



14<sup>th</sup> April 2023

Mr. Justice Christopher Blackman, GCM  
Chairman, Constitutional Reform Commission  
2nd Floor, E. Humphrey Walcott Building  
St. Michael, Barbados

Dear Justice Blackman,

Re: **The inclusion of the right to health and right to adequate food in the new Constitution of Barbados**

My name is Trevor Hassell. I am the President of the Healthy Caribbean Coalition (HCC), an alliance of over 60 health and non-health civil society organisations (CSOs), including the Heart and Stroke Foundation of Barbados (HSFB), whose activities and advocacy support the rights to health, adequate food and related rights for Barbadians. HCC works closely with regional leaders in non-communicable disease (NCD) prevention and control to strengthen and support the implementation of programmes and policies aimed at reducing the morbidity and mortality associated with NCDs, including in relation to children.

On behalf of the HCC and HSFB, supported by the academic partnership of the Law and Health Research Unit (LHRU), University the West Indies (UWI), Cave Hill Campus, and the Global Center for Legal Innovation on Food Environments (Global Center) at the O'Neill Institute for National and Global Health at Georgetown University,<sup>1</sup> I urge the Barbados Constitutional Reform Commission to recommend the inclusion of the right to health and the right to adequate food in the new Constitution of Barbados to reflect Barbados' ongoing commitment to protecting these rights.

Explicit provisions reflecting these rights are essential to ensure that our supreme law, the Constitution, sets the agenda for the State to engage with Barbadians to guarantee the realisation of these rights and enable our people to seek redress for rights violations.

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<sup>1</sup> The Global Center for Legal Innovation on Food Environments builds connections between academic legal scholarship and applied initiatives, amplifying the impact of both in the process. The Center generates and disseminates information on food law and policy, builds capacity in the field, and provides technical assistance to international organisations, governments, and civil society.

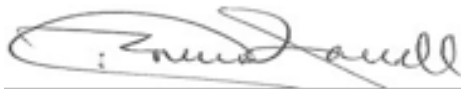
In support of this petition, we have attached HCC and HSFB's joint proposal outlining:

1. the rationale for including an explicit right to health and right to adequate food in the new Constitution of Barbados;
2. the content and scope of these rights, and central elements that should be contemplated to align Barbados' human rights framework with its duty to respect, protect and fulfil human rights; and
3. recommendations to inform the drafting of these constitutional provisions.

We are excited that our transition to a parliamentary Republic has already resulted in several rights-supportive commitments in the Charter of Barbados, and that now, this process of constitutional reform is an opportunity for us to decide on our collective future.

Thank you for considering our submission. If you have any questions, please do not hesitate to reach out to me via email at [Trevor.hassell@healthycaribbean.org](mailto:Trevor.hassell@healthycaribbean.org) or HCC, Executive Director, Maisha Hutton at [maisha.hutton@healthycaribbean.org](mailto:maisha.hutton@healthycaribbean.org).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Trevor Hassell', written over a horizontal line.

Sir Trevor Hassell  
President, HCC

# **Proposal for the inclusion of the right to health and right to adequate food in the new Constitution of Barbados**

## **Submission to the Constitutional Reform Commission**

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## Introduction

This submission from the Healthy Caribbean Coalition (HCC) and Heart and Stroke Foundation of Barbados (HSFB), supported by the academic partnership of the Law and Health Research Unit (LHRU), University the West Indies (UWI), Cave Hill Campus, and the Global Center for Legal Innovation on Food Environments (Global Center) at the O’Neill Institute for National and Global Health at Georgetown University, proposes the inclusion of provisions on the right to health and the right to adequate food in the new Constitution of Barbados, to protect these rights from interference by actors with opposing interests and to ensure accountability and transparency in policymaking. Barbados has ratified or acceded to several international human rights treaties that recognise the right to health, the right to adequate food, and other related human rights which impose corresponding obligations.<sup>2</sup> Although our government has commenced incorporating various aspects of these rights at the domestic level through policies, programmes and legal instruments, explicit constitutional provisions reflecting these rights are essential to ensure that the supreme law of our land, the Constitution, sets the agenda for the engagement of the State with the people to guarantee the realisation of these rights.

Our transition to a parliamentary Republic has already resulted in several rights-supportive commitments in the Charter of Barbados,<sup>3</sup> and now, this process of constitutional reform is an opportunity for us to concretely decide on the future we envision as a collective. In addition, enshrining these rights in the new Constitution provides an opportunity for our nation’s people to seek redress where these rights are violated. This submission discusses the content and scope of these rights and proposes central elements that a constitutional right to health and right to adequate food should contemplate to align our constitutional rights framework with Barbados’ duty to respect, protect and fulfil human rights, and to chart a path forward that is cognisant of the welfare of all Barbadians. Finally, recommendations are made to inform the drafting of these constitutional provisions.

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<sup>2</sup> See e.g., International Covenant on Economic, Social and Cultural Rights (ICESCR) (acceded to on 5<sup>th</sup> January 1973); Convention on the Rights of the Child (CRC) (ratified on 9<sup>th</sup> October 1990); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (ratified on 24<sup>th</sup> July 1980); Convention on the Rights of Persons with Disabilities (CRPD) (ratified on 27<sup>th</sup> February 2013); and American Convention on Human Rights (ACHR) (ratified on 5<sup>th</sup> November 1981).

<sup>3</sup> Charter of Barbados (2021). See Article II on the duty of care which arguably includes recognition of access to food and nutritional security, affordable and efficient public transport, water, sanitation, universal quality education, quality health care, affordable housing and the provision of social protections aimed at eradicating poverty and providing for the most vulnerable people within our society, among other factors. See also, Article IV on the right to live in a healthy and balanced environment.  
[https://www.barbadosparliament.com/uploads/bill\\_resolution/4ce7d0e312158c7fd9134f37fe7656d9.pdf](https://www.barbadosparliament.com/uploads/bill_resolution/4ce7d0e312158c7fd9134f37fe7656d9.pdf).

## *Noncommunicable diseases*

The civil society organisations making this submission are interested in accelerating the creation of a legal and policy environment in Barbados that respects, protects and fulfils all human rights, in particular the right to health and the right to adequate food, with emphasis on children, who are particularly vulnerable to diet-related non-communicable diseases (NCDs). NCDs, also known as chronic diseases, refer to various conditions, including cardiovascular and chronic respiratory diseases, cancers, and diabetes, which are not primarily caused by acute infection, but which result in long-term health and other consequences.<sup>4</sup> Those four main NCDs are the leading cause of mortality, morbidity and disability in the Caribbean and are largely attributable to the four main risk factors of tobacco use, harmful alcohol consumption, unhealthy diets, and physical inactivity.<sup>5</sup> In Barbados, NCDs are estimated to account for the majority (83%) of all deaths.<sup>6</sup> Specifically, unhealthy diet is a major risk factor for diet-related NCDs, and increasingly among children. Barbados recorded the highest prevalence of overweight among children under 5 (almost 12 percent) among CARICOM Member States.<sup>7</sup> Children's dependency on others, such as parents or schools, makes them vulnerable to diet-related NCDs.<sup>8</sup> The NCD crisis in Barbados warrants urgent legislative and other action.

This situation has led to the introduction of the Barbados School Nutrition Policy, which seeks, among other objectives, "to ensure that only nutritious food and beverages that enhance health, learning and well-being of school children are sold, served and promoted in school environments."<sup>9</sup> In addition, successive governments of Barbados have introduced, and then increased, the *ad valorem* tax on sugar-sweetened beverages (SSBs) from 10 percent

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<sup>4</sup> World Health Organisation (WHO). Fact Sheet on Noncommunicable diseases. <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>.

<sup>5</sup> The Use of Law to Address Noncommunicable Diseases in the Caribbean. Subregional Workshop Report. Miami. 3–5 March 2020. Pan American Health Organisation (PAHO). 2021. PAHO/NMH/CRB/21-0003. Note that since 2018, the NCD agenda has broadened to include mental health and air pollution). [https://iris.paho.org/bitstream/handle/10665.2/53821/PAHONMHCRB210003\\_eng.pdf?sequence=1&isAllowed=y](https://iris.paho.org/bitstream/handle/10665.2/53821/PAHONMHCRB210003_eng.pdf?sequence=1&isAllowed=y).

<sup>6</sup> World Health Organisation (WHO). NCDs Data Portal. Small Island Developing States. <https://sids.ncdportal.org/CountryProfile/GHE110/BRB>.

<sup>7</sup> FAO, IFAD, PAHO, UNICEF and WFP. 2023. Regional Overview of Food Security and Nutrition – Latin America and the Caribbean 2022: towards improving affordability of healthy diets. Santiago. <https://doi.org/10.4060/cc3859en>.

<sup>8</sup> Office of the United Nations High Commissioner for Human Rights. Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs. 2020. <https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning>.

<sup>9</sup> Barbados School Nutrition Policy (2023). <http://mes.gov.bb/News/Latest/National-School-Nutrition-Policy.aspx>.

in 2015 to the World Health Organisation (WHO)-recommended 20 percent in 2022, in order to raise prices and reduce consumption.<sup>10</sup>

Beyond the health burden of NCDs, including diet-related NCDs, the adverse impacts on the social, economic and sustainable development of Barbados and its population mean that lives and livelihoods are affected, with direct impacts on human rights. NCDs should therefore also be addressed as a human rights issue. The Chapter on the “Protection of fundamental rights and freedoms of the individual” in the Barbados Constitution should lead the charge, by expressly including the right to health and the right to adequate food, as well as other related human rights. Law, notably the new Barbados Constitution, must play a pivotal role in combatting the heavy burden of diseases faced by our small island developing state and securing our sustainable development.

That said, within the context of NCD prevention and control, a comprehensive approach is required and policies, such as labelling and policies that ban or limit the sale and marketing of unhealthy products, especially to vulnerable populations such as children, have been met with considerable resistance from some powerful actors in the private sector, who have sought to delay, dilute or derail public health policy. Weak (public) health governance, including a lack of robust conflict of interest policies, regulations to prevent undue influence of private actors on policy-making processes and access to information legislation, compromise system transparency and accountability as well as the ability of governments to effectively safeguard policy and law-making spaces. Ultimately, Barbados’ ability to guarantee public interest is hampered. This proposal therefore also addresses the commercial determinants of health and the issue of industry interference, in an effort to further buttress the power of the Parliament of Barbados “to make laws for the peace, order and good government of Barbados”.<sup>11</sup>

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<sup>10</sup> Budgetary Proposal & Financial Statement 2022 - presented by Prime Minister Mia Amor Mottley. <https://gisbarbados.gov.bb/download/budgetary-proposal-financial-statement-2022/>.

<sup>11</sup> The Constitution of Barbados. Section 48.

## International human rights law

Barbados has acceded to or ratified international human rights treaties that recognise the right to the enjoyment of the highest attainable standard of health and the right to adequate food, among other human rights. These include:

- International Covenant on Economic, Social and Cultural Rights (ICESCR) (acceded to on 5<sup>th</sup> January 1973);
- Convention on the Rights of the Child (CRC) (ratified on 9<sup>th</sup> October 1990);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (ratified on 24<sup>th</sup> July 1980);
- Convention on the Rights of Persons with Disabilities (CRPD) (ratified on 27<sup>th</sup> February 2013); and
- American Convention on Human Rights (ACHR) (ratified on 5<sup>th</sup> November 1981).<sup>12</sup>

The international human rights framework imposes three levels of obligations on States: to respect, protect, and fulfil all human rights. These obligations include the need for States to take “all appropriate means [towards the realisation of human rights], including particularly the adoption of legislative measures” for their realisation.<sup>13</sup> Where Barbados has begun to take legislative measures in line with its international obligations under the right to health and right to adequate food, the constitutionalisation of these rights would grant them the highest level of authority within the country’s legal system, thereby informing the entire legal framework and creating greater awareness and recognition across government and society.

The rights to health and adequate food rest upon State obligations of both immediate and progressive realisation. Immediate obligations include the need to ensure that rights are guaranteed without discrimination, as well as the need to take “deliberate, concrete and targeted” steps to “move as expeditiously and effectively as possible towards” the full realisation of human rights.<sup>14</sup> The establishment of a robust health system which is able to

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<sup>12</sup> The American Convention does not explicitly recognise the right to health or the right to adequate food. However, the case law of the Inter-American Court of Human Rights has established a progression away from adjudicating the right to health in relation to civil and political rights such as the rights to life and/or personal integrity. Recently, the Court has established that the right to health, and other socio-economic and cultural rights, can be directly adjudicated under Article 26. See e.g., S Serrano Guzmán ‘Comentarios sobre el giro jurisprudencial de la Corte Interamericana en materia de justiciabilidad de los derechos económicos, sociales, culturales y ambientales a la luz de seis sentencias emitidas entre 2017 y 2019’ in M Morales Antoniazzi et al (coord) *Interamericanización de los DESCA: el Caso Cuscul Pivaral de la Corte IDH* (2020).

<sup>13</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR). 1996. Article 2.1. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>14</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant). 1990. See paras 1, 2 and 9. <https://www.refworld.org/pdfid/4538838e10.pdf>.

provide a wide set of goods, services and facilities represent obligations of a progressive nature.

The following sections will outline the content and scope of the right to health and right to adequate food, address the State's obligations in relation to each right, and provide elements for consideration in the drafting process.

## **Right to health**

The right to the enjoyment of the highest attainable standard of physical and mental health, more commonly referred to as the *right to health*, was first articulated in the preamble of the 1946 Constitution of the WHO as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.<sup>15</sup> The right to health was then entrenched in the ICESCR and has been considered as a protected right under Article 26 of the American Convention.<sup>16</sup> The ICESCR provides that States “recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.<sup>17</sup> The ICESCR states in article 2.2 that this fundamental human right, like all others, is one to which every human being is entitled without discrimination. The ICESCR also identifies measures that States Parties must adopt, including the prevention, treatment and control of epidemic, endemic, occupational and other diseases.<sup>18</sup>

The Committee on Economic, Social and Cultural Rights (CESCR), the authoritative interpreter of the ICESCR, in General Comment No. 14 (2000), qualified the right to health “as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.”<sup>19</sup> The right to health includes the right of every person to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health. Importantly, the right to health also

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<sup>15</sup> Barbados is a WHO Member State having accepted the WHO Constitution (in 1967).

<sup>16</sup> See, Inter-American Court of Human Rights. Case of The Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Judgement of February 6, 2020. Merits, Reparations and Costs. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf).

<sup>17</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR). 1996. See Article 12.1. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>18</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR). 1996. See Article 12.2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

<sup>19</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12). 2000. See para. 11. <https://www.refworld.org/pdfid/4538838d0.pdf>.

encompasses various freedoms, such as the right to control one's health and body, including sexual and reproductive freedom, as well as entitlements like "the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."<sup>20</sup> The right to health is therefore a broad right that goes beyond the provision of health care.

According to the CESCR, the essential and interrelated elements of the right to health are<sup>21</sup>:

- *Availability*: there must be a sufficient number of public health facilities, goods and services, health care centres and health programmes.
- *Accessibility*: health goods and services must be accessible to all, without discrimination, in four overlapping dimensions: (1) de jure (legal) and de facto (in fact or in effect) non-discrimination; (2) physical and geographic accessibility; (3) economic accessibility (or affordability); and (4) accessibility of information.
- *Acceptability*: health goods and services should be respectful of medical ethics and people's culture. At the same time, they should be sensitive to age and gender.
- *Quality*: health goods and services must be scientifically and medically appropriate.

The right to health is also found within specific human rights instruments that have carved out special considerations for certain groups. For instance, specific human rights treaties for children's rights<sup>22</sup>, women's rights<sup>23</sup>, and the rights of persons with disabilities<sup>24</sup>, enshrine the right to health for these groups in a manner that mirrors the broad interpretation of the right to health in the ICESCR explored above.

At the regional level, economic, social, and cultural rights are protected as autonomous and justiciable rights by Article 26 of the ACHR. The Inter-American Court of Human Rights

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<sup>20</sup> *Ibid*, para. 8.

<sup>21</sup> *Ibid*, para. 12.

<sup>22</sup> Convention on the Rights of the Child (CRC). 1989. Article 24. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>23</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). 1979. CEDAW contains articles related to the right to health protection (art. 10, para. h), equal access to health care (art. 12), and access to information and advice on family planning (art. 11, para. f). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

<sup>24</sup> Convention on the Rights of Persons with Disabilities (CRPD). 2006. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

has also provided guidance on the content of the right to health that relies on the interpretation of the ICESCR and General Comment 14, as explored above.<sup>25</sup>

## Right to adequate food

Access to adequate food is considered to be a critical determinant of health, but it is also considered to be a human right in itself that the new Constitution of Barbados should include.

The right to adequate food, enshrined in Article 11 of the ICESCR and considered as a protected right under Article 26 of the American Convention,<sup>26</sup> provides that adequate nutrition is necessary to achieve an “adequate standard of living”.<sup>27</sup> General Comment No. 12 (1999) by the CESCR elaborates that States must “ensure [...] access to the minimum essential food which is sufficient, nutritionally adequate and safe...”,<sup>28</sup> and further explains that this right should “not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients”.<sup>29</sup> The right to adequate food therefore goes beyond the mere protection against hunger to incorporate considerations regarding the nutritional and cultural adequacy of food.

The CESCR outlines the core elements of the right to adequate food in order to reflect the broad understanding of this right:

- *Availability*: food must be available in “quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”.<sup>30</sup> The availability of food refers to either the possibility of “feeding oneself directly from productive land or other natural resources” or through “well-functioning distribution, processing and market systems that can move food” to where it is needed.<sup>31</sup>
- *Economic and physical accessibility*: accessing food should always be sustainable and not interfere with other human rights.<sup>32</sup> Adequate food must be available to all people, including the physically vulnerable and disadvantaged groups, “such

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<sup>25</sup> See, Isabel Barbosa and Margherita M Cinà, Beyond Tobacco: Lessons on Noncommunicable Diseases from the Inter-American Human Rights System, in International Human Rights Law and the Framework Convention on Tobacco Control: Lessons Learned from Africa and Beyond, editors Ebenezer Durojaye and Lucyline Nkatha Murungi, Routledge (2023).

<sup>26</sup> See, Inter-American Court of Human Rights. Case of Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Judgement of February 6, 2020. Merits, Reparations and Costs. [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf).

<sup>27</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR). 1996. See Article 11

<sup>28</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment 12: The Right to Adequate Food (Article 11). 1999. See para. 14. <https://www.refworld.org/pdfid/4538838c11.pdf>.

<sup>29</sup> *Ibid*, para. 6.

<sup>30</sup> *Ibid*, para. 8.

<sup>31</sup> *Ibid*, para. 12.

<sup>32</sup> *Ibid*, para. 8.

as infants and young children, elderly people, the physically disabled, the terminally ill, and persons with persistent medical problems, including the mentally ill”.<sup>33</sup> The costs associated with the acquisition of food must not jeopardise the provision and satisfaction of other basic needs.<sup>34</sup>

In relation to children, the CRC also recognises the importance of adequate food as a determinant of the right to health. Under Article 24, the CRC dictates that the full implementation of the right to health requires States to “take appropriate measures [...] “[t]o combat disease and malnutrition [...] through the provision of adequate foods”.<sup>35</sup>

The Committee on the Rights of the Child expands specifically on the State’s duties for the “provision of adequate nutritious foods”.<sup>36</sup> States must adopt measures to “ensure access to nutritionally adequate, culturally appropriate and safe food and to combat malnutrition”<sup>37</sup> that include, for example, “direct nutrition interventions for pregnant women”, the protection and promotion of breastfeeding for infants up to 6 months, “[a]dequate nutrition and growth monitoring in early childhood”, school feeding programmes, and addressing “obesity in children, as it is associated with hypertension, [...] cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death.”<sup>38</sup> Likewise, recognising the essential nature of safe drinking water for the full enjoyment of life and other human rights, the CRC has highlighted the need to take concrete actions to guarantee the conditions of access to adequate food.<sup>39</sup>

Women and persons with disabilities are also recognised as important groups when considering the right to adequate food. CEDAW recognises the importance of the right to adequate food, requiring States parties to guarantee appropriate services and “[ensuring] adequate nutrition during pregnancy and lactation.”<sup>40</sup> CEDAW establishes that “nutritional well-being throughout [the] life cycle through the ingestion of foods suitable for consumption, nutritious and adapted to local conditions” is a necessary condition for the full

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<sup>33</sup> *Ibid*, para. 13.

<sup>34</sup> *Ibid*, para. 13.

<sup>35</sup> Convention on the Rights of the Child (CRC). 1989. Article 24.2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>36</sup> Committee on the Rights of the Child. General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24). 2013. <https://digitallibrary.un.org/record/778524?ln=en>.

<sup>37</sup> *Ibid*, para. 43.

<sup>38</sup> *Ibid*, paras. 43-47.

<sup>39</sup> *Ibid*, para. 48.

<sup>40</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). 1979. Art. 12.2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

realisation of the right to health.<sup>41</sup> Consequently, States “must take measures to facilitate physical and economic access to productive resources (...) and guarantee (...) that the special nutritional needs of all women under their jurisdiction are met.”<sup>42</sup> The CRPD makes reference to the right to adequate food in Article 28, establishing that “States Parties recognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.<sup>43</sup>

## State’s legal obligations

As mentioned above, the human rights framework imposes three levels of obligations on State Parties: to respect, protect and fulfil. While these apply to all human rights, this section provides guidance on how these obligations relate to the rights to health and to adequate food, as well as explain how the constitutionalisation of these rights will help Barbados move towards the realisation of these three levels of obligations.

First, the *obligation to respect* requires States to refrain from interfering directly or indirectly with the enjoyment of the rights to health and adequate food.<sup>44</sup> This obligation requires States to refrain from, for example, “engaging in any conduct that is likely to result in preventable morbidity or mortality” such as incentivizing the consumption of unhealthy products<sup>45</sup>, or from preventing access to or interfering with the availability of adequate food.<sup>46</sup> This obligation also requires that States do not discriminate against people with regard to access to health services and “access to food, as well as to means and entitlements for its

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<sup>41</sup> Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health). 1999. <https://www.refworld.org/docid/453882a73.html>, para 7.

<sup>42</sup> *Ibid.*

<sup>43</sup> Convention on the Rights of Persons with Disabilities (CRPD). 1966. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

<sup>44</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12). 2000. See para. 33. <https://www.refworld.org/pdfid/4538838d0.pdf>; and CESCR General Comment 12: The Right to Adequate Food (Article 11). 1999. See para. 15. <https://www.refworld.org/pdfid/4538838c11.pdf>.

<sup>45</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12). 2000. See para 33; and Office of the United Nations High Commissioner for Human Rights. Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs. 2020. <https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning>.

<sup>46</sup> and CESCR General Comment 12: The Right to Adequate Food (Article 11). 1999. See para. 15. <https://www.refworld.org/pdfid/4538838c11.pdf>.

procurement” based on the grounds of “race, colour, sex, language, age, religion, political and other status”.<sup>47</sup>

The obligation to *protect* requires States to take measures to prevent third parties, including companies/businesses, from interfering with the enjoyment of all human rights. In relation to the right to health and right to adequate food, this obligation requires States to adopt measures to prevent and address adverse impacts from private actors’ activities on these rights. This includes the duty of States to regulate the actions of entities that, for example, interfere with the provision of health care goods and services, prevent policymakers from regulating the marketing of health-harming products, or that have an impact on the accessibility and availability of nutritious and adequate food.<sup>48</sup>

This obligation therefore requires States to address the commercial determinants of health, or those “private sector activities that affect people’s health, directly or indirectly, positively or negatively”.<sup>49</sup> The WHO recognises that “the private sector influences the social, physical and cultural environments through business actions and societal engagements; for example, supply chains, labour conditions, product design and packaging, research funding, lobbying, preference shaping and others”.<sup>50</sup> Relatedly, the ultra-processed food and beverage industry represents one of the four industries<sup>51</sup> that is responsible for an estimated third of global deaths per year.<sup>52</sup> Addressing the commercial determinants of health requires strong regulatory frameworks that place the right to health and right to adequate food over commercial profits, thereby creating health-supporting environments in which, for example, the accessibility, availability and affordability of health-harming products, such as ultra-processed products, are significantly limited or altogether absent.<sup>53</sup> Weak (public) health governance, including lack of robust conflict of interest policies and access to information

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<sup>47</sup> Committee on Economic, Social and Cultural Rights (CESCR) General Comment 12: The Right to Adequate Food (Article 11). 1999. See para. 18. <https://www.refworld.org/pdfid/4538838c11.pdf>.

<sup>48</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12). 2000. See para. 33.

<sup>49</sup> WHO. Fact Sheet on Commercial Determinants of Health. 2023. <https://www.who.int/news-room/fact-sheets/detail/commercial-determinants-of-health>.

<sup>50</sup> *Ibid.*

<sup>51</sup> The other industries include the tobacco industry, fossil fuel industry, and alcohol industry.

<sup>52</sup> Unravelling the commercial determinants of health. The Lancet. 2023. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)00590-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)00590-1/fulltext).

<sup>53</sup> Office of the United Nations High Commissioner for Human Rights. Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs. 2020. <https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning>. See: “In line with the right to health framework, States should regulate the activities of the food and beverage industry, which are increasingly implicated in the global obesity and NCDs epidemic, in order to mitigate the detrimental impact their actions have on the enjoyment of the right to health and other rights. States should decisively counter undue influence of corporations on government decision-making by strengthening legal frameworks and safeguarding the policies that protect the right to health... Furthermore, the food and beverage industry has an independent responsibility to respect human rights.”).

legislation, compromise system transparency, accountability and ability of governments to ably safeguard policy-making spaces. Consequently, opening the door to conflicts of interest and policy interference by some industry actors.

Lastly, the human rights framework imposes an *obligation to fulfil* human rights, which requires States to adopt all appropriate legislative, administrative, budgetary, judicial, promotional, and other measures towards the full realisation of all rights.<sup>54</sup> States should give “sufficient recognition” to these rights within the national political legal system which include, among other actions, the potential constitutionalisation of these rights.<sup>55</sup>

All of these obligations are relevant when defining the scope and content of the rights in the Constitution and therefore are also important considerations for the constitutional reform process and, ultimately, the new Constitution.

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<sup>54</sup> Committee on Economic, Social and Cultural Rights (CESCR). General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12). 2000. <https://www.refworld.org/pdfid/4538838d0.pdf>.

<sup>55</sup> *Ibid*, para 36.

## Drafting considerations for the inclusion of the right to health and right to adequate food

The article(s) of the new constitution relating to these rights should be in line with Barbados' international human rights obligations. Accordingly, it is recommended that the drafting take into consideration the following:

Right to Health	Right to Adequate Food
<p><b>The content and scope of the right to health:</b> Drafting should consider the inclusive nature of the right to health, which covers access to facilities, goods, services as well as the conditions necessary for the realisation of the highest attainable standard of health. A comprehensive approach also requires including, as part of the right to health, its underlying determinants, such as access to clean drinking water and adequate sanitation, adequate supplies of healthy food, adequate nutrition, adequate housing, healthy working and environmental conditions, and access to education and information on health-related issues, including sexual and reproductive health.</p>	<p><b>The content and scope of the right to adequate food:</b> The recognition of the right to adequate food should be based on a definition that denotes the scope and breadth of the right, admitting that it is not equivalent to a right to be fed, but rather to be fed in conditions of dignity, valuing the cultural and nutritional adequacy of food.</p>
<p><b>The essential and interrelated elements of the right to health:</b> Drafting should consider including the essential and interrelated elements of the right to health, such as availability, accessibility, acceptability and quality of health facilities, goods and services.</p>	<p><b>The essential and interrelated elements of the right to adequate food:</b> Drafting should consider including the essential and interrelated elements of the right to adequate food; namely, availability, and economic and physical access. Food must be culturally acceptable and should go beyond a minimum package of calories, proteins and specific nutrients. The right to adequate food should contemplate not only the right to solid food but also the right to liquid food and to drinking water.<sup>56</sup></p>
<p><b>The recognition of enabling conditions for the realisation of the right to health and right to adequate food:</b> Measures aimed at the realisation of the right to health should consider not just access to health care but also the determinants of health. Measures aimed at the realisation of the right to food should include</p>	

<sup>56</sup> UN Commission on Human Rights. Report by the Special Rapporteur on the Right to Food. 2001. See para. 32. /<https://www.refworld.org/docid/45377ab90.html>.

those needed to develop a healthy and sustainable food environment, as well as aimed at providing information and education.

**Advance in a concrete and constant manner, taking into account obligations of immediate effect, towards the full realisation of the rights:** Drafting should consider the obligations to be satisfied immediately by the State, including the duty to take necessary and deliberate measures to satisfy the minimum contents of the right under conditions of non-discrimination, in order to advance in a concrete and constant manner, as expeditiously and efficiently as possible, towards the full realisation of the right to health and right to adequate food. Likewise, drafting should also consider that the State has a concrete and constant obligation to move as expeditiously and efficiently as possible towards the full realisation of the right to health and the right to food, contemplating the duty not to adopt unjustified regressive measures and/or to unjustifiably limit the enjoyment of these rights.

**State's duty to regulate, supervise and oversee private actors that impact the right to health and the right to food:** Drafting should consider the State's broad regulatory, supervisory and oversight powers over private actors that may interfere with the enjoyment of the right to food and the right to health, including both access to health care goods and services as well as access to food and those whose activities that have adverse impacts on determinants of health. In particular, the necessary institutional arrangements must be put in place to ensure that the obligations of supervision and oversight are adequately exercised with effective and timely accountability mechanisms.

**Ensure that the realisation of the right to health and right to adequate food are in accordance with the best available scientific evidence:** Drafting should consider the need for the measures established in pursuit of compliance with these rights to be based on the best scientific evidence available and be free from conflicts of interest. Interference from industries with interests that do not align with the rights to health and to adequate food should be restricted. Relatedly, the right to access information is supportive of this drafting consideration since it safeguards accountability and transparency in decision-making.

**An adequate judicial remedy to respond to violations of the rights to health and to adequate food:** The new Constitution should ascertain the justiciability of economic, social and cultural rights.