From ICDC’s desk in Penang...

WESTERN PACIFIC  From a relatively quiet third quarter, the last months of 2012 brought a series of meetings and conferences for ICDC. Yeong Joo Kean, ICDC’s Legal Advisor, represented IBFAN at the 63rd Session of the WHO Regional Committee for the Western Pacific, which took place in Hanoi 24-28 Sept. Joo Kean’s trip to Hanoi was facilitated by joint resources from WHO Western Pacific, the UNICEF Regional Office and UNICEF Vietnam. In return, Joo Kean provided legal advice to the Vietnamese government and alerted officials to potential far-reaching implications of investment clauses in multi-lateral trade agreements. This sort of collaboration is rare nowadays, but it is a fine example of how work can be still be done through a system of referrals and references when people are proactive and can think outside the box, away from formal contracts and arrangements. ICDC looks forward to more of this type of collaboration in future.

As Joo Kean was grappling with trade issues and giving input on Code implementation in Vietnam, ICDC’s Director, Annelies Allain joined WABA and the Malaysian Breastfeeding Association to advocate for improved Code implementation in Malaysia at the Malaysia Breastfeeding Charter Forum in Kuala Lumpur. Annelies gave a talk to a group of breastfeeding advocates and witnessed the start of a petition to call on the government to convert the voluntary Malaysian Code into law. Although the Ministry of Health appeared unmoved, the message is out that the public is unhappy and people want the Ministry to take a tighter grip on the marketing practices of baby feeding companies in the country.

MIDDLE EAST  In November, Joo Kean went to the Emirate of Dubai to give a talk on Code Compliance in Health Care Facilities at the 3rd Biennial Regional Conference on Human Lactation at the invitation of Breastfeeding Friends of the UAE. The Conference attracted health professionals in the region who were able to gain points for their continuing education, and it was a wonderful opportunity for ICDC to spread the Code message at a plenary session, not just to the converted but to others in the health field who are not exposed to the Code.

The workshop in Sharjah provided the opportunity to meet with officials and lawyers from the Ministry of Health in Abu Dhabi (one of whom was trained by ICDC in the last Middle East and North African Regional Course) and review the draft law for the United Arab Emirates. Code implementation for the UAE is a long term quest for ICDC because Dubai is the marketing hub for the region.

The World Breastfeeding Conference in India took centre stage in December. Joo Kean again represented ICDC, working together with her UNICEF counterpart to handle the technical session on the Code, where the emphasis was on countries that had made great strides in Code implementation. The countries invited to speak were Fiji, Kenya, Vietnam and India. ICDC has invested a lot of ‘Code time’ in all these countries except for India, which implemented the Code as law much earlier on.

The Biennial Meeting for the IBFAN Coordinating Council (IBCoCo) took place after the Conference, where IBFAN groups thrashed out strategies and priorities for the future. The informal meetings and contacts made in India set the stage for ICDC’s work in 2013.

We wish all our readers a pleasant new year!

Raja Razak,
Publication Support

HIGHLIGHTS
- Laws in two more countries!
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  - Parliamentary Act in Kenya
- Danone in Laos – Behaving better or what?
- Fiji uncovered – Nestlé creates artificial shortage
- Undermining breastfeeding in AP
  - Hong Kong – manipulating public opinion
  - Philippines – divide and rule
  - Vietnam – using diplomatic channels
  - Thailand – bad press for the Code
**Law in two more countries!**

The last quarter of 2012 was exciting because two African countries, Kenya and South Africa, succeeded after many years in adopting strong Code-based legislation. Both countries had previously tried to control the marketing of breastmilk substitutes through voluntary agreements but these measures had largely been unsatisfactory.

For ICDC, the progress in these two important Anglophone countries is a huge step forward and a vindication of our training courses. ICDC has, for many years, jointly with IBFAN Africa and UNICEF, tried to convince policy makers of these two countries to go for law. Towards this, ICDC trained a number of Kenyans and South Africans in Code implementation courses. It took many years to progress from training to law – in South Africa, it was nine years of slow burn, and in Kenya, five years with many failed attempts. Both countries showed that when the foundation is laid for the right people in the right places, Code training does bear fruit.

The journey to law in both countries was fraught with opposition from industry and third parties who do not appreciate the importance of the Code. Code proponents in both countries were fortunate to have political backing and support to push their laws through with major provisions intact. We salute them for their achievements!

There are some legal weaknesses and incongruities, which ICDC was not able to iron out despite interventions. Both countries will be upgraded to **Category 1** in ICDC’s next **State of the Code by Country Chart**. The analyses for the laws of both countries are available upon request from ICDC, but here are some highlights.

### Kenya

Kenya implemented the Code through primary legislation passed by Parliament: The Breastmilk Substitutes (Regulation and Control) Act No. 34 of 2012. From leaked documents, ICDC learnt that the Global Alliance for Improved Nutrition (GAIN) threatened a ‘global advocacy effort’ to derail the bill. GAIN feared that its promotion of commercial complementary foods would be jeopardised by the law, but failed to convince lawmakers to defer adopting it.

Essentially, the Kenya Law covers a full range of baby feeding products marketed for children from birth to two years of age. Of significance is the inclusion of breastmilk fortifiers, pacifiers and cups with spouts, extending the scope of the International Code in Kenya. There is a catch-all phrase allowing the Cabinet Secretary to add new products for coverage under the Law by notice in the Gazette.

Key provisions from the Model Law were imported into the Kenya Law, including extensive bans on various forms of sponsorship, to root out conflicts of interest.

Some important Code provisions were relegated to regulations to be made under the Act, due either to technical or tactical reasons. These are still being developed at the time of review. Strong primary legislation lays a good foundation for regulations made under it, but they must come out fast for the law to run well. The Code community waits in anticipation.

### South Africa

South Africa opted for subsidiary legislation, and adopted the Regulations Relating to Foodstuffs for Infants and Young Children R.991/6 pursuant to powers of the Minister of Health under the Foodstuffs, Cosmetics and Disinfectants Act, 1972.

The South African Regulations (SARs) contain innovative and progressive prohibitions of promotional practices, which are wide and took into consideration prevailing marketing practices. Many subsequent World Health Assembly resolutions were crafted incorporated. The labelling provisions are exemplary and take into account the need to emphasise the risk of artificial feeding and warn about intrinsic contamination of powdered infant formula.

The imprint of ICDC’s Model Law can be seen in the way the scope of the SARs is neatly listed under a common term: “designated products”. The products covered are extensive and significantly include liquid milks, powdered milks, modified powdered milks, or powdered drinks marketed or otherwise represented as suitable for infants and young children. This inclusion is in line with World Health Assembly resolution 63.23(2010) that calls on countries to end “inappropriate promotion” of foods for infants and young children. However the ban on promotion for complementary foods is restricted to health establishments.

Discretionary powers are conferred upon the Director General of Health to decide whether to allow the donation of equipment, research grants, and sponsorship of meetings. Since the exercise of such discretionary powers is fraught with difficulties, there is a need to establish a sound system of scrutiny overseen by trained personnel.

To assist in monitoring, any person, group, body, or institution may submit a written complaint supported by adequate evidence to the Director-General of Health. There are different dates for the commencement of different provisions in the SARs so it may take up to mid 2014 to determine the full impact of the SARs on the marketing behaviour of manufacturers and distributors. There are lost opportunities and missing Code provisions but the end product is still an impressive document. The SARs generally weathered well during its long incubation period. Compared to other countries, South Africa has had a late, but excellent start.
Danone – behaving better or playing games?

Both ICDC and its partner in the UK, Baby Milk Action, have been badgering Danone about its marketing practices in the UK and Asia since it became big enough, through a spate of acquisitions, to be a serious rival to Nestlé. The company has stepped up on Code compliance but the progress is s-l-o-w. Since mid-2012, we hear, repeatedly, that there will be changes in Danone’s Marketing Policy, which will be reflected in its much awaited “Green Book” to be published sometime in 2013. Although Danone only started its global expansion a few years back, it has been in the baby food business for decades so you would think they would be quicker on their feet.

From what we have seen of the draft policy, we do not believe the company is being very original, as it is largely mimicking rival Nestlé’s narrow interpretation of the Code, which ICDC has criticised for years. Seriously, the Danone policy setting machinery needs to be revved up. Another reason for the slothful pace in which they operate could be deceit. If it takes from 6 months to two years to get a reaction, any errant million $ marketing campaign would have raked in all the benefits the campaign was intended to bring. So what, if at the end of the day, the company makes some concessions and admits that it has violated the Code. The job’s done and mothers everywhere have been enticed into buying the company’s product at the crucial point when they are making infant feeding decisions.

Still, some credit is due to Danone for conceding that some marketing practices by its Asian subsidiary, Dumex, was engaging in in Laos were in violation of the Lao Agreement on Infant and Child Food Product Control, and Danone’s own policy. Among these were:

- Lucky draws with big prizes to doctors and nurses attending a conference in July 2012.
- Leaflets and brochures for mothers and health professionals.
- Gifts to health workers.
- Trade incentives involving the Hi–Q range of formula products.

Danone promises that these practices will be stopped but ICDC’s other complaints were disputed. These include:

- Perks such as air travel, allowance and upscale hospitality which compete unfairly with local CME attempts. (Danone denied any wrongdoing; in line with its mission of “standing by mums to nurture new lives”, it claimed to be complementing local education and enhancing the knowledge of health care professionals.)
- Content of conference presentations and materials focussing on the “superior” qualities of ingredients coincidently found in Dumex products. Danone claimed to have no say over “content” of presentations and exonerated itself by saying the materials carry the “breast is best” message.
- Dumex staff dressed in orange uniforms; colour-coordinated to match its Dulac/Dupro products in a clear promotional strategy. Danone averred instead that orange is the Dumex company colour, not its products.

Fiji uncovered – Nestlé creates artificial shortage

ICDC discovered that on the day before the Fiji Law came into force, Nestlé reacted to the law’s strong labelling provisions by removing its products from shop shelves. By doing so, Nestlé caused an artificial shortage which caused panic among consumers. The Minister of Health, Dr Niel Sharma, had to appear on TV to appeal for calm and to stress the importance of breastfeeding. In an underhanded way, Nestlé caused public ire over government action because the dramatic disruption of supplies resulted in inconvenience to mothers who were already using the products. This is despite the fact that the Fijian government had given companies a grace period of 18 months to bring their labels into compliance with the Fijian Law. It is to the credit of the Fijian Ministry of Health that it stood its ground to protect infant health. To Nestlé, we say: Shame on you!
Undermining breastfeeding in Asia

Baby food companies are increasingly using their trade associations and other third parties to press their points. It is obvious that they see government regulation as a constraint and will do their utmost to sabotage the process.

Hong Kong - manipulating public opinion

The Department of Health in Hong Kong launched its comprehensive draft voluntary Code and opened the document for public comment from October 2012 to February 2013. Even as the voluntary Code was being drafted, the Hong Kong Infant and Young Child Nutrition Association (HKIYCNA) – the misleading name of the industry association – began to lay the foundation for dissent. HKIYCNA commissioned Hong Kong University Public Opinion Campaign to conduct a survey showing that mothers oppose the ban on promotion – on the ground that they want information. Since the survey was commissioned by HKIYCNA, ICDC wonders if the interviewees were told about the difference between “information” and product propaganda. ICDC doubts if the results would have been the same if interviewees were told that the “so-called” information contains misrepresentation and unsubstantiated claims designed to entice mothers into buying the products of the people who commissioned the survey. ICDC also questions whether the interviewers were informed about potential conflicts of interest.

HKIYCNA, working with PR companies, also took out full page ads in the press to get mothers to speak out against the Code. The ad implied that formula feeding mothers or those who do not breastfeed for legitimate reasons will be made out to be bad mothers. This is far from the truth, and to use mothers to fight against the very instrument that is aimed at protecting them and their babies is plainly underhanded.

Philippines - divide and rule

In the Philippines, where law makers representing opposing factions compete to submit draft laws to supplant the much maligned 1986 Milk Code, we see the Department of Trade and Industry (DTI) weighing in on behalf of the baby food industry. Acting as the mouth piece of the baby food industry, DTI issued a statement in October 2012, calling into question the decision of the Department of Health to introduce a new law, which it claims will jeopardise multinationals’ plans to invest $400m in the Philippines. When it comes to conflicting priorities, the choice clearly should be health, not investment. Watch this space for the ongoing saga of the Milk Code and its revisions.

Vietnam – attacking the Code through diplomatic channels

As legislators in Vietnam deliberated on laws to raise the age limit of a ban on advertising of baby foods to two years, ICDC received information that companies are trying to subvert the legislative process through the US Embassy in Hanoi.

In an official letter to key Vietnamese lawmakers dated June 13th 2012, the US Embassy said: “Several US companies have contacted the US Embassy regarding their serious concerns about this proposed prohibition on advertising of formula milk products, which could have a significant negative impact on their business in Vietnam.”

Claire A. Pierangelo, the Charge d’Affaires a.i., irresponsibly wrote, “We have not seen a compelling scientific, legal or economic argument for changing the current regulatory regime…”

Luckily, the National Assembly in Vietnam chose to ignore the letter and went on to approve the law on June 21 by an overwhelming majority. Le Nhu Tien, vice chair for the parliamentary Committee for Culture, Education, Youth, and Children, said the ban was the “best decision” the lawmakers could make to promote the public good. The UNICEF country office, a strong proponent of the Code, said passing the law fully complies with the Convention on the Rights of the Child and international standards.

Thailand – bad press for the Code

As efforts began for the umpteenth time to reactivates implementing the Code in Thailand, the Thai Rath newspaper decided to lend its considerable support to the baby food industry. It questioned the wisdom of having tighter controls on baby food marketing. In an article dated 14 November 2012, the newspaper opined that the voices of actual stakeholders have been completely overlooked and that the business sector will unavoidably be victimised by the promulgation of such a law. It quoted the Philippine DTI’s statement about the threat of loss in investment. Too bad the article did not look into the dismal rate of exclusive breastfeeding in Thailand; the role companies play in undermining breastfeeding, and the public health costs, when babies are not breastfed.

Editorial note: These Code attacks are not new. As industry gets more organised under the cover of new trade associations, and engage PR companies to whom they outsource their campaigns, the siege on the Code becomes a barrage. Although more concerted, these attacks are pathetically predictable. One can anticipate what industry is going to say. Countries should organise themselves regionally to defeat such corporate strategies. Industry should realise that they will not get what they want from the millions they spend on PR companies to spearhead their anti-Code campaigns.