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## NCHR OCCASIONAL PAPER SERIES

### #10/2018

#### HUMAN RIGHTS AND HEALTHY DIETS

*Does the food industry have a responsibility to respect the human right to adequate food and diet-related health?*

*Based on an International Seminar held at NCHR on 8th December 2016, hosted by FoHRC – Food Human Rights and Corporations, the Norwegian National Nutrition Council and FIAN Norway.*



## Norwegian Centre for Human Rights Occasional Paper Series

### About

The NCHR Occasional Paper Series is an open publication channel reflecting the work carried out by the Centre as a whole on a range of human rights topics. It is published on an irregular basis, with contributions in both Norwegian and English from NCHR's researchers, guests, master students, and the various international programmes and thematic working groups.

The objective of the Series is to provide an insight into the work carried out at the Norwegian Centre for Human Rights, and disseminate it both internally and externally. It provides a forum for NCHR's staff and students to publish relevant papers in a freely accessible format. Its scope includes activity reports, thematic reports, conference/seminar papers, master theses, reflective essays or reports on completed projects. The papers are published by submission or invitation.

The papers are published in the name of the author, and their views do not necessarily reflect those of the NCHR.

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The content of this publication can be cited as long as the author and source are specifically cited.

## PREFACE

The Food, Human Rights and Corporations (FoHRC) Research and action network, which is affiliated to the Norwegian Centre for Human Rights (NCHR), is pleased to present a new collection of papers based on one of its seminars held in collaboration with FIAN Norway, and this time also the Norwegian National Nutrition Council. We once again appreciate the opportunity to publish a paper collection through the NCHR Occasional Paper Series (OPS).

The OPS No 8/2017 provided material presented at the seminar on “Investments and Land Rights – The Role of the Private Sector in Ensuring Responsible Governance of Tenure”, held at NCHR in June 2016. The focus at that previous seminar was corporate responsibilities in regard of primary land used for food or other production, while the seminar from which material to this present OPS is provided from, dealt with concerns at the other end of the spectrum: aspects of nutritional health as impacted through the intermediary of the diet and in a human rights perspective. With the title “Human Rights and Healthy Diets”, the seminar was pre-announced by asking “Does the food industry have a responsibility to respect the human right to adequate food and diet-related health?”. The seminar took as a point of departure the challenges to businesses and governments seen through the lens of the UN Guiding Principles on Business and Human Rights, illuminated by five different actors.

We thank all the contributors as well as the editors of this issue, Ann Louise Lie and Kristine H. Vinje, for their engagement in shaping yet another document that reflects the intention of FoHRC: to spread information and trigger research on how various human rights instruments and mechanisms can be used to promote corporate respect for human rights in the food sector and strengthen governments’ protective obligations vis-à-vis the human rights to adequate food and to health for all.

*Wenche Barth Eide*

*Coordinator, FoHRC*

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*Photo: FIAN Norway (By Marit Erdal)*

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## INTRODUCTION

*By Liv Elin Torheim, Chair, Norwegian National Nutrition Council and Marit Erdal, Acting Director, FIAN Norway*

Poor diets constitute the world's leading cause of early deaths, and accounted for every fifth death in 2016 according to the Global Burden of Disease study.<sup>1</sup> Undernutrition continues to take its tolls among young children, including by contributing to deaths from common infectious childhood diseases. With obesity on the rise, including in childhood, people are becoming further predisposed for non-communicable diseases (NCDs) like diabetes type 2, cardiovascular diseases and cancer. If current trends continue, the number of overweight or obese infants and children globally will increase to 70 million by 2025.<sup>2</sup>

Under international human rights law, everyone has a right to adequate food and to the highest attainable standard of health. States are obliged to adopt appropriate measures to respect, protect and fulfil these rights, which can be done in many ways, including public health regulations through food legislation or restrictions concerning the marketing of food.

Correspondingly, the food industry has a duty to comply with existing regulations in the territory of the states where they operate. A crucial question that warrants further discussion, however, is whether the industry has a responsibility for healthy diets when existing regulations are insufficient or totally absent because of the failure of the state to provide effective regulations. Linked to this, other pertinent questions arise: which obligations do governments have to protect their populations from unnecessary poor health? And what responsibility do food companies have with regards to promoting healthier diets?

Businesses across the world are encouraged by governments to follow the Guidelines for Multinational Enterprises developed by the OECD – Organisation for Economic Co-operation and Development. The OECD Guidelines provide guidance for responsible business conduct in a global context. They have been updated to be in line with the UN Guiding Principles on Business and Human Rights (UNGPR), which were unanimously endorsed by the UN Human Rights Council in 2011.

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<sup>1</sup> <http://www.thelancet.com/gbd>

<sup>2</sup> <http://www.who.int/end-childhood-obesity/facts/en/>

The UNGP builds upon three pillars: the state obligation to *protect* human rights; the corporate responsibility to *respect* human rights; and the *shared responsibility* of corporations and governments for access to effective remedies for victims of business-related abuses. The principles apply to all States and to all business enterprises, both transnational and others, regardless of size, sector, location, ownership and structure. Though not legally binding, the UNGP is recognized as the authoritative global standard on business and human rights, and has garnered international consensus. Several civil society organizations however, including FIAN, voice concern over the non-binding nature of these principles, and advocate for a legally binding instrument on business and human rights to be established under international human rights law in order to effectively end corporate impunity.

The FoHRC-led seminar ‘Human Rights and Healthy Diets’, held in Oslo on 8 December 2016 at the Norwegian Centre for Human Rights, explored the challenges and opportunities in adopting a human rights based approach to preventing NCDs. The UNGP, as well as the national action plans (NAP) that have been adopted for the implementation of these principles, served as a starting point for the discussions. The UNGP Reporting Framework, as developed by Shift and Mazars in 2015, was also a key component in the open morning seminar, and in the workshop discussions that ensued in the afternoon. The framework provides guidance for companies to report on how they respect human rights.

Many human rights can be impacted by business, and the UNGP Reporting Framework asks companies to identify those rights at risk of the most severe negative impacts – the ‘salient human rights issues’ – across their operations and supply chains. The seminar explored whether it is likely that companies will define the impacts on rights to adequate food and nutrition and to health as sufficiently ‘salient’. And if yes, what would this imply in practice along the value chain from production to consumption?

Research over the last twenty years has established that children’s health is negatively impacted by unhealthy food marketing. The challenges that both industries and governments face in mitigating the accelerating global obesity epidemic were debated in the seminar, and challenges related to ethical marketing practices directed to children in particular.

The four contributions in this collection have been developed based on the presentations given

at the seminar. The first article deals with the responsibility of the private sector to respect human rights; the second explores the obligations of states to protect human rights especially of children in the area of food, nutrition and health; the third provides the example of Norway where the emphasis has been on the shared responsibility of the Government and the food industry to attempt to adapt food processing and marketing in a healthy direction; and the fourth and last article offers an overview of the parallel and complementary guidelines developed by the OECD countries on corporate behaviour regarding human rights.

**Julie Schindall**, Senior Advisor at Shift explains how the UNGP provides companies with a blueprint for the management process necessary to respect human rights, and explores the responsibilities that companies can be said to have with respect to consumer health.

**Amandine Garde** and **Ben Murphy**, at the Law and Non-Communicable Diseases Unit at the University of Liverpool, argue that the Convention on the Rights of the Child (CRC) and other international human rights instruments impose an obligation on States to protect children from the negative impact of unhealthy food marketing, as well as a responsibility on business actors not to advertise or otherwise promote unhealthy food to children.

**Fredrik Wang Gierløff**, State Secretary, Ministry of Health and Care, describes how the Norwegian Government combines several approaches to reach the overarching goal of reduced social inequality in health, reduced NCDs and better health of the population. The Norwegian Minister of Health has entered a formalized cooperation with market actors, and combines this approach with regulation, taxes and legislation. Their experience so far is that it is a fruitful and effective approach to promoting healthier choices for consumers.

**Benedicte Bjerknes**, Higher Executive Officer, and **Cathrine Halsaa**, Head of Secretariat, at the Norway's National OECD Contact Point present the OECD Guidelines on Multinational Enterprises. They explain how these guidelines provide a framework for businesses to ensure that they contribute to sustainable development and protection of human rights.

## PROCESSED FOOD AND HUMAN RIGHTS HARMS: WHAT IS THE RESPONSIBILITY OF BUSINESS?

*Today it is broadly accepted that companies must take responsibility for their impacts on people's dignity and welfare. In the area of food production and consumption, attention is often directed at business practices in the supply chain. But what about when the food products themselves -- the outcome of the supply chains -- are harmful to consumers' health?*

*By Julie Schindall, Senior Advisor at Shift, the leading center of expertise on the UN Guiding Principles on Business and Human Rights / [www.shiftproject.org](http://www.shiftproject.org)*

Since 2011, businesses, governments, civil society and other stakeholders around the world have come to a clear consensus about businesses' responsibility to respect human rights throughout their operations and value chains. This consensus centers on the authoritative international standard, the 2011 UN Guiding Principles on Business and Human Rights (Guiding Principles),<sup>3</sup> which clearly lays out expectations of governments and businesses when it comes to preventing and addressing businesses' impacts on human rights. Pressure on companies to ensure they respect human rights is only growing, from increasing regulations to investor and stock exchange requirements to rising consumer awareness. Public trust in corporations is at an all-time low.<sup>4</sup> The imperative could not be clearer for companies to examine their impacts on human rights, and take concrete steps to prevent and address these impacts.

When we think about business activities having severe impacts on people's lives, we often think of high profile cases that have occurred in supply chains. For example, we may think about the over 1,100 textile workers who died in the building collapse at Rana Plaza in India<sup>5</sup>, about children who harvest tobacco in the US<sup>6</sup>, or about modern day slaves working in fisheries in Thailand.<sup>7</sup> The focus on supply chains is important because of the scale: around one billion people are part of the global supply chains that provide us with essential products and services.<sup>8</sup> But what happens at the downstream end of the supply chain, when products are consumed? The

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<sup>3</sup> For a brief introduction and link to the document, see "UN Guiding Principles on Business and Human Rights," <http://www.shiftproject.org/resources/publications/un-guiding-principles-on-business-and-human-rights/>.

<sup>4</sup> See "2017 Edelman Trust Barometer," Edelman, <http://www.edelman.com/trust2017/>.

<sup>5</sup> See <https://business-humanrights.org/en/rana-plaza-building-collapse-april-2013>.

<sup>6</sup> See <https://www.hrw.org/report/2015/12/09/teens-tobacco-fields/child-labor-united-states-tobacco-farming>.

<sup>7</sup> See <https://www.ap.org/explore/seafood-from-slaves/>.

<sup>8</sup> See <http://www.shiftproject.org/resources/viewpoints/ruggie-address-responsible-supply-chains-g20/>.



potential for products to seriously harm consumers is obvious: fake medicines, faulty electrical switches that start fires, foods contaminated with poisonous chemicals, etc.

And speaking of food: every human on the planet consumes it. Of course this is a terrific market opportunity for companies that want to provide us with food and beverages, and many of us benefit greatly from their products.

But what about when the food is unhealthy – indeed, when it is spectacularly unhealthy? When only scientists in a lab can create it and then only factories can produce it? When the food is extremely high in sugar, salt or fat, and extremely low in nutrients? What about food and beverage products that are formulated to be addictive?<sup>9</sup>

**What is the responsibility of companies to prevent and address human rights harms to consumers?**

Companies have a responsibility to consider the impact of their food and beverage products on the health of consumers, just as they need to consider the human rights impacts of other aspects of their activities. When their products are connected to serious health impacts on consumers, in some cases those impacts may rise to the level of human rights harms. And where companies are connected to potential or actual human rights harms, they have a responsibility to prevent and address those harms. This is the standard set by the Guiding Principles.

Unanimously endorsed by the UN Human Rights Council in 2011, the 31 principles set by the UN Guiding Principles on Business and Human Rights apply to all states and all businesses worldwide and today are being implemented by companies, governments and their stakeholders on every continent.

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<sup>9</sup> See, for example, “Sugar, Salt, Fat” by Michael Moss, <http://www.nytimes.com/2013/03/17/books/review/salt-sugar-fat-by-michael-moss.html>.

The Guiding Principles provide companies with a clear blueprint for the management process

**Corporate transparency on human rights: a path to join the global conversation**

At the December 2016 workshop in Oslo “[Human Rights and Healthy Diets](#),” participants felt there was a lack of information from food and beverage companies about how they understand and manage their impacts on consumers’ human rights. Some participants said companies simply had not been part of the broader global conversation on the health impacts of processed food, even though it is of course companies that make these products. This information vacuum means it is even more urgent for food and beverage companies to fulfill the expectation in the Guiding Principles regarding communication. Companies are expected to communicate transparently and in an easy-to-access manner regarding how they are working to prevent and address their impacts on people. Since 2015, there has been one central framework for companies that want to report meaningfully on how they are managing human rights: the UN Guiding Principles Reporting Framework. The Reporting Framework is a short series of questions that relate to the company’s governance of human rights risks and its management of its most severe potential impacts on people (its “salient human rights issues”). Companies from multiple sectors and countries are already using the Reporting Framework for public reporting, and many more are using it to strengthen internal management systems. More information about the UNGP Reporting Framework is available at [www.ungpreporting.org](http://www.ungpreporting.org).

necessary to respect human rights. That blueprint includes a three-part approach that can be summarized as:

- A public commitment to respect human rights that is embedded into the business's culture;
- An ongoing process of human rights due diligence through which the business assesses risks to human rights, integrates the findings into its decision making and actions in order to mitigate the risks, tracks the effectiveness of these measures, and communicates its efforts internally and externally;
- Processes for providing remedy to anyone who is harmed where the business caused or contributed to that harm.

Achieving respect for human rights is challenging. It is not just about companies' own operations and employees and the activities they directly control. Nor is it just about first tier or strategic suppliers. The responsibility to respect human rights includes impacts that may be much more remote in their supply chain – whether in the production, consumption or other end-of-life stage of the product. It also includes impacts caused by third parties over whom the company may have limited influence. But the expectation of companies is clear: if their products or services are connected to human rights abuses, they have a responsibility to take reasonable steps to try to change the situation.<sup>10</sup>

### **Consuming processed food: when does it rise to the level of human rights harm?**

Having introduced the process companies should follow to prevent and address potential harms to human rights, the fundamental question that follows is: how can companies determine if consumption of their products is somehow harming consumers' human rights?

What is causing the harm in the case of processed food? The harm could be the product itself: its high levels of sugar, salt or fat, its lack of nutrients, its addictive nature, all of which may harm consumers' health and potentially negatively influence other aspects of consumers' life,

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<sup>10</sup> This text is drawn from "UN Guiding Principles on Business and Human Rights," Shift, <http://www.shiftproject.org/un-guiding-principles/>. For further guidance on what companies need to do to respect human rights, there is extensive, high quality and free guidance available online. We recommend "Doing Business With Respect for Human Rights," a comprehensive guide for companies on implementing the Guiding Principles authored by the Global Compact Network Netherlands, Oxfam and Shift. The guide was developed by drawing on companies' real experience and is available in both PDF and interactive format on its dedicated website, <https://www.businessrespecthumanrights.org/>.

like their ability to move around and to take part in physical activities.<sup>11</sup>

There are multiple factors involved in determining the product's role in any harms to consumers' health and quality of life. Consuming one candy bar one time per year hardly constitutes human rights harm. And many consumers would be angry if they could no longer drink their favorite soft drink because it was harming their human rights. Consumption of unhealthy foods and beverages is not like consumption of food products with deadly toxins<sup>12</sup>: a single dose does not constitute human rights harm. Instead, companies need to consider how much of their product people are consuming, if potentially vulnerable groups are consuming too much of the product, and how the company itself is influencing the level of consumption.

Of course this “continuum of potential harms” does not make things easy for a company that wants to respect their consumers' right to health and an adequate standard of living. During the Oslo seminar on “Human Rights and Healthy Diets,” senior nutrition and food industry experts developed a set of consensus points and key follow-up questions that companies and their stakeholders may want to discuss, in order to better understand the role of food products in potential human rights harms, and what companies could do to prevent and address those harms:

**Consensus points and follow-up questions: are my company's products connected to human rights harms of consumers? What could we do about it?**

1. We can accept that occasional consumption of small quantities of unhealthy foods generally has limited health impacts. We know that the potential harm of these products to consumers' health is greater if they consume large quantities more often.
  - a. Are we interacting with our consumers in good faith? Meaning: are we transparently and in an easy-to-understand manner informing consumers about the negative effects of consuming large quantities of our product?
  - b. Is there a way we could reformulate our product to make it less unhealthy – thereby making greater/more frequent consumption less harmful to consumers' health?

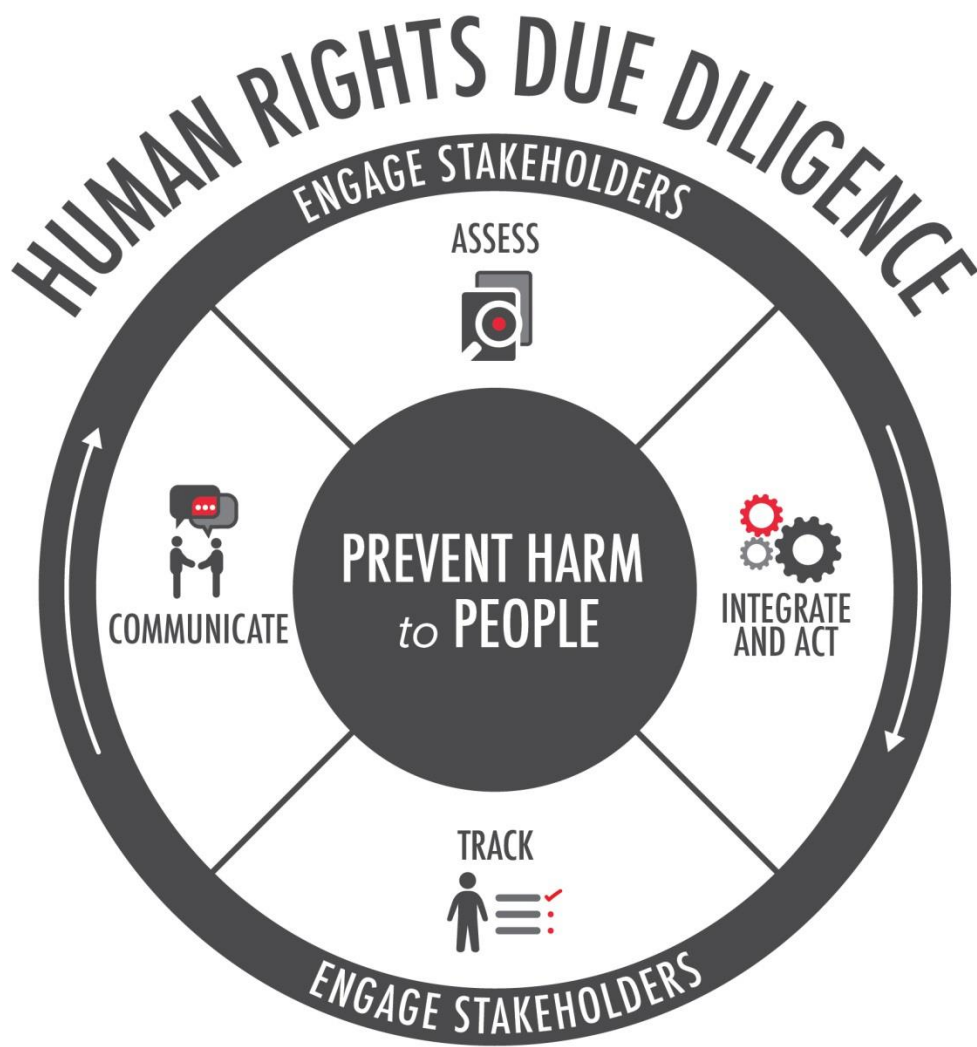
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<sup>11</sup> In the language of human rights, we are primarily looking at potential harms to the right to an adequate standard of living (which includes access to food and food security) and the right to the highest attainable standard of health. See articles 11 and 12 respectively of the International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

<sup>12</sup> See, for example, <https://rendezvous.blogs.nytimes.com/2012/07/23/carcinogen-found-in-chinese-baby-formula/>?, regarding numerous cases of baby formula manufactured in China found to contain mercury and melamine.

- c. Should we focus more of our research and development and sales efforts on other, healthier products, so we can feel confident that consumers can enjoy our products with fewer negative impacts?
- 2. We can accept that many consumers have a free choice regarding whether or not to consume unhealthy food or beverages. But we also know that some consumers are not entirely free in their choices, often due to circumstances related to income, knowledge, age, access, etc. Such circumstances can make these consumers more vulnerable to making unhealthy choices.
  - a. Are we aggressively targeting sales of our product at potentially vulnerable groups or other people who might be at risk of more severe impacts because of their particular circumstances? For example:
    - i. Children: children are vulnerable to aggressive advertising, including marketing of food and beverages. They are also less capable of making informed choices about the food they consume. Therefore, food and beverage companies cannot claim that children are completely free in their decisions about which foods they consume.
    - ii. Disadvantaged or isolated communities: for example, in some places, soft drinks are less expensive than the cheapest available drinking water. While on the one hand this is a good sales opportunity for a soft drink company, aggressive sales approaches are more likely to negatively impact consumers' health.
  - b. Should we reconsider our sales and marketing practices so that a) we can identify if we are aggressively marketing unhealthy foods or beverages to vulnerable groups, and b) can we consider if we need to shift our sales approach, such as by putting more emphasis on healthier foods or ensuring we promote healthier products equally alongside less healthy options?

Clearly more thinking and testing needs to be done about how food and beverage companies can ensure they respect consumers' human rights -- but certainly the answer to the question "do companies have responsibilities in this area?" is a resounding yes.



*Graphic courtesy of Shift*

# TOWARDS A CHILDREN'S RIGHTS APPROACH TO THE REGULATION OF FOOD MARKETING

*By Professor Amandine Garde and Ben Murphy, Law & Non-Communicable Diseases Unit, School of Law and Social Justice, University of Liverpool*

## I. Introduction

Childhood obesity and related non-communicable diseases (NCDs) have grown rapidly throughout the world in the last 20 years, and their prevention has become one of the most pressing public health concerns across the globe. The World Health Organization (WHO) estimates that the global number of overweight or obese infants and young children (aged 0–5 years) increased from 32 million in 1990 to 42 million in 2013.<sup>13</sup> Once considered a problem for high-income countries, overweight and obesity rates are rising in low- and middle-income countries, particularly in urban settings. The vast majority of overweight or obese children live in developing countries, where the rate of increase has been more than 30 per cent higher than that of developed countries. If current trends continue, the number of overweight or obese infants and young children globally will increase to 70 million by 2025.<sup>14</sup>

Most children today are growing up in highly 'obesogenic' environments, i.e. environments that contribute to obesity in that they encourage weight gain and are not conducive to weight loss.<sup>15</sup> Energy imbalance, caused by consuming more calories than the body uses, has resulted from changes in food type, availability, affordability and marketing, as well as a decline in physical activity, with more time being spent on screen-based and sedentary leisure activities.<sup>16</sup> This contribution focuses on one element of the equation: the marketing of unhealthy food to children and how such marketing should be regulated to ensure that the child's right to adequate food is effectively upheld.<sup>17</sup> Over the last 20 years, independent research has consistently established that children's health is negatively influenced by

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<sup>13</sup> World Health Organization, 'Facts and Figures on Childhood Obesity', WHO, 29 October 2014, <[www.who.int/end-childhood-obesity/facts/en](http://www.who.int/end-childhood-obesity/facts/en)>.

<sup>14</sup> Ibid.

<sup>15</sup> G. Egger and B. Swinburn, 'An "Ecological" Approach to the Obesity Pandemic', *British Medical Journal*, vol. 315, 1997, pp. 477–480.

<sup>16</sup> Commission on Ending Childhood Obesity, 'Report of the Commission on Ending Childhood Obesity', WHO, Geneva, January 2016, p. iv.

<sup>17</sup> The term 'unhealthy food' is used throughout this report to refer to nutritiously poor foods and non-alcoholic beverages that are high in fats, added sugar or salt.

unhealthy food marketing.<sup>18</sup>

In May 2010, the 63rd World Health Assembly unanimously endorsed the set of WHO recommendations on the marketing of foods and non-alcoholic beverages to children.<sup>19</sup> The WHO Recommendations urge Member States to restrict the marketing of unhealthy food to children to promote better nutrition and contribute to the global objective of ending childhood obesity. Seven years later, however, children remain highly exposed to such marketing due to the slow progress towards implementing the Recommendations.<sup>20</sup>

In this contribution, we argue that the Convention on the Rights of the Child (CRC) and other international human rights instruments impose an obligation on States to protect children from the negative impact of unhealthy food marketing (II), as well as a responsibility on business actors not to advertise or otherwise promote unhealthy food to children (III).<sup>21</sup>

## II. Towards a children's rights approach to obesity and NCD prevention

Childhood obesity is traditionally addressed as a public health concern and/or a concern for the global economy. Cumulative economic losses to low and middle-income countries from the four main NCDs (heart diseases and stroke, diabetes, cancer and chronic lung disease) are estimated to surpass USD 7

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<sup>18</sup> G. Hastings et al., *Review of Research on the Effects of Food Promotion to Children* (final report), University of Strathclyde, Glasgow, 22 September 2003, updated for the WHO: G. Cairns, K. Angus and G. Hastings, *The Extent, Nature and Effects of Food Promotion to Children: A review of the evidence to December 2008*, World Health Organization, December 2009, <[www.who.int/dietphysicalactivity/Evidence\\_Update\\_2009.pdf](http://www.who.int/dietphysicalactivity/Evidence_Update_2009.pdf)>. See also: M. J. McGinnis, J. Appleton Gootman and V. I. Kraak, eds., *Food Marketing to Children and Youth: Threat or opportunity?*, Institute of Medicine, National Academies Press, Washington, D.C., 2006, pp. 378–380. And more recently: G. Cairns et al., 'Systematic Reviews of the Evidence on the Nature, Extent and Effects of Food Marketing to Children: A retrospective summary', *Appetite*, vol. 62, 1 March 2013, pp. 209–215; World Health Organization, *Consideration of the Evidence on Childhood Obesity for the Commission on Ending Childhood Obesity: Report of the Ad hoc Working Group on Science and Evidence for Ending Childhood Obesity*, WHO, Geneva, 2016, p.72; WHO Regional Office for Europe, *Tackling Food Marketing to Children in a Digital World: Transdisciplinary perspectives*, World Health Organization, Copenhagen, 2016; and E. Boyland and M. Tatlow-Golden, 'Exposure, Power and Impact of Food Marketing on Children: A narrative review of the evidence to support strong restrictions', in *Implementing the WHO Recommendations on Food Marketing to Children in Europe*, edited by A. Garde, European Journal of Risk Regulation, Special Issue 2, 2017).

<sup>19</sup> World Health Organization, 'A Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children', WHO, Geneva, 2010. Available in all six United Nations languages at [www.who.int/dietphysicalactivity/publications/recsmarketing/en](http://www.who.int/dietphysicalactivity/publications/recsmarketing/en), and adopted through World Health Assembly Resolution WHA 63.14. These recommendations should be read alongside the framework implementation report, published in July 2012: A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children (WHO, 2012): <http://www.who.int/dietphysicalactivity/marketing-food-to-children/en/index.html>.

<sup>20</sup> V. I. Kraak et al., 'Progress Achieved in Restricting the Marketing of High-Fat, Sugary and Salty Food and Beverage Products to Children', *Bulletin of the World Health Organization*, vol. 94, no. 7, July 2016, pp. 540–548. On the implementation of the WHO Recommendations in Europe more specifically, see A. Garde (ed), *Implementing the WHO Recommendations on Food Marketing to Children in Europe*, Special Issue of the European Journal of Risk Regulation (2017).

<sup>21</sup> This contribution draws on the report that the Law & NCD Unit at the University of Liverpool was commissioned to write for UNICEF: A. Garde, S. Byrne, N. Gokani and B. Murphy, *Food Marketing and Children's Rights* (Geneva, UNICEF, forthcoming, December 2017).



trillion over the period 2011-2025 (an average of nearly USD 500 billion per year).<sup>22</sup> There is, however, additional scope to view the negative impact of food marketing to children as a human rights issue, and more particularly a *children's rights* issue.<sup>23</sup>

### ***The added value of a children's rights approach to obesity and NCD prevention***

Adopting a children's rights approach to the adverse impacts of marketing to children, squarely rooted in international human rights law, offers several potential benefits:

- **Accountability:** A children's rights approach guarantees a degree of State accountability, making effective remedies more likely where rights are violated. This, in turn, facilitates the translation of the commitments and obligations established in the CRC into operable, durable, and realizable entitlements.
- **Empowerment:** Once the concept of 'rights' is introduced in policymaking, the rationale of limiting marketing to children no longer derives merely from the fact that children have *needs* but also from the fact that they have *rights* – entitlements that give rise to legal obligations on the part of States.
- **Legitimacy:** Because children's rights are inalienable and universal, there is an inherent legitimacy to the language of human rights. Thus, children's rights arguments can ensure that an issue is given special consideration and that competing policies lose legitimacy if they are incompatible with children's rights.
- **Advocacy:** A human rights-based approach provides an opportunity to build strategic alliances, coalitions and networks with other actors who share a similar vision and pursue common objectives. In relation to childhood obesity, a children's rights approach is likely to foster the involvement of a broad range of actors who may not have viewed the issue of marketing of unhealthy food to children as raising children's rights concerns. In turn, this is likely to help galvanize political will and increase pressure on States to ensure

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<sup>22</sup> See World Health Organization, *From Burden to 'Best Buys': Reducing the Economic Impact of Non-communicable Diseases in Low- and Middle-income Countries*, *The Global Economic Burden of NCDs and Scaling up action against noncommunicable diseases: How much will it cost?* (WHO, 2011). On the economics of obesity prevention, see also OECD, *Obesity and Economics of Prevention: Fit not Fat* (OECD, 2010), and McKinsey Global Institute, *Overcoming Obesity: An initial Economic Analysis* (McKinsey, 2014).

<sup>23</sup> This approach should complement, rather than exclude, other existing approaches : M. Friant-Perrot and A. Garde, 'L'impact du marketing sur les préférences alimentaires des enfants', Rapport pour l'Institut national de prévention et d'éducation pour la santé, 15 September 2014, at pp. 43-49: <http://inpes.santepubliquefrance.fr/30000/pdf/marketing-alimentaire-des-enfants.pdf>.

that they comply with their human rights obligations, particularly under the CRC.

The adoption of a human rights based approach to NCD prevention and control is at the heart of the WHO Global Action Plan for the Prevention and Control of NCDs 2013–2020<sup>24</sup> and is also highlighted in the final report of the WHO Commission on Ending Childhood Obesity.<sup>25</sup> However, it is necessary to flesh out what this approach entails.<sup>26</sup> We focus here on the right to food.<sup>27</sup>

### ***The right to food and the duty of Member States to regulate food marketing to children***

While freedom from hunger clearly constitutes the core minimum content of the right to food, we can also identify broader concerns regarding to *adequacy* and nutritional value of available food, as provided by both international<sup>28</sup> and regional human rights instruments.<sup>29</sup> In particular, the CRC recognises ‘the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development’.<sup>30</sup> The CRC also provides that States parties shall take appropriate measures ‘to combat disease and malnutrition ... through the provision of adequate nutritious foods’,<sup>31</sup> and 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

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<sup>24</sup> World Health Organization, ‘Global Action Plan for the Prevention and Control of Noncommunicable Diseases, 2013–2020’, WHO, Geneva, 2013: [www.who.int/nmh/events/ncd\\_action\\_plan/en](http://www.who.int/nmh/events/ncd_action_plan/en). The Global Action Plan (p. 12) relies on the ‘human rights approach’ as one of its nine overarching principles: “It should be recognized that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being, without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, as enshrined in the Universal Declaration of Human Rights.”

<sup>25</sup> World Health Organization, ‘Report of the Commission on Ending Childhood Obesity’, WHO, Geneva, January 2016, pp. 8, 10, 40: [http://apps.who.int/iris/bitstream/10665/204176/1/9789241510066\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/204176/1/9789241510066_eng.pdf).

<sup>26</sup> Academic literature is growing on the relationship between children’s rights and childhood obesity. See for example: A. Garde, ‘Advertising Regulation and the Protection of Children-Consumers in the European Union: In the best interest of ... commercial operators?’, *International Journal of Children’s Rights*, vol. 19, no. 3, 2011, pp. 523–545; L. Mills, ‘Selling Happiness in a Meal: Serving the best interests of the child at breakfast, lunch and supper’, *International Journal of Children’s Rights*, vol. 20, no. 4, 2012, pp. 624–644; E. Handsley et al., ‘A Children’s Rights Perspective on Food Advertising to Children’, *International Journal of Children’s Rights*, vol. 22, no. 1, 2014, pp. 93–134; and K. Ó Cathaoir, ‘Childhood Obesity and the Right to Health’, *Health and Human Rights Journal*, vol. 18, no. 1, 2016, pp. 249–261.

<sup>27</sup> See, in particular: Final Report submitted by Asbjørn Eide, Special Rapporteur on the Right to Adequate Food as a Human Right, ‘The Right to Adequate Food as a Human Right’, 1987, UN Doc. E/CN.4/Sub.2/1987/23; and A. Eide, ‘The Right to an Adequate Standard of Living including the Right to Food’ in A. Eide, C. Krause and A. Rosas (eds) *Economic, Social and Cultural Rights: A Textbook* (Martinus Nijhoff Publishers 1995).

<sup>28</sup> Article 25(1), Universal Declaration on Human Rights (1948): ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, *including food...*’ (emphasis added); Article 11 (1), International Covenant on Economic, Social and Cultural Rights (1966): ‘The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, *including adequate food ...*’ (emphasis added).

<sup>29</sup> See, for example, Article 12, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the “Protocol of San Salvador”) (1988): ‘Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development’; Article 14, African Charter on the Rights and Welfare of the Child (1990): ‘[State Parties] shall take measures ... (c) to ensure the provision of adequate nutrition and safe drinking water; (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology; ... (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents ...’

<sup>30</sup> CRC, art 27.

<sup>31</sup> CRC, art 24(2)(c).

nutrition’.<sup>32</sup>

According to General Comment No. 12 of the Committee on Economic, Social and Cultural Rights, ‘whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* [the right to food] directly’.<sup>33</sup> In relation to implementing the right to food at a national level, General Comment 12 stresses that national policies should give particular attention to ‘the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security’.<sup>34</sup> The power of the food industry to influence diets in a negative way through its marketing practices threatens the child’s realisation of the right to adequate food. In particular, the Special Rapporteur on the Right to Food, Hilal Elver, has recently highlighted the negative impact which food marketing has on the right to food: ‘marketing campaigns employed by the food and beverage industry, targeting children and adolescents [...] bear much of the responsibility’.<sup>35</sup> She also stressed the need for an effective international framework to hold the global food industry legally accountable for its actions: ‘There is a need to create an international framework that binds States and casts responsibility on them to modify their domestic laws for reduction and prevention of diet-related NCDs’.<sup>36</sup> Ultimately, Elver made two recommendations regarding the marketing of unhealthy food to children. Firstly, she recommended that States regulate the marketing of unhealthy food, particularly to women and children, to reduce their visibility.<sup>37</sup> Secondly, she recommended that the food industry should refrain from marketing of unhealthy food to the population, especially to children.<sup>38</sup>

### ***The right to food and the implementation of the WHO Recommendations***

The report commissioned by UNICEF argues that the WHO Recommendations should guide the interpretation of what the CRC requires from Member States to ensure that they uphold their legal obligation to protect children’s rights from harmful business practices. In other words, it is argued that

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<sup>32</sup> CRC, art 24(2)(f).

<sup>33</sup> CESCR, General Comment No. 12 on ‘The right to adequate food (art 11)’ (12 May 1999) UN Doc E/C.12/1999/5, at para 15.

<sup>34</sup> CESCR, General Comment No. 12 on ‘The right to adequate food (art 11)’ (12 May 1999) UN Doc E/C.12/1999/5, at para 25.

<sup>35</sup> Interim report of the Special Rapporteur on the Right to Food, Hilal Elver, submitted in accordance with UNGA Res 68/177 (7 August 2014) UN Doc A/69/150, at para 40.

<sup>36</sup> Interim report of the Special Rapporteur on the Right to Food, Hilal Elver, submitted in accordance with UNGA Res 68/177 (7 August 2014) UN Doc A/69/150, at para 61.

<sup>37</sup> Interim report of the Special Rapporteur on the Right to Food, Hilal Elver, submitted in accordance with UNGA Res 68/177 (7 August 2014) UN Doc A/69/150, at para 64(f).

<sup>38</sup> Interim report of the Special Rapporteur on the Right to Food, Hilal Elver, submitted in accordance with UNGA Res 68/177 (7 August 2014) UN Doc A/69/150, at para 66(b).

the duty of Member States to respect, protect and fulfil children's right to adequate food and other related rights requires the full implementation of the WHO Recommendations. This, in turn, requires that Member States adopt an independent evidence-based nutrient profiling system to determine which food is unhealthy (and should not be marketed) and which food is healthy (and may be marketed).<sup>39</sup> It also requires that they define 'marketing to children' broadly to include both direct and indirect marketing. A narrow focus on children's programmes and children's media fails to restrict most forms of unhealthy food marketing to which children are, in fact, exposed. The more comprehensive the restrictions on unhealthy food marketing, the more effective they are likely to be in protecting children from its harmful effects.<sup>40</sup> Furthermore, Member States must ensure that all settings where children gather are free from all forms of unhealthy food marketing;<sup>41</sup> this specifically requires that they regulate sponsorship by the food industry of sports and cultural events attended by a high number of children.<sup>42</sup> A children's rights approach also embraces international cooperation to ensure that the effectiveness of national measures intended to protect children from unhealthy food marketing is not limited as a result of cross-border marketing which States will find difficult to regulate unilaterally. The problem is all the more acute in regions that have close cultural and linguistic ties, and is likely to become even more so with the rapid development of digital marketing.<sup>43</sup> All in all, a children's rights approach requires that

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<sup>39</sup> Nutrient profiling is the science of classifying or ranking food according to the composition of its nutrients, in the interests of preventing disease and promoting health. It can be used for multiple applications, including implementation of the WHO Recommendations on the marketing of foods and non-alcoholic beverages to children: World Health Organization, 'Nutrient Profiling', WHO, Geneva, 2010: [www.who.int/nutrition/topics/profiling/en](http://www.who.int/nutrition/topics/profiling/en).

<sup>40</sup> WHO Recommendations 2 and 3 call for a comprehensive approach focusing on both the exposure of children to marketing and the power of marketing on children. Research has accumulated on the importance of defining marketing broadly to protect children effectively from being exposed to unhealthy food marketing. See, for example, the analysis of the food marketing restrictions which the United Kingdom introduced in and around children's programmes between 2007 and 2009: J. Adams et al., 'Effect of Restrictions on Television Food Advertising to Children on Exposure to Advertisements for "Less Healthy" Foods: Repeat cross-sectional study', *PLoS ONE*, vol. 7, no. 2, 2012, e31578; E. Boyland et al, 'The Extent of Food Advertising to Children on UK Television in 2008', *International Journal of Pediatric Obesity*, vol. 6, no. 5–6, 2011, pp. 455–461; A. Garde, S. Davies and J. Landon, 'The UK Rules on Unhealthy Food Marketing to Children', *European Journal of Risk Regulation* (Special Issue 2, 2017).

<sup>41</sup> WHO Recommendation 5: 'Such settings include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises.' There will be several additional settings – which may vary from one country to another – where children commonly gather, such as public playgrounds, swimming pools, summer schools and programmes, afterschool programmes, and sporting events. Such settings also include temporary displays or gathering points for children, including activity areas created for children in airports or motorways, community centres, places of worship and shopping malls. Furthermore, the 2012 Framework Implementation Report has noted that the areas surrounding settings where children gather should also be considered, for example, the use of highly prominent billboards promoting unhealthy food near schools (at p. 22).

<sup>42</sup> Sports sponsorship arrangements, which provide food companies with unique business opportunities to attract a captive audience of new, young consumers, have recently attracted the attention of the United Nations Special Rapporteur on the right to health who called on States to "ban the advertising, promotion and sponsorship of all children's sporting events, and other sporting events which could be attended by children, by manufacturers of alcohol, tobacco and unhealthy foods": Human Rights Council, Resolution A/HRC/Res/26/18 (on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: sport and healthy lifestyles as contributing factors), United Nations, 14 July 2015 (at para. 33).

<sup>43</sup> Recommendation 8. On the digital marketing of unhealthy food, see WHO Regional Office for Europe, *Tackling Food Marketing to Children in a Digital World: Trans-disciplinary perspectives*, World Health Organization, Copenhagen, 2016. On the failure of the European Union in regulating the cross-border food marketing, see O. Bartlett and A. Garde, 'Time to Seize the (Red) Bull by the Horns: The European Union's failure to protect children from alcohol and unhealthy food marketing', *European Law Review*, vol. 38, no. 4, 2013, pp. 498–520, and O. Bartlett

the measures adopted by Member States be goal-oriented: they must effectively restrict the exposure of children to unhealthy food marketing and the power such marketing has over them.

A human rights approach to obesity and NCD prevention calls for an enquiry into how the right to food and other human rights can be used to counter the arguments put forward by the food industry. The tide is turning. While human rights may have traditionally been relied upon by business actors to protect their interests from unwanted health-promoting measures, they are now – and should increasingly be – invoked by public health policymakers to develop and defend effective, evidence-based NCD prevention strategies with the imperative of ensuring a high level of public health protection in all policies.

### **III. The responsibility of food business actors to refrain from marketing unhealthy food to children**

This leads us to the second recommendation of the Special Rapporteur on the Right to Food that the food industry should refrain from marketing of unhealthy food, especially to children. The WHO Recommendations do not clearly determine whether the food industry should have a role to play in their implementation; they are clearly addressed to States. Furthermore, they warn Member States against conflicts of interest: ‘Governments should be the key stakeholders in the development of policy [...]’. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, *while protecting the public interest and avoiding conflict of interest*.<sup>44</sup> As paragraph 21 of the explanatory notes accompanying the WHO Recommendations further emphasises, this is because ‘governments are in the best position to set direction and overall strategy to achieve population-wide public health goals’. However, the WHO Recommendations do not answer the question of what the food industry should be expected to do, in light of the United Nations Framework for Business and Human Rights, to ensure that children are protected from the harmful impact of food marketing.

#### ***The United Nations Framework for Business and Human Rights***

While it is traditionally assumed that the obligation to protect, respect and fulfil international human

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and A. Garde, ‘The EU ’s Failure to Support Member States in their Implementation of the WHO Recommendations: How to Ignore the Elephant in the Room?’, *European Journal of Risk Regulation* (Special Issue, 2017).

<sup>44</sup> Recommendation 6.

rights rests exclusively with the State,<sup>45</sup> the powerful role and position of multinational and transnational companies has necessitated closer inspection and analysis of the nexus between business actors and human rights. Most significantly, the Special Representative of the Secretary-General, John Ruggie, led the development of the United Nations ‘Protect, Respect and Remedy’ Framework, which has resulted in the adoption of two key documents: ‘Protect, Respect and Remedy: A Framework for Business and Human Rights’, which constitutes the overarching policy guide for future thinking and action on business and human rights at an international level;<sup>46</sup> and the ‘Guiding Principles on Business and Human Rights’, which supplement the Framework and provide guidance as to measures that enable its operationalisation.<sup>47</sup>

Business actors have, to a great extent, accepted that they ‘are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent’.<sup>48</sup> Therefore, the food industry has a responsibility to *respect* human rights, including the rights of the child under the CRC: ‘this means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved’,<sup>49</sup> wherever they operate.<sup>50</sup> In practical terms, the responsibility to respect corresponds to a ‘do no harm’ responsibility, whereby business actors are required to avoid harm and respond to situations in which adverse impact is triggered.<sup>51</sup>

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<sup>45</sup> The most famous exposition of this approach remains that of Oppenheim: ‘Since the law of nations is based on the common consent of individual States, States solely and exclusively are subjects of international law’. See L. Oppenheim, *International Law: A Treatise* (2<sup>nd</sup> ed, 1912) at 19. See also *SS Lotus* [1927] PICJ Rep Ser A 10, 18: ‘International law governs relations between independent States’.

<sup>46</sup> Human Rights Council, ‘Protect, Respect and Remedy: A Framework for Business and Human Rights; Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (7 April 2008) UN Doc A/HRC/8/5.

<sup>47</sup> Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework; Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (21 March 2011) UN Doc A/HRC/17/31, at para 9. It has been argued that the *Guiding Principles* represent a ‘sophisticated and refined synthesis of existing standards and mechanisms that integrate both voluntary standards and *legally compelling standards*’, thus setting them apart from previous efforts such as the Global Compact: M.K. Addo, ‘The Reality of the United Nations Guiding Principles on Business and Human Rights’, *Human Rights Law Review* 14 (2014) 133, 136 (emphasis added).

<sup>48</sup> International Organization of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organization for Economic Co-operation and Development, *Business and Human Rights: The Role of Government in Weak Governance Zones* (2006) at para 15. Available at: <https://business-humanrights.org/sites/default/files/media/bhr/files/Role-of-Business-in-Weak-Governance-Zones-Dec-2006.pdf>.

<sup>49</sup> Guiding Principle 11.

<sup>50</sup> ‘The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights’: Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, 21 March 2011, UN Doc. A/HRC/17/31, at p. 13.

<sup>51</sup> D. Davitti, ‘Refining the Protect, Respect and Remedy Framework for Business and Human Rights and its Guiding Principles’, *Human Rights Law Review* 16(1) (2016) 55, 69. See also, P. Muchlinski, ‘Implementing the UN Corporate Human Rights Framework: Implications for Corporate Law, Governance, and Regulation’ (2012) 22 *Business Ethics Quarterly* 145, 148.

In 2013, the UN Committee on the Rights of the Child issued General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights.<sup>52</sup> The Committee acknowledges that voluntary actions of corporate responsibility by business enterprises are not a substitute for State action and regulation of businesses or for businesses to comply with their responsibilities to respect children's rights. Furthermore, it affirms that while there is no international legally binding instrument on the business sector's responsibilities vis-à-vis human rights, 'duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore, all businesses must meet their responsibilities regarding children's rights and States must ensure they do so'.<sup>53</sup> Although the Committee on the Rights of the Child predictably focused upon the obligations of States, General Comment No. 16 could also have incorporated a specific section directed to business actors. This is arguably a missed opportunity, as the specific expertise of the Committee and authority in children's rights could have added a powerful and complementary voice to the Children's Rights and Business Principles by providing further clarification of the expectations and duties of business actors in respect of children's rights beyond referring to violations 'committed or contributed to by business enterprises'.<sup>54</sup>

### ***'We shall market responsibly to children'***

Leading food and beverage companies have responded directly to childhood obesity concerns by proposing a series of company-led pledges to change, among others, their marketing activities directed at children, so that the mix of foods advertised to children would encourage healthier dietary choices and healthy lifestyles.<sup>55</sup> In particular, in 2009, a group of major food operators launched the International Food and Beverage Association (IFBA), which presented a series of five commitments to contribute to the objectives laid down in the 2004 WHO Global Strategy on Diet and Physical Activity,

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<sup>52</sup> The Committee is the first UN human rights treaty body to address this issue directly in a General Comment, thus taking 'a decisive step in clarifying standards under the CRC and providing much needed guidance for States to better protect the rights of the child against business abuse': International Commission of Jurists, *'ICJ hails step towards protection of children against business abuses'* (21 March 2013) <<http://www.icj.org/icj-hails-step-towards-protection-of-children-against-business-abuses/>>

<sup>53</sup> UN 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 (17 April 2013), at para 8.

<sup>54</sup> UN 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 (17 April 2013), at para 76.

<sup>55</sup> For a review of existing industry pledges to restrict unhealthy food marketing to children, see S. Galbraith-Emami and T. Lobstein, "The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review", *Obesity Reviews* (2013). See also C. Hawkes and J. Harris, "An analysis of the content of food industry pledges on marketing to children", *Public Health Nutrition* (2011) 14:1403.

including a commitment to ‘extend our initiatives on responsible advertising and marketing to children globally’.<sup>56</sup> The Pledge was reviewed in September 2014 (for entry into force in December 2016):

“IFBA members commit either to:

- Only advertise products to children under the age of 12 years that meet common nutrition criteria<sup>1</sup> which are based on accepted science-based dietary guidance; or
- Not to advertise their products at all to children under the age of 12 years.

The above policy covers food and beverage product marketing communications that are primarily directed to children under 12 in all covered media.

In addition, IFBA members agree not to engage in food or beverage product marketing communications to children in primary schools.”

The fact that the relevant companies acknowledge the importance of restricting unhealthy food marketing to children is welcome. However, the IFBA Pledge contains many shortcomings not least relating to its membership and its scope, notwithstanding the claim that ‘IFBA’s Global Policy is in line with the aims of the WHO Recommendations’.

Regarding membership, twelve IFBA members had in 2015 combined annual revenues of approximately USD 397 billion.<sup>57</sup> However, they do not represent all food industry operators as several major food players do not participate in the IFBA Pledge; nor do local, smaller operators. The effectiveness of the IFBA Pledge is therefore necessarily restricted.

Furthermore, several gaps remain regarding the scope of the IFBA Pledge, notwithstanding the enhanced commitments which were made first in 2011 and subsequently in 2014 and entered into force on 31 December 2016. Originally, IFBA commitments applied to three media only: television, print and the internet. The 2011 enhanced commitment extended the application of the Pledge to company-owned websites, and in 2014, IFBA members undertook to extend their commitments to additional media, including outdoor, mobile and SMS marketing, interactive games, DVD/CDROM, cinema and

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<sup>56</sup> <https://www.ifballiance.org/>

<sup>57</sup> <https://www.ifballiance.org/members.html>



product placement. Even if this enhanced commitment will close significant loopholes, it remains that the IFBA Pledge will continue to allow for the marketing of unhealthy food to children in a range of media. In particular, no mention is made of sponsorship arrangements (subject to the commitment not to engage in food or beverage product marketing communications to children in primary schools). The IFBA Pledge also explicitly excludes packaging, in-store, point-of-sale and user-generated content from its scope.<sup>58</sup> This is in sharp contrast to the definition of “marketing” provided in the Recommendations that has been designed to facilitate the adoption of a comprehensive approach as the most effective to ensure their policy objective.<sup>59</sup>

Equally problematic is the fact that the criteria used to determine whether a television programme is a children’s programme and, as such, being subject to the IFBA Pledge, are unlikely to reduce effectively the impact on children of unhealthy food marketing. Even though the relevant threshold has been lowered from 50 to 35% it does not significantly change the assessment, as discussed above.<sup>60</sup>

Regrettably, also the IFBA Pledge only protects children of less than 12 years of age from the negative impact of unhealthy food marketing; it does not protect adolescents. The research focusing on children’s cognitive development assumes that, at a certain age, their cognitive abilities would be sufficient to protect themselves from adverse advertising influences. However, an increasing number of studies have called for a paradigm shift, arguing that governments should not only consider whether children have the cognitive capacities to identify the persuasive intent of advertising, but also whether teenagers (i.e. older children) possess the same resistance as adults to commercial advertising. Studies using neurosciences and behavioural psychology show that advertising can manipulate consumer behaviour via implicit persuasion, which may in turn explain why cognitive defence would not protect older children.<sup>61</sup> This is compounded by the fact that during childhood and adolescence, children’s brains are biased towards rewards, and they are more likely to respond to cues in their environment, including

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<sup>58</sup> ‘Packaging is not covered as the vast majority of food purchasing decisions are taken by adults and not the children themselves; mothers and adults serve as gatekeepers in these situations. The policy also does not cover in-store, point-of-sale and user generated content as these are generally not within the control of the brand owner.’

<sup>59</sup> Recommendation 3. ‘Marketing’ is defined as “any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service” (footnote 2, page 7).

<sup>60</sup> In the UK, for example, 67.2% of children’s television viewing in 2009 occurred during adult airtime. For the lower age group (children aged between 4 and 9 year olds), the figure was 54.4% and for the higher age group (10 to 15 year olds) it was 79.8%. Ofcom’s Evaluation Report is available at: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/hfss-review-final.pdf>.

<sup>61</sup> A. Nairn and C. Fine, ‘Who’s Messing with My Mind? The implications of dual-process models for the ethics of advertising to children’, *International Journal of Advertising*, vol. 27, no. 3, 2008, pp. 447–470. See also: J. Harris, K. Brownell and J. Bargh, ‘The Food Marketing Defense Model: Integrating psychological research to protect youth and inform public policy’, *Social Issues and Policy Review*, vol. 3, no. 1, 2009, pp. 211–271.

marketing.<sup>62</sup> Unlike adults, however, children may not activate brain areas that are important for inhibitory control due to a lack of development of this area of the brain.<sup>63</sup> As food selection is primarily a response of the human visual system, food marketing can promote overconsumption.<sup>64</sup> This thinking is further supported by the growing literature on behavioral economics and psychology, which has established that obesogenic environments interfere with consumers' ability to act in their long-term interests by inducing a preference for unhealthy food.<sup>65</sup>

Recognising that their original commitment was out of line with the WHO Recommendations, in that it did not address the power of marketing,<sup>66</sup> IFBA members have now undertaken to 'not use certain marketing techniques that appeal primarily to children under 12, that are primarily directed to children under 12 in the media channels covered, for foods not meeting specific nutrition criteria'. However, this enhanced commitment explicitly excludes equity brand characters – even though such characters are frequently used to promote unhealthy food to children, most notoriously on breakfast cereals loaded with sugar. The explanation for the exclusion is that 'brand equity characters are part of a brand's intellectual property and so, taking them away from the brand would basically mean that the brand ceases to be the same entity'. This is an oversimplistic appraisal of what is an inherently complex issue: the use of equity brands characters is a well-established marketing technique which influences children's food preferences, purchase requests and consumption patterns. Consequently, a comprehensive implementation of the WHO Recommendations would require that their use be

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<sup>62</sup> B. Casey, 'Beyond Simple Models of Self-Control to Circuit-Based Accounts of Adolescent Behavior' *Annual Review of Psychology*, vol. 66, no. 1, 2005, pp. 295–319.

<sup>63</sup> F. Van Meer et al., 'What You See is What You Eat: An ALE meta-analysis of the neural correlates of food viewing in children and adolescents', *Neuroimage*, vol. 104, 1 January 2015, pp. 35–43; and A. Dagher, 'Functional Brain Imaging of Appetite', *Trends in Endocrinology & Metabolism*, vol. 23, no. 5, May 2012, pp. 250–260.

<sup>64</sup> F. Van Meer et al., 'Developmental Differences in the Brain Response to Unhealthy Food Cues: An fMRI study of children and adults', *American Journal of Clinical Nutrition*, vol. 104, no. 6, 2016, pp. 1515–1522.

<sup>65</sup> B. Wansink, *Mindless Eating: Why we eat more than we think*, Hay House, 2011; L. Skov et al., 'Choice Architecture as a Means to Change Eating Behaviour in Self-Service Settings: A systematic review', *Obesity Reviews*, vol. 14, no. 3, March 2013, pp. 187–264; O. Oullier and S. Sauneron, *Improving Public Health Prevention with Behavioural, Cognitive and Neuroscience*, Centre for Strategic Analysis, Paris, March 2010; D. Just, L. Mancino and B. Wansink, 'Could Behavioral Economics Help Improve Diet Quality for Nutrition Assistance Program Participants?', *Economic Research Report*, no. 43, United States Department of Agriculture, June 2007; B. Wansink and P. Chandon, 'Can "Low-Fat" Nutrition Labels Lead to Obesity?' *Journal of Marketing Research*, vol. 43, no. 4, 2006, pp. 605–617; F. Etilé, *Obésité. Santé publique et populisme alimentaire*, Éditions Rue d'Ulm, collection « Cepremap », Paris, 2013; and Institut national de la santé et de la recherche médicale, *Agir sur les comportements nutritionnels. Réglementation, marketing et influence des communications de santé*, INSERM, Paris, 2017.

The WHO Framework Implementation Report lists certain particularly powerful marketing techniques which have frequently been used to promote unhealthy food to children. They include: the use of cartoon characters, including equity brand characters, and fictional narratives which appeal to children, the use of famous sports personalities and other celebrities which attract children's attention, the offer of "free" toys, music downloadable software, mobile telephone ringtones and other goods and services which may appeal to children.<sup>66</sup> One could add the use of claims directed at children, as well as the use of specific types of packaging, colours, graphics... which are of specific appeal to children.

restricted.<sup>67</sup>

Similarly, IFBA members should also be challenged to consider the context in which their brands, rather than specific products, are promoted. Coca Cola and McDonald's sponsorship of the Olympics faced criticism for achieving significant brand exposure to young children at a time when the companies pledged not to advertise directly to them.<sup>68</sup> As stated above, the issue of sports sponsorship requires careful consideration. It is true that the WHO Recommendations refer to the marketing of products and services; they do not refer explicitly to the promotion of brands (as distinct from products and services). Nevertheless, as certain brands and organisations are clearly associated with products or services whose marketing could fall within the scope of the Recommendations, efforts to restrict marketing in this area also need to consider how brands are marketed, in line with the spirit of the Recommendations.<sup>69</sup>

#### **IV. Conclusion**

The argument that Anand Grover, former UN Special Rapporteur on the right to the enjoyment of the highest attainable standard of health, made in 2014, applies with equal force to the right to food:

Owing to the inherent problems associated with self-regulation and public-private partnerships, there is a need for States to adopt laws that prevent companies from using insidious marketing strategies. The responsibility to protect the enjoyment of the right to health warrants State intervention in situations when third parties, such as food companies, use their position to influence dietary habits by directly or indirectly encouraging unhealthy diets, which negatively affect people's health. Therefore, States have a positive duty to regulate unhealthy food advertising and the promotion strategies of food companies. Under the right to health, States are especially required to protect vulnerable groups such as children from violations of their right to health.<sup>70</sup>

The duty to ensure that the right to food and other human rights are upheld rests, first and foremost, with Member States. The food industry should be encouraged to refrain from marketing unhealthy food

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The Framework Implementation Report lists certain particularly powerful marketing techniques which have frequently been used to promote unhealthy food to children. They include: the use of cartoon characters, including equity brand characters, and fictional narratives which appeal to children, the use of famous sports personalities and other celebrities which attract children's attention, the offer of "free" toys, music downloadable software, mobile telephone ringtones and other goods and services which may appeal to children.<sup>67</sup> One could add the use of claims directed at children, as well as the use of specific types of packaging, colours, graphics... which are of specific appeal to children.

<sup>68</sup> A. Garde and N. Rigby, 'Going for gold – Should responsible governments raise the bar on sponsorship of the Olympic Games and other sporting events by food and beverage companies?' (2012) 17 *Communications Law* 42.

<sup>69</sup> WHO Framework Implementation Report, 2012, at paragraph 2(1).

<sup>70</sup> A. Grover, 'Unhealthy Foods, Non-Communicable Diseases and the Right to Health', A/HRC/26/31, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, United Nations, 1 April 2014, para. 25.

to children, but the development of voluntary pledges and codes of conduct should not be envisaged as an alternative to the introduction of legally binding provisions intended to implement the CRC as interpreted in light of the evidence-based WHO Recommendations.

## **THE GOVERNMENT'S PLAN FOR HEALTHIER DIETS IN NORWAY: WHAT ROLE DOES THE INDUSTRY PLAY?**

*Recognizing the great global challenges of malnutrition and the increasing burden of obesity, this article discusses how Governments can set the direction towards healthier diets and create fruitful collaborations with the food and beverage industry.*

*By Fredrik Wang Gierløff, State Secretary, Ministry of Health and Care Services*

How to link human rights and healthy diets, and how to follow up on the UN Guiding Principles on Business and Human Rights are important topics. Looking outside of Norway, we recognize the great challenges around the world regarding hunger, malnutrition and also the growing burden of obesity and non-communicable diseases worldwide. Human rights relating to food and nutrition are something we probably do not appreciate enough in our daily life, here in Norway. While the human rights aspect is probably more pressing in many other countries, we still need to be reminded that also in our country we face great challenges relating to health and social inequalities in health, many of which are related to access and consumption of food.

### **Political guidance**

In 2014, the Norwegian Government launched a White Paper on public health<sup>71</sup>, which was adopted by our Parliament, The Storting. The White Paper expresses the Government's goal of promoting healthy lifestyles and developing a health promoting society. Physical activity, healthy diets, reduction of tobacco use and avoidance of harmful alcohol consumption are main factors addressed in the document. Integrating mental health as a part of all public health

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<sup>71</sup> <https://www.regjeringen.no/no/dokumenter/meld.-st.-19-2014-2015/id2402807/>

policies, is equally a major priority. Furthermore, we support that all children need special protection, and the White Paper makes reference to the Convention on the Rights of the Child. The need for special protection of children also applies when it comes to nutrition, diets and access to food.

To follow up on the White Paper, the Government, led by the Ministry of Health and Care Services, has developed a new Action Plan for a Healthier Diet. The action plan was launched in March 2017<sup>72</sup>. In our work with the plan we have tried to identify the most relevant international obligations concerning diets and health:

- I.** The United Nations Sustainable Development Goals (SDGs)
- II.** WHO Global Action Plan for the Prevention and Control of NCDs 2013-2020<sup>73</sup>
- III.** UN Decade on Action for Nutrition

### **Cooperation across different perspectives**

Then, let's turn to the question: "what role does the industry play in the Norwegian Government's work on promoting healthier diets?" The Government has a very good and constructive cooperation with the food producers, food industry and retailers in Norway. While we obviously have some differences of perspective, we have managed to find constructive ways to work together and actually see real results – through formalized cooperation.

Our Minister of Health and Care Services, Mr. Bent Høie, recently signed an agreement of intent with the major representatives of the whole food and drinks industry, with the aim to have a long-term cooperation for promoting healthier products and diets in Norway. The agreement was signed by different parts of the food chain and their organizations. This formal cooperation with actors throughout the food chain started a couple of years ago, by inviting the big players of food enterprises to meet at the Ministry twice a year.

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[https://www.regjeringen.no/contentassets/fab53cd681b247bfa8c03a3767c75e66/norwegian\\_national\\_action\\_plan\\_for\\_a\\_healthier\\_diet\\_a\\_n\\_outline.pdf](https://www.regjeringen.no/contentassets/fab53cd681b247bfa8c03a3767c75e66/norwegian_national_action_plan_for_a_healthier_diet_a_n_outline.pdf)

<sup>73</sup> [http://apps.who.int/iris/bitstream/10665/94384/1/9789241506236\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/94384/1/9789241506236_eng.pdf?ua=1)

The need for reduced consumption of salt, saturated fats and added sugar have been on the agenda of these meetings – as well as regulation of marketing of unhealthy foods and beverages to children, and systems for food labelling. They have also started to discuss in more detail how to increase consumption of fish and seafood, and of fruits and vegetables.

Overweight and obesity are big challenges in public health. We are dependent on collaboration with many different sectors to reach our goals in the field of public health. The Norwegian food industry agrees on this and wants to contribute to the solutions for handling it. As Minister Bent Høie has humorously said, no industry has an interest in killing off its consumer base.

One of the main points of this cooperation has been based on a political premise. That is that dialogue, cooperation and committing to shared goals is a more fruitful approach to changing the industry's way of business in a healthier direction, than one-sided regulation, taxes and legislation from the Government. The dynamics of this government-business cooperation has shown that this approach has been correct.

Rather than fighting political battles over specific legislation, we have shown that the industry is willing to partake in a shared effort to promote healthier diets – but are able to reach specific goals in the manner they see best fit. It has also fostered a culture, where the industry participants want to show and promote that they are actively committed to this work.

We know that the industry needs to earn money. That is, after all, a purpose of business – inherent to its logic. Therefore, we respect our different roles in our cooperation. From the Government's side we need to provide data for consumption, updated dietary advice, and not least to communicate to consumers the positive effects of having a healthy diet.

Under the umbrella of the signed agreement of intent, there are different initiatives:

- A partnership working on reducing the salt content of different food groups, with the aim of reducing salt intake from 10 to 8 grams a day, within 2021 – i.e. by 20%.

- An aim to decrease intake of sugar with *at least* 12.5% within 2021, which is more ambitious than the goals set by the EU, in spite of Norway having a different starting point.
- And, another goal of reducing content of saturated fat in foods and reducing intake of saturated fat from 14 % to 13% of the energy consumed within 2018.

These are goals that the industry representatives, including the Federation of Norwegian Food and Drink Industry, have signed off on as well. These are all measures that will make it easier to make healthier choices for consumers – given that the products they consume every day will actually be healthier. Under this agreement, the partners are also committed to work for increased consumption of healthy foods, such as fruit, berries, vegetables, fish, as well as high fiber grain products.

### **Labelling and self-regulation**

The Government has the responsibility for food labelling systems. For the most part, we have the same regulations in the food area as the EU. However, we have established the Keyhole-label together with the other Nordic countries. If you choose a product marked with a keyhole, it will be the healthiest choice within a specific product group. This label has been a success. The Keyhole system is understood by all consumers, independently of language and reading skills. The food industry shows great responsibility with developing new food items fulfilling the criteria for the labelling system with less saturated fat, sugar and salt. Another good example of governmental and industry collaboration is the development and implementation of a self-regulatory system aimed at regulating marketing of unhealthy foods and beverages to children. So far, the Government's opinion is that this self-regulation system seems to work. Consumer organizations and NGOs have also been actively involved in this issue in Norway.

The self-regulation system was evaluated in 2016. The evaluation was planned in collaboration with the food industry and with consumer representatives as appropriate. The results of the

evaluation were presented earlier this year and show that the situation is quite good in Norway. We have very limited marketing of unhealthy foods to children through television, although some more via social media. When it comes to placement in the shops, portion sizes, and pricing there is a potential to do more to protect children. The food industry has been challenged by the Government to come up with suggestions for improving the system.

### **Way forward and lessons learned**

The comprehensive Action Plan for a Healthier Diet builds on collaboration between several ministries; those responsible for health, for children and equality, for fisheries, for agriculture, for education and for climate and the environment. Our opinion is that the whole food chain must be a part of the solution when it comes to promoting health and nutrition. The Government's view is that the food producers we are collaborating with clearly see their responsibility when it comes to protecting children, as well as combatting NCDs more generally. We are aware that the challenges in these areas are larger and more complex in other regions and countries than what we experience in Norway and in the Nordic countries.

This regards both the actual health status and inequalities in health, as well as governance challenges with regards to the culture and conditions for fruitful cooperation with local food industry. Whether our approach will have the intended effect at other times and in different places requires a more contextual analysis – but there are likely to be points to learn from our work vis-à-vis the food industry.

However, let it be clear that the overarching goal for the Norwegian Government is to promote healthier lives, reduced social inequality in health, fight the increase in NCDs and secure better health for our population. The question is how we achieve these goals. The food industry is the one producing, distributing and promoting products on the market available to consumers. Thus, the industry and its activities are key to achieving these goals. From our perspective, we see that a combination of regulation, taxes and legislation, as well as a formalized and constructive cooperation with market actors, is a fruitful and effective approach to promoting healthier choices for consumers. And, of course, market actors know that in the absence of their active participation, the Government is left only with other, harsher measures, to promote health and



nutrition – measures that might be less sensitive to the specific conditions of the various industry actors. A large part of our satisfaction with this work is obviously based on the willingness of both public and private actors to cooperate and to commit to specific goals, and we depend on actually achieving the intended results.

## **THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES: A FRAMEWORK FOR ENSURING SUSTAINABLE DEVELOPMENT AND PROTECTING HUMAN RIGHTS**

*How and why should businesses behave responsibly? What does this responsibility entail? Attainment of the Sustainable Development Goals and responsible business conduct go hand in hand. Businesses do have the potential to generate growth, employment and development through their operations, but they will not be able to do so without behaving responsibly. This article explains how The OECD Guidelines for Multinational Enterprises provides a framework for businesses to ensure they contribute to sustainable development and protection of human rights.*

*By Benedicte Bjercknes, Higher Executive Officer and Cathrine Halsaa, Head of Secretariat Norway's National OECD Contact Point*

The UN Sustainable Development Goals (SDGs) set out a new direction for sustainable development to be achieved within 2030. The 2030 Agenda acknowledges the role of businesses to ensure and contribute to development. Moreover, it acknowledges mobilization of private capital as a driving factor for development. Businesses have the potential to generate growth, employment and development through their operations. However, human rights and labor abuses and harm to the environment by enterprises are prevalent throughout the supply chain in various sectors. Consequently, the SDGs cannot be achieved without Responsible Business Conduct (RBC). The SDGs and RBC are interlinked and co-dependent.

But how and why should businesses behave responsibly? What does this responsibility entail? 48 governments around the globe have decided on a set of guidelines and a tool for businesses to answer these challenging questions: the OECD Guidelines for Multinational Enterprises (the Guidelines).

National Contact Points have been established in these countries to promote, give guidance and handle specific instances on matters covered in the Guidelines. The following article will firstly

present the Guidelines themselves; what are they and why should businesses follow them? Secondly, it will present and discuss the role and work of the Norwegian National Contact Point (NCP) of the Guidelines. Thirdly and lastly, this paper will present the OECD sectoral guidances with a specific focus on food security, healthy diets and human rights.

### **The OECD Guidelines – an effective tool to prevent human rights violations**

The OECD Guidelines for Multinational Enterprises<sup>74</sup> are recommendations from the OECD countries to promote responsible business conduct in all sectors. The Guidelines are the only multilaterally adopted, comprehensive guidelines for responsible business backed by 48 governments.

A main goal of the Guidelines is that the business sector shall contribute to sustainable development. The Guidelines clearly express expectations in areas such as human rights, including labor rights, the environment, anti-corruption and transparency. Together, the Guidelines cover all key aspects of corporate social responsibility. More specifically, on the subject of healthy diets, the Guidelines provide a separate chapter on consumer interests that formulates expectations to business on this topic.

Chapter 8, Consumer interests begins as follows:

*When dealing with consumers, enterprises should act in accordance with fair business, marketing and advertising practices and should take all reasonable steps to ensure the quality and reliability of the goods and services that they provide. In particular, they should:*

1. Ensure that the goods and services they provide meet all agreed or legally required standards for consumer health and safety, including those pertaining to health warnings and safety information.

[...]

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<sup>74</sup> Read the OECD Guidelines for multinational enterprises in full [here](#).

8. Take into consideration, in applying the above principles, *i)* the needs of vulnerable and disadvantaged consumers and *ii)* the specific challenges that e-commerce may pose for consumers.<sup>75</sup>

The above presents an example of how the Guidelines covers different aspects of human life. As consumers, we have a right to information and companies are urged to consider vulnerability of consumers.

In 2016, it was 40 years since the OECD Guidelines were adopted. In order to ensure that they continue to be a relevant and leading international tool for promoting responsible business, the Guidelines were revised in 2011. The revision included adding a chapter on human rights. This chapter reflects the UN Guiding Principles on Business and Human Rights from the same year.

The Guidelines are expectations from governments on how businesses should act responsibly, but they also represent expectations from other businesses and investors, employees, labor organizations and civil society. Researchers such as Sveinung Jørgensen and Lars-Jacob Pedersen<sup>76</sup> point to the fact that behaving responsibly and sustainably could be a comparative advantage in many aspects.

Acting responsibly is important in and of itself, but it also offers a market advantage. As such, a company's reputation and expectations from the public, the company's own employees, civil society and labor organizations create incentives for businesses. The Guidelines present businesses with a tool on how to embark on responsible business conduct, and on how to prevent violations.

### **The Norwegian National Contact Point (NCP)**

The Guidelines are supported by a unique implementation mechanism of National Contact Points (NCPs). The NCPs were established by the acceding governments to raise awareness about the Guidelines and to establish a grievance mechanism. The grievance mechanism ensures

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<sup>75</sup> [OECD Guidelines for Multinational Enterprises](#), Chapter 8, Consumer Interests, page 53-54

<sup>76</sup> RESTART, Jørgensen, Sveinung and Lars Jacob Tynes Pedersen, Cappelen Damm Akademisk, 2017, page 22-23

that concerned stakeholders have a place to turn to. The NCPs facilitate dialogue and mediation in order to resolve cases (specific instances).

The Norwegian NCP<sup>77</sup> is an independent expert body. The members are appointed by the Ministry of Foreign Affairs and the Ministry of Industry and Fisheries on the basis of their professional expertise, and based on proposals from the social partners and civil society, represented by the Confederation of Norwegian Enterprise (NHO), the Confederation of Norwegian Trade Unions (LO) and the Forum for Development and Environment (ForUM).

All OECD countries are obliged to establish a national contact point. How they are organized varies from country to country. The Norwegian NCP has three main tasks:

1. To promote and provide guidance about the OECD Guidelines
2. To handle complaints in specific instances
3. To cooperate internationally with the OECD's central organization and other NCPs

The Norwegian NCP has arranged and participated in several courses and seminars for Norwegian business, civil society, labor organizations and more to promote and provide guidance of the Guidelines. One example is participating in the Oslo seminar on "Human rights and healthy diets". Furthermore, the Norwegian NCP has arranged courses for Norwegian businesses on human rights due diligence. One of the main goals of these courses has been to discuss and jointly find solutions to how businesses can prevent human rights violations in their supply chains. Human rights due diligence (HRDD) is a method whereby companies identify, prevent and limit the risk of human rights violations. The method also requires businesses to remedy actual consequences and give an account of how they handle the negative consequences of their activities. This is a continuous process in which the affected parties are heard through stakeholder engagement.

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<sup>77</sup> See the website of the Norwegian NCP [www.responsiblebusiness.no](http://www.responsiblebusiness.no) (Both in English and Norwegian).

Moreover, the Norwegian NCP has handled several specific instances throughout its existence. Any individual or organization with a legitimate interest in the matter can submit a case to an NCP regarding a company, operating in or from the country of the NCP, which has not observed the Guidelines.

When a NCP receives a specific instance, the NCP will evaluate whether the issues raised merit further examination, in a so-called “initial assessment”. Based on this evaluation, the NCP either accepts the case or publishes a statement explaining why it has not been accepted. If a NCP accepts a specific instance, the NCP offer support and guidance through a mediation process between the involved parties. The goal of the NCP mechanism is to resolve the issue through dialogue and mediation. Thirdly, after dialogue and mediation, the NCP will issue a final statement summarizing what has been agreed upon, and offer follow-up communication with both parties.<sup>78</sup>

More than 400 specific instances have been treated by NCPs worldwide since year 2000. The main themes for these cases are employment, human rights, the environment and bribery. A case regarding healthy diets, human rights, food security etc. may be submitted to the NCP system for review.<sup>79</sup>

### **Provision of concrete advice through the OECD-FAO Guidance for Responsible Agricultural Supply Chains**

The OECD Guidelines are overarching and general. Therefore, the OECD has prepared guidance documents with specific and practical advice adapted to different sectors, like the agriculture and food sector, the garment and footwear industry, the financial sector, the extraction industry and minerals from conflict areas. A General Due Diligence Guidance is also currently being developed, which addresses due diligence as a method. The sectoral guidelines focus in

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<sup>78</sup> Read more about the grievance mechanism and how the Norwegian NCP handles cases [here](#) (from the Annual Report 2016)

<sup>79</sup> See [OECD Database for specific instances](#) for details.

particular on how companies can use their influence to ensure responsible supply chains.

These guidance documents are unique in that they are recommendations addressed by governments. Furthermore, they have been created through a multistakeholder process in cooperation with key business representatives in each sector and persons from civil society. The sectoral guidance focuses on stakeholder engagement and includes perspectives of vulnerable groups, such as indigenous people and female workers. It can be demanding for companies to familiarize themselves with the wide-ranging recommendations enshrined in the OECD Guidelines. The sectoral guidelines contain useful examples and concrete advice.

[The OECD-FAO Guidance for Responsible Agricultural Supply Chains](#) is one of these guidance documents. The Guidance is developed in cooperation with the Food and Agriculture Organization of the United Nations (FAO) and contains two major sections:

- I. Establishing standards: by presenting a model, enterprise policy the guidance outlines a standard model for businesses.
- II. Implementing due diligence: providing a step-by-step framework describing how businesses should identify, assess, mitigate and account for how they address actual and potential adverse impacts in their activities.

The Guidance has a chapter on “model enterprise policy for responsible agricultural supply chains”. In this chapter it is advised that companies include the following text on food security and nutrition:

“We will strive to ensure that our operations contribute to food security and nutrition. We will give attention to enhancing the availability, accessibility, stability and utilization of safe, nutritious and diverse foods”<sup>80</sup>.

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<sup>80</sup> [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#), Chapter 2, Model Enterprise policy for responsible agricultural supply chains, page 28

The Guidance also has a chapter dedicated to food security and nutrition<sup>81</sup>. In this chapter, the guidance makes reference to The Committee on Economic, Social and Cultural Rights and the International Covenant on Economic, Social and Cultural Rights (Article 11), and states that “States Parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food“. Furthermore, the FAO-OECD Guidance states that enterprises should:

*.. to the extent possible, consider the impacts of operations on the availability and access to food, local employment, dietary preferences and stability of food supply, including by involving local governments and other relevant stakeholders.*

Companies should also:

*...To the extent possible, consider contributing to improving access to food and the resilience and nutrition of local populations by: increasing the production of safe, nutritious and diverse foods and promoting the nutritional value of food and agricultural products; facilitating access to inputs, technology, and markets; generating employment in downstream activities; or setting up community storage facilities to reduce postharvest losses and price volatility.*

And:

*When appropriate, **identify food-related concerns** of different stakeholders and evaluate strategies for meeting investment objectives while respecting the food-related concerns of different stakeholders, through consultations with relevant stakeholders.*<sup>82</sup>

Hence, the OECD-FAO Guidance acknowledges that many human rights relevant to food security can be impacted by business. Enterprises must define and prioritize salient risks, the most severe negative impacts, and handle them accordingly. Furthermore, the guidance provides tools for businesses that wish to contribute to the attainment of the SDGs.

## Conclusion

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<sup>81</sup> [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#), Annex A, Chapter 5, Food Security and nutrition

<sup>82</sup> [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#), Annex A: Measures for risk mitigation and prevention along agricultural supply chains, Page 62



The OECD Guidelines provide a roadmap for businesses seeking to behave responsibly. They are expectations from not only governments, but also other businesses, employees, civil society, labor organizations and more. The guidelines work in tandem with the OECD sectoral guidance documents and provide business with specific tools to identify, assess, mitigate and account for how they address actual and potential adverse impacts in their activities. These adverse impacts may include issues of food security, healthy diets and consumer interests

Attainment of the SDGs and responsible business conduct go hand in hand. The two are interlinked and co-dependent. Businesses do have the potential to generate growth, employment and development through their operations, but they will not be able to do so without behaving responsibly. The OECD Guidelines provide a framework and a tool to ensure sustainable development.



***Part II of the program was a Technical Workshop to explore further some of the issues raised in the open seminar.***

***Photo: FIAN Norway (By Marit Erdal)***

***APPENDIX:***  
***Seminar program***

# Human Rights and Healthy Diets

Does the food industry have a responsibility to respect the human right to adequate food and diet-related health?

A seminar hosted by FoHRC- Food, Human Rights and Corporations, the National Nutrition Council and FIAN Norway

**Time: Thursday 8 December 2016**

Part I : Open Morning Seminar 09:00 - 12:15

Part II: Technical Workshop Afternoon

**Where: Norwegian Centre for Human Rights,  
Cort Adelers gate 30, Oslo**

## **PART I: Open Morning Seminar**

- 08:30** Registration and coffee/tea
- 09:00** Welcome and introduction by **Wenche Barth Eide, Coordinator of FoHRC**
- 09:10** *What is the responsibility of business? An overview of the UN Guiding Principles on Business and Human Rights and their applicability.*  
**Julie Schindall, Senior Advisor at Shift**
- 09:40** *Regulating food marketing to children: towards a children's rights approach?*  
**Professor Amandine Garde and Ben Murphy, Law & Non-Communicable Diseases Unit, University of Liverpool**
- 10:10** Coffee/tea and fruits
- 10:30** *The Government's plan for healthier diets in Norway. What role does the industry play?*  
**Fredrik Wang Gierløff, State Secretary, Ministry of Health and Care Services**
- 10:45** *Competition in the food industry driving healthier diets.*  
**Petter Haas Brubakk, Director-General of the Federation of Norwegian Food and Drink Industry, Confederation of Norwegian Enterprise**
- 11:00** *Expectations to businesses - OECD Guidelines for responsible business conduct.*  
**Cathrine Halsaa, Head of Secretariat, Norway's OECD National Contact Point**
- 11:10** Video message from **Dr. Francesco Branca, Director of the Department of Nutrition for Health and Development, World Health Organization (WHO)**
- 11:20-12:15** Discussion with introductory remarks by **Stineke Oenema, Coordinator, UN System Standing Committee on Nutrition (UNSCN)**

**Afternoon: PART II: Technical Workshop (by invitation)**



FoHRC is an interdisciplinary research and action network, with representatives from the University of Oslo, Oslo and Akershus University College of Applied Sciences, FIAN Norway, and Redd Barna. FoHRC's institutional home is the Norwegian Centre for Human Rights.

Nasjonalt råd for Ernæring  
National Nutrition Council



UiO : Norwegian Centre for Human Rights  
University of Oslo

