

# BRIEF ON THE REPORT “FOOD, NUTRITION AND THE RIGHT TO HEALTH”

United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dr. Tlaleng Mofokeng

Key takeaways to advance food justice through the prevention of diet-related non-communicable diseases from a rights-based perspective

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## Background

Dr. Tlaleng Mofokeng was appointed as the United Nations' Special Rapporteur on the right to health by the Human Rights Council at its forty-fourth session in July 2020<sup>1</sup>. The Special Rapporteur's mandate includes gathering, requesting, receiving and exchanging information on the realization of the right to health, as well as reporting on its realization across the world, including through laws, policies and good practices.<sup>2</sup>

In compliance with her mandate and in line with these priorities, Dr. Tlaleng Mofokeng devoted her latest report —published in July 2023— to the topic of food, nutrition and the right to health.<sup>3</sup> The report acknowledges that “international human rights law mandates that States address non-communicable disease [NCDs] risk factors, including unhealthy diets,” (para. 41) and provides an in-depth, rights-based analysis of specific regulatory measures, such as front-of-package nutrition labeling, marketing restrictions and fiscal and procurement policies. It also explores food systems governance for health, touching upon the issue of conflicts of interest.

At the national level, reports issued by United Nations Special Rapporteurs often inform advocacy and litigation efforts connected to policy reform, in addition to helping policymakers as they seek to uphold human rights obligations. This brief was elaborated by the Global Center for Legal Innovation on Food Environments to summarize the key points of Dr. Tlaleng Mofokeng's report in connection with the prevention of diet-related NCDs. Please see the QR code in the last page to access her full report.

## Corporations in the context of food and nutrition

The Special Rapporteur relies on the framework of the commercial determinants of health to examine the rise of “availability and accessibility of unhealthy foods and beverages, particularly those undergoing high levels of processing, on the global market.” (para. 20)

She highlighted that “[c]orporations headquartered in higher-income countries extract valuable natural resources for food production from lower-income countries, often displacing Indigenous and rural populations from their land and disrupting traditional means of food production, in order to flood their markets with unhealthy foods and beverages.” (para. 4) She frames these practices as a manifestation of neocolonialism, racism, cultural erasure and extractive capitalism. (para. 4)

## State obligations in the context of food and nutrition

States have an obligation to respect, protect and fulfill the right to health and other related rights. (para. 61) First, the obligation to respect requires States to “not engage in any conduct that is likely to result in preventable, diet-related morbidity or mortality, such as incentivizing the consumption of unhealthy foods and beverages.” (para. 11)

Second, the obligation to protect “requires States to take measures that prevent third parties, including corporations, from interfering with the enjoyment of human rights.” (para. 12 and 61) The “failure to regulate the activities of the food and beverage industry to prevent them from violating the right to health of others and protect consumers from practices detrimental to their health may amount to a violation of the right to health.” (para. 12)

1. United Nations Special Procedures. Special Rapporteur on the right to health. <<https://www.ohchr.org/en/special-procedures/sr-health>>
2. Ibid
3. Special Rapporteur on the right to health and Tlaleng Mofokeng, "Food, Nutrition and the Right to Health" (2023) A/78/185 para 41

Third, the obligation to fulfill requires States to —among other things— “give ‘sufficient recognition’ to the right to health, preferably through domestic legislation, and ensure ‘equal access for all to the underlying determinants of health, such as nutritiously safe food.’” (para. 13)

## Conflicts of interest

Corporate actors may have vested interests in the adoption of weak and ineffective regulations and may try to influence decision-making processes related to food systems and nutrition. (para. 62)

Multistakeholder approaches to policymaking should not eclipse States as the main duty-bearers. (para. 61)

As part of the obligation to respect, States are required to refrain from “entering into partnerships in policymaking that subordinate health, particularly the health of the most vulnerable.” (para. 61) In turn, as part of the obligation to protect, States are required to establish rules of engagement and adopt measures relevant to good food systems governance. (para. 61)

## Examples of regulatory measures

The Special Rapporteur emphasizes that “health and health-related regulatory measures should not be approached as presumably conflicting with human rights, but rather as mutually reinforcing frameworks.” (para. 68) States should align regulatory measures with the best scientific evidence available free from conflicts of interest. (para. 69)



### Front-of-package nutrition labeling

One of the regulatory measures recommended by the Special Rapporteur towards the realization of the right to health is the adoption of mandatory front-of-package nutrition labeling. (para. 73) This also contributes to the “realization of the right to information and the right to benefit from scientific progress and its application, which includes access to scientific knowledge and information.” (para. 75)

The report reiterates that States must support people in “making informed choices about their health.” (para. 13) Front-of-package nutrition labeling allows “consumers to correctly, quickly and easily identify products that contain excess sugar, sodium and fats by providing them with accurate, transparent and easily understandable nutritional information.” (para. 73)

The Special Rapporteur praises the adoption of front-of-package nutrition labeling in several countries, such as Argentina, Brazil, Canada, Chile, Colombia, Mexico, Peru and Uruguay. (para. 88) She also recommends that States “adopt front-of-package nutrition warning labeling on food and beverages containing excessive amounts of critical nutrients, following the best available scientific evidence free from conflicts of interest.” (para. 97 - i)



### Marketing restrictions

The Special Rapporteur acknowledges that food and beverage corporations have used highly deceptive marketing strategies, including “luring consumers into believing that certain products are more sustainable, or in some cases more nutritious, than they actually are, to influence dietary decisions.” (para. 76)

Marketing strategies have pervasive effects in people who live in vulnerable conditions. For instance, “corporate marketing strategies for unhealthy foods and beverages specifically target lower-income countries, while often pushing healthier products in

richer countries.” (para. 18) Furthermore, corporations have “stimulated an increasing demand for ultra-processed products through advertising, promotions and other marketing strategies that disproportionately target children, racial and ethnic minorities and people from socially disadvantaged backgrounds.” (para. 26)

In compliance with States’ obligation to protect, States must “reduce children’s exposure to food and beverage advertising and ensure that industry provides accurate and easy-to-read nutrition information when advertising its products.” (para. 78) This includes “consider[ing] measures such as restricting the marketing and advertising of certain goods and services to protect public health.” (para. 78) On this subject, the Special Rapporteur recommends that States restrict the “availability of unhealthy foods and their advertising in school settings.” (para. 97 - k)



### Corporate Social Responsibility

The report acknowledges that during the COVID-19 pandemic corporate actors in the food and beverage industry positioned themselves as part of a solution to food- and nutrition-related crises, such as hunger and food insecurity, through various means. For instance, by “coupling pandemic relief actions (e.g., donations) with aggressive marketing of ultra-processed products; promoting ultra-processed products as being safer and free of contamination; donating ultra-processed products to individuals in vulnerable situations, such as programs for school children or low-income populations; and highlighting philanthropic activities while actively lobbying against public health policies to address diet-related non-communicable diseases.” (para. 58)

In this regard, the Special Rapporteur calls on States to “prioritize the rights of the population over the private interests of the food and beverage industry.” (para. 97 - h)



### Fiscal policies

The report concedes that “taxation and subsidy strategies can redistribute the relative costs of foods, promoting equity and empowering decision-making.” (para. 80) The revenue collected through the adoption and implementation of fiscal policies can be used by States to progressively achieve the full realization of rights “to the maximum of its available resources” and “by all appropriate means.” (para. 81)

The Special Rapporteur praises Barbados’ tax on sweetened beverages in accordance with the guidelines set by the World Health Organization, (para. 89) as well as Colombia’s tax on ultra-processed sugar-sweetened beverages and food. (para. 90)



### Procurement policies

The Special Rapporteur recalls that sourcing food for schools, hospitals and public administrations represents an opportunity for government to support more nutritious diets and more sustainable food systems. (para. 82)

She praises Brazil’s school feeding program, which requires that 30% of the budget be used to purchase food from family farms, showcasing how specific budget allocations coupled with simplified hiring processes can catalyze the expansion of the healthy food market. (para. 87)



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