

# HUMAN RIGHTS APPROACH TO ENSURING FOLLOW-UP FORMULA ARE DEFINED AND LABELLED AS BREAST-MILK SUBSTITUTES AT CODEX

**GOVERNMENTS HAVE A RESPONSIBILITY TO RESPECT,  
PROTECT AND FULFILL HUMAN RIGHTS:  
BREASTFEEDING IS A HUMAN RIGHTS ISSUE**

The United Nations Office of the High Commissioner for Human Rights (UNHCR) has clearly stated that breastfeeding is a human rights issue for both the child and the mother. Yet, this right is regularly violated by the breast-milk substitute (BMS) industry around the world.

The market for breastmilk substitutes, especially in low and middle-income countries, is lucrative and growing—predicted to reach USD 70 billion by 2019. This includes an expanding market for so-called follow-up formula products marketed for older infants and young children. Yet, the UNHCR states that the promotion of breast-milk substitutes by manufacturers and lack of corporate accountability for the adverse consequences of such practices pose a major obstacle to breastfeeding. These practices undermine efforts to improve early, exclusive and continued breastfeeding rates, and act as a barrier for women to exercise their rights. It is therefore essential that breast-milk substitutes, including follow-up formula, should not be marketed or distributed in ways that interfere with the protection and promotion of breastfeeding.

## **A human rights approach to breastfeeding**

Breastfeeding offers significant benefits to the mother and child - reducing child mortality, increasing child cognition, improving maternal and child health, and fostering economic development. Breastfeeding as the right of mother and child together is the fundamental principle of the rights-based approach to infant feeding, not in the sense that the mother is obligated to breastfeed the child, but in the sense that no one may interfere with the mother's right to breastfeed the child.

A human rights approach does not prescribe optimal behaviour but functions to establish outer limits. The major concern for infant and young child feeding is the protection of the woman-child unit from outside interference, namely by manufacturers and distributors of breast-milk substitutes.

Women have the right to accurate, unbiased, objective and consistent information to make an informed decision about breastfeeding, as well as the right to an environment that enables them to carry out their decision. If women are given accurate and appropriate information, and have all the obstacles to breastfeeding eliminated, they are empowered to make good choices.

### **Codex 2018:**

#### **An opportunity to protect children's health:**

This November, Codex will review both categories of follow-up formula: one for older infants aged 6 to 12 months, to be called Follow-Up Formula for older infants, and one for young children aged 12 to 36 months, often called growing-up milk, but its name is to be decided at this year's Codex meeting. The key consideration at this year's meeting is whether to define both categories of follow-up formula as breastmilk substitutes. In doing so, follow-up formula would fall under the same regulations as infant formula and ensure that companies are required to comply with the International Code of Marketing of Breast-milk Substitutes. These products must therefore be considered as breastmilk substitutes to protect breastfeeding and improve child nutrition - a major contribution to reducing preventable child deaths.

## THE UN CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child (CRC) acknowledges and addresses the unique sensitivities of children and their need for special protection. It is the most-signed human rights legislation in the world: 196 countries are party to it, including every member of the United Nations except the United States. It is therefore not surprising that the US takes a stance against defining all follow-up formula as breast-milk substitutes.

### **A strong stance is necessary to protect the right to breastfeed**

Numerous articles of the CRC address the right of children to the highest attainable standard of health, by, inter alia, reducing infant mortality, and promoting breastfeeding. Many civil society organisations, the Special Rapporteurs on the Right to Health and Food, the Committee on the Rights of the Child and the Working Group on Discrimination Against Women in Law and Practice are all in agreement that Countries that are signatories to the CRC need to take a strong stance and are urged to take urgent action to protect infants, older infants and young children from misleading, aggressive and inappropriate marketing of breast-milk substitutes.

### **States must protect mothers and their children against rights infringements**

Article 24, on the child's right to health and health services requires the government to take all appropriate measures (including the adoption of all relevant legislation, policies and programmes) *"...to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents."* It also requires, together with Article 18, that governments support and assist parents providing education that offers the knowledge parents need and that governments and other duty bearers ensure parents can act upon the information provided. This approach would empower parents to make the best possible choices for the feeding of their older infants and young children.

## HOW THE CONVENTION ON THE RIGHTS OF THE CHILD IMPACTS THE WORK OF CODEX ALIMENTARIUS CODEX COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES

Member states attending the Codex Committee on Nutrition and Foods for Special Dietary Uses need to consider their obligations under the Convention on the Rights of the Child and other relevant UN human rights instruments. They must respect, protect and fulfil children's right to life, survival, and development; their right to safe and nutritious foods, and their right to the enjoyment of the highest attainable standard of health; and ensure that women's rights are protected from harmful interference by non-state actors, particularly the private sector.

### **The rights of the child are universal, but the needs of the most vulnerable must be protected**

States have obligations not only to their own people, but also to all people everywhere. Article 24 of the CRC calls upon parties to promote and encourage international co-operation to progressively achieve the full realization of the rights of the child, with particular accountability to the needs of developing countries. Thus, high income countries must not only consider their needs, but also that of low- and middle-income countries (LMIC).

The voices of LMICs cannot be ignored at Codex this November. Much of the text under discussion in the revision of the Standard on Follow-Up Formula represents an equity issue and an LMIC issue.

### **Sales of follow-up formula slow in high income countries but grow significantly in LMIC**

Euromonitor data shows that while in two high income countries (Canada and France where stunting is negligible) the percentage volume growth of follow-up formula and growing up milk is in decline. In contrast, among nine LMICs with stunting rates between 7% and 36%, the annual volume growth of both the follow-up formula and growing-up milk categories range between 2% and 40% (follow-up formula) and 5% and 80% (growing-up milk).

A recent UNICEF report, *Breastfeeding: A Mother's Gift for Every Child*, shows that amongst poor African children, 64% are still breastfed at age two, compared to only 41% amongst the richest. These indicate that LMICs have the greatest reason to raise concerns and demand that Codex standards protect their children.

### **Promotion of follow-up formula impacts child feeding decisions and violates the rights of the child**

It is critical that Codex protects mothers from any undue influence by breast-milk substitute companies, including follow-up formula manufacturers, when making their child feeding decisions. In so doing, it must be recognised that when the rate of breastfeeding increases, revenue for manufacturers and traders of nutritional products for older infants and young children decreases. Trading in these products brings profit to companies; hence, they overtly or subtly find ways of positioning their products as equivalent to or superior to breastmilk. This makes mothers consider using these products in place of breastmilk and limits her rights to an informed decision.

### **At Codex, the best interests of the child must come before profit**

Article 3 of the CRC requires that the best interests of children be a primary consideration in all actions concerning them, whether undertaken by public or private institutions, courts of law, or legislative bodies. The Committee on the Rights of the Child outlines a conceptual framework that highlights three parts to the ‘best interests of the child’:

- 1. A substantive right** – the individual, personal right of the child to have her or his best interests taken as a primary consideration. It is in the best interest of the mother and child that breastfeeding

is exclusive to six months and continued to two years and beyond; any product that potentially interferes with breastfeeding must be referred to as a breast-milk substitute.

- 2. A fundamental, interpretative legal principle** – when a legal provision is open to more than one meaning, it must be interpreted in a way that best serves the child’s interests. In the case of children, Codex must put public health before trade and profit.
- 3. A rule of procedure** – any decision that is likely to have an impact on the best interests of the child must include an evaluation of the potential impacts. If all follow-up formula is not to be defined as being a breastmilk substitute, the impact of such a decision must first be assessed.

### **FOLLOW-UP FORMULA MUST BE DEFINED AS BREAST-MILK SUBSTITUTES**

States participating in the Codex Alimentarius review of the Standard for Follow-up Formula this November are called upon to fulfill their obligation in terms of human rights conventions, specifically the Convention on the Rights of the Child. To provide the necessary protection and to ensure that the provisions of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant WHA Resolutions are covered, it is therefore essential that all follow-up formula be defined as breast-milk substitutes and throughout the text.

## **OTHER RIGHTS CONVENTIONS RELEVANT TO CODEX**

### **The International Covenant on Economic, Social and Cultural Rights (CESCR)**

The International Covenant on Economic, Social and Cultural Rights (CESCR) recognizes the right to enjoy **“the highest attainable standard of physical and mental health”**, including the reduction of infant mortality and the healthy development of the child (Article 12).

It is well documented that inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in all countries, and improper marketing practices of breast-milk substitutes and related products can contribute to these major public health problems.

### **United Nations Committee on the Elimination of Discrimination Against Women (CEDAW)**

United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has 3 relevant articles. Article 10 protects access to information to ensure the health and well-being of families. Article 11 confers the right to health **“including the safeguarding of the function of reproduction”**, while Article 12 assures **“adequate nutrition during pregnancy and lactation”**, thus recognizing the importance of lactation.

## United Nations Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights sets the expectation that business´ adhere to three foundational principles:

- The development of adequate measures to prevent, address, and remediate for adverse impacts;
- The declaration of commitments and execution of activities that support and contribute to the enjoyment of the rights;
- The establishment of operations that do not undermine States´ ability and efforts to ensure these rights.

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### References:

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UNICEF. *A Child Rights-based Approach to Food Marketing: A Guide for Policy Makers.* April 2018

United Nations Office of the High Commissioner on Human Rights. *Convention on the Rights of the Child.* <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>