



# BRIEF ON THE REPORT “NONCOMMUNICABLE DISEASES AND HUMAN RIGHTS IN THE AMERICAS”

Inter-American Commission on Human Rights

Key takeaways to advance the prevention and treatment of  
non-communicable diseases from a rights-based perspective

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## Background

The Inter-American Commission on Human Rights (IACHR) is an autonomous body of the Organization of American States (OAS) and has the mandate to promote the observance and defense of human rights in the Americas. The IACHR has thematic rapporteurships, including the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights, which specifically supports the promotion and protection of economic, social, cultural and environmental rights.

In compliance with this mandate, the IACHR published in August 2023 the thematic report developed by the Special Rapporteur on Economic, Social, Cultural and Environmental Rights titled “*Noncommunicable Diseases and Human Rights in the Americas*.” This is the first report issued within the Inter-American Human Rights System that addresses in a broad and in-depth manner the relationship between the effective enjoyment of human rights and non-communicable diseases (NCDs), considering them a serious problem impacting public health, sustainable development and human rights.

The Special Rapporteur sets forth the Inter-American standards applicable to the prevention and treatment of NCDs. In exploring human rights and related obligations, the report specifically addresses the duty to regulate and supervise private actors such as the food and beverage industry—including considerations about conflicts of interest—, as well as regulatory measures such as front-of-package warning labels, marketing restrictions, fiscal measures and school environments. It also cites measures adopted by various States in the Americas to address NCDs, offering recommendations to guide compliance with State’s human rights obligations.

At the national level, reports issued by the IACHR 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 the IACHR report in connection with the prevention and treatment of NCDs. Please see the QR code in the last page to access the full report.

# Key points from the report



## States must prevent NCDs at the population level

Given the serious problem of NCDs, “and taking into account the knowledge that States have about the risks and adverse impact on human rights of these diseases, [the Special Rapporteur] considers that States have the duty to adopt the necessary measures to prevent [NCDs] development at the population level,”<sup>1</sup> including in the context of business activities. (para. 171)

The report emphasizes the close relationship that exists between the duty to regulate and the duty to prevent violations of human rights, particularly in relation to the frameworks that regulate business activities. (para. 141)



## States cannot promote risk factors associated with NCDs

“States must refrain from engaging in conduct linked to business activities that contravenes the exercise of human rights.” (para. 128) Therefore, “State conduct that promotes or encourages factors associated with [NCDs] could have implications on the compliance with the obligation to respect [human rights].” (para. 169)



## States must encourage the social determinants that lead to good health outcomes, while discouraging those that facilitate the development of NCDs

States “must assume a proactive role to modify those factors that facilitate the development of NCDs, and promote those that make it easier for people to enjoy a state of general well-being.” (para. 167) Thus, for example, States must adopt measures to discourage the consumption of products that contribute to the development of risk factors for NCDs such as tobacco, alcohol and unhealthy food products and beverages, as well as adopt measures to promote healthy diets and physical activity. (paras. 168, 169 and 201)

According to the report, “addressing the social determinants of health or the conditions of the environment in which people live (healthy environment, access to nutritious foods, access to health information, distribution of resources, among others), as well as the behavior of companies that manufacture and market products associated with the development of NCDs, is decisive to prevent and control these diseases. The right to health requires that States adopt measures not only with respect to health care through the provision of health services and goods, but also with respect to the physical and psychosocial environments that condition the enjoyment of the right to health of people.” (para. 185)

The report also states that “the health problems derived from NCDs are influenced by the activities of the industries manufacturing unhealthy products whose use and consumption constitute risk factors for the development of NCDs, forming part of the environment that conditions the behaviors and

1. CIDH, ‘Las Enfermedades No Transmisibles y Los Derechos Humanos En Las Américas’ (2023) OEA/Ser.L/V/II. Doc. 192 para 141 <[https://www.oas.org/es/cidh/informes/pdfs/2023/REDESCA\\_enfermedades\\_NoTransmisibles\\_DDHH\\_SPA.pdf](https://www.oas.org/es/cidh/informes/pdfs/2023/REDESCA_enfermedades_NoTransmisibles_DDHH_SPA.pdf)>

options of consumers. The recognition of these determinants offers a different explanation to the preconceived idea that NCDs are mainly self-inflicted, and highlights the role that companies have in the spread of these diseases, shedding light on their potential legal implications in the Inter-American System. Given the relationship of business activities with adverse impacts on health in the context of the development of NCDs, the Office of the Special Rapporteur considers that one of the ways to address these commercial determinants of health is through compliance with the obligation to guarantee the right to health, and specifically through the exercise of the duty of regulation, supervision and oversight of the activities of private actors.” (para. 187)



### **States have a duty to regulate and supervise business activities in the context of NCDs**

States must “regulate the activities of companies whose actions are linked to the risk factors of [NCDs], as well as those involved in the provision of health services related to their detection and treatment.” (para. 148)

Additionally, “companies whose activities are related to the modifiable risk factors of NCDs, and which therefore have implications for the life, personal integrity and health of people, must be subject to inspection and supervision. Furthermore, companies that provide health services in the context of NCDs must be supervised because of the connection of their work with the right to life, personal integrity and health, in addition to providing a service of public interest.” (para. 148)



### **States must consider the impact of NCDs on groups or individuals in a vulnerable situation**

The report affirms that “the actions that States implement in the area of health must consider the contexts in which these social groups live and direct their efforts towards eradicating or reducing the various social, economic, political and cultural factors that negatively affect their well-being including how certain business activities impact them more severely... Moreover, all State measures adopted... to reduce exposure to the risk factors of NCDs and the incidence of these diseases must consider their particular impact on certain population groups.” (para. 174)

Accordingly, “the regulations and public policies that are designed and implemented by States regarding the prevention and treatment of NCDs must consider the inequities faced by certain groups or individuals in terms of access to health services, as well as their special vulnerability derived from exposure to NCD risk factors, so that they seek to guarantee substantive equality for these groups and avoid the deepening of inequities. Similarly, these rules and regulations must guarantee the special protection of groups such as children and adolescents, as well as include in their evaluation their impact on traditionally discriminated groups and those most exposed to the risk factors of NCDs.” (para. 217)



### **States should avoid undue industry influence and must identify, prevent and regulate conflicts of interest**

The report points out that the “absence of [S]tate regulation in terms of due diligence and supervision mechanisms facilitates the exercise of influence by companies in the adoption of regulations and public policies.” (para. 247) Therefore, in the context of NCDs, taking measures to prevent and regulate the undue influence of industries is key. (para. 248)

In compliance with the obligation to respect rights, “States must identify, prevent and regulate the management of conflicts of interest in which their agents and those involved in the design, formulation and implementation of public policies may be involved; moreover, States must refrain from disseminating or basing their regulatory and public policy decisions on evidence affected by conflicts of interest.” (para. 230)





### States should adopt regulations to prevent and address NCDs based on scientific evidence free of conflicts of interest

The report highlights that scientific studies on which underpin “the design, implementation and evaluation of public policies on NCDs or... risk factor associated with them... must be free of conflicts of interest.” (para. 231)

“[T]he States must consider the best scientific evidence free of conflict of interest, both regarding the existence of human rights problems to be addressed, and in relation to effective measures to address them. In the context of NCDs, scientific evidence must be seriously addressed by States regarding its impact on human rights. The measures adopted aimed at preventing, treating and controlling NCDs must be aligned with the best available scientific evidence free of conflicts of interest in the matter, without implying that in circumstances in which the scientific evidence on the effectiveness of a particular measure is incipient or still developing, States may omit their obligation to guarantee and adopt measures.” (para. 232)

### States should adopt regulations on front-of-package warning labeling

The labeling of products associated with the development of NCDs guarantees the right of people to receive “clear and easy-to-understand information about the products, as well as the risks that their use and consumption entail.” (para. 272) The use of labels that warn about health risks should be extended to all products related to the development of NCDs, such as unhealthy foods and beverages. (para. 273)

Front-of-package warning labeling “has proven to be the most effective way to allow consumers to identify the characteristics of the product and recognize the least harmful options, by providing concrete, clear and understandable information to quickly identify the potential impact of that product on health, making the exercise of informed consent and the right to information real.” (para. 332)

The report indicates that States must ensure access to information about the content of foods and beverages, and their impact on human rights. “This information must be presented in a clear, simple, easy and quick way to understand, according to the best scientific evidence free of conflicts of interest available regarding the public health purpose pursued.” (para. 332 and recommendation 19)

The IACHR explicitly recommends the adoption of “regulatory measures to address NCDs such as front-of-package warning labeling for unhealthy foods and beverages, taking into account that this is a necessary, non-discriminatory and proven effective public health measure for warn people about the harmful content of products.” (para. 332 and recommendation 25)



### Due diligence of companies that produce and distribute products associated with NCDs

Companies that produce and distribute products that constitute risk factors for the development of NCDs must carry out due diligence processes, that is, they must identify, prevent and mitigate the negative impacts of their activities and operations on human rights, as well as ensure accountability for the impacts that they have produced or have contributed to producing. (para. 243) The regulations established by States, as well as the due diligence processes of companies, must cover their production and distribution activities of unhealthy products, in addition to advertising and promotion activities (para. 245) and the participation in the decision-making processes carried out by the State. (para. 246)



### **States should appropriately regulate and supervise the production, marketing and promotion of products associated with NCDs**

States should take measures to reduce the attractiveness, availability, affordability, exposure and access to tobacco, alcohol and unhealthy food products and beverages through the implementation of various regulatory interventions, (para. 257) which in turn, have been recommended by different international public health organizations. (para. 258)

### **States should implement restrictions on marketing of unhealthy products**

The report asserts that “advertising, promotion and sponsorship of products related to the development of NCDs should be restricted, particularly, although not exclusively, in order to avoid the exposure of children and adolescents and protect them from their detrimental impacts.” (para. 265) States must take measures to “reduce the impact that marketing practices have on children and adolescents.” (para. 165 and recommendation 24)

### **States should restrict the availability, advertisement, promotion and sponsorship of unhealthy products in school environments and health institutions**

The report indicates that in certain contexts the obligation to guarantee the rights of children and adolescents is reinforced, and therefore advertising, promotion and sponsorship, as well as the availability of products associated with the development of NCDs, must be restricted. These restrictions must reach “school environments or other environments where children and adolescents gather or visit, such as parks and play places.” (para. 267) These restrictions should also apply to health institutions. (para. 268)

Moreover, the report recommends the adoption of “measures to reduce the impact that marketing practices have on children and educational environments,” (para. 268 and recommendation 24) as well as strengthening “school health and nutrition programs to ensure the existence of schools that support nutrition interventions and whose policies, curriculum, spaces and services are designed to promote healthy eating and support good nutrition.” (para. 268)

The report also points out that States must carry out “interventions... to raise awareness and encourage regular physical exercise, including educational campaigns, urban planning policies that make it easier for the population to transport themselves in a more active, sustainable and safe way” (para. 268 and recommendation 33) , as well as “expand opportunities for students to practice more activities at school and on the way home.” (para. 268)



### States should regulate the activities of so-called Corporate Social Responsibility (CSR)

Considering that CSR activities can be used to encourage the consumption of products associated with the development of NCDs “directly or indirectly, including through the promotion of their brands, this [Special Rapporteurship] urges States to adopt regulations that allow the prevention and mitigation of the negative impacts of such activities on human rights.” (para. 271)



### States must review their fiscal framework and should adopt healthy taxes and other measures towards healthier environments

The report mentions that “the adaptation of the fiscal framework aimed at the effective enjoyment of human rights is one of the measures that States should adopt and implement” (para. 332) in compliance with human right obligations.

The IACHR notes that “States can use the fiscal tools at their disposal, such as healthy taxes and subsidies for healthy foods, to modify the risk factors that generate NCDs, and thus make it easier for people to enjoy the maximum possible level of health.” (para. 259) The report also mentions that the World Health Organization and Pan-American Health Organization have recommended the adoption of a tax on tobacco, sugary drinks and other products harmful to health, as well as the adoption of subsidies to encourage the consumption of healthy foods. (para. 260)

Regarding healthy taxes, the IACHR considers that they contribute to reducing the consumption of products harmful to health, generate additional immediate tax revenues and potentially reduce health care costs, as well as increase labor productivity. (para. 321) In addition, they are considered a valuable tool to achieve the Sustainable Development Goals (SDGs), since they “collaborate in reducing the burden of NCDs (SDG3), they are progressive measures that greatly benefit vulnerable populations that endure a greater health burden (SDG 1, 5, 10), and drive economic development through a healthier workforce (SDG 8).” (para. 321)

According to the IACHR, taxes on sugary drinks are an essential part “of a comprehensive approach to reduce the consumption of products associated with the development of NCDs. The benefits resulting from their imposition may be greater if they are applied as part of a package of demand reduction measures, such as restricting their promotion and marketing, regulating their labeling, as well as prohibiting them in schools and other environments.” (para. 324)

Furthermore, States must “[a]void establishing or granting tax incentives that promote the production or consumption of unhealthy products as part of compliance with their obligation to respect human rights.” (para. 324 and recommendation 22) Incentives of this type constitute “obstacles to reducing poverty and inequality in the region.” (para. 264)



### States must guarantee the right to adequate food which requires addressing poor nutrition

The report emphasizes that “[m]alnutrition in all its forms and the lack of accessibility to healthy foods is a problem that is more widespread in communities made up of people and social groups that live in vulnerable circumstances or have historically been discriminated against”, (para. 198) such as children and adolescents, or people living in poverty.

Poor nutrition is an issue that must be addressed by States. In this context, States’ obligation respect human rights requires “that [they] refrain from acting in a way that hinders access to adequate nutrition, including promoting the consumption of unhealthy food products and beverages, which do not comply with the characteristics to be considered foods of sufficient quality given that they are associated with the development of NCDs.” (para. 200)



The Special Rapporteur urges States to adopt measures aimed at discouraging the consumption of products of low nutritional quality, and to promote the availability, access and consumption of safe, acceptable, quality and culturally appropriate foods to satisfy the dietary needs of people.” (para. 200)

Additionally, the report recommends the “adoption of public procurement policies that support the production and consumption of healthy, sustainable and local food products.” (para. 200)



### States must consider the detection, screening and treatment of NCDs as essential health services

“[T]he management of NCDs, understood as the detection, screening, treatment and palliative care of people, should be considered included within essential health services. The above is without prejudice to the need for interventions at the population level to reduce exposure to NCD risk factors, widely recommended as cost-effective measures to prevent their development.” (para. 166)



### States must not discriminate in the enjoyment of the right to health in the context of NCDs

The report indicates that States may violate their obligation to respect the right to health when they deny or postpone without justification access to health services for people living with NCDs to prioritize medical care for people with other diseases, as well as when they deny people who are overweight or obese care that would allow them to access a timely and quality diagnosis, as well as appropriate treatments for eventual health conditions. (para. 159)

Regarding the special situation of vulnerability in which people living with NCDs found themselves during the COVID-19 pandemic, the report notes “that all people have the right to access medical health services under conditions of equality, regardless of to their state or health condition, as is the case with people living with NCDs.” (para. 175)



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