

ICDC LEGAL UPDATE

Nov. 2002



Highlights

- New countries with laws!
- New WHA Resolutions.
There now is a clear recommendation of exclusive breastfeeding for 6 months; Nestlé changes labels in some countries.
- Legal and monitoring successes.

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From ICDC's desk in Penang:

This is a special update to keep ICDC's Legal Associates abreast on developments on the Code front. Our last Legal Update was in 1995!! Some of you were involved in the lawyers' meetings in upstate New York in 1996 to discuss the Code Handbook and in Ohrid, Macedonia in 1998 to discuss the relationship between breastfeeding and human rights. These two meetings have been helpful in moving ICDC's agenda forward. We published the Code Handbook in 1997 and it has since been translated into Spanish, French, Portuguese and now Russian. We have also started to use the rights approach while teaching about the Code but we could do with more help on this front.

Since 1997, we have not met as a group of IBFAN legal Associates. Although we actually fundraised for such a meeting and keep telling ourselves that we must organise one – there just was no suitable time to do so. Instead, we have been calling on individual lawyers to assist us in the many training courses we held in Penang and elsewhere on an ad hoc basis. To date we have trained over 550 government officials from 114 countries! We also enlarged our legal resource pool by identifying and training more lawyers who are politically attuned to the cause. Such random recruitment did not, however, provide all of you with on-going information about developments surrounding the Code unless you happen to belong to an IBFAN group or international agency active in infant and young child feeding. A few of you are, many are not.

Back in 1998, Ellen Sokol (who wrote the *Code Handbook* and did the last Legal Update) left Penang after 7 long years with IBFAN/ICDC. She actually physically sailed away into the setting sun of the West and has settled in Florida. But she still is very much part of ICDC as a consultant for various training courses. A new Legal Advisor, Yeong Joo Kean, gave up private practice to take Ellen's place in Penang and much of her time is taken up with training and advice. Shanti, our former junior lawyer, who came to Ohrid, went off to London and passed her final law exams with special honors. Although she is likely to stay in Europe, she also continues to work with ICDC on and off.

When we were reviewing our future directions earlier this year, we decided to take stock of available Legal Associates and other resource people and potential contributors whose expertise ICDC could tap in its efforts to implement and monitor the International Code world wide.

Reviving ICDC's LEGAL UPDATE as a simple tool to keep the select group of Legal Associates periodically informed of developments seemed like a good idea. The first new installment of ICDC legal news is before you. As we would like to keep within the 4-page format, all articles are kept as brief as possible. We also hope to bring you more updates in the future.

If you are receiving this UPDATE, you are part of that select group of ICDC Legal Assistants and other professionals we would like to keep in touch with. If you haven't heard from us for ages, do get back in touch, tell us how you are, what you are doing and whether you would like to be in this pool of resource people with whom we can link up in the future, especially in events taking place in your region. Let us hear from you.

*Annelies Allain & Yeong Joo Kean
from the ICDC team in Penang*

A Watching Brief on the State of the Code by Country

The following is a summary of new national laws, regulations and voluntary measures which implement all or substantial parts of the International Code of Marketing of Breastmilk Substitutes since the publication of the Code Handbook, 1997.

ALBANIA	Law for Promotion and Protection of Breastfeeding No 8528, 23 September, 1999.
ARGENTINA	Resolución Nro 54/97 : Salud Publica, Sucedáneos De La Leche Materna, 05/06/1997. (Although passed in 1997, this law only surfaced recently due to the diligence of a legal associate of LACMAT Argentina)
BENIN	Decret N°97-643: Portant réglementation de la commercialisation des substituts du lait maternel et des aliments pour nourrissons, 31 décembre 1997 (ICDC notified after publication of Code Handbook).
BRAZIL	Regulamento Técnico Chupetas, Bicos, Mamadeiras e Protetores de Mamilo, Resolução-RDC N°221, de 5 de Agosto de 2002. Regulamento Técnico para Promoção Comercial dos Alimentos Para Lactentes e Crianças de Primeira Infância, Resolução-RDC N°222, de 5 de Agosto de 2002.
DJIBOUTI	Decret N°97 –0011/PB/SB Fixant les conditions de Commercialisation des Substituts du Lait Maternel, 28 Jan 1997 (ICDC notified after publication of Code Handbook).
ESTONIA	The Food Law passed on 25 February 1999 prohibits the advertisement of infant formula and follow-up formula.
FRANCE	Decret N°98-688 relatif à la distribution gratuite des préparations pour nourrissons, à la documentation et au matériel de presentation les concernant, 30 juillet 1998.
GEORGIA	The Law of Georgia on Protection and Promotion of Breastfeeding and Regulated Use of Artificial Foods, 9 September 1999.
GHANA	Breastfeeding Promotion Regulations, 9 May 2000.
INDONESIA	Keputusan Menteri Kesehatan No. 237/MENKES/SK/IV/1997 tentang Pemasaran Pengganti Air Susu Ibu; 10 April 1997 ((ICDC notified after publication of Code Handbook). Peraturan Pemerintah Republik Indonesia No.69/1999 tentang Label dan Iklan Pangan, 21 July 1999.
ITALY	Circolare Nr. 16: Promozione e tutela dell'allattamento al seno, 24 Ottobre 2000.
MACEDONIA	Law on Protection of Consumers passed on 26 July 2000 prohibits the advertisement of formula and other foods for infants below 6 months.
NICARAGUA	Ley No.295: Ley de Promoción, Protección y Mantenimiento de la Lactancia Materna y Regulación de la Comercialización de Sucedáneos de la Leche Materna, 16 Junio 1999.
NIGER	Arrêté N° 215 MSP/DSF: Portant Réglementation de la Commercialisation des Substituts du Lait Maternel, 27 juillet, 1998 (ICDC notified after publication of Code Handbook).
OMAN	Ministerial Decision No 55/98 Regulating the Marketing of Breastmilk Substitutes, 11 May 1998 (ICDC notified after publication of Code Handbook).
PAKISTAN	Protection of Breastfeeding and Young Child Nutrition ordinance 2002, 25 September 2002.
PHILIPPINES	Administrative Order No 3-B s. 2000: Guidelines for assistance/sponsorship by manufacturers of products covered by Executive Order 51, 7 January 2000.
SWEDEN	Amning och bröstmjölk ersättnings, 1999.
UGANDA	The Food and Drugs (Marketing of Infant and Young Child Foods) Regulations, 31 October 1997.
VIETNAM	Government Decree on Marketing and Use of Breastmilk Substitutes to Protect and Promote Breastfeeding, 6 December 2000.
YEMEN	Prime Minister's Decree #18 on Breastfeeding Promotion and Protection Regulation, 8 January 2002
ZIMBABWE	Public Health (Breastmilk Substitutes and Infant Nutrition) Regulations 1998, 1 May 1998.

- With the exception of Djibouti, France, Italy, Sweden and Yemen, ICDC trained policy makers from all of the above countries in Code implementation.

Selection of recent events

In 2001 and 2002, the World Health Assembly (WHA) passed two resolutions:

- WHA Resolution 54.2 (2001) settled, once and for all, the controversy over the recommended period of exclusive breastfeeding. After a 7-year battle in which IBFAN played a central role, there is now a clear recommendation of exclusive breastfeeding for 6 months. This effectively means that labels for complementary foods have to change -- no more representations that they are suitable for babies before 6 months.

So far, only Nestlé stated that it will change the labels of complementary foods but ONLY in developing countries. We have noted changes in a handful of countries.

- WHA 55.25 (2002) endorses the Global Strategy on Infant and Young Child Feeding which calls on governments to reaffirm their commitment to combat child malnutrition. The International Code and subsequent WHA Resolutions feature prominently in the Strategy. Much of the language in the Resolution which would have allowed industry leeway in the policy-making of young child feeding, was removed through IBFAN's efforts. There is scope, however, in the Global Strategy itself for industry to play an important part in the promotion of fortified complementary foods. Watch this space!

The full text of both Resolutions can be found on the IBFAN website: www.ibfan.org/english/resource/who/whares3332.html

- There is growing concern that Code and national implementation could be challenged as "barriers to trade" under the existing WTO trade liberalisation agreements. However, a new joint study by WHO and WTO takes the reassuring stand that health can take precedence over trade issues and if necessary, governments may put aside WTO commitments in order to protect human life. (BMJ, August 2002)

Review of case law

- A challenge against regulation of marketing was brought in the case of **Commission vs. Hellenic Republic** [1995] ECR I-1621. Here the European Court ruled that the Greek legislation (which provides that only pharmacies can sell processed milk for infants) does not hinder trade between Member States. The court held that the legislation relates to selling arrangements and is applied in a non-discriminatory manner. The case relates to European Competition Law but is a useful analogy to use against trade arguments.

Legal successes

Bangladeshi authorities succeeded in securing convictions against the importers of the following brands for promoting products violating the Bangladeshi Breastmilk Substitutes (Regulation of Marketing) Ordinance: *My Boy* (Coberco, Holland), *Biomil* (Fasska, Belgium), *Enfamil*, *Enfapro* and *O-Lac* (Mead Johnson, USA)

- In May 2000, Nestlé was fined for violating labelling provisions under Costa Rica's *Ley de Fomento a la Lactancia Materna*. Nestlé paid the fine but downplayed the conviction by making a statement on their website that 95% of volume of infant formula that they sell in Costa Rica had been in compliance with the local labelling law which goes "beyond WHO recommendations." Nestlé promised to regularise its product labelling within three months.
- Nestlé was given the highest fine possible for violating the national consumer protection legislation in the Czech Republic in 1999. It claimed, misleadingly, that its complementary food was ideal for infants from 4 months of age.
- The Advertising Standards Authorities in the UK and South Africa upheld complaints:
 - i) in the UK in 1999 that Nestlé's claim concerning Code compliance over time had not been substantiated;
 - ii) that Wyeth's TV ad for S-26 Promil Gold in South Africa in 2001 was in violation of the country's Code.
- Botswana, Cambodia, Malawi, Kiribati, Kenya and Zambia recently submitted draft laws which are substantially based on ICDC's Model Law and we are keeping our fingers crossed that this impetus does not stall.
- Brazil passed two new innovative *Regulamentos* on promotion and labelling of commercial foods for infants and young children, and of bottles, teats and dummies. The latter one makes it the first country to have separate labelling laws for bottles, teats and dummies. Nestlé and Gerber began to comply with Brazil's strict labelling laws for commercial foods even before they came into force.

Monitoring successes

- Following a complaint by ICDC, in July 2002, Nestlé agreed to destroy all remaining copies of its leaflet, *Welcoming your new baby* which were circulated in Shanghai China. The booklet which was distributed to mothers contained packshots of Lactogen 2, Nestogen 2, Nan 2, Neslac and Nestlé Rice Cereal. Nestlé also agreed to stop distributing separate flyers stapled to the booklet which contained a price list for Nestlé products with discounts for bulk home delivery, and a leaflet advertising Nan 1 & 2 and Lactogen 1 & 2.
- Monitoring in Zimbabwe revealed that its law has brought positive changes to labels of commercial baby foods, bottles and teats, compared to neighbouring countries.