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CONFLICTS OF INTEREST AND HUMAN RIGHTS-BASED POLICY MAKING: THE CASE OF MATERNAL, INFANT, AND YOUNG CHILDREN'S HEALTH AND NUTRITION

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The global community is searching for new approaches to address the uneven progress towards achieving the Millennium Development Goals (MDGs) to halve poverty and hunger and to reduce maternal and child mortality by 2015. As encouraged through the UN Global Compact and the Global Alliance for Improved Nutrition—GAIN (launched in 2000 & 2002, respectively), these approaches are increasingly linked to what are sometimes called multi-stakeholder initiatives (MSIs) and sometimes public-private partnerships (PPPs). Resource-strapped public sector actors, bodies, and institutions have formed these MSI/PPP constituencies by including the private sector and industrial giants, whose interests lie first and foremost in profit-making.² Close cooperation between public and private sector actors in the MSI and PPP model creates a multitude of conflicts of interest.

The fundamental unaddressed political issue is whether the massive promotion of “multi-stakeholder” corporate social responsibility (CSR) initiatives and dialogues, as well as public-private “partnership” ventures, can be reconciled with the UN agencies’ duty to promote the public interests. This obligation is enshrined in their constitutional mandates and core functions, in particular, in their mandate to respect, protect, and fulfill human rights.

MULTI-STAKEHOLDER INITIATIVES: UNDERMINING RIGHTS-BASED AND LEGALLY-BINDING ACCOUNTABILITY MECHANISMS

MSIs and PPPs have been used to undermine international regulatory measures that hold business sector actors accountable for not respecting human rights principles. Examples are the 1981 International Code of Marketing of Breast-milk Substitutes (the Code) and subsequent relevant World Health Assembly (WHA) resolutions. The MSI and PPP models undermine the Code’s aim to protect the health and lives of the youngest “consumers” and the informed decision-making of those who make decisions on their behalf. Moreover, MSIs/PPPs undermine internationally agreed public health policies, such as the 2002 Global Strategy on Infant and Young Child Feeding.^{3,4} Today, with UN backing, the private sector continues to press for “voluntary,” i.e. non-legally binding, measures to “self-regulate” its conduct. The Global Compact, the best known UN-business initiative, presents itself as “a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption.”⁵ However, powerful business actors, such as the International Chamber of Commerce, have successfully used the Global Compact in their opposition to the UN *Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights*—work that has been done under the auspices of the Human Rights Commission and aimed at developing an overarching, legally-binding international human-rights framework to regulate harmful business practices.⁶

BOX 1

The “Children’s Rights & Business Principles Initiative”: undermining legally-binding corporate accountability?

UNICEF together with Save the Children and the UN Global Compact developed the Children’s Rights & Business Principles Initiative, launched globally on 12 March 2012.⁷

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2 As Ann Zammit explains, the term “partnerships” “covers a multitude of activities and relationships, perhaps best conceptualized as a special case of ‘close’ rather than ‘arms-length’ relationships” between public and private sector actors. (Zammit, Anne. [Development at Risk: Rethinking UN-business Partnership](#). Geneva: UNRISD in collaboration with the South Center, 2005.)

3 The Global Strategy calls for exclusive breastfeeding for six months, followed by continued breastfeeding for two years or beyond with adequate and safe complementary feeding.

4 World Health Organization. [International Code of Marketing of Breast-milk Substitutes](#). Geneva: WHO Office of Publications, 1981. www.who.int/nutrition/publications/code_english.pdf.

The Initiative is based on the Global Compact Corporate Social Responsibility model and appears to ignore concerns voiced in the UN Joint Inspection Unit 2010 evaluation of the Global Compact that “reporting and self-evaluation mechanism [of Global Compact] does not provide adequate and effective monitoring and verification of actual implementation of the [10 Global Compact] principles by [corporate] participants.”⁸

Parallel to this initiative, a General Comment on Children’s Rights and Business is being prepared in the Committee on the Convention on the Rights of Children (CRC). The Committee’s work is to oversee States parties’ progressive realization of their obligations to take measures to regulate and control corporate activities to prevent the violations of child rights (including the right to adequate food) and to facilitate redress for violations by businesses when they occur.

There is a risk that the Initiative, which poses no mandatory obligations on industry and which benefits from the support of UNICEF and Save the Children, will undermine these efforts of the CRC Committee⁹ as the Global Compact undermined and sidelined the UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights.

CONFLICTS OF INTEREST AND ROLE OF INDUSTRY

There are various guidelines on cooperation between UN agencies and the business community. They include, for instance, the UN Guidelines on Cooperation between the United Nations and the Business Community (2000/2009);¹⁰ the WHO Guidelines on Working with the Private Sector to Achieve Health Outcomes (2000);¹¹ and the WHO Policy on WHO Engagement with Global Health Partnerships and Hosting Arrangements (2010).¹²

These documents contain a number of useful tenets for UN business arrangements. These arrangements should not “diminish the UN’s integrity and independence.” They should “advance UN goals,” be based on a “clear delineation of responsibilities and roles,” and be “transparent.” “Information on the nature and scope of cooperative arrangements should be available to the public at large.”¹³ However, there is a clear gap between such guidelines and UN agencies’ practices.

Moreover, despite reference to conflicts of interest in several UN documents, the United Nations family has no comprehensive ethical and policy framework to help adequately deal with both individual and institutional conflicts of interest and to help differentiate appropriate from inappropriate roles for business.^{14,15}

We present two definitions that may help to better understand and address this issue:

- “[An individual] conflict of interest is a set of conditions in which professional judgment concerning a primary interest [...] tends to be unduly influenced by a secondary interest.”¹⁶
- “Institutional conflicts of interest arise when an institution’s own financial interest or those of its senior officials pose risk of undue influence on decisions involving the institution’s primary interest.”¹⁷

Conflicts of interest do occur in MSIs and PPPs, for example, when the wish of UN agencies to attract private sector resources (secondary interest) conflicts with their duty to work towards the fulfillment of their “core missions” as expressed in their constitutional mandates and functions (primary interests).

- 5 For more information visit: www.unglobalcompact.org/.
- 6 cf. Richter, Judith. Building on Quicksand: the Global Compact, Democratic Governance and Nestle. Geneva: IBFAN-GIFA, CETIM, Berne Declaration, 2004a. 40–42.
 . Public private Partnerships and International Health Policy Making: How Can Public Interests Be Safeguarded? Helsinki: Ministry for Foreign Affairs of Finland, Development Policy Information Unit, 2004b. 74.
- 7 “A Call to Business to Respect and Support Children’s Rights.” Online Posting. 12 March 2012. www.unglobalcompact.org/news/197_03_12_2012.
- 8 Fall, Papa Louis, and Mohamed Mounir Zahran. United Nations Corporate Partnerships: the Role and Functioning of the Global Compact (IU/REP/2010/9). Geneva: UN Joint Inspection Unit, 2010.
- 9 IBFAN Comments on the Children’s Rights & Business Principles Initiative can be found at www.info.babymilkaction.org/news/policyblog/CRBPcomment.
- 10 “Guidelines on Cooperation between the United Nations and the Business Sector.” UN, 2009. www.unglobalcompact.org/docs/news_events/9_1_news_archives/2009_11_23/un_business_guidelines.pdf. This document is available on the Watch website: www.rtfri-watch.org/en/home/watch-2012/main-sources.
- 11 WHO Executive Board, 107th Session. Provisional agenda item 8.3. “Guidelines on Working with the Private Sector to Achieve Health Outcomes; Report by the Secretariat” (EB107/20). Geneva: World Health Organization, 30 Nov. 2000. www.apps.who.int/gb/archive/pdf_files/EB107/ee20.pdf.
- 12 “Policy on WHO Engagement with Global Health Partnerships and Hosting Arrangements.” WHO, 2010. www.apps.who.int/gb/ebwha/pdf_files/WHA63-REC11/WHA63_REC1_P4_en.pdf.
- 13 UN op.cit.
- 14 cf. Richter, Judith. op. cit. (2004b). 11 50.
- 15 In a Statement of Concern, the 148 national, regional and global networks and NGOs working in public health called on the UN to develop such a framework: www.info.babymilkaction.org/sites/info.babymilkaction.org/files/COIC145%20.pdf. This document is available on the Watch website: www.rtfri-watch.org/en/home/watch-2012/main-sources.
- 16 Thompson, Dennis F. Restoring Responsibility: Ethics in Government, Business and Health Care. Cambridge: Cambridge University Press, 2005. 290.
- 17 Lo, Bernard, and Marilyn J. Field, eds., Institute of Medicine. Conflict of Interest in Medical Research, Education and Practice. Washington, D.C.: National Academies Press, 2009.

Conflict of interest policies and laws are of a very particular nature: “[w]hether they are at the individual or the institutional level, conflict of interest policies seek to *prevent* compromised decisions [...]”¹⁸

The 2002 Global Strategy on Infant and Young Child Feeding (Global Strategy),¹⁹ which backs up Code implementation, tried to address risks posed by conflicts of interest in infant and young child nutrition by, e.g., defining appropriate roles for infant food manufacturers. The aim was to prevent interactions between policy makers and baby food companies that pose too great a risk of business influence on public policy making.²⁰ The Global Strategy limited the role of manufacturers to: a) conforming at every level with the Code; and b) meeting the specific quality, safety, and labeling standards set by the Codex Alimentarius.²¹

Why then were some infant food manufacturers invited to participate in certain PPPs beyond these stipulated roles? For example, DANONE, the second largest infant food manufacturer, was on the Board of Directors of GAIN, until forced to step down.²² DANONE continues to be GAIN’s partner despite being a known Code violator.²³ Originally launched in 2008 to focus on micronutrient deficiencies, GAIN has since become an influential player in the infant and young child nutrition field.

The policy shift towards closer cooperation between the UN and the corporate sector has created an environment in which there seems to be no alternative to having private sector actors as “partners” and “stakeholders” in any public initiative. There is insufficient scrutiny of the actual conduct of corporate “partners”, e.g. baby food manufacturers; all seem accepted. Thus the private sector actors can easily use UN initiatives to gain influence in public policy making arenas that intersect with their market goals, and, at the same time, “bluewash”²⁴ their tarnished images through association with the UN. In 2011, for example, the UN Secretary General called on all actors to contribute to the 2010 Every Woman Every Child Initiative²⁵ in terms of policy, service, and product delivery, and through financial support.

BOX 2

Nestlé’s commitment to the UN Every Woman Every Child Initiative

In early 2011, the UN Initiative’s website announced:

“Nestlé commits to expanding nutrition education to teenage girls in all its milk villages in India before they reach the age of marriage, so that they will have the nutritional knowledge to best feed their children when they reach childbearing age. Nestlé also aims to double the number of countries covered by its “Healthy Kids Global Program” launched in 2010, and already has programs in over 50 countries reaching 5 million children [...]”²⁶

In authors’ opinion, allowing the world’s largest baby food manufacturer to educate teenage girls on infant and young child feeding contradicts the fundamental aim of the Code which is to protect caregivers from biased information and unethical marketing practices. The Code specifically prohibits contact between manufacturers and pregnant women and mothers of infants and young children. The company sidesteps that Code provision by engaging with young women and girls, defining them as future mothers, and promoting communication about pre- and post-natal nutrition before they become pregnant. This can also be seen as a violation of Article 24 of the Convention on the Rights of the Child, whereby States are to ensure that parents receive proper information about breastfeeding and the risks of artificial feeding.

18 Idem (emphasis added).

19 WHO. WHO Global Strategy on Infant and Young Child Feeding. Geneva: WHO Office of Publications, 2003. www.who.int/maternal_child_adolescent/documents/9241562218/en/index.html.

20 Richter, Judith. Conflicts of Interests and Policy Implementation: Reflections from the Fields of Health and Infant Feeding. Geneva: IBFAN GIFA, 2005. www.ibfan.org/art/538-1.pdf.

21 WHO. op. cit. fn. 19, Para 44.

22 Lhotska, Lida. Whatever Happened to Health for All? Ups and Downs of Protection of Breastfeeding, Regulation of Transnational Corporations and Health for All. Geneva: IBFAN-GIFA, 2008.

23 Evidence of violations of the International Code of Marketing of Breastmilk Substitutes and subsequent resolutions can be found at www.ibfan.org/art/dano_p1.pdf.

24 “Bluewash” refers to corporations that wrap themselves in the blue UN flag in order to improve their social image (adapted from Greenwash Fact Sheet. CorpWatch, 22 March 2001. www.corpwatch.org/article.php?id=242).

25 The UN 2010 Every Woman Every Child Initiative is presented as designed to accelerate progress towards women’s and children’s health and the achievement of MDG 4. www.everywomaneverychild.org/.

26 For Nestlé original commitment see “Analysing Commitments to Advance the Global Strategy for Women’s and Children’s Health.” PMNCH, 2011. (Web Annex 1) 27. www.who.int/pmnch/topics/part_publications/Web_Annex_1_-_29_09_2011.pdf.

Some concerns within the UN must have been raised, as the original commitment was reworded. Today, the UN Initiative's website states:

"Nestlé's commitment to Every Woman Every Child is anchored in continuing and scaling up a host of programmes, including the expansion of Nestlé Healthy Kids Global Programme (HKP) [...] HKP has been designed to address today's complex health challenges, such as poor nutrition and obesity, by teaching school-age children the value of good nutrition and physical activity."²⁷

This case study raises fundamental questions: why does the UN accept a commitment that goes beyond the roles defined for infant food manufacturers by the Code and the Global Strategy? Why does it give its blessing and confer its image on a known Code violator? Why does it allow a corporation to take on a role of a nutrition educator for children? Why does it not challenge the company to refrain from marketing infant foods in violation of the Code?

CSR INITIATIVES AND (PP) PPPS: MANUFACTURING A GOOD IMAGE

Public relations (PR) are an integral part of the exercise of power in our society. The PR industry provides avenues to those who control it to seed ideas, set expectations and the conceptual agenda of society or, as the influential PR practitioner Edward Bernays popularized it, to "engineer consent."²⁸ Multi-Stakeholder CSR and PPP initiatives use PR to manufacture social discourse supportive to their goals. In this way, MSIs and PPPs have prevented, replaced, or sidetracked efforts to develop legally binding regulatory tools and structures for human rights-based approaches to hold powerful business actors accountable for their practices. The semantical power behind "voluntary" or "shared" codes of conduct, employed by MSIs and PPPs, implies beneficence when in fact it undermines the development and implementation of legally-binding human rights instruments. The use of the term "voluntary" must be rejected. Instead, such CSR initiatives should be referred to as "legally non-binding."

BOX 3

Powerful (PP)PPPs: the Scaling Up Nutrition (SUN) Initiative' Attempt to Engineer a Social Movement Image

The World Bank, UNICEF, WHO, and WFP along with some country partners, some civil society organizations, and bilateral agencies launched the Scaling Up Nutrition (SUN) initiative in 2010. SUN immediately began to present and legitimate itself as a popular social movement, "[t]he overall intention of this communications strategy is to encourage pride and satisfaction for public participation in a social movement to empower households and communities for better nutrition."²⁹

In 2012, SUN issued a press release at the World Economic Forum in Davos in which the UN Secretary General's Special Representative for Food Security and Nutrition and Coordinator of SUN, David Nabarro, states, "[SUN] means sound, principled, people-private-public partnerships that empower societies for optimal nutrition." In other words, he magnified the PPP of private-public partnerships to a 5P approach (adding "principled" and "people") insisting that SUN includes civil society and social movements, and operates in an ethical, *if not legally accountable*, fashion.³⁰

27 For more information visit:

www.everywomaneverchild.org/commitments/business-community.

28 See e.g. in Richter, Judith. Holding Corporations Accountable: Corporate Conduct, International Codes, and Citizen Action. New York: Zed Books, 2001. 149–150.

29 Nabarro, David. Introducing the Policy Brief, "Scaling Up Nutrition: A Framework for Action". Revised April 2010. www.sarcaweb.org/san/dmdocuments/SUN_Introducing_Policy_David_Nabarro.pdf.

30 Private Sector Engagement, Toolkit, Work in Progress, 8 Sept. 2011. www.scalingupnutrition.org/wp-content/uploads/2011/05/DRAFT8-Private-Sector-Engagement-Toolkit_090911.pdf.

Our concerns regarding SUN center on:

- Inadequate conflict of interest safeguards: SUN proposes to minimize conflicts of interest through “shared common codes of conduct,” in reality meaning legally non-binding measures, potentially arrived at in “partnership” with private sector actors.
- Participation of the baby food industry: SUN fails to rule out participation by manufacturers of products falling under the scope of the Code. SUN’s member EPODE, for example, has Nestlé as its core partner.
- Manufacturing of a misleading image: suggesting that SUN is a social movement reflects either a serious misnomer, or calculated appropriation of the social discourse to manufacture support in households and communities by convincing them that SUN is a “bottom-up,” grassroots construction of a broad popular social movement.

In his recent report to the Human Rights Council, the Special Rapporteur on the right to food also pays attention to SUN and GAIN.³¹ He is concerned that these initiatives are not aligned within a human rights framework and they “overlook the entitlements that have been established under international law for women, children, minorities, refugees and internally displaced persons, and other groups that may be subjected to marginalization and discrimination.” He calls on SUN for “an explicit alignment of its initiatives with human rights, including the right to food” (para 15). He also emphasizes that “[c]ountries committed to scaling up nutrition should begin by regulating the marketing of commercial infant formula and other breast-milk substitutes, in accordance with WHA resolution 63.23” (para 16), and urges the private sector, “consistent with its responsibility to respect the right to adequate food,” to “[c]omply fully with the International Code of Marketing of Breast-milk Substitutes abstaining from promoting breast-milk substitutes” (para 51.a.).

In conclusion, CSR should not be seen as a “voluntary” commitment. In fact, business actors must abide by public policies and codes adopted at international level, for all persons, everywhere in the world, with respect to everyone’s human rights over their lifetime. An appropriate business contribution and a good indicator of their genuine respect for mother and child nutritional well-being and the most local of food systems, i.e. breastfeeding, would be their full compliance with the International Code of Marketing of Breast-milk Substitutes and relevant WHA resolutions and adherence to their roles defined in the Global Strategy on Infant and Young Child Feeding.

Interactions with the private sector are not new. However, most recently, multi-stakeholder initiatives (MSIs) and public-private partnerships (PPPs) have enabled commercial actors to permeate inappropriately into the responsibilities of public interest actors. This multiplies situations of conflicts of interest resulting in increased risks to the integrity and independence of public sector actors in public policy making. The development of adequate international and national legally binding measures that set the rules of engagement with the powerful economic actors and business-interest non-governmental organisations³² is essential to ensure adequate protection against their negative impacts and conflicts of interests. CSR initiatives must not be allowed to interfere with the development of legally binding measures that hold the private sector accountable for their practices.

The CRC General Comment on Children’s Rights and Business has the potential to become a crucial tool to develop frameworks of justice and accountability. These frameworks

31 Human Rights Council, 19th Session. “Report of the Special Rapporteur on the Right to Food to the Human Rights Council” (A/HRC/19/59), 26 Dec. 2011. www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.59_English.pdf. This document is available on the Watch website under article 3: www.rtfn_watch.org/en/home/watch_2012/main-sources.

32 Paluzzi, Joan E. “Dualities of Interest: the Inter-Organizational Relationships between Disease-Specific Nonprofits and the Pharmaceutical Industry.” *International Journal of Health Services* 42.2 (2012): 323–339.

should include legally-binding regulations of harmful practices of the private sector actors, both within and outside of national borders.

To help counter the undue influence of these actors, readers should consider:

- challenging the PPP/MSI model and demanding clear distinction between appropriate and inappropriate roles for businesses;^{33,34}
- joining actions that call on the UN to develop a comprehensive ethical [and] policy framework to deal with individual and institutional conflicts of interest;
- using conflict of interest lenses in international and national policy-making and programme design, as well as in their implementation;
- engaging in alternative reporting to the CRC Committee when their country comes up for review, and using that opportunity to communicate local experience and perspective on the need for strengthening national Code implementation;³⁵
- holding their government accountable for following up on the CRC recommendations;³⁶
- monitoring and documenting Code violations³⁷ and sharing complaints with governments, the International Baby Food Action Network,³⁸ and violating companies.

³³ Richter, Judith. "WHO Reform and Public Interest Safeguards: an Historical Perspective." *Social Medicine* 6.3 (2012): 141-150.

³⁴ "The Greed Revolution, Mega Foundations, Agribusiness Muscle In On Public Goods" ETC Group Communiqué 108 (2012). www.etcgroup.org/sites/www.etcgroup.org/files/ETComm108_GreedRevolution_120117.pdf. This document is available on the Watch website: www.rtfn-watch.org/en/home/watch-2012/main-sources.

³⁵ "A Guide to NGO Submissions." NGO Group for the Convention on the Rights of the Child. 2006. www2.ohchr.org/english/bodies/crc/partners.htm. Shared reports together with IBFAN-GIFA.

³⁶ All past and future country CRC reviews are listed on this link, including concluding observations and recommendations issued by the Committee: www2.ohchr.org/english/bodies/crc/sessions.htm.

³⁷ For Code monitoring forms see: www.ibfan.org/code_watch_form.html.

³⁸ IBFAN's International Code Documentation Center (ICDC) at ibfanpq@tm.net.my keeps a global database on Code violations.