

**Submission on Draft Regulations Relating to the Labelling and Advertising of Foodstuffs
(Regulation No. 3337) of the *Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972***

Comments by: Global Center for Legal Innovation on Food Environments at the O'Neill Institute for National and Global Health Law, Georgetown University Law Center

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Re: Draft Regulation No. 3337

The Global Center for Legal Innovation on Food Environments (Global Center) at the O'Neill Institute for National and Global Health Law housed at Georgetown University Law Center, is an initiative that builds connections between academic legal scholarship and applied work, generates knowledge, builds capacity, and provides technical assistance in the areas of food law and policy, specifically as it relates to unhealthy diets as a modifiable risk factor for diet-related non-communicable diseases (NCDs). Specifically, the Global Center works on human rights-based regulatory measures that promote healthy environments and seek to discourage the consumption of unhealthy food and beverages. The Global Center therefore commends the National Department of Health's (NDOH) initiative to publish the Regulations Relating to the Labelling and Advertising of Foodstuffs (Regulation No. 3337) and welcomes the opportunity to submit comments.

Overall, the Global Center is supportive of Regulation No. 3337. Our submission seeks to provide the NDOH with a strong foundation in international and regional human rights law to support and defend this Regulation as it continues with its efforts to combat NCDs. Part I briefly sets out the relevance of Regulation No. 3337 in addressing NCDs and the relationship with regional and international human rights obligations. This section also provides information from comparative law, highlighting examples from jurisdictions where similar regulations have been adopted, and for which the Global Center has provided technical assistance.¹ Part II of the submissions provides both support and recommendations for specific regulations within Regulation No. 3337.

We hope that the NDOH finds these submissions helpful in its mandate to protect public health and human rights in South Africa, and we remain at the Department's disposal for any clarifications or requests for additional information now or in the future.

¹ The Global Center has provided technical assistance on issues dealing with front-of-package warning label regulations in a number of countries including, Argentina, Brazil, Colombia, and Mexico, by sharing our expertise with civil society members and/or governments throughout the regulatory process including in defending adopted regulations from legal challenges.

Part I: Front-of-package labels and human rights law

The rise of unhealthy diets is contributing to the global epidemic of NCDs.² Characterized by an intake of products with an excess of critical nutrients (sugars, fats and salt) that are often ultra-processed,³ unhealthy diets work alongside tobacco use, alcohol consumption, and physical inactivity as modifiable factors that increase global rates of cardiovascular diseases, cancers, chronic respiratory diseases, and diabetes.⁴

Where these were once seen as diseases of rich countries, low- and middle-income countries (LMICs) are increasingly impacted by NCDs, with 77% of all NCD deaths occurring in LMICs.⁵ South Africa is not immune to this growing public health threat. Critically, South Africa is contending with the double burden of malnutrition which is the coexistence of undernutrition, stunting, and wasting, alongside diet-related NCDs within individuals, households and populations across the life course.⁶ This phenomena is particularly common in LMICs that have experienced rapid changes in food systems such as an increase in the availability of unhealthy products, and creates unique challenges for governments seeking to develop sustainable solutions, as obesity and overweight live alongside other forms of malnutrition.⁷ Importantly, obesity and overweight are metabolic risk factors for NCDs and are widely used as a proxy for understanding the impacts that unhealthy diets have on individual and population health.⁸

NCDs have a two-fold impact on South Africa. First, South Africa has one of the highest prevalence of obesity in both women and men globally.⁹ In 2018, NCDs accounted for 59% of the deaths in South Africa, compared to 44% in 2008,¹⁰ with six of the top ten causes of deaths being attributable to NCDs.¹¹ Significant amounts of public funds are therefore directed towards treating preventable NCDs.¹² Second, NCDs impact the country's economic potential. The

² World Health Organization, 'Noncommunicable Diseases' (*World Health Organization*, 16 September 2022) <www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases> accessed 10 July 2023.

³ Pan American Health Organization, *Pan American Health Organization Nutrient Profile Model* (PAHO 2016) <https://iris.paho.org/bitstream/handle/10665.2/18621/9789275118733_eng.pdf?sequence=9&isAllowed=y> accessed 16 June 2023; United Nations General Assembly, 'Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Anand Grover' (2014) A/HRC/26/31 para 3.

⁴ World Health Organization, 'Noncommunicable Diseases' (n 2).

⁵ World Health Organization, 'Noncommunicable Diseases' (n 2).

⁶ Abigail Harper and others, 'Dietary Diversity, Food Insecurity and the Double Burden of Malnutrition among Children, Adolescents and Adults in South Africa: Findings from a National Survey' (2022) 10 *Frontiers in Public Health* <<https://doi.org/10.3389/fpubh.2022.948090>> accessed 19 July 2023.

⁷ Barry M Popkin, Camila Corvalan and Laurence M Grummer-Strawn, 'Dynamics of the Double Burden of Malnutrition and the Changing Nutrition Reality' (2020) 395 *The Lancet* 65 <[https://doi.org/10.1016/S0140-6736\(19\)32497-3](https://doi.org/10.1016/S0140-6736(19)32497-3)> accessed 19 July 2023.

⁸ Leandra Abarca-Gómez and others, 'Worldwide Trends in Body-Mass Index, Underweight, Overweight, and Obesity from 1975 to 2016: A Pooled Analysis of 2416 Population-Based Measurement Studies in 128.9 Million Children, Adolescents, and Adults' (2017) 390 *The Lancet* 2627 <[https://doi.org/10.1016/S0140-6736\(17\)32129-3](https://doi.org/10.1016/S0140-6736(17)32129-3)> accessed 19 July 2023.

⁹ Mashudu Manafe, Paul Kiprono Chelule and Sphiwe Madiba, 'The Perception of Overweight and Obesity among South African Adults: Implications for Intervention Strategies' (2022) 19 *International Journal of Environmental Research and Public Health* <<https://www.mdpi.com/1660-4601/19/19/12335>> accessed 19 July 2023.

¹⁰ Department of Statistics South Africa, 'Mortality and Causes of Death in South Africa: Findings from Death Notification' (2023) p33 <www.statssa.gov.za/publications/P03093/P030932018.pdf> accessed 18 July 2023.

¹¹ Department of Statistics South Africa, 'Mortality and Causes of Death in South Africa: Findings from Death Notification' (2023) p1 <www.statssa.gov.za/publications/P03093/P030932018.pdf> accessed 18 July 2023.

¹² Micheal Kofi Boachie and others, 'Estimating the Healthcare Cost of Overweight and Obesity in South Africa' (2022) 15 *Global Health Action* 2045092 <<https://doi.org/10.1080/16549716.2022.2045092>> accessed 19 July 2023.

majority of these deaths are recorded amongst the economically productive age groups thus impacting productivity.¹³ Around the world, NCDs are also responsible for productivity loss as individuals leave the labour market prematurely either through disability, absenteeism, and lowered capacities for work.¹⁴ Following global and regional trends, South Africa lost an estimated \$1.88 billion of its gross domestic product between 2006 and 2015 due to diabetes, stroke and coronary heart disease.¹⁵ These social and economic impacts also hinder the achievement of sustainable development goals.¹⁶ Additionally, one of the SDG targets is to reduce NCD-related mortality through prevention and treatment.¹⁷

Given the public health, social, and economic burdens of NCDs, as well as the modifiable nature of many of these diseases, governments have a responsibility to implement measures that prevent the increase of such burdens. Global and regional public health authorities have recommended the adoption and implementation of a wide range of regulatory measures to tackle unhealthy diets as a risk factor for NCDs. Following this, countries around the globe have begun adopting and implementing interventions aimed at creating healthy food environments,¹⁸ by discouraging the consumption of unhealthy diets and at incentivizing the consumption of healthy food. Front-of-Package Labeling (FOPL) is one such intervention that targets diet-related NCDs, and should be part of a comprehensive package of interventions to increase overall effectiveness. It is against the backdrop of this factual matrix that Regulation No. 3337 should be considered.

On 21 April 2023, the South African NDOH published Regulation No. 3337 establishing front-of-package warning labels (FOPwL) - a specific scheme of FOPL that includes warning symbols for critical nutrients like sugar, fats and salt, as well as for artificial sweeteners and caffeine. Regulation No. 3337 follows similar laudable steps the NDOH has already undertaken to address diet-related NCDs, which include the adoption of mandatory regulations to reduce salt

¹³ WHO Regional Office for Africa, 'A Heavy Burden: The Productivity Cost of Illness in Africa' (2019) <www.afro.who.int/sites/default/files/2019-03/Productivity%20cost%20of%20illness%202019-03-21.pdf> accessed 20 June 2023.

¹⁴ Pan American Health Organization, 'Economics of NCDs' <www.paho.org/en/topics/economics-ncds> accessed 16 June 2023. See also: WHO Regional Office for Africa (n 13).

¹⁵ Dele O Abegunde and others, 'The Burden and Costs of Chronic Diseases in Low-Income and Middle-Income Countries' (2007) 370 *The Lancet* 1929 <[https://doi.org/10.1016/S0140-6736\(07\)61696-1](https://doi.org/10.1016/S0140-6736(07)61696-1)> accessed 19 July 2023.

¹⁶ NCD Alliance, 'NCDs and Sustainable Development' (*NCD Alliance*, 2 April 2015) <<https://ncdalliance.org/why-ncds/ncds-and-sustainable-development>> accessed 16 June 2023.

¹⁷ UN Department of Economic and Social Affairs, 'Sustainable Development Goal 3: Ensure Healthy Lives and Promote Well-being For All at All Ages', Target 3.4

<www.un.org/sustainabledevelopment/health/#:~:text=Goal%203%20targets,-3.1%20By%202030&text=3.4%20By%202030%2C%20reduce%20by,and%20harmful%20use%20of%20alcohol> accessed 13 July 2023.

¹⁸ See for example: In Brazil, where the Constitution established a school meal program as part of the right to education, Congress enacted a 2009 law that established guidelines to better execute the National School Nutrition Feeding Program, which provides nutritious school meals to more than 40 million public school students, 30% of which should be directly purchased from family farmers according to the law. Mexico has also taken measures including the taxation of sugar-sweetened beverages (which came into effect in 2014), as well as the implementation of a front-of-package warning labelling system in 2020 that warns consumers of products that contain an excess of sugars, saturated fats, trans fats, sodium, and calories, and whether it contains caffeine or non-sugar sweeteners.

consumption¹⁹ and a health promotion levy on sugary beverages.²⁰ If Regulation No. 3337 is adopted, these three regulatory interventions will put South Africa at the forefront of the fight against NCDs. We commend the publication of Regulation No. 3337 as an important step towards addressing this grave public health issue and towards achieving South Africa's international, regional and national human rights obligations, in line with international best practices and supported by scientific evidence.

Specifically, we commend the NDOH's decision to pursue the FOPwL scheme that includes warning symbols for critical nutrients. Among the existing FOPL schemes, the FOPwL has proven to be the most effective in discouraging the consumption of unhealthy products, given its ability to capture consumers' attention, provide easy, understandable information, and capacity to influence purchasing decisions.²¹ Consequently, and in line with the best available scientific evidence, this warning scheme has been adopted by several countries, including Argentina, Brazil, Canada, Colombia, Chile, Israel, Mexico, and Peru.²² The FOPwL scheme is also a materialization of the duties derived from human and fundamental rights obligations²³, which are explored below.

(a) Front-of-package Labeling and Human Rights

The escalating rates of NCDs pose serious threats to the enjoyment of various fundamental human rights guaranteed in international and regional legal instruments that have been ratified by South Africa, as well as in national legal instruments. These rights, which are interdependent and indivisible, include, but are not limited to the rights to health, adequate food, and equality and non-discrimination. Below, we briefly develop the content of these rights, and their corresponding obligations, in the context of the prevention and control of diet-related NCDs.

Right to health

The adoption of FOPwL as an effective measure to contribute to NCDs prevention, is directly relevant to States' obligations under the right to health, which is guaranteed in diverse instruments at the international and regional level: Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁴ Article 24 of the Convention on the Rights of

¹⁹ Foodstuffs, Cosmetics and Disinfectants Act (54/1972): Regulations Relating to the Reduction of Sodium in Certain Foodstuffs and Related Matters R.214 of 20 March 2013: Amendment
<www.gov.za/sites/default/files/gcis_document/201710/41164gon1071.pdf> accessed 13 July 2023.

²⁰ South African Revenue Service, 'Health Promotion Levy on Sugary Beverages' (3 February 2021)
<www.sars.gov.za/customs-and-excise/excise/health-promotion-levy-on-sugary-beverages/> accessed 16 June 2023.

²¹ Office of the High Commissioner of 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' (27 July 2020)
<<https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning>> accessed 16 June 2023.

²² Global Food Research Program at UNC-Chapel Hill, 'Front-of-Package Labels Around the World' (February 2023)
<www.globalfoodresearchprogram.org/wp-content/uploads/2023/02/GFRP-UNC_FOPL_maps_2023_02.pdf> accessed 11 July 2023.

²³ Andrés Constantin and others, 'A Human Rights-Based Approach to Non-communicable Diseases: Mandating Front-of-Package Warning Labels' (2021) 17 *Globalization and Health* 85
<<https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-021-00734-z>> accessed 19 July 2023.

²⁴ International Covenant on Economic Social and Cultural Rights (adopted 6 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR). South Africa ratified the ICESCR on 12 January 2015.

the Child (CRC),²⁵ Article 16 of the African Charter on Human and Peoples' Rights (ACHPR)²⁶, and Article 14 of the African Charter on the Rights and Welfare of the Child (ACRWC).²⁷

The ICESCR, as well as the regional treaties, understand the right to health to be an inclusive right that goes beyond the timely and appropriate delivery of health care to also include underlying determinants of health.²⁸ Among the determinants that impact health outcomes are social determinants, which are the “conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life.”²⁹ These include, for example, access to safe and potable water, adequate sanitation, an adequate supply of safe food, nutrition, housing and access to information.³⁰ Another key framework for understanding the right to health are the commercial determinants of health, which captures the influence that the private sector has – both positive or negative – on public health, including the political and economic systems and norms.³¹ These include, for example, “all products and services provided by private entities to gain a financial profit, as well as market strategies, working conditions, production externalities and political activities, such as misinformation, lobbying and donations.”³²

Under this broad understanding of the right to health, States have the duty to address the determinants of health and to create conditions conducive for people to achieve the best level of health. The ICESCR explicitly mandates the adoption of measures necessary for “[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases.”³³ Among those measures, States shall adopt those addressing the determinants of health through the promotion of those determinants that foster the enjoyment of a good level of health, and the modification of those that make it easier for people to become ill. Regarding NCDs, this means addressing the determinants that are associated with NCDs development and their risk factors, including those aimed at discouraging unhealthy diets while incentivizing access to healthy food.

While a number of determinants are critical when considering the NCD epidemic, two are particularly relevant to the discussion at hand: food and access to health-related information. Although food is also a right in itself and will be discussed below, it is worth noting that under the right of health, one of the basic obligations of States is to “ensure access to the minimum

²⁵ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1573 3. South Africa ratified the CRC on 16 June 1995.

²⁶ Organization of African Unity (OAU), ‘African Charter on Human and Peoples’ Rights (“Banjul Charter”)' (27 June 1981) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

²⁷ African Charter on the Rights and Welfare of the Child (adopted 11 July 1990 entered into force 29 November 1999) CAB/LEG/24.9/49 <https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf> accessed 17 July 2023.

²⁸ ‘CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’ (2000) E/C.12/2000/4 para 11.

²⁹ World Health Organization, ‘Social Determinants of Health’ (*World Health Organization*) <www.who.int/health-topics/social-determinants-of-health#tab=tab_1> accessed 11 July 2023.

³⁰ CESCR General Comment No. 14 (n 28), para 11; African Commission on Human and Peoples’ Rights, ‘Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People’s Rights’ (2010) para 63 <https://archives.au.int/bitstream/handle/123456789/2063/Nairobi%20Reporting%20Guidelines%20on%20ECOSOC_E.pdf?sequence=1&isAllowed=y> accessed 16 June 2023.

³¹ World Health Organization, ‘Commercial Determinants of Health’ (*World Health Organization*, 21 March 2023) <www.who.int/news-room/fact-sheets/detail/commercial-determinants-of-health> accessed 14 June 2023.

³² World Health Organization, ‘Commercial Determinants of Health’ <www.who.int/health-topics/commercial-determinants-of-health#tab=tab_1> accessed 11 July 2023.

³³ ICESCR (n 24), art 12(2)(c).

essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone”³⁴, and that such a core obligation cannot be understood as fulfilled by the provision of unhealthy food given their adverse impacts on health.

Additionally, health-related information is directly implicated when discussing FOPwL. The Committee on Economic, Social and Cultural Rights (CESCR) has indicated States are required to disseminate “appropriate information relating to healthy lifestyles and nutrition”.³⁵ Additionally, a former Special Rapporteur on the right to health explicitly recognized that FOPwL delivers “clear and complete information in a simple way” that also, very importantly, encourages “consumers to make informed decisions about their diets, without making additional efforts or requiring qualified knowledge.”³⁶ FOPwL is therefore an intervention that helps tackle some of the underlying determinants of health.

Right to adequate food

At the international level, the right to adequate food is guaranteed under Article 11 of the ICESCR³⁷ and in Article 24.2.(c) of the CRC³⁸. Regionally, the ACRWC recognizes the right to adequate nutrition for children³⁹ and the Maputo Protocol recognizes the right to nutritious and adequate food for women.⁴⁰ The African Commission has also interpreted the right to food as being implicitly protected under the ACHPR through the rights to life, health, and economic, social and cultural development.⁴¹

Under international and regional human rights law, the right to adequate food should “not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients”.⁴² The CESCR has established that the core content of this right covers both the “availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture” and the “accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights”.⁴³ In relation to the unhealthy diets, former Special Rapporteurs on the Right to Adequate Food understood food safety in a broad manner “to include the nutritional value of food products”⁴⁴ and recommended States to prioritise “access to adequate diets that are socially and environmentally sustainable over the mere provision of

³⁴ CESCR General Comment No. 14 (n 28), para 43(b).

³⁵ Ibid, para 37.

³⁶ Office of the High Commissioner of 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’ (n 21).

³⁷ ICESCR (n 24).

³⁸ Convention on the Rights of the Child (n 25).

³⁹ African Charter on the Rights and Welfare of the Child (n 27), art 14 2(c).

⁴⁰ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (The Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) CAB/LEG/66.6, art 15
<<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf>>
accessed 14 July 2023.

⁴¹ *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (SERAC)* communication No. 155/96 [64] <https://achpr.au.int/public/Document/file/English/achpr30_155_96_eng.pdf>
accessed 16 June 2023.

⁴² ‘CESCR General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)’ (1999) E/C.12/1999/5 para 6.

⁴³ Ibid, para 8.

⁴⁴ United Nations General Assembly, ‘Interim Report by the Special Rapporteur on the Right to Food, Hilal Elver (3 August 2016) A/71/282 para 74.

cheap calories”.⁴⁵ The former Special Rapporteur on the Right to Food has also endorsed the FOPwL system to achieve these goals.⁴⁶ Given their detrimental health effects, as well as their lack of nutritional quality, unhealthy products cannot be considered to meet the normative standards derived from the right to health and adequate food as understood by the CESCR.

Equality and non-discrimination

NCDs disproportionately impact individuals and communities that are most marginalised and socially disadvantaged.⁴⁷ People in contexts of poverty are more exposed to diet-related NCD risk factors, as unhealthy products are more affordable and are heavily advertised to them.⁴⁸ Importantly, the food and beverages industry deliberately and aggressively target persons living in poverty, persons of ethnic groups, and children, thus increasing their exposure to such products.⁴⁹ As NCDs and their risk factors affect people living in contexts of vulnerability, States are obliged to take measures to counteract these disproportionate impacts and to guarantee the enjoyment of all rights, including the right to health and to adequate food, without discrimination.⁵⁰ Particularly, the obligation to guarantee the enjoyment of the right to health without discrimination is an obligation of immediate nature.⁵¹ FOPwL is one intervention that helps address the disproportionate prevalence of NCDs and their risk-factors by balancing “the starting point for all consumers by providing equality in access to information relevant to health”.⁵²

⁴⁵ United National General Assembly, ‘Report Submitted by the Special Rapporteur on the Right to Food, Oliver De Schutter’ (26 December 2011) A/HRC/19/59 para 12.

⁴⁶ Office of the High Commissioner of 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’ (n 21).

⁴⁷ World Health Organization, ‘Noncommunicable Diseases’ (n 2).

⁴⁸ Mina Qobadi and Marinelle Payton, ‘Consumption of Sugar-Sweetened Beverages in Mississippi: Is There A Disparity? Behavioral Risk Factor Surveillance System, 2012’ (2017) 14 International Journal of Environmental Research and Public Health 228 <<http://www.mdpi.com/1660-4601/14/3/228>> accessed 16 June 2023; Neha Zahid and others, ‘Socioeconomic Disparities in Outdoor Branded Advertising in San Francisco and Oakland, California’ (2022) 27 Preventive Medicine Reports 101796 <<https://linkinghub.elsevier.com/retrieve/pii/S2211335522001036>> accessed 16 June 2023; Kim H. Nguyen and others, ‘Transferring Racial/Ethnic Marketing Strategies From Tobacco to Food Corporations: Philip Morris and Kraft General Foods’ (2020) 110 American Journal of Public Health 329 <<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305482>> accessed 16 June 2023; Erin A Dowling and others, ‘Disparities in Sugary Drink Advertising on New York City Streets’ (2020) 58 American Journal of Preventive Medicine e87; Adjoian T, Dannefer R and Farley SM, ‘Density of Outdoor Advertising of Consumable Products in NYC by Neighborhood Poverty Level’ (2019) 19 BMC Public Health 1479 <<https://doi.org/10.1186/s12889-019-7821-y>> accessed 16 June 2023.

⁴⁹ Jennifer L Harris, ‘Targeted Food Marketing to Black and Hispanic Consumers: The Tobacco Playbook’ (2020) 110 American Journal of Public Health 271 <<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305518>> accessed 16 June 2023; Kim H. Nguyen and others, ‘Transferring Racial/Ethnic Marketing Strategies From Tobacco to Food Corporations: Philip Morris and Kraft General Foods’ (2020).

⁵⁰ ‘CESCR General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)’ (2009) UN Doc E/C.12/GC/20, para 6; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS13 Art 3; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 Art 2.2; Inter-American Court of Human Rights. *Case of the Yakye Axa Indigenous Community v Paraguay* (2005) IACHR Series C no 125 [162].

⁵¹ CESCR General Comment No. 14 (n 28), para 30.

⁵² Office of the High Commissioner of 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’ (n 21).

Children are particularly vulnerable to the impacts of diet-related NCDs. First, children depend “on others, such as parents or schools, for food, and because they are more susceptible to marketing strategies” employed by industry actors to entice them to use their products.⁵³ Additionally, children that develop NCDs early on may experience severe health issues later in life.⁵⁴ The CRC explicitly establishes an obligation for States to combat disease and malnutrition through, among other means, “the provision of adequate nutritious foods and clean drinking-water”.⁵⁵ This obligation also imposes specific duties on States to address obesity in children and protect them through the limitation of exposure to unhealthy food products.⁵⁶ In addition, under the CRC’s obligation to develop preventive health care,⁵⁷ States are required to regulate “advertising and sale of substances harmful to children’s health”.⁵⁸ Similarly, the CRC mandates that parents and children “are informed, have access to education and are supported in the use of basic knowledge of children’s health and nutrition”⁵⁹ that includes information about healthy eating to allow them to make “informed decisions about their lifestyle”.⁶⁰ FOPwL is therefore a step towards protecting children’s rights as it provides “accurate product labeling and information that allow parents and children to make informed consumer decisions”.⁶¹

The content of the human rights discussed above supports the adoption of the FOPwL scheme found in Regulation No. 3337. FOPwL helps achieve the rights to health and to adequate food and is an important intervention to counteract the disproportionate impact that NCDs have on vulnerable groups protected under anti-discrimination provisions. FOPwL achieves these rights and protections by helping individuals identify unhealthy products and discouraging their consumption. It also helps counter the disproportionate impact that diet-related NCDs and their risk-factors have on vulnerable groups.

(b) FOPwL and South Africa’s Human Rights Obligations

The human rights framework imposes three distinct general obligations on States that are critical within the context of NCD prevention and control: the obligations to respect, protect, and fulfil human rights.⁶² South Africa’s Constitution also imposes similar obligations on the State.⁶³ The obligation to *protect* is particularly relevant within the context of Regulation No. 3337. The obligation to *protect* the right to health and other related rights requires States to take measures

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Convention on the Rights of the Child (n 25), art 24 2(c).

⁵⁶ UN Committee on the Rights of the Child, ‘General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Standard of Health (art. 24)’ (2013) UN Doc CRC/C/GC/15 paras 47, 65.

⁵⁷ Convention on the Rights of the Child (n 25), art 24 2(f).

⁵⁸ UN Committee on the Rights of the Child (n 56), para 65.

⁵⁹ Convention on the Rights of the Child (n 25), art 24 2(e).

⁶⁰ UN Committee on the Rights of the Child (n 56), para 59.

⁶¹ Office of the High Commissioner of 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’ (n 21).

⁶² While this submission focuses on the obligation to *protect*, the obligations to *respect* and *fulfil* are critical. The duty to *respect* human rights means that States must refrain from directly or indirectly denying or limiting equal enjoyment of health and other rights. The obligation to *fulfil* requires States to adopt appropriate legislative, administrative, budgetary and other measures to ensure the realisation of human rights (CESCR General Comment No. 14 (n 28), para 33).

⁶³ The Constitution of the Republic of South Africa, 1996, s 7(2).

that prevent third parties from interfering with the achievement of human rights.⁶⁴ The adoption of FOPwL regulations is a manifestation of this general obligation to protect.

In relation to diet-related NCDs, the obligation to *protect* includes, among others, adopting measures aimed at discouraging the consumption of unhealthy products that are linked to NCDs. Part of this duty requires the adoption of regulations to ensure that the food and beverage industry “convey accurate, easily understandable, transparent and comprehensible information on their products”,⁶⁵ as well as to regulate the aggressive marketing of unhealthy products.⁶⁶ This is a response to the fact that the rising burden of diet-related NCDs has largely been driven by the activities of the food and beverage industry.⁶⁷ In the context of business operations that have adverse impacts on human rights, the obligation to *protect* imposes the duty on States to address the commercial determinants of health, as described above. This requires that States effectively prevent interference by third parties with these rights through legislative, administrative and other measures,⁶⁸ including through direct regulation.⁶⁹

The interference of the private sector with the enjoyment of human rights has also been acknowledged within the African region, with the ACHPR recently noting that many commercial actors have pursued profit-seeking strategies to the detriment of human rights, and should therefore be regulated.⁷⁰ Furthermore, the ACHPR has recognized the importance of legislative frameworks for the realisation of rights.⁷¹ In a 2019 resolution on the right to food, the ACHPR expressed concerns about malnutrition, under-nutrition, obesity and diet-related NCDs affecting the health and well-being of individuals in Africa.⁷² The resolution called on States to take appropriate measures to ensure the full enjoyment of the right to food, which includes obligations to regulate the promotion and marketing of industrialised and highly processed foods.⁷³ The adoption of FOPwL regulations is consistent with the ACHPR's guidance.

Additionally, the human rights framework requires that “States use scientific knowledge in decision-making and policies” to ensure that it achieves its public health goals and is “in accordance with scientific evidence free from conflicts of interest available at the time”.⁷⁴ As it

⁶⁴ CESCR General Comment No. 14 (n 28), para 33.

⁶⁵ Office of the High Commissioner of 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’ (n 21).

⁶⁶ CESCR General Comment No. 14 (n 28), para 51.

⁶⁷ Melissa Mialon, ‘An Overview of the Commercial Determinants of Health’ (2020) 16 Globalization and Health <<https://doi.org/10.1186/s12992-020-00607-x>> accessed 18 July 2023.

⁶⁸ ‘CESCR General Comment No. 24: (2017) on State Obligations Under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities’ (10 August 2017) UN Doc E/C.12/GC/24 para 14.

⁶⁹ Ibid, para 19.

⁷⁰ African Commission on Human and Peoples’ Rights, ‘General Comment 7: State Obligations Under the African Charter on Human and Peoples’ (adopted 28 July 2022) <<https://achpr.au.int/en/documents/2022-10-20/general-comment-7-state-obligations-under-african-charter-human>> accessed 17 July 2023.

⁷¹ *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (SERAC)* (n 41) [64].

⁷² African Commission on Human and Peoples’ Rights, ‘Resolution on the Right to Food and Nutrition in Africa’ (10 November 2019) RES 431 (LXV) <<https://achpr.au.int/en/adopted-resolutions/431-resolution-right-food-and-nutrition-africa-achpres431lxv2019>> accessed 16 June 2023.

⁷³ Ibid, paras 1, 7.

⁷⁴ Office of the High Commissioner of 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’ (n 21); ‘CESCR General Comment No. 25

currently stands, Regulation No. 3337 generally aligns itself with evidence produced by local experts that is not immersed in conflict of interest.⁷⁵ Any changes to the proposed Regulation No. 3337 and to it once approved should be studied and based on the best scientific evidence free of conflicts of interest in relation to the objective of discouraging the consumption of unhealthy products in order to avoid the risk of violations to South Africa's obligations to respect and protect human rights under international and regional human rights law.

The solution to the rising NCDs burden requires a comprehensive approach that includes a package of regulatory and legal responses that are mutually reinforcing, thus the publication, and future adoption, of Regulation No. 3337 puts South Africa one step towards its obligation to *protect* the human right to health and other related rights, established both under international and regional human rights law. Whilst we commend Regulation No. 3337 in general, we have identified certain regulations that could be strengthened to ensure that they are the most effective as possible. In the following table, we highlight aspects of the regulations that are commendable, as well as outline some recommendations to further strengthen Regulation No. 3337.

(2020) on Science and Economic, Social and Cultural Rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights)' (30 April 2020) UN Doc E/C12/GC/25 paras 53-54, 59.

⁷⁵ Makoma Bopape and others, 'South African Consumers' Perceptions of Front-of-Package Warning Labels on Unhealthy Foods and Drinks' (2021) 16 PLOS ONE e0257626 <<https://dx.plos.org/10.1371/journal.pone.0257626>> accessed 17 July 2023; Makoma Bopape and other, 'Effect of Different Front-of-Package Food Labels on Identification of Unhealthy Products and Intention to Purchase the Products— A Randomised Controlled Trial in South Africa' (2022) 179 Appetite <10.1016/j.appet.2022.106283> accessed 17 July 2023.

Part II: Analysis of Regulation No. 3337

Date	Definition, Regulation, Annexure No	Company name	Proposed changes	Motivation or justification for changes
17/07 /2023	Regulation 1 <i>Definition of “fake food”</i> Regulation 56 <i>Fake foodstuffs</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	Replace or harmonize the definition of “fake foods” with that of “ultra-processed products”	The definition of fake foods resembles that of ultra-processed products (UPPs), ⁷⁶ which has been adopted by the Pan American Health Organization (PAHO) and that is found in much of the scientific literature. ⁷⁷ The harmonization of the South African regulations with the language which has been most widely adopted in the scientific literature is advised to strengthen the regulations with the growing body of evidence on the matter. ⁷⁸

⁷⁶ The Pan American Health Organization defines ultra-processed products as “Industrial formulations manufactured with several ingredients. Like processed products, ultra-processed products include substances from the culinary ingredients category, such as fats, oils, salt, and sugar. Ultra-processed products can be distinguished from processed products based on the presence of other substances that are extracted from foods but have no common culinary use (e.g., casein, milk whey, protein hydrolysate, and protein isolates from soy and other foods); substances synthesized from food constituents (e.g., hydrogenated or interesterified oils, modified starches, and other substances not naturally present in foods); and additives used to modify the color, flavor, taste, or texture of the final product. Unprocessed or minimally processed foods usually represent a tiny proportion of or are absent in the list of ingredients of ultra-processed products, which often have 5, 10, or 20 or more items. Several techniques are used in the manufacture of ultra-processed products, including extrusion, molding, and pre-processing, through frying. Examples include soft drinks, packaged snacks, “instant” noodles, and chicken nuggets.” Pan American Health Organization, ‘Pan American Health Organization Nutrient Profile Model’ (PAHO 2016) p.24

<https://iris.paho.org/bitstream/handle/10665.2/18621/9789275118733_eng.pdf?sequence=9&isAllowed=y> accessed 17 July 2023.

⁷⁷ Carlos Augusto Monteiro and others, ‘Ultra-Processed Foods, Diet Quality, and Health the NOVA System’ (2019) <www.fao.org/3/ca5644en/ca5644en.pdf> accessed 16 June 2023; Pan American Health Organization, ‘Ultra-processed Food and Drink Products in Latin America: Trends, Impact on Obesity, Policy Implications’ (2015) <https://iris.paho.org/bitstream/handle/10665.2/7699/9789275118641_eng.pdf> accessed 16 June 2023; Pan American Health Organization, ‘Ultra-processed Food and Drink Products in Latin America: Sales, Sources, Nutrient Profiles, and Policy Implications’ (2019) <<https://iris.paho.org/handle/10665.2/51094>> accessed 16 June 2023.

⁷⁸ See for example: Kevin D Hall and others, ‘Ultra-Processed Diets Cause Excess Calorie Intake and Weight Gain: An Inpatient Randomized Controlled Trial of Ad Libitum Food Intake’ (2019) 30 Cell Metabolism 67 <<https://linkinghub.elsevier.com/retrieve/pii/S1550413119302487>> accessed 16 June 2023; Kiara Chang and others, ‘Ultra-Processed Food Consumption, Cancer Risk and Cancer Mortality: A Large-Scale Prospective Analysis within the UK Biobank’ (2023) 56 eClinicalMedicine 101840 <<https://linkinghub.elsevier.com/retrieve/pii/S2589537023000172>> accessed 16 June 2023; Kim Anastasiou and others, ‘A Conceptual

<p>Regulation 1 <i>Definition of "Front-of-Pack- Labelling" (FOPL)</i></p> <p>Regulation 51.2 <i>Profiling Model for Foodstuffs for South Africa for the purpose of FOPL logos on labels of foodstuffs that may not be marketed or advertised to children</i></p>	<p>Global Center for Legal Innovation on Food Environments, Georgetown University</p>	<p>Include further clarification on the prohibition for products to have a "double front of pack" (especially, but not only, for cylindrical packages).</p>	<p>As a tactic to avoid the FOPL being visible, industry has leveraged package design to create a double-front face of pack (i.e., two identical or near identical faces of packages), placing the FOPL on one side, but displaying the products using the other face in a retail setting. This industry tactic has been identified in Mexico⁷⁹ and Argentina,⁸⁰ regardless of the existence of an explicit prohibition in the latter. Regulation No. 3337 can anticipate such a misleading tactic explicitly.</p>
<p>Regulation 1 <i>Definition of "Portion size"</i></p> <p>Regulation 47.5 <i>Additional requirements relating to the</i></p>	<p>Global Center for Legal Innovation on Food Environments, Georgetown University</p>	<p>Avoid referring to portion or single portion/serving as the amount "which is typically <i>recommended by health professionals for maintenance or achievement of a healthy weight and good health</i>" (emphasis added). Rather, the</p>	<p>Avoiding references to recommendations by health professionals is advised, since there is no amount of unhealthy foods that should be recommended by them.</p>

Framework for Understanding the Environmental Impacts of Ultra-Processed Foods and Implications for Sustainable Food Systems' (2022) 368 Journal of Cleaner Production 133155 <<https://linkinghub.elsevier.com/retrieve/pii/S0959652622027445>> accessed 16 June 2023.

⁷⁹ El Poder del Consumidor, 'Entrada en Vigor de la Segunda Fase del Etiquetado revela cumplimiento e incumplimiento para algunas categorías de Alimentos y Bebidas' (*El Poder del Consumidor*, 1 June 2021) <<https://elpoderdelconsumidor.org/2021/06/entrada-en-vigor-de-la-segunda-fase-del-etiquetado-revela-cumplimiento-e-incumplimiento-para-algunas-categorias-de-alimentos-y-bebidas/>> accessed 17 July 2023.

⁸⁰ María Daniela Yaccar, 'Etiquetado Frontal: Las Estrategias de las Empresas Para Esquivar la Ley' (*PAGINA12*, 3 April 2023) <www.pagina12.com.ar/537238-etiquetado-frontal-las-estrategias-de-las-empresas-para-esqu> accessed 16 June 2023.

	<i>nutritional information table</i>		regulations can refer to the serving size recommended by the manufacturer.	
	Regulation 1 <i>Definition of "Supersize portion or serving size"</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	Clarify the definition and its implications.	The definition is unclear and circular, which can be misleading to consumers and detrimental to the effectiveness of the regulation. It allows the provision to be interpreted to mean that it is safe to consume a large amount of unhealthy food, especially as it refers to portions that are "not" more than "typically recommended by health professionals" that would "not encourage consumers to consume "supersize" servings which might result in an undesirable increase of their total energy intake..."
	Regulation 52 <i>Marketing Restrictions for foodstuffs that may not be advertised to children</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	Provide a definition of marketing and marketing to children. It is advised to use the WHO definition of "marketing": "Any form of commercial communication, message or action that acts to advertise or otherwise promote a product or service, or its related brand, and is designed to increase, or has the effect of increasing, the recognition, appeal and/or	The Global Center commends the inclusion of marketing restrictions in the regulations, especially as they are aimed at protecting children that are common targets of marketing strategies ⁸² and because they reinforce the objective of the FOPwL scheme to discourage the consumption of unhealthy products. ⁸³ Adopting a comprehensive definition that anticipates present and future marketing strategies, including digital marketing and marketing of brands, in order to protect children from the power and the exposure of marketing is advised to strengthen the regulations, as per

⁸² World Health Organization, 'Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children' page vii <<https://apps.who.int/iris/handle/10665/44416>> accessed 16 June 2023.

⁸³ UNICEF, 'Marketing of Unhealthy Foods and Non-Alcoholic to Children' (UNICEF, 2021) <www.unicef.org/media/116691/file/Marketing%20restrictions.pdf> accessed 17 July 2023.



			consumption of products or services.” ⁸¹ Define marketing “to children” as any form of marketing to which children are exposed.	the recommendations of the World Health Organization. ⁸⁴
	Regulation 9 <i>Prohibited statements</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	None.	<p>The Global Center commends the regulation’s restrictions of endorsements on labels or advertisements by health professionals sponsored directly or indirectly by food business operators, as well the limitations of endorsements to entities that are free from food industry influence (Regulation 9.a.i and iii.).</p> <p>These provisions are relevant and should be maintained, as they are well aligned with evidence showing that sponsorship by the food industry presents a conflict of interest that biases research⁸⁵ and should therefore not be allowed to offer endorsements that appear independent.</p>
	Regulation 1 <i>Definition of “artificial”</i>	Global Center for Legal Innovation on	Make the format of the caffeine warning analogous to the other warnings (instead of a written	The Global Center celebrates the adoption of warnings on caffeine and artificial sweeteners.

⁸¹ World Health Organization, ‘Policies to Protect Children from the Harmful Impact of Food Marketing: WHO Guideline’ (*World Health Organization*, 2023) <www.who.int/publications/i/item/9789240075412> accessed 18 July 2023.

⁸⁴ Ibid.

⁸⁵ See for example: Gary Sacks and others, ‘The Characteristics and Extent of Food Industry Involvement in Peer-Reviewed Research Articles from 10 Leading Nutrition-Related Journals in 2018’ (2020) 15 PLOS ONE e0243144 <<https://dx.plos.org/10.1371/journal.pone.0243144>> accessed 16 June 2023 [“Of articles with food industry involvement, 55.6% reported findings favourable to relevant food industry interests, compared to 9.7% of articles without food industry involvement.”]; Daniele Mandrioli, Cristin E Kearns and Lisa A. Bero, ‘Relationship between Research Outcomes and Risk of Bias, Study Sponsorship, and Author Financial Conflicts of Interest in Reviews of the Effects of Artificially Sweetened Beverages on Weight Outcomes: A Systematic Review of Reviews’ (2016) 11 PLOS ONE e0162198 <<https://dx.plos.org/10.1371/journal.pone.0162198>> accessed 16 June 2023 [“Review sponsorship and authors’ financial conflicts of interest introduced bias affecting the outcomes of reviews of artificially sweetened beverage effects on weight that could not be explained by other sources of bias.”].



<p><i>sweetener”</i></p> <p>Regulation 22 <i>Added caffeine and alcohol-containing foodstuff and Annexure 5 Letter sizes: Definitions of x-Height</i></p> <p>Regulation 51 <i>Profiling Model for Foodstuffs for South Africa for the purpose of FOPL logos on labels of foodstuffs that may not be marketed or advertised to children and</i></p>	<p>Food Environments, Georgetown University</p>	<p>warning). Change the language on “artificial sweeteners” to “non-sugar sweeteners”.</p>	<p>The inclusion of warnings for artificial sweeteners is in line with the best available scientific evidence⁸⁶ and anticipates unintended consequences of reformulation.⁸⁷ However, to avoid tactics used in other jurisdictions to get around similar regulations, we advise that the regulations adopt the more comprehensive concept of “non-sugar sweeteners” instead of “artificial sweeteners”. The implementation of the precautionary legend for artificial sweeteners in Mexico has shown that the food industry replaced artificial sweeteners with other sweeteners that, while natural, keep the sweetness threshold equally high. This is problematic from a public health perspective. The more comprehensive concept of “non-sugar sweeteners” will help avoid these reformulations.</p> <p>Since caffeine is also a nutrient of concern particularly in children,⁸⁸ the inclusion of a warning is necessary. However, the caffeine warning is currently not part of the FOPL scheme and the regulations only define some aspects of the warning like the letter format and</p>
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⁸⁶ World Health Organization, ‘Use of Non-Sugar Sweeteners: WHO Guideline’ (15 May 2023) <www.who.int/publications-detail-redirect/9789240073616> accessed 13 July 2023.

⁸⁷ Natalia Rebolledo and others, ‘Did the Sweetness of Beverages Change with the Chilean Food Labeling and Marketing Law? A before and after Study’ (2022) 9 *Frontiers in Nutrition* <<https://doi.org/10.3389/fnut.2022.1043665>> accessed 19 July 2023; Natalia Rebolledo and others, ‘Sweetener Purchases in Chile before and after Implementing a Policy for Food Labeling, Marketing, and Sales in Schools’ (2023) 7 *Current Developments in Nutrition* 100016 <<https://doi.org/10.1016/j.cdnut.2022.100016>> accessed 19 July 2023.

⁸⁸ Jennifer Temple, ‘Caffeine Use in Children: What We Know, What We Have Left to Learn, and Why We Should Worry’ (2009) 33 *Neuroscience & Biobehavioral Reviews* 793 <<https://doi.org/10.1016/j.neubiorev.2009.01.001>> accessed 19 July 2023; Rita Soós and other, ‘Effects of Caffeine and Caffeinated Beverages in Children, Adolescents and Young Adults: Short Review’ (2021) 18 *International Journal of Environmental Research and Public Health* 12389 <<https://doi.org/10.3390/ijerph182312389>> accessed 19 July 2023.

	Annexure 10 <i>Front of pack nutrition labelling (FOPL logos)</i>			size, allowing industry to exploit the loopholes to the detriment of the regulations. The regulations should be adjusted such that the caffeine warning should be part of the FOPL scheme that is also tied to marketing restrictions (Regulation 52). Such an approach would also reflect best practices and lessons learned in Mexico and Argentina, both of which have included precautionary legends to warn consumers about the presence of artificial sweeteners and caffeine. ⁸⁹ In Argentina, products that include those nutrients are also subject to marketing and other restrictions, ⁹⁰ while in Mexico the restrictions to marketing are imposed on products with FOPL seals as well on those bearing the precautionary legend on sweeteners. ⁹¹
	Regulation 51(2)(e) <i>Profiling Model for Foodstuffs for</i>	Global Center for Legal Innovation on Food	Establish a time-frame for stickers to be allowed, to accommodate for necessary transitions, but not allow them	Stickers are easily removed and hamper effective monitoring and industry accountability (e.g., allowing for claims that stickers have been removed, rather than wrongly placed by

⁸⁹ Argentina, Ley N° 27.642 de Promoción de la Alimentación Saludable, 2020 <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/355000-359999/356607/norma.htm>> accessed 17 July 2023; Decreto 151/2022 de Promoción de la Alimentación Saludable, 2022 <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/360000-364999/362577/norma.htm#:~:text=Que%20la%20Ley%20N%C2%B0,los%20alimentos%20envasados%20y%20bebidas>> accessed 17 July 2023; Mexico, Modificación a la Norma Oficial Mexicana NOM-051-SCFI/SSA1-2010, Especificaciones Generales de Etiquetado para Alimentos y Bebidas No Alcohólicas Preenvasados-Información Comercial y Sanitaria, publicada el 5 de abril de 2010 <https://www.dof.gob.mx/2020/SEECO/NOM_051.pdf> accessed 18 July 2023.

⁹⁰ Argentina, Ley N° 27.642 de Promoción de la Alimentación Saludable, 2020 <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/355000-359999/356607/norma.htm>> accessed 17 July 2023; Decreto 151/2022 de Promoción de la Alimentación Saludable, 2022 <<http://servicios.infoleg.gob.ar/infolegInternet/anexos/360000-364999/362577/norma.htm#:~:text=Que%20la%20Ley%20N%C2%B0,los%20alimentos%20envasados%20y%20bebidas>> accessed 17 July 2023.




⁹¹ Mexico, Modificación a la Norma Oficial Mexicana NOM-051-SCFI/SSA1-2010, Especificaciones Generales de Etiquetado Para Alimentos y Bebidas No Alcohólicas Preenvasados-Información Comercial y Sanitaria, publicada el 5 de abril de 2010, < https://www.dof.gob.mx/2020/SEECO/NOM_051.pdf> accessed 19 July 2023.

South Africa for the purpose of FOPL logos on labels of foodstuffs that may not be marketed or advertised to children	Environments, Georgetown University	indefinitely.	manufacturers). The use of stickers has been identified in the international experience as a means to delay or hamper the full and effective implementation of FOPL, ⁹² as well as unlawfully covering the mandated FOPL. ⁹³ South Africa could consider these experiences in order to anticipate and prevent such industry tactics.
Regulation 50 Nutrient Profiling Model for South Africa for the purpose of screening foodstuffs for their eligibility to make any claim with a nutrition or health message	Global Center for Legal Innovation on Food Environments, Georgetown University	None.	The Global Center welcomes the restrictions on claims, nutrition or health messaging and/or endorsement logos on products that carry FOPL, which is important to ensure consumers receive a coherent message that products with FOPL are unhealthy. Evidence has shown that nutrition and other claims can have a “halo effect” that misleads consumers into understanding that products are overall healthy. ⁹⁴ Hence, such restrictions are relevant for the effectiveness of the regulations and should be maintained.
Regulation 27 Foodstuffs	Global Center for Legal	None.	The Global Center celebrates the requirement that foodstuffs sold in vending machines clearly

⁹² Juan Alvarez-Cano, Victoria Cavero and Francisco Diez-Canseco, 'Idas y Venidas del Diseño de la Política de Alimentación Saludable en el Perú: Análisis Comparativo de Sus Documentos Regulatorios' (2023) 39 Revista Peruana de Medicina Experimental y Salud Pública 480 <www.scielo.org/article/rpmesp/2022.v39n4/480-488/> accessed 16 June 2023; Sheila Sánchez, 'Alimentos y Bebidas Podrán Emplear “Stickers” Provisionales en Etiquetado Frontal' (*Forbes México*, 11 June 2020) <www.forbes.com.mx/negocios-alimentos-bebidas-stickers-provisionales-etiquetado-frontal/> accessed 16 June 2023; 'Gremios de la Industria Alimentaria Insisten con Nueva Prórroga Para el Etiquetado' (*ASPEC Blog*, 10 June 2020) <<https://aspec.org.pe/2021/06/29/gremios-de-la-industria-alimentaria-insisten-con-nueva-prorroga-para-el-etiquetado/>> accessed 16 June 2023.

⁹³ '¿Falso?: Un Sticker Tapa Octógonos de Etiquetado Frontal y Provoca Ira' (*Infociel*, 19 May 2023) <<https://infocielo.com/etiquetado-frontal/falso-un-sticker-tapa-octogonos-etiquetado-frontal-y-provoca-ira-n763082>> accessed 16 June 2023.

⁹⁴ Catherine Fernan, Jonathon P. Schuldt and Jeff Niederdeppe, 'Health Halo Effects from Product Titles and Nutrient Content Claims in the Context of “Protein” Bars' (2018) 33 Health Communication 1425 <<https://doi.org/10.1080/10410236.2017.1358240>> accessed 16 June 2023.

	<i>vending machines</i>	Innovation on Food Environments, Georgetown University		display the FOPwL such that it is visible from outside the machine. This anticipates any industry strategies to conceal the seals, thereby misleading consumers.
	Regulation 25(f) <i>Small packages</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	<p>Eliminate the exception to the application of FOPL to small packages (regardless of whether pre-packaged items are sold in bulk or not).</p> <p>Incorporate an alternative FOPL format that can fit into small packages (for example, for small packages that cannot fit the full-sized FOPwL, Mexico and Argentina have added labels indicating the number of FOPL seals that the product would carry).⁹⁵</p>	<p>The exemption of small packages is broad and applies to a large amount of products thus hampering consumers' right to receive accurate information regardless of product size. Additionally, the regulation as it currently reads is confusing and requires clarification.</p> <p>Mexico and Argentina have recently adopted "micro-seals" for small packs (indicating the number of FOPL seals that the product would carry in full size), to guarantee information regardless of package size.⁹⁶</p> <div data-bbox="1220 898 1751 959">  </div> <div data-bbox="1220 971 1751 1032">  </div> <p><i>Figure 1: Depiction of the Argentinian microseals.</i></p> <div data-bbox="1220 1146 1703 1252">  </div>

⁹⁵ Ministerio de Salud Argentina, 'Manual de Aplicación Rotulado Nutricional Frontal: Aplicación de la Ley N 27642 y el Decreto N 151/22' <www.argentina.gob.ar/sites/default/files/anmat_manual_rotulado_nutricional_frontal.pdf> accessed 16 June 2023; Mexico NOM-051-SCFI/SSA1-2010 <www.dof.gob.mx/2020/SEECO/NOM_051.pdf> accessed 22 June 2023.

⁹⁶ Ibid.

				<p><i>Figure 2: Depiction of the Mexican microseals.</i></p> <p>The inclusion of this FOPwL on small packs is also relevant because FOPwL ties to marketing restrictions. Such an exemption would mean that products that are only sold in small packages are potentially exempt from marketing restrictions.</p>
	Regulation 1 <i>Definition of “Pre-packaged”</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	Eliminate from the definition the exemption of “individually wrapped one-bite sweets or chocolate confectionery, sugars or savoury accompaniments...”	Since FOPL applies to pre-packaged foods, this definition excludes small packages from carrying FOPL. To guarantee consistency of the regulations, all packages of unhealthy products should provide accurate information regardless of the size. The elimination of the exemption could also prevent its use as a promotional tactic.
	Regulation 48(5) <i>General information on front-of-package labels, health and nutritional claims (General information and conitions)</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	None.	The Global Center celebrates the restrictions to nutrition labels, panels and simplified nutrition information when FOPL is applicable under regulation 51, as the proliferation of nutrition information can confuse consumers. This is particularly relevant considering that the food industry has voluntarily adopted Guideline Daily Amount (GDA) labeling, regardless of solid research showing that such format is unintelligible and difficult to understand, besides requiring mathematical skill. ⁹⁷

⁹⁷ Alejandra Arrúa and others, 'Warnings as a Directive Front-of-Pack Nutrition Labelling Scheme: Comparison with the Guideline Daily Amount and Traffic-Light Systems' (2017) 20 Public Health Nutrition 2308 <www.cambridge.org/core/product/identifier/S1368980017000866/type/journal_article> accessed 16 June 2023; Gaston Ares and others, 'Comparative Performance of Three Interpretative Front-of-Pack Nutrition Labelling Schemes: Insights for Policy Making' (2018) 68 Food Quality and Preference 215 <<https://doi.org/10.1016/j.foodqual.2018.03.007>> accessed 19 July 2023.

	Annexure 10 <i>Front of pack nutrition labelling (FOPL) Logos</i>	Global Center for Legal Innovation on Food Environments, Georgetown University	None.	<p>The Global Center commends South Africa's proposal to adopt an FOPwL scheme that aligns with recommendations from local experts not immersed in conflict of interest and that is based on the best-available scientific evidence. Such an approach is in accordance with international human rights law and applicable standards on right to health and the right to enjoy the benefits of scientific progress and its applications.⁹⁸</p> <p>The evidence in the South African context, in particular, supports: the use of a black triangle as the shape that portrays danger and stands out the most for South African consumers; the symbols for each nutrient as the easier to understand, especially for low-literacy groups; and the label size (20% of package) and placement in the upper-right corner for better visibility.⁹⁹</p>
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⁹⁸ CESCR General Comment No. 25 (n 74).

⁹⁹ Makoma Bopape and others (n 75).