, work for another undertaking while on leave, and failure to return to work on the expiration of leave. Many countries place the burden of proving a non-maternity related reason for dismissal on the employer, as required by the Convention. Some laws require judicial or administrative authorisation before giving notice of dismissal.<sup>93</sup> Some countries provide for compensation in the case of discriminatory dismissal. For example, the laws in Argentina and Ecuador provide for a year's salary as compensation. Belgium provides for six months' salary and Dominican Republic provides for five months compensatory pay.<sup>94</sup> Many countries also address rights upon return to work following maternity leave, commonly the right to return to the same or equivalent post paid at the same rate as before the leave.

### **5. Breastfeeding Mothers**

Breastfeeding breaks allow mothers to feed their babies or express their milk for later feedings. Expression of breastmilk is important for maintaining the supply of breastmilk. Legislation in at least 92 countries provides for breastfeeding breaks in addition to regular breaks, usually of 30-minute duration, two times per day.

Legislation in more than two thirds of countries for which the ILO has data provides for payment during breastfeeding breaks, as required by the Convention.<sup>95</sup> The law in Estonia provides breaks for feeding children younger than 18 months at least every three hours for 30 minutes each. Colombian law provides for two 30 minute breaks but allows for additional breaks where there is a medical certificate indicating the need. In Ecuador, when a workplace does not provide a nursery, a nursing mother is entitled to work only six hours/day during the first nine months after confinement. In some countries where leave is unpaid, at a very minimum breastfeeding breaks are paid.

Colombian law requires that every employer establish in or next to the premises a room for nursing or a suitable place for childcare.<sup>96</sup> The law in Ecuador requires that any employer with 50 or more

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<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

employees provide nursing or day care facilities.<sup>97</sup> In Cambodia, employers with 100 or more female employees must set up a nursing room and daycare centre in their establishments or nearby. A nursing room must be provided in or near any place of employment with more than 25 women employees.<sup>98</sup> To address hygienic concerns, more workplaces are providing facilities for expressing and storing milk.<sup>99</sup>

Governments should require employers to provide paid breastfeeding breaks often enough for women to meet their babies' feeding needs. Payment should be out of the social security fund, as it is for payment of leave, so that there is not a financial incentive for employers to discriminate.

#### *1.4.4 Suggestions for Additional Provisions*

Governments should establish and fund mechanisms for receiving, investigating and resolving complaints. As always, clear enforcement powers and duties need to be specified in the law. Finally, the law could require the government to fund public education programmes and materials for informing women of their rights under the law.

### **1.5 Establishing a Policy Environment to Protect against Childhood Obesity and Promote Physical Activity**

#### *1.5.1 Introduction to the Problem of Overweight Children and Obesity*

Developing countries are experiencing an increase in overweight and obesity in children under 5 years of age. This is the case even in countries with low gross national product per capita and where child and maternal under-nutrition is widespread.<sup>100</sup> Risk for obesity starts in utero and is associated with, among other factors,

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> *Repositioning Nutrition*, World Bank, Washington, D.C. (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

<sup>100</sup> Ibid.

both maternal under-nutrition and overweight mothers.<sup>101</sup> Populations in countries undergoing increased urbanisation and economic transition are consuming diets high in energy density, fat, sugar, and refined grains, and low in cereals, fruits and vegetables. Combined with decreased physical activity among children due to more television-viewing and other sedentary activities, a favourable environment is created for children to become overweight or obese.<sup>102</sup>

Overweight and obesity increase the risk for dyslipidemia, hypertension, hyperinsulinism, insulin resistance and diabetes. These, in turn, significantly increase the risk for cardiovascular disease and some forms of cancer.<sup>103,104</sup> A US study found that an obese person experiences a 50 per cent reduction in productivity and visits a doctor 88 per cent more often than a healthy person during a six-year period. Obesity contributes to absenteeism and reduces productivity of the population.<sup>105</sup> Consequently this reduces the country's development potential, feeding the vicious cycle of poverty and the ongoing denial of human rights for both children and adults that poverty creates.

### 1.5.2 *The Need for Legislation*

Worldwide, 155 million school-age children are overweight, including approximately 40 million who are obese. Developing countries overall have seen a seven per cent increase in childhood obesity prevalence rates. Africa has seen an astounding 58 per cent increase.<sup>106</sup> The growing incidence of Type II diabetes in children is sounding an alarm that calls for action now to change social and physical environments that promote overweight and obesity. Legislative reform is necessary to create environments that promote children's access and exposure to healthy foods, decrease access

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<sup>101</sup> Ibid.

<sup>102</sup> Hoffman, D., *Obesity in developing countries: Causes and implications*, FAO, Rome, undated; available at [www.fao.org/DOCREP/003/Y0600M/y0600m05.htm](http://www.fao.org/DOCREP/003/Y0600M/y0600m05.htm). Accessed June 25, 2006.

<sup>103</sup> Ibid.

<sup>104</sup> *Repositioning Nutrition*, World Bank, Washington, D.C. (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

<sup>105</sup> Hoffman, D., *Obesity in developing countries: Causes and implications*, FAO, Rome, undated; available at [www.fao.org/DOCREP/003/Y0600M/y0600m05.htm](http://www.fao.org/DOCREP/003/Y0600M/y0600m05.htm). Accessed June 25, 2006.

<sup>106</sup> *Repositioning Nutrition*, World Bank, Washington, D.C. (2006); available at <http://siteresources.worldbank.org/NUTRITION/Resources/281846-1131636806329/NutritionStrategy.pdf>. Accessed August 23, 2006.

and exposure to unhealthy foods through marketing, and encourage increased physical activity. In addition to the individual, public health, and socio-economic consequences of obesity, there is the issue of manipulating children through the marketing of junk foods. Children lack the cognitive ability to understand advertising and promotion or to distinguish programme content from advertisement. They also cannot appreciate the consequences of establishing bad eating habits that can persist over a lifetime and increase the risk of chronic diseases.<sup>107</sup> Yet, children in many countries are bombarded by direct and indirect food advertising and promotion, usually of the unhealthy variety.

Food companies and fast food restaurants spend billions marketing unhealthy and junk foods to kids.<sup>108</sup> Worse yet, schools in many places allow themselves to be vehicles for marketing these products to the children in their care. At the same time that schools teach nutrition and health education, many undermine these educational efforts by selling high-sugar sodas and high-sugar and -fat snacks in vending machines or school canteens. Many allow unhealthy fast food to compete with school-provided meals, which in many cases are also unhealthy. The CRC recognises the need to protect children from information and materials injurious to their well-being. This should include protection against marketing of junk foods to children. When the state becomes a party to this marketing through the public education system, for example by allowing sponsorships of school programs and materials, the case for legislative reform in this area becomes even stronger.

### 1.5.3 Issues

#### 1. Scant evaluation data

Most legislative and programmatic initiatives in this area have not yet been evaluated for impact on reducing obesity. For example, there is no direct evidence that increased taxation on unhealthy

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<sup>107</sup> Mello, M. et. Al, "Obesity - The New Frontier of Public Health Law", *New England Journal of Medicine*, vol. 354 (June 15, 2006), p. 2601-2610; available at <http://content.nejm.org/cgi/content/full/354/24/2601?query=TOC>.

<sup>108</sup> Nestle, M., "Food Marketing and Childhood Obesity - A Matter of Policy", *New England Journal of Medicine*, vol 354 (June 15, 2006), p. 2527-2529; available at <http://content.nejm.org/cgi/content/full/354/24/2527?query=TOC>.

foods affects rates of obesity, although studies have linked food pricing with consumption patterns. There are clear studies, by analogy, showing that higher cigarette taxes reduce tobacco consumption.<sup>109</sup> A recent study shows the relationship between advertising in *Parents' Magazine* and a reduction in breastfeeding rates.<sup>110</sup> Studies also are lacking to demonstrate the effectiveness of advertising restrictions (as compared to advertising bans). Drawing again from the tobacco control example, studies have shown that in countries where direct and indirect tobacco advertising has not been banned but merely restricted, the tobacco industry substituted its promotional activities to permitted forms.<sup>111</sup>

## **2. Content of legislation**

Because governments have only fairly recently begun taking legislative action in this arena, global guidance for specific policy and legislative content has not yet been disseminated in the same way as for the other nutritional topics discussed in this subchapter. National legislative activity has not occurred in too many countries, and effectiveness evaluation data are not yet available where it has. As a result of these factors, this subsection will simply highlight the areas for policy and legislative development proposed by some international and regional health organisations and consumer- and health-based NGOs.

Legislative topics applicable to obesity prevention and physical activity promotion might include:

## **3. Mandating and funding education and public awareness**

According to WHO's Global Strategy on Diet, Physical Activity and Health, articulated in WHA 57.17 (2004), the public needs to understand, among other things, the relationships among diet, physical activity and health, and between energy intake and output needs. Without this knowledge, healthy food choices cannot be made. Because children are exposed to food advertising and

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<sup>109</sup> Jha, P. and F. Chaloupka, *Curbing the epidemic: Governments and the economics of tobacco control*, World Bank, Washington, D.C. (1999).

<sup>110</sup> Foss, K. and B. Southwell, "The relationship between advertising in Parents Magazine and breastfeeding 1972-2000", *International Breastfeeding Journal*, 1:10 (2006); available at <http://www.internationalbreastfeedingjournal.com/content/1/1/10>. Accessed August 30, 2006.

<sup>111</sup> Ibid.

promotion almost everywhere they turn, starting at a very early age, media education (the skill of understanding the nature of mass media communications and employing critical thinking in interpreting them) should be introduced in schools early on.<sup>112</sup> The government will need to provide funding for these activities and for initiatives like mass media campaigns, school-based nutrition education, workplace healthy eating and physical activity promotion initiatives, and similar strategies.

#### **4. Banning marketing to children**

Food advertising affects food choices and influences dietary choices.<sup>113</sup> Many governments prohibit or restrict advertising during television programs targeting children.<sup>114</sup> Eighty-five per cent of 73 countries surveyed by WHO were found to regulate television advertising to children with respect to timing and content. Two countries had banned advertising to kids.<sup>115</sup> The food industry markets and promotes its products through many media, both directly and indirectly. Tactics include advertisements, product placements in toys, games, educational materials, songs, movies, character licensing, celebrity endorsements, internet and mobile phone text messaging, displays at retail outlets (including product displays), and stocking or slotting policies that make junk foods accessible to children, to name just a few.<sup>116,117</sup> All forms of direct and indirect advertising and promotion will need to be addressed in a comprehensive way. Marketing and promotion in schools is a growing trend and, as discussed above, should be prohibited.

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<sup>112</sup> *Global Strategy on Diet, Physical Activity and Health*, WHA 57.17 WHO, Geneva (2004); available at [http://www.who.int/child-adolescent-health/New\\_Publications/NUTRITION/gs\\_iycf.pdf](http://www.who.int/child-adolescent-health/New_Publications/NUTRITION/gs_iycf.pdf). Accessed August 23, 2006.

<sup>113</sup> Ibid.

<sup>114</sup> Hawkes, C., *Marketing food to children: The global regulatory environment*, WHO, Geneva (2004); available at <http://whqlibdoc.who.int/publications/2004/9241591579.pdf>.

<sup>115</sup> Ibid.

<sup>116</sup> Nestle, M., "Food Marketing and Childhood Obesity - A Matter of Policy", *New England Journal of Medicine*; 354:2527-2529 (June 15, 2006). Available at <http://content.nejm.org/cgi/content/full/354/24/2527?query=TOC>.

<sup>117</sup> "Obesity: How is the food industry responding?" *Investor Responsibility*. Accessed June 29, 2006.

## **5. Labeling**

Food labelling should provide consumers with accurate, standardised and understandable information on content to enable them to make healthy choices.<sup>118</sup> Labelling requirements also can mandate an indication of the nutritional disadvantages of a product (a warning). In addition, misleading claims will need to be addressed. For example, foods labelled as '90 per cent fat free' are misleading because 10 per cent fat content is still fairly high.<sup>119</sup> Under the proposed European Union Regulation on Nutrition and Health Claims Made on Foods, claims like 'high fibre' will have minimum amount of fibre per unit defined. To make health claims, companies will have to provide scientific evidence and get pre-marketing approval. A positive list of well-established health claims will be developed.<sup>120</sup>

## **6. Fiscal Policies**

Pricing influences food consumption choices.<sup>121</sup> Influencing pricing of healthy foods relative to unhealthy foods can be accomplished through measures like taxes (higher on junk foods, lower on healthy foods like fresh fruits and vegetables), subsidies (lower for products that are, for example, high in fat and higher for healthy foods), and reduced tariffs on fruits and vegetables.

## **7. School Policies**

Creating a healthy eating environment in schools has meant, in some jurisdictions, banning sales of junk foods and sugary sodas (e.g., England, sodas and high sugar snacks; France, sodas; and New South Wales, sodas) and establishing nutritional requirements for school-provided meals (England). Nutrition education, as discussed above, also is an important component of school policies, as are requirements for physical education in the curriculum.

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<sup>118</sup> *Global Strategy on Diet, Physical Activity and Health*, WHA 57.17 WHO, Geneva (2004); available at [http://www.who.int/child-adolescent-health/New\\_Publications/NUTRITION/gs\\_icyf.pdf](http://www.who.int/child-adolescent-health/New_Publications/NUTRITION/gs_icyf.pdf). Accessed August 23, 2006.

<sup>119</sup> "Obesity: How is the food industry responding?" *Investor Responsibility*. Accessed June 29, 2006.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

## **8. Physical activity promotion**

Many initiatives for promoting physical activity, such as providing paths for cycling and walking, and public transportation policies are to be undertaken at the local level. National government can establish policy guidance and provide funding to lower levels of governments for new initiatives in this area.

### **1.6 Participatory processes**

An important component of a rights-based approach to nutrition is a participatory process involving all stakeholders, with special outreach to population groups most affected by inadequate nutrition. In the micronutrient realm, national alliances involving governments, food producers, health and nutrition professionals, academics and researchers, civil society and international agencies have been key to the successes achieved.<sup>122</sup> These alliances have been involved in policy development, programme implementation, monitoring and evaluation. Similar alliances would be well equipped to address obesity prevention and physical activity promotion. The conflict of interest with involving the food industry in addressing obesity must be borne in mind, however.

With regard to breastfeeding, the Innocenti Declaration calls for a breastfeeding coordinator and a multisectoral national breastfeeding committee. Participatory processes for maternity protection will need to include the involvement of employers, trade unions, workers, especially from informal and rural economies, and health and nutrition NGOs. It also will be essential to include NGOs involved with breastfeeding promotion, health promotion, and women's rights in maternity protection efforts. Of course, the role of children of sufficient age in the process should be assured, as appropriate, in accordance with the CRC framework. A participatory approach should be taken in all phases of legislation reform for nutrition, from analysing the need for reform, to

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<sup>122</sup> Andersen P., *Vitamin and mineral deficiency: A global progress report*, Micronutrient Initiative, Ottawa, undated; available at <http://www.unicef.org/media/files/vmd.pdf>. Accessed August 23, 2006.

planning legislative and programme interventions, to implementing and monitoring their effectiveness.

## **1.7 Creating Justiciable Rights**

Creating a justiciable right of redress empowers individuals and members of civil society with a means for claiming their rights. In this regard, the law can provide for a private right of action by any individual harmed as a result of non-compliance by any duty-bearer, governmental and non-governmental alike. An individual, therefore, would not be required to rely on the government for protecting his or her rights. Rather, an individual would be able to bring action against the government for failing to fulfill any of its direct obligations of implementation and enforcement. An individual also would be able to bring legal action directly against a private duty bearer (e.g., food company, employer) for any failure to comply with any duty imposed on it by law.

A right to bring public litigation by civil society organisations should be established in the law, where appropriate. In the case where a duty bearer fails to fulfill its duty, representative organisations can be empowered to bring an action on behalf of any intended beneficiary to seek a court order for fulfillment of that duty and the award of an established civil penalty, along with recovery of costs and waiver of filing fees.

## **1.8 Mechanisms for Monitoring and Accountability**

For all of the programmes discussed in this sub-chapter, the law should charge the government with a clear duty to establish and implement processes for periodically monitoring the effectiveness of its nutrition interventions, including the effectiveness of legal provisions and their implementation and enforcement. This way, programmatic adjustments and legislative amendments can be undertaken as appropriate. Different models for doing this include, among others, monitoring by the state, special rapporteurs, ombudspersons or civil society.

In China, for example, the government undertakes a five-year review process designed to monitor progress, budgets, training and best practices to renew high-level political commitment to its

universal salt iodization program.<sup>123</sup> As mentioned in the section on the Code, above, Botswana's implementing regulations authorise the designation of specially trained monitors to investigate, observe and report on marketing practices and present evidence in court. The Brazilian Department of Justice, in collaboration with NGOs, established the position of a national rapporteur for monitoring the right to food, water and rural land. This endeavour was initiated by a national network of civil society organisations.<sup>124</sup>

## 1.9 Issues checklist

- Establish or reinvigorate multi-sectoral coordinating committees (or similar bodies) composed of broad-based governmental and civil society representatives, especially those responsible for child well-being, on:
  - micronutrient malnutrition;
  - breastfeeding promotion and accompanying social policies; and
  - childhood overweight and obesity.

Coordination among these committees will be important because micronutrient malnutrition, breastfeeding and obesity are all interconnected. Lessons learned, for example, from the Code's marketing restrictions can be applied, with some adaptation, to measures regulating the marketing of junk foods.

- Conduct a legislative review of nutrition policies, laws and regulations, specifically related to micronutrient malnutrition, breastfeeding protection, promotion and support, and childhood overweight and obesity, with special inquiry into:
  - whether existing measures meet or exceed the international standards of the Codex, the Code and the Maternity Protection Convention and Recommendations and whether they implement the frameworks of the

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<sup>123</sup> Ibid.

<sup>124</sup> *Report of the Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security*, FAO, Rome (2004); available at <http://www.fao.org/docrep/meeting/008/j1877e.htm>.

Innocenti Declaration and the Global Strategy on Infant and Young Child feeding;

- whether groups most affected or at risk of nutritional deficiencies, especially children and adolescent girls and women of childbearing age, are fully protected by existing measures; if not, what gaps exist and what strategic plans are necessary to fill them;
  - whether existing measures protect and promote the best interest of the child, including giving priority to children's best interests over competing interests (for example, mandatory fortification to address deficiencies that are widespread and that especially affect children and adolescent girls and women of child bearing age, banning marketing of junk foods to children);
  - whether existing measures adequately protect children from intentional or unintentional discrimination (for example, high rates of iron deficiency in girls and women);
  - whether existing measures adequately protect children's right of life, survival, development and protection (for example, where there are low rates of breastfeeding and high rates of child malnutrition and/or sickness and death);
  - whether existing laws have taken into account the views of children (for example, with regard to fortification, marketing of junk foods); and
  - whether duty bearers are clearly identified and justiciable rights and remedies are created for each breach of duty.
- Conduct a situation analyses, including:
    - rates in the entire population and in subpopulations of micronutrient malnutrition, breastfeeding, childhood overweight and obesity, physical activity, infant and child malnutrition, morbidity, and mortality, and the factors influencing these rates
    - identification of the groups affected by inadequate nutrition and the groups most vulnerable, barriers to their access to adequate and appropriate foods and, as applicable, adequate protection of breastfeeding; and
    - identification of additional nutrition and other public health interventions that may be necessary to reach

children and adolescent girls, women of childbearing age, and any other underserved populations.

- Develop strategic plans with measurable, time-bound objectives and clear roles with respect to:
  - eliminating deficiencies in iodine and Vitamin A and reducing iron deficiency;
  - increasing the rates of exclusive and continuing breastfeeding; and
  - reducing or at least containing the rate of childhood obesity; using a child impact analysis in developing the plan and monitoring indicators.
- Ensure an adequate budget for nutrition and breastfeeding protection and promotion interventions, including for their monitoring and enforcement.
- Assess institutional capacity in regard to:
  - implementing, monitoring and evaluating interventions and the effectiveness of legislative measures; and
  - inspecting and enforcing legal requirements.
- Develop programmes for capacity-building where gaps are identified.
- Conduct an analysis to identify potential unintended consequences, including those on other rights guaranteed by the CRC and other human rights instruments, of planned legislative reform.
- Develop mechanisms for monitoring and periodic reporting on legislative measures and nutrition programme interventions, with civil society involvement.

## Chapter 5: Annex 1

### Summary of the Code's Provisions

**Scope (Art.2):** The Code applies to products marketed or otherwise represented to be suitable for use as a partial or total replacement of breastmilk, feeding bottles, and teats.

**Information and Education (Art. 4):** The government is responsible for planning, providing, and disseminating information on infant and young child feeding, or controlling it to ensure objective and consistent information, which includes:

- the benefits and superiority of breastfeeding
- maternal nutrition and preparation for and maintenance of breastfeeding
- negative effect of introducing partial bottle feeding on breastfeeding
- difficulty of reversing a decision not to breastfeed
- proper use of infant formula where needed, social and financial implications, hazards of inappropriate use of breastmilk substitutes, and no text or pictures that idealise breastmilk substitutes

Distribution of informational or educational equipment or materials is allowed through the health care system if made at the request of the government and it does not refer to a proprietary product.

**The general public and mothers (Art. 5):** There should be no:

- advertising or other promotion of covered products to the general public
- direct or indirect provision of samples
- point of sale advertising, samples, other promotional devices at retail, such as special displays, discount coupons, premiums, special sales, loss-leaders, or tie-in sales
- distribution of articles or utensils which may promote the use of breastmilk substitutes
- direct or indirect contact with pregnant women or mothers by marketing personnel

**Health care systems (Art. 6; WHA 47.5):** No facility of a health care

system should be used for promoting covered products, including:

- displaying products, placards or posters, or distribution of material from a manufacturer or distributor other than scientific and factual information provided by companies to health professionals
- using 'professional service representatives', 'mothercraft nurses', or similar personnel provided or paid for by manufacturers or distributors
- allowing, if necessary, demonstration of infant formula by anyone other than health workers or community workers
- donations or low price sales of supplies of breastmilk substitutes in any part of the health system
- donated equipment or materials that refer to any proprietary product covered by the Code

**Health workers (Art. 7; WHA 58.32):** Health workers should encourage and protect breastfeeding and should not:

- accept financial or material inducements to promote covered products from manufacturers or distributors
- give samples of infant formula or other covered products to pregnant women, mothers, or members of their families
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Health workers should disclose any contributions made by a manufacturer or distributor of any fellowship, study tour, research grant, attendance at a professional conference, and the like.

Member states should ensure that financial support and other incentives for programmes and health professionals working in infant and child health do not create conflicts of interest.

**Employees of manufacturers and distributors (Art. 8):** Sales incentives for marketing personnel should not be based on volume of sales and sales quotas should not be set. Marketing personnel should not perform educational functions in relation to pregnant women or mothers of infants and young children. They should have written approval of the appropriate governmental authority to perform other functions.

**Labelling (Art. 9; WHA 58.32):** Labels should be designed to

provide necessary information about appropriate use and should not discourage breastfeeding. Labels on infant formula containers should have a clear, conspicuous, easily readable and understandable message printed in the appropriate language that includes the following words or statements:

- 'Important Notice' or the equivalent
- the superiority of breastfeeding
- should be used only on the advice of a health worker as to the need for its use and the proper method of use
- instructions for appropriate preparation and warning of the health hazards of inappropriate preparation
- information that powdered formula may contain pathogenic micro organisms and must be prepared and used appropriately

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There should be no pictures of infants or pictures or text which may idealise formula use or which contains the terms 'humanised' or 'maternalised' or similar terms.

Nutrition and health claims should not be permitted unless specifically provided for in national legislation.

**Quality (Art. 10):** Covered products should meet Codex-recommended standards.

**Implementation and monitoring (Art. 11):** Governments should implement the Code through appropriate legal, policy, or other measures. Governments have an obligation to monitor, in collaboration with UN agencies, NGOs, and civil society. Manufacturers and distributors should abide by the Code irrespective of whether the national government has taken steps to implement the Code through national measures.

## Chapter 5: Annex 2

# Summary of the ILO Maternity Convention and Recommendations

**Scope (Articles 1 and 2):** The Convention applies to all employed women, but ratifying members may exclude limited categories of workers when covering them would “raise special problems of a substantial nature.”

**Maternity leave (Article 4):** Women covered under the Convention are entitled to maternity leave of not less than 14 weeks. **Maternity Recommendation (R) 191:** members should endeavour to extend the leave period to at least 18 weeks.

**Benefits (Articles 6 and 7; R 191):** Cash benefits shall be provided for maternity leave and leave due to illness or complications. Benefit levels shall be at a level that ensures the woman can maintain herself and child in proper conditions of health and with a suitable standard of living:

- Cash benefits based on previous earnings shall be no less than two thirds of previous earnings or comparable amount. Where practicable, cash benefits should be raised to the full amount of previous earnings.
- A large majority of covered women must be able to satisfy the conditions for qualifying for cash benefits.
- Where a woman does not meet the conditions to qualify for cash benefits, she shall be entitled to adequate benefits out of social assistance or public funds upon meeting any required means test.
- To protect against discrimination, cash benefits shall be provided through compulsory social insurance or public funds.
- In countries where the economy and social security system are not sufficiently developed, benefits may be paid at least at the level provided for sickness or temporary disability.

**Employment protection and non-discrimination (Articles 8 and 9; R 191):**

- An employer may not terminate a woman during pregnancy or leave or following her return to work for a prescribed period, except on grounds unrelated to the pregnancy, birth, or nursing. The burden of proof rests with the employer.

- A woman is guaranteed the right to return to work to the same or equivalent position paid at the same rate. The period of leave should be considered as a period of service for the determination of rights.
- Ratifying members must adopt measures to prevent discrimination based on maternity, including not requiring a pregnancy test or certification of non-pregnancy upon application for employment, unless national law prohibits or restricts employment of pregnant or nursing women or where there is a recognised or significant risk to the health of the woman or child.

**Breastfeeding mothers (Article 10; R 191):** Women should have one or more daily breaks or a daily reduction of hours for breastfeeding, adapted to particular needs. These are to be counted and paid as working time. Where practicable, clean and safe facilities for nursing at or near the workplace should be established.

**Periodic Review (Article 11):** Each member must examine periodically, in consultation with the prescribed organisations, the appropriateness of extending the period of leave or increasing the rate of cash benefits.

# Glossary

Note from the author – The definitions of the following concepts are tailored strictly to the use and context in the text of the Handbook.

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**Affirmative action** – A mechanism for promoting equal access by actively promoting the interests of people from groups that have traditionally experienced discrimination.

**Automatic incorporation** – A constitutional provision by which international treaties or conventions are automatically incorporated directly into domestic legislation, becoming immediately and fully justiciable. (See **Monist system** below).

**Case law** – In the common law system, law which is created by arguments and judicial decisions relating to specific cases. (See **Common law system** below).

**Child-friendly court procedures** – Processes and procedures which are designed to make the court accessible to and less intimidating for children who appear as witnesses or victims. Such measures include courtrooms specially designed to put children at ease, legal and support staff trained to prepare children by explaining the process to them in ways that they will understand, and provisions to involve family or other trusted individuals in both the court proceedings, in support of the child, and in follow-up and recovery programmes.<sup>125</sup>

**Child trafficking** – Any act which involves the illicit transportation of children from one place to another. International trafficking is defined by the crossing of international boundaries.

**Children born out of wedlock** – Children whose parents at birth are not legally recognised as being married to each other under the law application to these children.

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<sup>125</sup> RESOLVE Manitoba, “Child Victim Support Service”, *Resolve News*, Winnipeg, Manitoba, Research and Education for Solutions to Violence and Abuse, Volume 7, Number 2, June 2005.

**Children in conflict with the law** – Children who are suspected or accused of infringing criminal laws.

**Children's codes** (also known as children's acts or children's statutes) – Comprehensive legislation covering a wide range of aspects of the lives of children, usually including name and nationality, family relations, standards of care and protection measures.

**Civil law** – A system of law derived mainly from Roman law, emphasising the arrangement of laws into comprehensive national codes. Civil law relies heavily on written law.<sup>126</sup>

**Codex Alimentarius** – A food code established by the World Health Organization (WHO) and Food and Agriculture Organization (FAO), defining quality standards to be met for food that has been fortified.

**Common law** – A system of law derived from English tradition, in which law is determined not only through written legislation (Statutes) but also by court decisions through the creation of judicial precedent from decisions on specific cases tried before the courts.<sup>127</sup> (See also **Case law** above).

**Constitution** – The fundamental law of a State, typically outlining the structure of government and the means by which the government will operate; may also include the principles of human rights which are intended to guide all government action, including legislation.<sup>128</sup>

**Criminal code** – A body of law that defines criminal acts and the application of criminal justice.

**Customary law** – Usually unwritten, the system of law which has developed over time in specific communities or social groups, derived from long-established practices that have acquired the force of law by common adoption or acquiescence; customary law is sometimes

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<sup>126</sup> See Chapter 2 for more details.

<sup>127</sup> See Chapter 2 for more details.

<sup>128</sup> See Chapter 3 for more details.

administered by traditional chiefs and their councils, often dealing with matters relating to children and family.<sup>129</sup>

**Dualist system** – Usually found in common law regimes, a system in which international treaties or agreements are not automatically incorporated into national or domestic law; such incorporation requires specific legislative measures to be accomplished. National laws need to be passed to incorporate the principles behind these treaties or agreements. (Contrast to **Monist system**, below).

**Duty bearers** – Those who are responsible for ensuring that the rights of designated groups are protected, promoted and fulfilled; for the rights of children, the State is the primary duty bearer and is responsible for creating conditions in which other duty bearers, such as parents, service workers, community leaders, the private sector, donors and international institutions, can meet their responsibilities for also protecting, promoting and fulfilling the rights of children.<sup>130</sup>

**Effective remedies** – Judicial or administrative remedies intended to restore to a victim or victims of human rights violations those rights and entitlements which were denied and, in cases where this is deemed necessary by the authorities mandating the remedies, to extend compensation for losses sustained in the violation of the victim's or victims' rights.

**Enabling legislation** – In dualist countries, the means by which international agreements are incorporated into national law, through constitutional amendment, law or decree. (See **Dualist system** above).

**Equal protection clauses** – As a complement to non-discrimination provisions, these human rights provisions provide for equal access or equal opportunity for all.

**Extra-territorial jurisdiction** – The capacity of a State to apply law and exercise authority through the application of national legislation to criminal acts involving their nationals (as perpetrator or victim) and/or

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<sup>129</sup> Heritage Community Foundation, "Nature's Laws: Customary Law", at Albertasource.ca, viewed 10 June 2008. See Chapter 2 for more details.

<sup>130</sup> Thies, Joachim, "Introduction to Rights-based Programming", *Part 1: Rights Based Programming – An Evolving Approach*, Save the Children, Sweden, 2004, p.3.

criminal acts prejudicial to the interests of the country or of its nationals committed outside the territory in which the law is enforced and of which the accused is a national. The exercise of extra-territoriality may be limited by the sovereignty of the State in the territory where the acts take place.<sup>131</sup>

**Family law** – The body of legislation which addresses all aspects of family relations, including marriage, divorce, custody of children, responsibility for the upbringing of children, adoption (where permitted) and inheritance.

**Female genital mutilation** – Customary activities which entail mutilation of female genitalia (i.e. partial or complete removal of the clitoris, or the *labia minora* (excision) or of any external genitalia, with stitching or narrowing of the vaginal opening (infibulation)), often performed on women and girls.

**Food fortification** – The addition of micronutrients or other essential elements that may have been removed in processing to commonly used foods, in order to combat widespread micronutrient deficiencies.

**Gender-sensitive court procedures** – Procedures and processes which take into account their impact on women, men, boys and girls, including the special circumstances of women and girls, designed to overcome the marginalization of and discrimination against women and girls.

**Good governance** – The process by which public institutions conduct public affairs, manage public resources and guarantee the realisation of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law.

**Holistic approach** (to legislative reform) – An approach which encompasses all the dimensions of the situations being addressed, for example taking into account the entirety of children's lives in revising legislation that affects children and addressing the issues in terms of

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<sup>131</sup> Coughlan, Steve; Currie, Robert J.; Kindred, Hugh M.; and Scassa, Teresa, *Global Reach, Local Grasp: Constructing Extraterritorial Jurisdiction in the Age of Globalization*, Dalhousie Law School, Prepared for the Law Commission of Canada, June 23, 2006, pp. 4-8.

both the legal areas involved and the measures needed to ensure effective application and enforcement of the law.<sup>132</sup>

**Homogeneous system** – A legal system based on a single legal tradition, either civil law or common law.<sup>133</sup>

**Human rights-based approach (HRBA) to legislative reform** – An approach based on international standards and norms and on the full recognition of the equal rights of children, boys and girls, men and women and the realisation of State obligations under the international human rights instruments to which the State is party.<sup>134</sup>

**Indirect discrimination** – Discrimination which does not occur by explicit prohibitions or restrictions, but rather by creating conditions in which certain groups are nevertheless effectively prevented from exercising all their rights; for example, by structuring voting in elections in such a way that people who cannot read are unable to participate, thereby effectively excluding a category of persons (illiterate, with disabilities etc.) from voting.

**Inter-Convention approach** – An approach which uses the broad spectrum of human rights instruments for the formulation of constitutional provisions, national legislation or government programmes.

**International instruments** – Internationally adopted treaties, conventions, covenants, protocols and declarations, including those that come under the United Nations, its Specialized Agencies or regional organisations.

**International law** – The body of norms and standards contained within international human rights and humanitarian instruments, including the human rights conventions and covenants of the United Nations system, the conventions of the International Red Cross, and the jurisprudence of the international courts and special tribunals that have been constituted by international agreement.

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<sup>132</sup> See Chapter 1 for more details.

<sup>133</sup> See Chapter 2 for more details.

<sup>134</sup> See Chapter 1 for details.

**Islamic law** – A system of civil and penal laws that is predominantly based on *Shari'a*, with a body of interpretation and jurisprudence that may be informed by local experience.

**Justiciable** – Subject to due process in a court of law.

**Juvenile justice** – A special dimension of the justice system which recognises the needs and rights of children who may come into conflict with the law.

**Law** – With regard to human society, the body of rules, regulations and prohibitions, developed through custom, or adopted and promulgated by the government, which guide the conduct of individuals, organisations and the government in relation to others with whom the political, civic, economic and social environment is shared.

**Law reform commissions** – Permanent standing bodies used in some countries to review existing legislation and make recommendations on new measures or revision of existing legislation in order to bring the expression of law up to current standards.

**Legal illiteracy** – Lack of knowledge of laws or of the legislative process.

**Legal reform** – Reform of the legal system, including the judiciary, police and custodial institutions.

**Legal system** – Encompasses all the rules and institutions, based on its legal tradition, which determine how the law is applied.<sup>135</sup>

**Legal tradition** – The cultural perspective under which the legal system is created, providing the philosophy for how the system should be organised and how law should be formed and implemented.<sup>136</sup>

**Legislation** – All acts of the legislature, including formal laws, government action plans, budgets, and administrative measures.

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<sup>135</sup> See Chapter 2 for more details.

<sup>136</sup> See Chapter 2 for more details.

**Legislative reform** – Reform of the whole body of legislation, including Constitutional laws, acts of the legislature, formal laws, decrees and administrative measures as well as legal institutions.

**Local or domestic law** – Law that is adopted by and prevails within a specific country, as opposed to international law. (See above).

**Mainstreaming** – Applying programmes or approaches which have been tried and tested in a small representative region to the entire country.

**Micronutrient malnutrition** – Caused by the lack of essential micronutrients (such as iodine, iron, folic acid, or vitamins A or D) in the diet, resulting in developmental deficits or vulnerability to particular ailments.

**Minority group** – Any group which, by virtue of its ethnic composition, place of origin, traditional practices, or language or culture is marginalized in society and effectively deprived of rights; the term may also be applied more generally to groups which, although not a numerical minority in society, are nevertheless treated by law or custom as if they were less significant than others, as women are in many countries.

**Mixed systems** – Legal systems which involve combinations of more than one legal tradition often involving some form of customary or traditional law or Islamic law combined with civil or common law.<sup>137</sup> (Contrast to **Homogeneous systems**, above).

**Monist system** – A system in which national and international law are viewed as a single legal system, and international treaties, once ratified or acceded to, automatically become part of national law.

**Non-discrimination** – One of the fundamental principles of human rights, which prohibits and condemns any distinction, exclusion, restriction or preference based on grounds such as “race, colour, sex,

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<sup>137</sup> See Chapter 2 for more details.

language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.’ (CRC, Article 2.1).

**Non-refoulement** – A principle of customary international law which opposes any measure attributable to the State which could have the effect of returning an asylum seeker or refugee to the frontiers of territories where his or her life or freedom would be threatened, or where he or she is at risk of persecution, including interception, rejection at the frontier, or indirect *refoulement*.<sup>138</sup>

**Penal reform** – Reform of the penal system (i.e. court system, prisons, and other penal institutions).

**Personal law** – Law which relates to the status of persons, in particular regarding adoption, marriage, divorce, burial, and devolution of property on death in some constitutional regimes.

**Plural systems** – see **Mixed systems** (above).

**Positive discrimination** – See **Affirmative action** (above); this term is not generally used in contemporary discussion.

**Reflection delay** – A mechanism instituted by some States as a middle ground between respect for the rights of victims of trafficking and States’ need to arrest and prosecute traffickers, to ensure that victims can recover from their trauma, have access to support and assistance including medical care and legal advice, and can thus make an informed decision about whether they want to testify against the trafficker.

**Rule of law** – A principle according to which laws have the ultimate authority over the actions of all individuals (including government representatives). Government authority is exercised only in accordance with publicly disclosed laws and regulations, and is subject to the normal checks of an independent judiciary.

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<sup>138</sup> Global Consultations on International Protection, Cambridge Roundtable, 9- 10 July 2001, organised by the United Nations High Commissioner for Refugees and the Lauterpacht Research Centre for International Law, *Summary Conclusions - The Principle of Non-Refoulement*.

**Self-executing** – Of international treaties and conventions, becoming part of domestic law as a consequence of ratification or accession (in monist systems).

**Statutes** – Laws enacted by the legislature, subject to judicial review and interpretation.

**Supremacy clauses** – Constitutional provisions which affirm the supremacy of the Constitution over all other legislation or regulations.

**System of presumption** – In criminal law, if certain conditions are gathered, even if there is no substantial evidence against a particular person, that person is presumed guilty.

**Traditional law** – See **Customary law**, above.