

Statement by the UN Special Rapporteur on the right to health* on the adoption of front-of-package warning labelling to tackle NCDs

Non-communicable diseases (NCDs) are a major challenge of this century highly rooted on overweight, obesity and unhealthy diets. As part of their right-to-health duties, States should address the diet-related NCDs preventable risk factors and promote frameworks whereby the food and beverage industry convey accurate, easily understandable, transparent and comprehensible information on their products. Front-of-package warning labelling regulations are much needed in this regard.

27 July 2020 - The global burden of non-communicable diseases (NCDs), including cardiovascular and chronic respiratory diseases, cancers, and diabetes, constitutes one of the major challenges of the twenty-first century that cause detrimental societal, economic and health effects. Common NCDs risk factors, including overweight and obesity, have reached concerning levels in much of the world and are becoming increasingly prevalent in developing countries.¹ Unhealthy diets have a direct impact on overweight and obesity and are key contributing factors to NCDs and to their related premature morbidity and mortality in all regions. Consequently, it is critical that States proactively and comprehensively address the diet-related NCDs preventable risk factors and that they do it in line with the right-to-health framework.

The right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as an adequate supply of safe food and nutrition. States' obligations therefore include ensuring equal access for all to nutritiously safe food as an underlying determinant of health. As adequate food is a human right in itself, States obligations include ensuring everyone's access to the minimum essential food that is sufficient, nutritionally adequate and safe; this involves food in sufficient quantity and quality to satisfy individuals' dietary needs, with a mix of nutrients for physical and mental growth, development and maintenance.

Intake of food products that contain excessive levels of critical nutrients, such as sugars, sodium, total fats, trans-fats and saturated fats, is known to pose a greater risk for obesity and NCDs. Most of these processed and ultra-processed food products are energy-dense and nutrient-poor and lead to diets that lack sufficient levels of essential nutrients.² The increase in the consumption of these products result from their wide availability, affordability, convenience and palatability, as well as the advertising, sponsorship, and promotional strategies often used by food and beverage industries.

Both the World Health Organization and the previous Special Rapporteur on the right to health have encouraged States to take measures to provide accurate, available, easily understandable, transparent and comprehensible information to enable consumers to make informed choices towards healthy diets.³ One such measure is the adoption of front-of-package warning labelling on unhealthy foods and beverages. This is line with States' obligation to protect the right to health because food that is not labelled may be harmful as it prevents consumers from making healthy and informed choices.

Encouragingly, several States have adopted, or are undertaking efforts to adopt, front-of-package warning labelling to foster healthier lives.⁴ In doing so, they promote health by discouraging the consumption of unhealthy foods and beverages. Healthier eating, in turn, contributes to reducing diet-related NCDs risk factors, such as overweight and obesity.

However, the food and beverage industry continues to strongly and extensively oppose front-of-package warning labelling regulations. This includes covering up the harmful effects of food

products with excessive amounts of critical nutrients through multiple tactics, including sponsoring research to downplay links to health problems. Misinformation and pressure from the food and beverage industry interferes with States' efforts to adopt public health laws, regulations and policies.⁵ The industry often has an interest in hindering the adoption of front-of-package warning labelling regulations by attempting to interfere or directly influencing government decision-making processes. Where States have effectively adopted front-of-package warning labelling regulations to promote public health, some companies have resorted to or threatened litigation. They have also drawn on other campaigns and tactics to delay and/or block implementation of these regulatory measures, to overturn them or diminish their effect. This constitutes an undue influence of corporations on government decision-making that should be addressed by States to ensure that regulations to prevent harm to people's health, derived from the consumption of unhealthy foods and beverages, are driven by human rights and scientific evidence free from conflicts of interest.

In 2018, the United Nations General Assembly explicitly acknowledged the importance of human rights in the global response to NCDs, with States committing to take "necessary measures to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health across the life course" and to respect human rights obligations in scaling up efforts to address NCDs.⁶

The adoption and implementation of front-of-package warning labelling is a rights-compliant response.⁷ By delivering clear and complete information in a simple way, it encourages consumers to make informed decisions about their diets, without making additional efforts or requiring qualified knowledge. This allows individuals to decide what they want to eat according to their preferences, tastes and health status. At the same time, front-of-package warning labelling promotes healthy decisions, discourages the consumption of food products that can have a detrimental impact on health, and counteracts the effects of living in an obesogenic environment.⁸

The right to health and unhealthy diets

To combat the growing burden of NCDs effectively in line with the right to health, States should address preventable risk factors that lead to premature morbidity and mortality so as to enable all people to achieve the highest attainable standard of physical and mental health.

The right to health framework imposes three levels of obligations on States: to respect, protect and fulfil. The obligation *to protect* requires measures to, inter alia, prevent third parties from interfering with the right to health and violations can come from omissions, such as the failure to regulate the activities of corporations to prevent them from violating the right to health of others, and the failure to protect consumers.⁹

In the context of unhealthy diets, the obligation *to protect* the right to health, inter alia, requires the regulation of the activities of non-State actors, such as the food and beverage industries, to ensure they convey accurate, easily understandable, transparent and comprehensible information on their products.¹⁰ In particular, States should develop regulations and intervene, for instance, to restrict marketing of food products with excessive amounts of critical nutrients in order to protect public health.¹¹ Such regulations should be implemented and monitored through indicators and benchmarks.¹²

Failure to regulate the activities of the food and beverage industry to prevent them from violating the right to health of others and protect consumers from practices detrimental to their health may amount

to a violation of the right to health.¹³ The State duty to protect as it relates to the oversight of business to prevent adverse human rights impacts is outlined in the UN Guiding Principles on Business and Human Rights.¹⁴ Business, in turn, have a responsibility to identify and mitigate the negative impacts of their operations on the right to health.

The obligation to *respect* the right to health imposes a duty on States to refrain from taking measures that prevent or interfere with the enjoyment of this right.¹⁵ As such, this obligation requires States not to engage in any conduct that is likely to result in preventable morbidity or mortality, including incentivizing the consumption of unhealthy foods and beverages.¹⁶ In the context of unhealthy diets, States should also refrain from partially or fully suspending legislation and from adopting laws or regulations that interfere with the enjoyment of any of the components of the right to health.¹⁷

Finally, the obligation *to fulfil* compels States to adopt appropriate measures towards the full realization of the right to health. This requires that States disseminate appropriate information relating to healthy life and nutrition patterns, encouraging and supporting people in making informed choices about their health.¹⁸ Considering epidemiological evidence of diet-related NCDs, States should also formulate comprehensive policies that improve the availability and accessibility of healthy foods.¹⁹ Front-of-package warning labelling is an essential component of such set of policies, as it prevents unhealthy food products from displacing healthy foods from diets and food systems.²⁰

In relation to children and the adoption of healthier ways of life,²¹ evidence indicates that, globally, childhood obesity has reached epidemic proportions, with rapid increases in low- and middle-income countries.²² Children are especially vulnerable to diet-related NCDs because they may be dependent on others, such as parents or schools, for food, and because they are more susceptible to marketing strategies. In addition to immediate detrimental effects on children's health, unhealthy diets can have severe health consequences later in life due to the early formation of eating habits and preferences, and because childhood NCDs are likely to persist into adulthood. Therefore, States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation to ensure these industries use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions.²³

States' obligations include combatting children's disease and malnutrition through, inter alia, the provision of adequate nutritious food, and by ensuring that all segments of society, especially parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition.²⁴ The proliferation of heavily advertised, inexpensive food products with excessive critical nutrients has a significant impact on children's rights to health, food and development.

States should, therefore, adopt front-of-package warning labelling regulations as a key component of a comprehensive strategy to promote healthier lives, in line with the right to health framework. Moreover, the adoption of front-of-package warning labelling can be an effective stepping stone for States to pursue a set of additional measures that promote and protect the right to health, such as taxation, regulating school environments, and imposing marketing restrictions.

Front-of-package warning labelling to protect public health

Front-of-package warning labelling allows consumers to identify more clearly and effectively products with a nutritional profile detrimental to health. It reduces the perception of healthfulness of certain food products among consumers by raising awareness of a high content of critical nutrients.

Front-of-package warning labelling regulations are also relevant when considering the disproportionate prevalence of NCDs in populations in vulnerable situations, including people living in poverty.²⁵ Not only is the front-of-package warning labelling system effective to protect the rights to health and to adequate food, but it also balances the starting point for all consumers by providing equality in access to information relevant to health.

It allows to identify which products have an excess of critical nutrients at first glance, without major investment of time and cognitive effort and in a simple way by clearly marking such excess with warning labels arranged on the front of the product, ultimately discouraging their consumption. Warning labels increase the accessibility to information and allow people to make informed decisions on whether they want to consume certain products, according to their preferences and needs, as well as an accurate understanding about whether such product can risk their health.²⁶

The decision on which front-of-package labelling system should be adopted must be linked to its effectiveness to achieve public health goals and be in accordance with scientific evidence free from conflicts of interest available at the time.²⁷ International human rights law promotes rational and rigorous policy-making that is based upon reliable data.²⁸ Therefore, the appropriateness of measures to address diet-related NCDs risk factors, such as front-of-package warning labelling, should arise from the best available evidence in public health. To that effect, what is normatively required must evolve with changing understandings of science. States should use scientific knowledge in decision-making and policies,²⁹ as they have a duty to make available and accessible to all persons all the best available applications of scientific evidence necessary to enjoy the highest attainable standard of health.³⁰

States should further consider monitoring and evaluating their front-of-package labelling measures to continually assess their impact as well as to identify where improvements are needed. Monitoring and evaluation also contribute to the body of evidence that can assist the efforts of other States and promote accountability with respect to measures that bear on the right to health.

Conclusion

Within the framework of the right-to-health, States are required to adopt regulatory measures aimed at tackling NCDs, such as front-of-package warning labelling on foods and beverages containing excessive amounts of critical nutrients. Front-of-package warning labelling should follow the best available evidence free from conflicts of interest, as a mechanism through which healthy choices can become the easier and preferred option.

In line with the right to health framework, States should regulate the activities of the food and beverage industry, which are increasingly implicated in the global obesity and NCDs epidemic, in order to mitigate the detrimental impact their actions have on the enjoyment of the right to health and other rights. States should decisively counter undue influence of corporations on government decision-making by strengthening legal frameworks and safeguard the policies that protect the right to health, such as the front-of-package warning labelling, from commercial and other vested interests of the food and beverage industry. Furthermore, the food and beverage industry has an independent responsibility to respect human rights.

Without clear efforts to promote action on the prevention of unhealthy diets, the rise of NCDs will remain on the margins of global health action. States cannot remain passive in the face of NCDs.

They should adopt an integral approach to reduce the consumption of unhealthy food products through the use of a broader set of laws and regulations. Front-of-package warning labelling is a key measure for States to tackle the burden of NCDs.

ENDS

(*)The expert: **Dainius Pūras** (Lithuania) took up his functions as *UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* took up his functions as on 1 August 2014. Mr. Pūras is the Director of Human rights monitoring institute in Vilnius Lithuania, a professor of child and adolescent psychiatry and public mental health at Vilnius University and teaches at the faculties of medicine and philosophy of the same university. He is a medical doctor with notable expertise on mental health and child health.

The Statement has been **endorsed by: Michael Fakhri, Special Rapporteur on the right to food, and Surya Deva, Elżbieta Karska, Githu Muigai, Dante Pesce (Vice-Chair), Anita Ramasastry (Chair), Working Group on the issue of human rights and transnational corporations and other business enterprises.**

NOTES

¹ World Health Organization (WHO), *Global Status Report on Non-Communicable Diseases* (2014): <https://www.who.int/nmh/publications/ncd-status-report-2014/en/>

² WHO, *Joint WHO/FAO Expert Consultation on diet, nutrition and the prevention of chronic diseases* (2003); WHO, *Guideline: sodium intake for adults and children* (2012); WHO, *Guideline: sugars intake for adults and children* (2015); Pan American Health Organization (PAHO), *Ultra-processed food and drink products in Latin America: Sales, sources, nutrient profiles, and policy implications* (2019). See also A/HRC/26/31 (2014), para. 3.

³ WHO, *Global Strategy on Diet, Physical Activity and Health* (2004): https://www.who.int/dietphysicalactivity/strategy/eb11344/strategy_english_web.pdf. See also A/HRC/26/31 (2014) and A/RES/73/2 (2018).

⁴ Evidence suggests that the octagon-shaped black warning front-of-package labeling that indicates when a product contains excessive amounts of critical nutrients has proven to be an effective system in influencing consumer's intent to purchase products containing excessive amounts of critical nutrients across different populations, leading them to make healthier purchase decisions. See inter alia, Ministry of Health of Chile. *Evaluation of Food Act 20.606*. Chile (2019); Ares G, Varela F, Machín L, Antúnez L, Giménez A, Curutchet MR, Aschemann-Witzel J. Comparative performance of three interpretative front-of-pack nutrition labelling schemes: Insights for policy making. *Food Qual Prefer* 2018; 68:215-25; Taillie LS, Hall MG, Popkin BM, Ng SW, Murukutla N. Experimental Studies of Front-of-Package Nutrient Warning Labels on Sugar-Sweetened Beverages and Ultra-Processed Foods: A Scoping Review. *Nutrients* 2020; 12(2):569; Acton RB, Jones AC, Kirkpatrick SI, Roberto CA, Hammond D. Taxes and front-of-package labels improve the healthiness of beverage and snack purchases: a randomized experimental marketplace. *International Journal of Behavioral Nutrition and Physical Activity* 2019; 16:46.

⁵ A/72/137 (2017), paras. 3 and 39; A/HRC/32/32 (2016), and *Joint statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination against Women in law and in practice, and the Committee on the Rights of the Child in support of increased efforts to promote, support and protect breast-feeding*: www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20871&LangID=E

⁶ A/RES/73/2 (2018), para. 28.

⁷ WHO, *Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013-2020* (2013) at 3: https://www.who.int/nmh/events/ncd_action_plan/en/; WHO, *Terms of Reference for the UN Interagency Task Force on the Prevention and Control of Noncommunicable Diseases* (2015) at 6: https://www.who.int/ncds/un-task-force/ToR_UNIATF.pdf?ua=1; WHO, *Time to Deliver: Report of the WHO Independent High-Level Commission on Noncommunicable Diseases* (2018) at 13: <https://www.who.int/ncds/management/time-to-deliver/en/>

⁸ An “obesogenic environment” refers to an environment that promotes high energy intake and sedentary behaviour. WHO, *Report of the Commission on Ending Childhood Obesity* (2016): https://apps.who.int/iris/bitstream/handle/10665/204176/9789241510066_eng.pdf?sequence=1

- ⁹ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, CESCR, 22nd Sess., UN Doc. E/C.12/2000/4 (2000), para. 33, 35 and 51.
- ¹⁰ Corporate practices have often been referred to as the “commercial determinants of health” in the understanding that corporate activities shape our environments and determine the availability, promotion and pricing of consumables that affect health. See Kickbusch I, Allen L, Franz C. The commercial determinants of health. *Lancet* 2016; 4:e895–6; Stuckler D, McKee M, Ebrahim S, Basu S. Manufacturing epidemics: the role of global producers in increased consumption of unhealthy commodities including processed foods, alcohol, and tobacco. *PLoS Med.* 2012;9: e1001235; Smith K, Dorfman L, Freudenberg N, Hawkins B, Hilton S, Razum O, et al. Tobacco, alcohol and processed food industries – why do public health practitioners view them so differently? *Front Public Health.* 2016; 4:64; Buse, K., Tanaka, S. & Hawkes, S. Healthy people and healthy profits? Elaborating a conceptual framework for governing the commercial determinants of non-communicable diseases and identifying options for reducing risk exposure. *Global Health* 13, 34 (2017). <https://doi.org/10.1186/s12992-017-0255-3>.
- ¹¹ CESCR, *General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UN Doc E/C.12/GC/24 (2017), para. 19. See also, Committee on the Rights of the Child (CRC), *General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights*, UN Doc. CRC/C/GC/16 (2013), paras. 14, 19, 20, 56 and 57.
- ¹² A/HRC/26/31 (2014), para. 16
- ¹³ CESCR, GC No. 14, E/C.12/2000/4 (2000), para. 51. See also, CESCR, *General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UN Doc E/C.12/GC/24 (2017), para. 14.
- ¹⁴ Available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- ¹⁵ CESCR GC No. 14: E/C.12/2000/4 (2000), para. 34.
- ¹⁶ *Ibid*, para. 50. See also A/HRC/26/31 (2014), para. 14.
- ¹⁷ CESCR GC No. 14, E/C.12/2000/4 (2000), para. 50.
- ¹⁸ CESCR GC No. 14 E/C.12/2000/4 (2000), para. 37. See also A/HRC/32/32 (2016), para. 13; A/HRC/26/31 (2014), para. 16.
- ¹⁹ A/HRC/26/31 (2014), para. 16.
- ²⁰ *Ibid*, para. 5. See also A/HRC/19/59, paras. 32, 33 and 35.
- ²¹ WHO, *Report of the Commission on Ending Childhood Obesity: Executive Summary* (2017) at 8: <https://www.who.int/end-childhood-obesity/publications/echo-plan-executive-summary/en/>
- ²² Lobstein, Tim, et al, “Child and adolescent obesity: part of a bigger picture” (2015) 385:9986 *The Lancet* 2510.
- ²³ Committee on the Rights of the Child, *General comment No. 16 on State obligations regarding the impact of the business sector on children’s rights*, CRC/C/GC/16 (2013), para. 59.
- ²⁴ Convention on the Rights of the Child, 20 November 1989, UN General Assembly Res. 44/25, Art. 24(2)(e).
- ²⁵ WHO, *Factsheet on Non-communicable diseases* (2018): <https://www.who.int/news-room/factsheets/detail/noncommunicable-diseases>
- ²⁶ A/71/282 (2016), para. 76
- ²⁷ CESCR, *General Comment No. 25 on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/25 (2020), para. 53 and 59.
- ²⁸ E/CN.4/2004/49/Add.1, para. 12.
- ²⁹ CESCR GC No. 25, E/C.12/GC/25 (2020), para. 54.
- ³⁰ *Ibid*, para. 52.