

A CHILD RIGHTS-BASED APPROACH TO FOOD MARKETING: A GUIDE FOR POLICY MAKERS

April 2018

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INTRODUCTION

A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers offers a legal analysis that links the WHO Recommendations with a human rights framework, particularly the Convention on the Rights of the Child. In this analysis, the CRC provides the foundation for a child rights approach to ending childhood obesity and the prevention of non-communicable diseases.

The Convention on the Rights of the Child – interpreted in light of the World Health Organization’s evidence-based set of recommendations on the marketing of foods and non-alcoholic beverages to children – requires governments to protect children from the negative impacts of marketing unhealthy food. For businesses, the Convention provides direction for respecting and supporting child rights in their policies and practices.

In May 2010, the 63rd World Health Assembly unanimously endorsed the World Health Organization (WHO) set of recommendations on the marketing of foods and non-alcoholic beverages to children.¹ The WHO Recommendations urge governments to adopt restrictions on marketing to promote better nutrition and contribute to the global objective of ending childhood obesity.

Despite the accumulation of independent evidence that unhealthy food marketing affects children’s preferences, purchase requests and diets, progress towards implementing these recommendations has been slow.

Food Marketing and Children’s Rights offers a legal analysis that links the WHO Recommendations with the Convention on the Rights of the Child (CRC). After describing the extent of children’s exposure to unhealthy food marketing, this report details which rights are impacted, and outlines government duties and corporate responsibilities to protect and respect these rights.

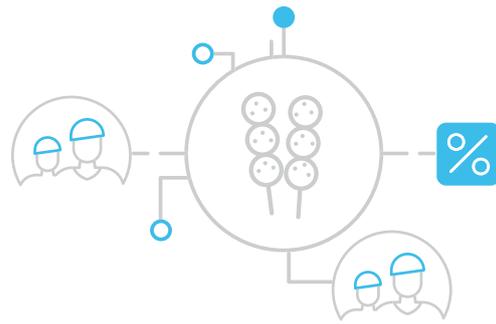
This report is intended for policy makers. It aims to highlight a useful framework for delivering on the government obligation and business responsibility to protect children from unhealthy food marketing.

In this analysis, the CRC provides the foundation for a child rights approach to ending childhood obesity and the prevention of non-communicable diseases – with children identified as rights holders and governments as the corresponding duty bearers. Within this framework, all policies and actions that have a potential impact on children should be guided by internationally accepted human rights principles and standards.

Full implementation of the WHO Recommendations can support respect for, protection and fulfilment of every child’s right to the highest attainable standard of health, adequate food, and other rights discussed in this report. As part of this process, governments should adopt evidence-based systems to determine which foods are unhealthy and which are healthy. This approach also embraces cross-country cooperation to ensure the effectiveness of national measures to protect children.

The United Nations Guiding Principles on Business and Human Rights states particular attention be given to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized.² Children are amongst such rightholders, as they are at heightened risk given their still evolving capacities.

The United Nations Framework ‘Protect, Respect and Remedy’ for Business and Human Rights, and General Comment No. 16 on State Obligations Regarding the Impact of the Business Sector on



Children’s Rights, in tandem with the CRC, establish a clear foundation for the integration of a child rights approach in policies, ultimately building practices that truly respect and support the rights of children everywhere, including the most vulnerable and marginalized.

A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers is based on deep and detailed research into the relevant literature, as reflected in its substantial bibliography. With the CRC as a focus, tables on each of its relevant articles offer both the original text and commentary on the related child rights.

FOOD MARKETING AND CHILDREN’S RIGHTS IS STRUCTURED IN FOUR PARTS:



Part 1 highlights the consequences of the growing rates of childhood obesity throughout the world. It focuses on the commitment that governments have made to halt the rise of childhood obesity by 2025, and the framework the United Nations has developed to support them in fulfilling this commitment. It concludes by describing the purpose of this report.



Part 2 discusses the extent to which children are exposed to unhealthy food marketing, and details key elements of the WHO Recommendations. It then examines the evidence on how marketing influences children’s food preferences, purchase requests and consumption patterns.



Part 3 identifies how some articles of the CRC are relevant to food marketing, and outlines a child rights approach to advancing the global objective of ending childhood obesity. A child rights approach to unhealthy food marketing offers a powerful and universally applicable way to consider children as rights holders who are central to any policy discourse. While reflecting and incorporating the provisions of the CRC, this approach should complement, rather than exclude, existing strategies and processes.



Part 4 discusses how the CRC’s core principles – and the United Nations ‘Protect, Respect and Remedy’ Framework and the United Nations Guiding Principles on Business and Human Rights – can be applied by government and business to systematically support the child’s best interests in general and specifically to ensure that marketing practices respect children’s rights.

PART 1

PREVENTING CHILDHOOD OBESITY: A GLOBAL CONCERN

Part 1 highlights the consequences of the growing rates of childhood obesity throughout the world. It focuses on the commitment that governments have made to halt the rise of childhood obesity by 2025, and the framework the United Nations has developed to support them in fulfilling this commitment. It concludes by describing the purpose of this report.



PREVENTING CHILDHOOD OBESITY: A GLOBAL CONCERN

Childhood obesity is associated with a broad range of non-communicable diseases (NCDs), affecting the health of millions of children worldwide. During the past 20 years, it has become one of the most pressing global public health concerns. Many governments have made a commitment to ending the increasing rates of childhood obesity by 2025. To achieve this goal, United Nations agencies have started reflecting on how to pool their resources to ensure that action to prevent childhood obesity is coordinated and effective.

1.1 CHILD OBESITY AND PUBLIC HEALTH

According to the Joint Child Malnutrition estimates by UNICEF, WHO and the World Bank, there are now nearly 41 million overweight children globally, an increase of 11 million since 2000.³ If current trends continue, the number of overweight or obese infants and young children globally will increase to 70 million by 2025.⁴ In 2016, almost half of overweight children under age 5 lived in Asia. In Africa, the number of overweight children under age 5 has increased by nearly 50 per cent since 2000.⁵

Overweight and obesity are major risk factors for a broad range of NCDs, including cardiovascular diseases, diabetes, musculoskeletal disorders and cancer. Obesity can affect a child's health, educational attainment and quality of life – potentially leading to psychological effects, as well as breathing difficulties, increased risk of broken bones, high blood pressure, early markers of heart disease and insulin resistance.⁶

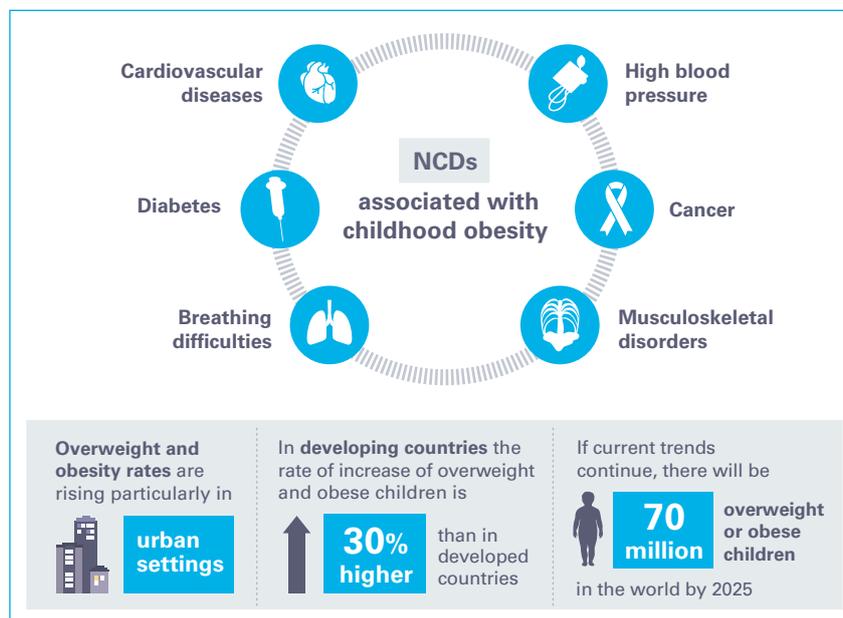
Childhood obesity is associated with a higher chance of adult obesity, premature death and preventable disability. It is an urgent concern because it has the potential to reverse many of the health benefits that are contributing to increased life expectancy.⁷ Most children are growing up in environments that encourage weight gain and are not conducive to weight loss.⁸ 'Energy imbalance', caused by consuming more calories than the body can use effectively, has resulted from changes in food type, availability, affordability and marketing, as well as a decline in physical activity, with more time being spent on screen-based and sedentary leisure activities.⁹

The vast majority of overweight or obese children live in developing countries, where the rate of increase has been more than 30 per cent higher than that of developed countries. Overweight and obesity are major risk factors for a broad range of NCDs, including cardiovascular diseases, diabetes, musculoskeletal disorders and cancer.

The marketing of unhealthy food has been clearly associated with increased childhood overweight and obesity, as discussed more thoroughly in Part 2. The term ‘unhealthy food’ is used throughout this report to refer to nutritiously poor foods and non-alcoholic beverages that are high in fats, sugar or salt. Such foods are the focus of WHO’s ‘Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children’, featured in Section 2.2. The box below introduces the nutrient profile, a key tool for systematically placing food in the ‘healthy’ or ‘unhealthy’ category.

Overweight and obesity can affect a child’s health, education attainment and quality of life.

FIG. 1: Effects of obesity on children’s health



CATEGORIZING FOOD AS ‘HEALTHY’ OR ‘UNHEALTHY’: NUTRIENT PROFILING

Nutrient profiling is the science of classifying or ranking food according to the composition of its nutrients, in the interests of preventing disease and promoting health. It can be used for multiple applications, including implementation of the WHO Recommendations on the marketing of foods and non-alcoholic beverages to children.^[1] With a focus on regulating unhealthy food marketing, the WHO Recommendations assume that governments determine what constitutes unhealthy food, based

on its nutritional value and content of fat, salt and sugar. While diverse models have been proposed to classify foods,^[2] the World Health Organization is working with international experts and partners to provide guidance in developing or adapting nutrient profile models. Several WHO regional offices have developed or are in the process of developing a nutrient profiling model that governments can adapt to their implementation of the WHO Recommendations.^[3]

The harmonization of nutrient profile models aims to produce consistent and coherent public health nutrition messages and, ultimately, improve nutrition and public health worldwide. Many governments still need to develop profiles to identify unhealthy foods and beverages.^[4] When establishing an appropriate system for categorizing food, governments should make sure that it is evidence-based and objective, while considering the best interests of children in all cases.

[1] World Health Organization, ‘Nutrient Profiling’, WHO, Geneva, 2010, <www.who.int/nutrition/topics/profiling/en>.

[2] For examples of methods used to distinguish ‘unhealthy’ foods, see: World Health Organization, ‘A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children’, WHO, Geneva, 2012, pp. 26–28. Available at <www.who.int/dietphysicalactivity/framework_marketing_food_to_children/en>. See also: Rayner, Mike, Peter Scarborough and Asja Kaur, ‘Nutrient Profiling and the Regulation of Marketing to Children: Possibilities and pitfalls’, *Appetite*, vol. 62, 1 March 2013, pp. 232–235; and Brinsden, H., and T. Lobstein, ‘Comparison of Nutrient Profiling Schemes for Restricting the Marketing of Food and Drink to Children’, *Pediatric Obesity*, vol. 8, 2013, pp. 325–337.

[3] WHO nutrient profile models include those developed by the Regional Office for Europe, (2015, <www.euro.who.int/_data/assets/pdf_file/0005/270716/Europe-nutrient-profile-model-2015-en.pdf>), the Office of the Americas (2016, <https://ncdalliance.org/sites/default/files/resource_files/9789275118733_eng.pdf>), the Regional Office for South-East Asia (2017, <<http://apps.who.int/iris/handle/10665/253459>>), the Regional Office for the Western Pacific Region (2016, <<http://iris.wpro.who.int/handle/10665.1/13525>>) and the Regional Office for the Eastern Mediterranean Region (2017, <http://apps.who.int/iris/bitstream/10665/255260/1/EMROPUB_2017_en_19632.pdf>).

[4] Developing nutrient profiles is a key part of implementing a comprehensive programme for ending childhood obesity. See, Recommendation 1.4: World Health Organization, ‘Report of the Commission on Ending Childhood Obesity’, WHO, Geneva, January 2016, p. viii.

1.2. THE TWENTY-FIRST CENTURY AGENDA FOR PREVENTING OBESITY

Non-communicable diseases gained international prominence as a result of the 2011 High Level Meeting on Prevention and Control of NCDs. As an outcome of this meeting, governments acknowledged their primary role and responsibility for responding to the challenges posed by NCDs, through the Political Declaration subsequently adopted by the United Nations General Assembly.¹⁰

As part of preparations for this meeting, the WHO determined that the implementation of population-wide interventions could offer a high return on investment, taking into account the social and economic costs of NCDs, particularly for low- and middle-income countries. If interventions remain static and NCD rates continue to increase as populations age, economic losses in low- and middle-income countries due to the four main NCDs – heart disease, cancer, diabetes and chronic respiratory disease – are estimated to reach more than \$7 trillion¹¹ over the period 2011–2025, an average of nearly \$500 billion per year, equivalent to approximately 4 per cent of these countries’ annual output.¹²

The Political Declaration paved the way for the adoption by the 66th World Health Assembly of the WHO Global Action Plan for the Prevention and Control of Noncommunicable Diseases, 2013–2020. This plan includes a monitoring framework with nine voluntary global targets to be reached by 2025, including four that are particularly relevant to this report: a 25 per cent reduction in the overall mortality from cardiovascular diseases, cancer, diabetes or chronic respiratory diseases; a 10 per cent reduction in prevalence of insufficient physical activity; a 30 per cent relative reduction in mean population intake of salt/sodium; and a halt in the rise of diabetes and obesity.¹³

These ambitious objectives require the development of effective multisectoral interventions, and their coordination at the local, national, regional and global levels. Mechanisms and working groups that have been set up to facilitate implementation of the Global Action Plan include the following:

WHO Global Coordination Mechanism on NCDs

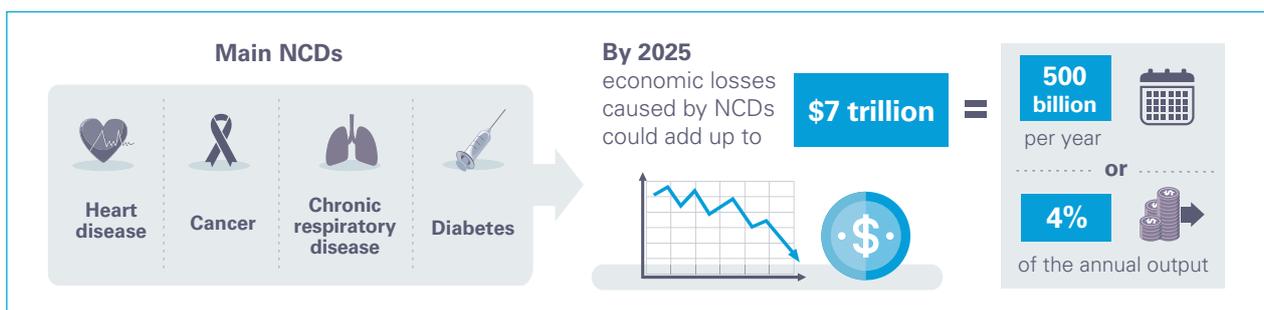
Established in September 2014 to harmonize engagement and action across sectors, the Global Coordination Mechanism is led by member States, with other participants ranging from non-governmental organizations and academic institutions to United Nations agencies. The primary purposes of the mechanism include “avoiding duplication of efforts, using resources in an efficient and results-oriented way, and safeguarding WHO and public health from any undue influence by any form of real, perceived or potential conflicts of interest.”¹⁴

United Nations Interagency Task Force on NCDs

Established in June 2013, with the World Health Organization as the lead agency, the Interagency Task Force was designed to help countries meet their high-level commitments to respond to NCD epidemics worldwide. Its primary objective is to “raise the priority accorded to the prevention and control of NCDs in global, regional and national agendas and internationally agreed development goals, through strengthened international cooperation and advocacy.”¹⁵ At its meeting in October 2016, the Task Force members agreed that the Standing Committee on Nutrition would convene a thematic group on nutrition, and that nutrition would become a standing agenda item at its meetings.¹⁶

Lack of further interventions on NCDs could cause economic losses in low- and middle-income countries

FIG. 2: Estimated economic losses in low and middle-income countries in relation to interventions on noncommunicable diseases.



An agenda for preventing obesity

FIG. 3: Frameworks and mechanisms currently in place for the prevention of noncommunicable diseases.



Commission on Ending Childhood Obesity (ECHO)

– Noting that progress in tackling childhood obesity had been “slow and inconsistent,” the WHO Director-General established ECHO in June 2014. To provide guidance to the Commission, two ad hoc working groups were convened: on the science and evidence for ending childhood obesity; and on implementation, monitoring and accountability frameworks. In May 2016, the 69th World Health Assembly welcomed ECHO’s report on the interventions that would be most effective in tackling childhood and adolescent obesity in different contexts around the world,¹⁷ and asked WHO to develop an action plan for implementing its recommendations. Following consultation with member States and relevant stakeholders, a plan was submitted to the WHO Executive Board.¹⁸

The Rome Declaration on Nutrition

, an outcome of the Second International Conference on Nutrition (ICN2), organized by the Food and Agriculture Organization of the United Nations and the World Health Organization, is another key milestone. In this declaration, ministers and representatives of the member States acknowledge that all forms of malnutrition – including undernutrition, micronutrient deficiencies, and overweight and obesity – not only affect people’s health and well-being, they carry a high burden in the form of negative social and economic consequences to individuals, families, communities and countries.¹⁹ In April 2016, the General Assembly endorsed the ICN2 outcomes and proclaimed 2016–2025 the United Nations Decade of Action on Nutrition.²⁰

The 2030 Agenda and the Sustainable Development Goals (SDGs), adopted in September 2015, focus on nutrition and health in SDG 2 (end hunger, achieve food security, improve nutrition and promote sustainable agriculture) and SDG 3 (ensure healthy lives and promote well-being for everyone, at all ages).²¹

1.3 PURPOSE OF THIS REPORT

Food Marketing and Children's Rights analyses the extent to which unhealthy food marketing has adverse effects on children's rights, and outlines the duties for governments and responsibilities for business to respond to the associated health risks. It aims to contribute to the broader reflection on the importance of adopting a child rights-based approach to preventing non-communicable diseases, which is at the heart of the WHO Global Action Plan²² and underscored by the final report of the Commission on Ending Childhood Obesity.²³

To date, United Nations agencies have published little on what a human/child rights approach to NCD prevention, and childhood obesity prevention specifically, entails in practice. One exception is the recent report published by the WHO Regional Office for Europe, which highlights the relevance of child rights in the context of digital marketing and the regulation of unhealthy food marketing to children.²⁴

In the academic literature, there is growing interest in the relevance of the CRC²⁵ and how it could be used to promote healthier diets.²⁶ But the literature does not fully develop the role that the CRC could play in supporting the development and implementation of policies regarding the impacts of marketing unhealthy food to children.

This report is intended to help fill that gap, placing children's rights at the heart of its premise and drawing attention to the role of governments and businesses in protecting children from the effects of unhealthy food marketing. Because there are multiple factors that contribute to obesity, it calls for a coordinated response across sectors.²⁷

In the scope of this report, the focus is on unhealthy food marketing (commercial practices promoting the consumption of unhealthy food), but it does not cover social marketing and how marketing techniques could be used to promote the consumption of healthy food.²⁸ Moreover, we recognize that a life-course approach is necessary to effectively address childhood obesity – embracing preconception and antenatal care, early childhood, school-age children and adolescents.

While the report concentrates on food marketed to children, rather than food marketed to their caregivers, a coordinated multisectoral response will involve implementing the International Code of Marketing of Breastmilk Substitutes, relevant World Health Assembly resolutions, and recommendations in the 2016 WHO Guidance on ending inappropriate promotion of foods for infants and young children at a national level.

Part 2 briefly presents evidence supporting regulations to restrict marketing of unhealthy food to children, in line with the WHO Recommendations. Part 3 reviews the provisions of the CRC that are particularly relevant to childhood obesity, and discusses how unhealthy food marketing impacts specific child rights. In conclusion, Part 4 offers a framework for implementing the WHO Recommendations, and discusses ways to ensure that the 'best interests of the child' principle is reflected in impact assessments and other policy processes.

PART 2

FOOD MARKETING TO CHILDREN: AN ISSUE OF PUBLIC HEALTH

Part 2 discusses the extent to which children are exposed to unhealthy food marketing, and details key elements of the WHO Recommendations. It then examines the evidence on how marketing influences children's food preferences, purchase requests and consumption patterns.



FOOD MARKETING TO CHILDREN: AN ISSUE OF PUBLIC HEALTH

New marketing channels and ever-evolving techniques, combined with escalating exposure, have a powerful effect on children. In evidence gathered over the past 20 years, unhealthy food marketing has been identified as a factor that contributes to growing rates of overweight and obesity. In May 2010, the World Health Assembly unanimously adopted the WHO Recommendations, marking the issue of unhealthy food marketing to children as a priority for the international community.

In-school promotion of unhealthy food is a particular concern because it reaches the settings where students and parents trust that action is taken in the best interests of children.

2.1. CHILDREN'S EXPOSURE TO UNHEALTHY FOOD MARKETING

Children are influenced primarily through three markets: (1) the primary market, as consumers in their own right, with their own money to spend; (2) the parental market, as children play a major role in influencing what their parents buy, often referred to as 'pester power', the 'nag factor' or 'kidfluence'; and (3) the future market, as children are likely to stick to the consumption habits they acquired as children when they grow older. The 'commodification of childhood' is all the more problematic when marketing promotes unhealthy food and therefore contributes to environments that tend to cause obesity.

Major food companies invest heavily in marketing, for example: Coca-Cola's \$3.499 billion advertising spending in 2014 amounted to 6.9 per cent of its turnover, Kellogg's spent \$1.13 billion in 2014, and McDonald's spent \$2.6 billion in 2011.²⁹ Even though an increasing portion of corporate marketing budgets is allocated to digital media,³⁰ companies continue to use more traditional settings to promote unhealthy food to children, including advertising through television, radio, print and billboards, as well as sponsorship arrangements, point-of-sale advertising and packaging design.³¹



WHAT MAKES SOME ADVERTISED DIETS UNHEALTHY?

The answer lies in food processing and the profits it delivers. As the Ad Hoc Working Group on Science and Evidence for Ending Childhood Obesity notes, "Although processing increases the monetary value of basic foodstuffs, in most instances the nutritional value is reduced."^[1]

Further details are offered in a Lancet paper, published in 2013:

"Ultra processed foods such as burgers, frozen pizza and pasta dishes, nuggets and sticks, crisps, biscuits, confectionery, cereal bars, carbonated and other sugared drinks, and various snack products... are typically energy dense, have a high glycaemic load; are low in dietary fibre, micronutrients, and phytochemicals; and are high in unhealthy types of dietary fat, free sugars, and sodium."^[2]

[1] World Health Organization, *Consideration of the Evidence on Childhood Obesity for the Commission on Ending Childhood Obesity: Report of the Ad hoc Working Group on Science and Evidence for Ending Childhood Obesity*, WHO, Geneva, 2016, p. 76.

[2] Moodie, Rob, et al., 'Profits and Pandemics: Prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries', *The Lancet*, vol. 381, no. 9867, 2013, pp. 670–679.

Television viewing is still popular with children, and one of the most popular ways to market unhealthy food to children. A global study of advertising on the commercial channels most watched by children found that 11–29 per cent of all advertisements broadcast were for food, and of those, 53–87 per cent were for unhealthy foods.³²

The Internet and other forms of digital marketing enable immersive, interactive and integrated marketing strategies: Unhealthy food marketing is everywhere, and children access digital media from an early age, often without the supervision of parents or any other adult. This risk is compounded by the rapid increase in ownership of mobile devices such as tablets and smartphones.³³

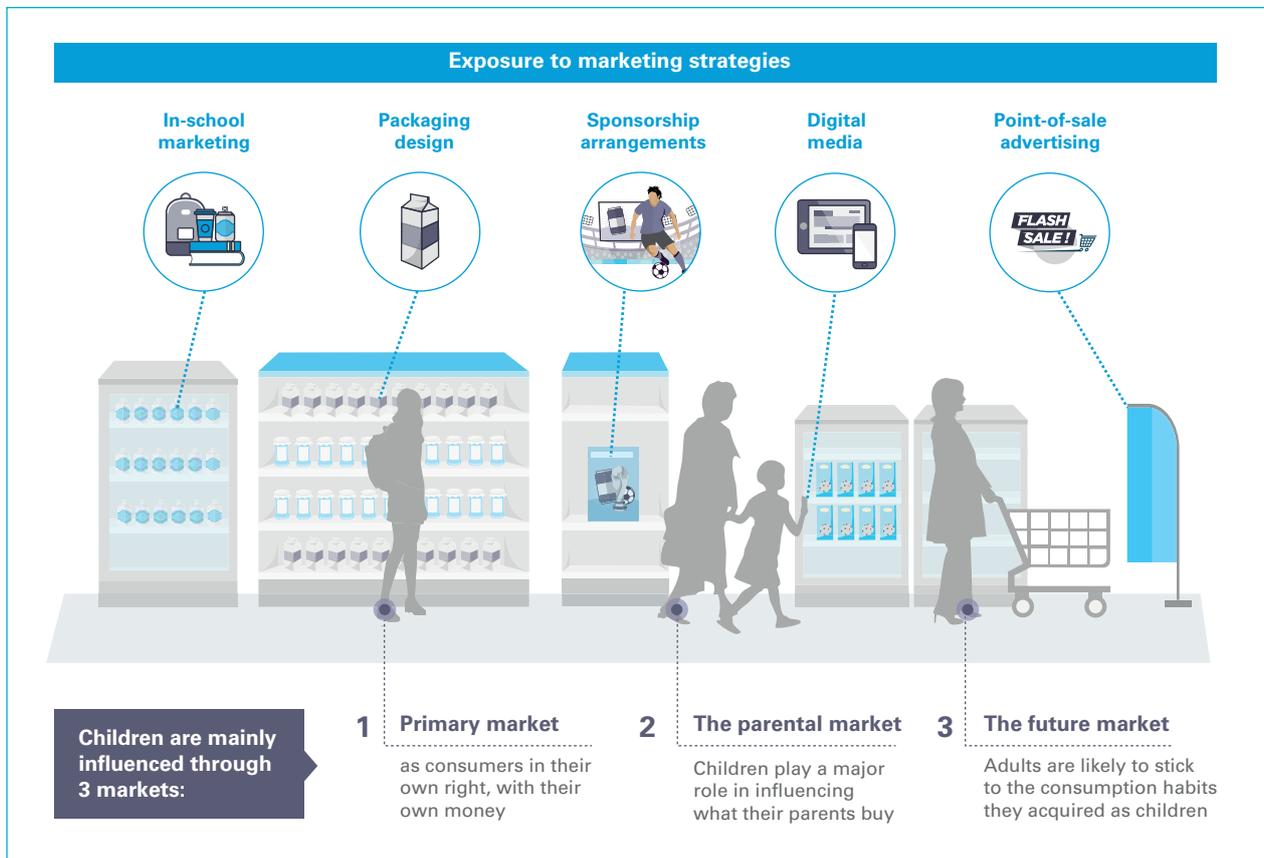
In-school promotion of unhealthy food is a particular concern because it reaches the settings where students and parents have a special trust that action is taken in the best interests of children. In the United States, children are sometimes exposed to

advertising on school buses and in-school television channels. While companies' expenditures on in-school marketing as reported to the Federal Trade Commission (FTC) have dropped compared to 2006, food companies invested \$149 million on in-school advertising in 2009. In-school marketing was mostly directed to teens, and 93 per cent was dedicated to promoting carbonated or non-carbonated beverages.³⁴

Sponsorship arrangements for major sports and cultural events also attract an audience of new, young consumers, particularly when related to sports events that have wide appeal, such as the Olympic Games. The 'Olympic Partner' companies, for example, obtain exclusive marketing rights worldwide within a designated product or service category.³⁵ As described by FIFA, in regard to the World Cup, companies that sponsor its games can rely on "the most effective international marketing platform, reaching millions of people in over 200 countries throughout the world,"³⁶ many of whom will be children.

New marketing channels and techniques have a powerful effect on children

FIG. 4: Factors that influence children's consumption.



2.1.1. INTEGRATED AND TARGETED STRATEGIES

Online marketing has become an integral component of the marketing mix for food brands: It has not replaced other forms of more traditional food marketing, but has been added to them to increase brand presence across a larger, more diverse range of media. This includes search engines, social networking, photo-sharing and other user-generated content sites. On one social media channel, for example, food companies had the third highest number of sponsored posts in September 2016.³⁷

One survey of 130 food company websites found that 48 per cent had designated children's areas, featuring a variety of marketing techniques including 'advergaming', interactive programmes, branded spokes-characters and tie-ins to other products.³⁸ Among companies with child-oriented sites, 87 per cent promoted unhealthy food.³⁹

Digital technologies have revolutionized marketing by making it possible for marketers to access much more specific audiences than in the broadcast era, gathering information and adapting their marketing strategies to target each potential customer as individually and effectively as possible. Technology provides an invisible, automatic means of collecting and analysing personal data to construct detailed consumer profiles. As described in the *Journal of Consumer Marketing*, "Most consumers do not realize that their information is being collected and used to construct profiles. Most have not consented to divulge the information nor to be the target of promotion."⁴⁰

Through the collection and analysis of highly detailed user data, marketing can be tailored to the content that a user is viewing on a website (contextual advertising) or to characteristics and preferences of each individual user (online behavioural marketing).⁴¹ The increasing use of such targeted marketing, coupled with geolocation technology, personalizes the connection between a brand and customers. Companies that collect mobile phone numbers from their interactive websites, for example, can customize their messages on the basis of users' interests. Smartphone applications further increase the opportunities for marketing, including unhealthy food marketing to children.⁴²

Digital technologies have revolutionized marketing strategies, broadening their influence

FIG. 5: Characteristics of digital media and its use for marketing



In addition, neuroscience techniques such as functional magnetic resonance imaging and facial emotion analysis are used to record viewers' responses to content – happiness, surprise, anger, disgust, fear or sadness – and analysed to optimize both the content and placement of advertising. The use of these highly sophisticated tools in the development of marketing campaigns raises questions regarding the ethics of increased identification and targeting of vulnerable consumers, particularly children and adolescents.⁴³

2.1.2. SOCIAL NETWORKING AND CHILDREN AS BRAND AMBASSADORS

The trend towards personalized marketing messages is supported by the rapid development of social networking sites, which are amply used by children and adolescents, for example:

- A poll in the United States found that 22 per cent of teenagers access their favourite social media site more than 10 times a day, with more than half of adolescents logging onto a social media site more than once a day.⁴⁴
- An analysis of Brazil and seven European countries found that 52 per cent of Internet users aged 9–10 had a social networking profile, rising to 91 per cent for the 15–16 age group.⁴⁵
- In the United Kingdom, children aged 13–17 spend an average of 9 hours per day ‘digitally engaged’, with 100 minutes of Internet time per day devoted to social media.⁴⁶

Social networking sites enable companies to encourage children to ‘like’, make references to and promote their brands, taking advantage of the influence of peers’ opinions.⁴⁷ This type of viral marketing relies on children as brand ambassadors – in turn, enabling brands to create a mix of social impressions that incorporate both paid advertising and ‘earned’ media,⁴⁸ which is generated for free by Internet users in response to a company’s other types of promotional efforts.

Even though children may have to declare that they are over a certain age to register on networking sites and message services, evidence suggests they often register under false ages and access sites at a much younger age. This raises questions around the effectiveness of age verification, and gives rise to both public health and data protection concerns,⁴⁹ as further discussed in Section 3.3.7.

2.1.3 MARKETING TECHNIQUES AND THEIR EFFECTS ON CHILDREN

Marketing techniques that are effective for promoting products, services and brands to children include celebrity endorsements, the use of cartoon or licensed characters, and the offer of a ‘free’ toy together with the sale of another product.⁵⁰ Gifts distributed with children’s meals, for example, are a widespread fast-food marketing tool, and are viewed by parents in the United Kingdom as the technique most likely to encourage children to ask their parents for unhealthy food.⁵¹ According to a report by the FTC, 10 ‘quick-service’ restaurant chains in the United States spent \$360 million in 2006 to acquire toys distributed with children’s meals – selling more than 1.2 billion meals with toys to children under 12, accounting for 20 per cent of all sales for children in these restaurants.⁵²

Several studies have shown that food packaging that displays familiar cartoon characters can increase children’s liking of this food, and some authors advocate that characters could be used as a strategy to promote healthy food.⁵³ In one study, children aged 4–6 differentiated identical food on the basis of its packaging and consistently stated that they preferred the taste of those foods with popular cartoon characters on the packaging. The effect, however, was seen most strongly for unhealthy food.⁵⁴

Children’s food intake is also influenced by celebrity endorsements, which can lead to increased consumption of an endorsed brand even when the endorser has been viewed by children in a non-food context. The ubiquitous presence of celebrity media may reinforce children’s unhealthy eating practices,⁵⁵ especially with the rise of less overt commercial endorsements from influential text and video blogs.⁵⁶ Marketing in the online environment is a concern when it portrays sales pitches as entertainment, making it particularly difficult for children to distinguish marketing from content. The proliferation of ‘advergames’ is one example of this trend, as discussed in the box on the following page.



ADVERGAMES: 'UNDER THE COGNITIVE RADAR'

Websites offer a range of games promoting goods, services and brands through highly immersive advergames that are designed to be entertaining and rely on users playing for long periods of time, sometimes with several repeat visits. They are a particular cause for concern in the context of childhood obesity because they tend to operate under the cognitive radar, that is, without children being aware they are the targets of unhealthy food marketing when playing these games.



Several studies have systematically reviewed the influence of advergames on the dietary choices of both younger and older children.^[1] One study found that children playing advergames with energy-dense food consumed more energy-dense snacks and fewer fruits and vegetables than children who played advergames with fruit or those in the control group.^[2] Research has also demonstrated that playing advergames creates a positive effect on liking, preferring and recognizing the promoted brands.^[3]

The impulsive nature of children plays an important role in their susceptibility to food advertisements. One study found that rewarding children to refrain from overeating

generally decreased their caloric intake, but rewarding children to refrain from eating had no influence when they were playing a game that promoted energy-dense snacks.^[4] In an examination of the effect of advergames that promoted energy-dense snacks or games that promoted fruit on children's freely chosen consumption, playing either type of advergame increased the intake of energy-dense snacks, but children playing the 'fruit versions' of advergames did not eat significantly more fruit than those in the other groups.^[5]

Studies have also looked at 'attentional bias', the tendency to pay attention to some things while simultaneously ignoring others, and the effect of advergames that promote energy-dense snacks. Using eye movements and reaction times to food and non-food cues, eye-tracking experiments found that a higher gaze duration for **the food cues results in consumption of more of the advertised snacks, and initial fixations on the food cues result in greater consumption of food in general, as well as the advertised product.**^[6]

[1] See, for example: Nairn, Agnes, and Haiming Hang, *Advergames: It's not child play*, Family and Parenting Institute, London, December 2012.

[2] Harris, Jennifer L., et al., 'US Food Company Branded Advergames on the Internet: Children's exposure and effects on snack consumption', *Journal of Child Media*, vol. 6, 2012, pp. 51–68.

[3] Van Reijmersdal, E. A., E. Rozendaal and M. Buijzen, 'Effects of Prominence, Involvement, and Persuasion Knowledge on Children's Cognitive and Affective Responses to Advergames', *Journal of Interactive Marketing*, vol. 26, 2012, pp. 33–42; Cauberghe, Verolien, and Patrick De Pelsmacker, 'Advergames: The impact of brand prominence and game repetition on brand responses', *Journal of Advertising*, vol. 39, 2010, pp. 5–18; and Mallinckrodt, Victoria, and Dick Mizerski, 'The Effects of Playing an Advergame on Young Children's Perceptions, Preferences, and Requests', *Journal of Advertising*, vol. 36, no. 2, 2007, pp. 87–100.

[4] Folkvord, Frans, et al., 'Impulsivity, "Advergames," and Food Intake', *Pediatrics*, vol. 133, no. 6, June 2014, pp. 1007–1012.

[5] Folkvord, Frans, et al., 'The Effect of Playing Advergames that Promote Energy-Dense Snacks or Fruit on Actual Food Intake among Children', *American Journal of Clinical Nutrition*, vol. 97, no. 2, February 2013, pp. 239–245.

[6] Folkvord, Frans, et al., 'The Role of Attentional Bias in the Effect of Food Advertising on Actual Food Intake among Children', *Appetite*, vol. 84, January 2015, pp. 251–258.

2.1.4. CHILDREN AS A GROUP OF PARTICULARLY VULNERABLE CONSUMERS

As a recent report by the WHO Regional Office for Europe points out, in a digital world, there are significant challenges associated with the definitions of ‘a child’ and ‘marketing to children’, because assumptions about older children’s media literacy in recognizing and resisting marketing may not necessarily be correct.⁵⁷

The child’s evolving capacities, a fundamental principle of the CRC, has long been a topic of research on how children develop. For example, Jean Piaget identified ‘milestones’ in the cognitive development of children, which have subsequently been adapted and applied to children’s relationship with advertising.⁵⁸ In Deborah Roedder John’s review of the literature on children’s consumer socialization, she proposed a three-stage process:

1. Perceptual (aged 3–7) – by the middle of this stage (age 4 or 5), children would be capable of distinguishing an advert from a programme by its length and format;

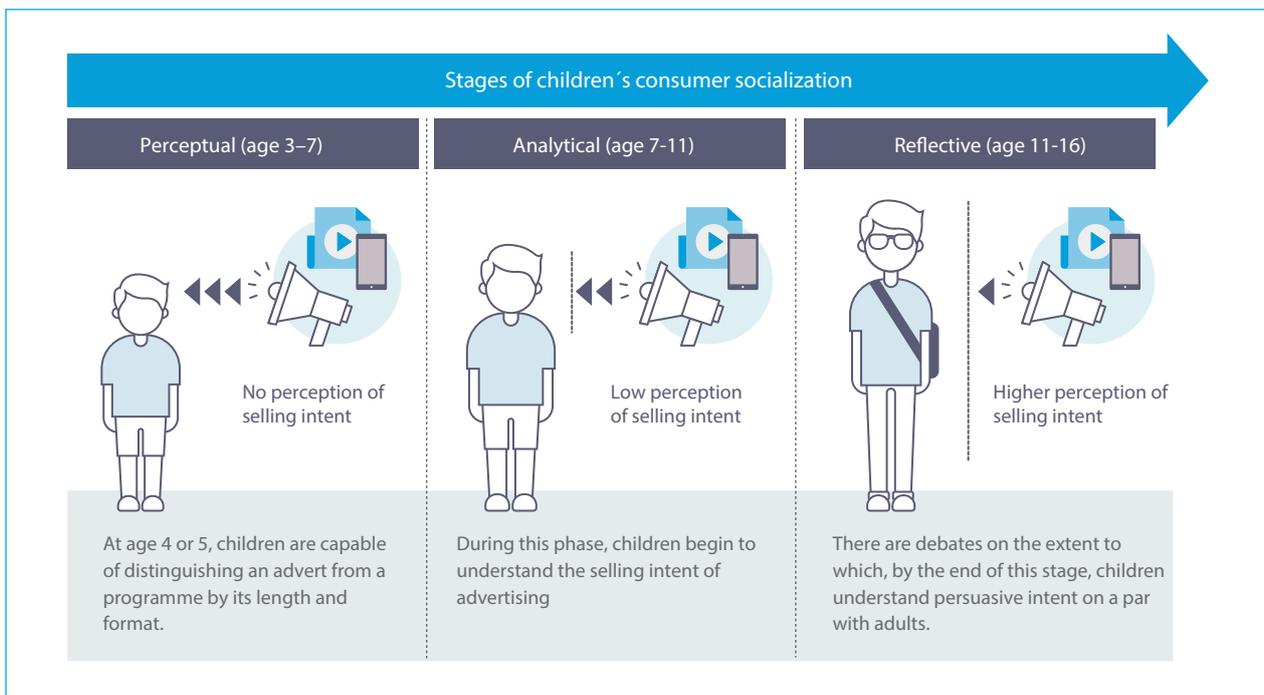
2. Analytical (aged 7–11) – during this phase, children would begin to understand the selling intent of advertising; and

3. Reflective (aged 11–16) – there would be some debates on the extent to which, by the end of this stage, children understand persuasive intent on a par with adults.⁵⁹

The research focusing on children’s development assumes that, at a certain age, their cognitive abilities would be sufficient to protect themselves from adverse advertising influences. This strand of research has been used to support the regulation of advertising to younger children, typically under age 12. Consequently, some countries and provinces have prohibited advertising to children, including Quebec (see box, page 19), Sweden⁶⁰ and Norway.⁶¹ Similarly, several major food businesses at the global or regional level have made pledges to limit advertising to children under age 12, including the International Food & Beverage Alliance commitments and the European Union (EU) Pledge.⁶²

Children become more aware of the selling intent of advertising as they grow older

FIG. 6: Stages of children’s consumer socialization



However, an increasing number of studies, using neuroscience and behavioural psychology, have called for a paradigm shift to consider whether teenagers have the cognitive capacities to identify the persuasive intent of advertising.⁶³ Such research has found that adolescents' brains are biased towards rewards, and they are more likely to respond to cues in their environment, including marketing.⁶⁴ In addition, the area of the brain that prompts inhibitory control is less developed in children and adolescents than in adults.⁶⁵

As food selection is primarily a response of the human visual system, food marketing can promote overconsumption.⁶⁶ Studies have also shown

that these brain responses may be augmented in overweight and obese children, encouraging additional overconsumption.⁶⁷

In particular, emotional marketing has been found to be persuasive even when consumers seem to pay little attention to the marketing, which may be even more effective under 'low involvement' conditions.⁶⁸ This thinking is further supported by the growing literature on behavioural economics and psychology, which has established that obesogenic environments (those that encourage obesity) interfere with consumers' ability to act in their long-term interests by inducing a preference for unhealthy food.⁶⁹



LEGISLATING AGE LIMITS TO ADVERTISING IN QUEBEC

The Province of Quebec's Consumer Protection Act, adopted in 1971, was revised in 1978 to mandate that no one may make use of commercial advertising directed to children, defined as any person under age 13.^[1] Since the revised legislation became effective in 1980, it has been periodically supplemented by guidance documents, as well as updated regulations.^[2]

The prohibition on advertising to children covers all goods and services, and applies to all media for distributing or broadcasting commercial advertising – including any new formats that might emerge in advertising technologies, as well as current media such as radio, television, the Internet, mobile phones and printed materials. It also applies to all individuals connected to the advertising process, from those

who request the promotion of goods or services to those involved in designing, distributing, publishing or broadcasting the advertisement.^[3]

While Quebec's legislation does not apply exclusively to food marketing, it has had a positive impact: reducing children's exposure to unhealthy food marketing. This contributed to an estimated 11 per cent drop in the likelihood of purchasing 'fast food', consequently reducing fast food consumption by \$88 million per year.^[4]

Section 249(a–c) of the Consumer Protection Act addresses the question of what constitutes advertising to children, taking the context of the presentation into account, according to the following questions:

- For whom are the advertised goods or services intended?

Do these goods and services appeal to children?

- Is the advertisement designed to attract children's attention?
- Are children targeted by the advertisement or exposed to it?
- Are children present at the time and place the ad appears or is broadcast?^[5]

Despite its broad scope, there are several gaps, for example, an advertisement directed at children is exempt if it appears in a store window or a display, or on a container, wrapping or label. Under certain conditions, the regulations allow advertising in magazines for children. Also, the ban does not apply to advertisements transmitted from outside Quebec.

[1] Government of Quebec, 'Consumer Protection Act' (Chapter P-40.1), Official Editor of Quebec, Updated 1 March 2017, section 248. Available at <<http://legisquebec.gouv.qc.ca/en/showdoc/cs/P-40.1>>.

[2] For regulations that focus specifically on advertising to children (defining 'child' as a person under age), see: Government of Quebec, 'Regulation Respecting the Application of the Consumer Protection Act' (Chapter P-40.1, r. 3), Official Editor of Quebec, Updated 1 April 2017, sections 87–91. Available at <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/P-40.1,%20r.%203>>.

[3] Office for the Protection of the Consumer, 'Advertising Directed at Children Under 13 Years of Age: Guide to the application of sections 248 and 249 – Consumer Protection Act', Government of Quebec, 2012, pp. 2–3. Open PDF from <www.opc.gouv.qc.ca/fileadmin/media/documents/consommateur/sujet/publicite-pratique-illegale/EN_Guide_publicite_moins_de_13_ans_vf.pdf>.

[4] Dhar, Tirtha, and Kathy Baylis, 'Fast Food Consumption and the Ban on Advertising to Children: The Quebec experience', *Journal of Marketing Research*, vol. 48, no. 5, October 2011, pp. 799–813.

[5] Office for the Protection of the Consumer, 'Advertising Directed at Children Under 13 Years of Age', Government of Quebec, 2012, p. 4.

2.2 THE WHO RECOMMENDATIONS ON THE MARKETING OF FOODS AND NON-ALCOHOLIC BEVERAGES TO CHILDREN

The WHO Recommendations acknowledge the relationship between food marketing and children's preferences, purchase requests and consumption choices, and call on governments to restrict the marketing of unhealthy food to children as comprehensively as possible.

International efforts to limit unhealthy food marketing to children culminated in the unanimous adoption of World Health Assembly resolution WHA63.14, on 21 May 2010, establishing a set of recommendations on the marketing of foods and non-alcoholic beverages to children.⁷⁰ The full text of these recommendations appears in the box at the end of this section.

The evidence-based WHO Recommendations clearly acknowledge the relationship between food marketing and children's preferences, purchase requests and consumption choices, and call on governments to restrict the marketing of unhealthy food to children as comprehensively as possible. These recommendations should be read alongside the framework implementation report,⁷¹ published in May 2012, which is intended to provide technical support to WHO member States in implementing, monitoring and evaluating their execution of the recommendations.

The framework draws attention to key issues arising at all stages of the policy cycle – from policy development to implementation, monitoring and evaluation. Three points of significance for policies intended to restrict unhealthy food marketing to children are highlighted in the following sections.

In May 2010, at the Sixty-third World Health Assembly, the WHO Member States endorsed a set of recommendations on the marketing of foods and non-alcoholic beverages to children (resolution WHA63.14).

The recommendations were developed in response to a request made by Member States in May 2007 (resolution WHA60.23). The main purpose of the recommendations is to guide efforts by Member States in designing new and/or strengthening existing policies on food marketing communications to children in order to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

The WHO Set of Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children

- 1** The policy aim should be to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
- 2** Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
- 3** To achieve the policy aim and objective, Member States should consider different approaches, i.e. stepwise or comprehensive, to reduce marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt, to children.
- 4** Governments should set clear definitions for the key components of the policy, thereby allowing for a standard implementation process. The setting of clear definitions would facilitate uniform implementation, irrespective of the implementing body. When setting the key definitions Member States need to identify and address any specific national challenges so as to derive the maximal impact of the policy.
- 5** Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Such settings include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises.
- 6** Governments should be the key stakeholders in the development of policy and provide leadership, through a multistakeholder platform, for implementation, monitoring and evaluation. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest.
- 7** Considering resources, benefits and burdens of all stakeholders involved, Member States should consider the most effective approach to reduce marketing to children of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Any approach selected should be set within a framework developed to achieve the policy objective.
- 8** Member States should cooperate to put in place the means necessary to reduce the impact of cross-border marketing (in-flowing and out-flowing) of foods high in saturated fats, trans-fatty acids, free sugars, or salt to children in order to achieve the highest possible impact of any national policy.
- 9** The policy framework should specify enforcement mechanisms and establish systems for their implementation. In this respect, the framework should include clear definitions of sanctions and could include a system for reporting complaints.
- 10** All policy frameworks should include a monitoring system to ensure compliance with the objectives set out in the national policy, using clearly defined indicators.
- 11** The policy frameworks should also include a system to evaluate the impact and effectiveness of the policy on the overall aim, using clearly defined indicators.
- 12** Member States are encouraged to identify existing information on the extent, nature and effects of food marketing to children in their country. They are also encouraged to support further research in this area, especially research focused on implementation and evaluation of policies to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

2.2.1 A BROAD DEFINITION OF MARKETING

Marketing is intended to promote the consumption of particular products and services. It is provided on a voluntary basis by business actors to present the positive attributes of their products, services and brands. And it is distinct from government-required disclosures that are intended to inform consumers through, for example, a statement of nutritional content on pre-packaged food.

Companies promote their products and services in various ways, including by:

- Paying for advertising, e.g., buying advertising space on a television channel or paying a celebrity;
- Using product placement, e.g., paying for the company's branded products or services to be featured in a movie;
- Sponsorship, e.g., paying for the brand to be featured before and after a programme or at a sports or cultural event; and
- Promoting itself, e.g., through its own websites or through food packages.

To adequately address its impact on children, marketing must be defined as any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal, and/or consumption of particular products and services (including direct and indirect promotion).

The WHO Recommendations define marketing as *“any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service.”*⁷² Because this broad definition is intended to reduce the impact of unhealthy food marketing on children, it is interpreted to cover all forms of direct or indirect promotion in a marketing strategy.⁷³

This is particularly important in light of the growing importance of ‘earned’ advertising (as opposed to ‘paid’ advertising) and the use of children as unpaid brand ambassadors.⁷⁴ It is also highly relevant to sponsorships, such as for sports events. This has recently attracted the attention of the United Nations Special Rapporteur on the right to health, who called for banning or limiting the marketing of unhealthy food and beverages at sports events to protect the right of the child to the highest attainable standard of health.⁷⁵

In order to limit ambiguities concerning their material scope, it is therefore appropriate for the WHO Recommendations to adopt as wide a definition as possible, which will also ensure that they can be adapted to a rapidly changing environment. Although the definition in the WHO Recommendations does not refer specifically to ‘brands’, this should not be interpreted as suggesting that brand marketing falls outside their mandate. As stated in the framework for implementation, *“Insofar as certain brands and organizations are clearly associated with products or services whose marketing could fall within the scope of the Recommendations, it is necessary to consider how brands are marketed.”*⁷⁶

2.2.2 BENEFITS OF A COMPREHENSIVE APPROACH

The WHO Recommendations urge governments to address two components of marketing: (1) 'exposure', or the reach and frequency of the marketing message; and (2) 'power', the creative content, design and execution of the message. This encompasses advertising, direct marketing, point-of-sale, product placement, branding, design and packaging of food and non-alcoholic beverages.

While the WHO Recommendations note that a comprehensive approach to unhealthy food marketing "has the highest potential to achieve the desired impact,"⁷⁷ there are some cases where restrictions could begin with a gradual or 'stepwise' approach that proceeds in stages, prioritizing the regulation of some forms of marketing over others. For example, it might target certain categories of unhealthy food (sugar-sweetened beverages); a particular type of media and programming (children's programmes broadcast over television); or particular settings (schools) and/or marketing techniques (celebrity endorsement).

A gradual approach, however, would be less effective in protecting children than a comprehensive approach because it allows gaps in the regulatory framework. To ensure the full implementation of the WHO Recommendations, governments need to set clear definitions that include:

- The age group for which restrictions will apply;
- The communication channels, settings and marketing techniques to be covered;
- What constitutes marketing to children according to such factors as product, timing, viewing audience, placement and content of the marketing message; and
- Which food falls within the scope of marketing restrictions, that is, what constitutes 'unhealthy' food.

In defining these terms, governments have a duty to protect public health and avoid conflicts of interest.⁷⁸ The WHO Recommendations specifically request governments to define settings where children gather and ensure that they are free from all forms of unhealthy food marketing.



DEFINING THE 'COMPREHENSIVE' AND 'STEPWISE' APPROACHES

A **comprehensive approach** restricts all forms of marketing to children of foods that are high in saturated fats, trans-fatty acids, free sugars or salt.

A **stepwise approach** implies that some form of risk assessment and prioritization is undertaken in order to identify different forms and types of marketing and the impact of such marketing. Policies are then developed that prioritize action to regulate marketing practices, the highest risk being the top priority.

Source: World Health Organization, 'A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children', WHO, Geneva, 2012, p. 16.

This issue was raised by many member States during the consultation that led to the Recommendations. The special situation of schools as a setting where children are a captive audience and the health-promoting role that schools should have were identified as requiring specific attention.

As set out in Recommendation 5, these settings include, but are not limited to, nurseries, schools, school grounds and preschool centres, playgrounds, family and child clinics, and paediatric services, including immunization programmes, and during any sporting and cultural activities that are held on these premises. However, there will be several additional settings – which may vary from one country to another – where children commonly gather, such as public playgrounds, swimming pools, summer schools and programmes, afterschool programmes, and sporting events. They also include temporary displays or gathering points for children, such as activity areas created for children in airports or motorways, community centres, places of worship and shopping malls. The areas surrounding settings where children gather should also be considered, for example, the use of highly prominent billboards promoting unhealthy food near schools.⁷⁹



ASSESSING CHILDREN'S ACTUAL EXPOSURE TO UNHEALTHY FOOD MARKETING

Defining the term 'marketing to children' could seem like a simple prospect, but it raises a crucial question:

To what extent are children exposed to unhealthy food marketing beyond 'children's programmes' or 'children's media'?

A range of studies show that children are often exposed to a particularly high volume of advertising for unhealthy food/beverages on commercial television, even at times when the largest numbers of children are watching.^[1] For example, a recent study on the exposure of minors to alcohol advertising in nine EU member States finds that many children aged 4–17 watch television during peak hours that would generally be characterized as 'family viewing' times and therefore fall outside the scope of marketing bans regarding children's programmes.^[2]

In July 2010, **Ofcom published a final review highlighting the effectiveness of the rules it had introduced in the United Kingdom, in 2007**, to prohibit the marketing of unhealthy food on television in and around children's programmes. The review concluded that broadcasters were observing "the letter and the spirit" of the scheduling restrictions with very few exceptions. Between 2005 (before advertising restrictions were introduced) and in 2009 (after the restrictions had been fully implemented) children aged 4–9 saw 52 per cent less unhealthy food advertising, and children aged 10–15 saw 22 per cent less. In addition, their exposure was 25 per cent lower during the peak hours of 6–9 p.m.

However, the volume of unhealthy food advertising aired throughout the day had increased, and children saw just 1 per cent less unhealthy food advertising overall in 'adult' airtime.^[3] Other research findings suggest that children's exposure to unhealthy food advertising has increased. Researchers from Newcastle University, for example, found that children were exposed to the same level of unhealthy food advertising as they were before the Ofcom rules entered into force, confirming that children are still being exposed to unhealthy food ads during programming that is not specifically aimed to them.^[4] Similarly, researchers from the University of Liverpool concluded that despite regulation, children in the United Kingdom were exposed to more television advertising for unhealthy than healthy food items, even at peak children's viewing times.^[5]

Moreover, many programmes or events are targeted to reach mixed audiences. Family shows and sports events are examples of the artificial separation of 'direct' from 'indirect' marketing: **What counts is the exposure of children to unhealthy food marketing, taking into consideration the full gamut of media, from television to the Internet and beyond.**

[1] Kelly, Bridget, et al., 'Trends in Food Advertising to Children on Free-to-Air Television in Australia', *Australian and New Zealand Journal of Public Health*, vol. 35, no. 2, 2011, pp. 131–134. See also: Jenkin, Gabrielle, Nick Wilson and Nicole Hermanson, 'Identifying "Unhealthy" Food Advertising on Television: A case study applying the UK Nutrient Profile model', *Public Health Nutrition*, vol. 12, no. 5, May 2009, pp. 614–623; and Huang, Liyan, Kaye Mehta and Mun Loke Wong, 'Television Food Advertising in Singapore: The nature and extent of children's exposure', *Health Promotion International*, vol. 27, no. 2, June 2012, pp. 187–196.

[2] European Commission, *Study on the Exposure of Minors to Alcohol Advertising on TV and in Online Services (final report)*, European Union, Brussels, 2016, p. 61.

[3] Ofcom, *HFSS Advertising Restrictions: Final review*, Ofcom, 26 July 2010, pp. 31, 3. Open PDF from <<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/hfss-review-final.pdf>>.

[4] Adams, Jean, et al., 'Effect of Restrictions on Television Food Advertising to Children on Exposure to Advertisements for "Less Healthy" Foods: Repeat cross-sectional study', *PLoS ONE*, vol. 7, no. 2, 2012, e31578, <<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0031578>>.

[5] Boyland, Emma J., et al., 'The Extent of Food Advertising to Children on UK Television in 2008', *International Journal of Pediatric Obesity*, vol. 6, no. 5–6, 2011, pp. 455–461.

2.2.3 CROSS-BORDER MARKETING

Recommendation 8 points to the significance of addressing cross-border marketing to ensure that national policies regulating unhealthy food marketing to children are effective. Along with broadcasting and Internet-based advertising, media that readily cross national borders include advertising in print, such as magazines or comic books, sponsorship of international events, and product placement in movies. In addition, food packaging is often used as a form of marketing and may be regulated differently from one country to another.

The expansion of unhealthy food marketing via advergames and social networking sites is also reinforcing the need to adopt and implement cross-border standards at the regional level. In addressing in-flowing marketing, governments may

find it difficult to restrict media content originating from a neighbouring country. Adopting a comprehensive approach to unhealthy food marketing to children therefore requires that governments, particularly among countries that share borders and the same language and media, agree on minimum standards that can be effectively enforced.⁸⁰

In 2012, the WHO Regional Office for the Eastern Mediterranean's strategy for health sought to emphasize the promotion of regional cooperation in regard to health.⁸¹ Relating specifically to food marketing, the regional meeting on the prevention and control of NCDs (Kuwait City, 29–30 April 2013) urged governments to take collective action, as did the expert consultation on the implementation of the WHO Recommendations held in Amman, 18–19 September 2013.

The regulation of cross-border marketing was also discussed at the training workshop jointly organized by WHO's Eastern Mediterranean and European Regional Offices. Commitments made at these regional forums have subsequently become policies.

While implementing the WHO Recommendations at the national level is important, regional-level cooperation through appropriate forums is needed to complement and support these efforts. In the Eastern Mediterranean Region, for example, the Gulf Cooperation Council and the Arab League could serve as platforms to reflect on how governments could apply regional-level regulations to the marketing of unhealthy food, so that the flow of media services is not detrimental to children's health.

Despite repeated calls on governments to uphold their international commitments and implement the WHO Recommendations, and on businesses to stop marketing unhealthy food to children, the Recommendations have been poorly implemented – and children remain exposed to high levels of unhealthy food marketing.

2.3 EVIDENCE AS THE BASIS FOR ACTION

There is strong evidence that unhealthy food marketing influences children's preferences, purchase requests and consumption, and is one factor that contributes to childhood obesity. More specifically, there is evidence that directly links unhealthy food marketing and childhood obesity, independently from other factors.

One of the founding studies was published in September 2003, after the Food Standards Agency, United Kingdom, commissioned a group of independent experts to conduct a systematic literature review of all the reputable studies that had been carried out on the topic at the time.⁸² Noting that most food marketing to children was for unhealthy food, the review concluded that the practice: undermines food knowledge and confuses children as to what is healthy and unhealthy food; stimulates a preference for unhealthy food; encourages the purchase of, and pestering for, unhealthy food; and makes children more likely to consume unhealthy food.

The report also found that advertising led to an increase in consumption of the category of product, as well as the specific brand. In other words, not only will children prefer one brand of sugary soft drink to another, they will also increase their consumption of sugary drinks to the detriment of healthier drinks, such as water and milk. This Food Standards Agency literature review, which provided a basis for the WHO Recommendations, has been updated on several occasions, and subsequent studies have confirmed the findings from 2003 and 2009.⁸³

The evidence base on the effects of unhealthy food marketing is also emerging in low- and middle-income countries. A review conducted in the Middle East, for example, concludes that the negative effects of television commercials are particularly noticeable, including on nutrition and childhood obesity.⁸⁴ Social media marketing has also been found to increase advertisement recall, awareness of the product or brand, and intent to purchase.⁸⁵ This evidence provides a sound and probably conservative assessment of the impact of unhealthy food on children's health, bearing in mind that, beyond the direct effect of unhealthy food marketing on children, there are a range of indirect effects that are more difficult to measure.⁸⁶

In its final report, ECHO urged governments to implement the WHO Recommendations, stating: "There is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages is related to childhood obesity. Despite the increasing number of voluntary efforts by industry, exposure to the marketing of unhealthy foods remains a major issue demanding change that will protect all children equally. Any attempt to tackle childhood obesity should, therefore, include a reduction in exposure of children to, and the power of, marketing."⁸⁷

In effect, despite repeated calls on governments to uphold their international commitments and implement the WHO Recommendations,⁸⁸ and on businesses to stop marketing unhealthy food to children,⁸⁹ the Recommendations have been poorly implemented – and children remain exposed to high levels of unhealthy food marketing. Part of the problem stems from the fact that the few governments that have adopted restrictions on unhealthy food marketing to children have not used a comprehensive approach, leaving gaps in their existing regulatory framework.⁹⁰

Much remains to be done at the local, national, regional and global levels to reduce the impact of unhealthy food marketing on children. The rest of this report examines how a child rights framework offers an opportunity for more effective implementation of the WHO Recommendations.



KEY RECOMMENDATIONS FROM THE ECHO REPORT

The WHO's Commission on Ending Childhood Obesity recommends:

- Implement the WHO set of recommendations on the marketing of foods and non-alcoholic beverages to children to reduce the exposure of children and adolescents to, and the power of, the marketing of unhealthy foods (1.3).
- Develop nutrient profiles to identify unhealthy foods and beverages (1.4).
- Establish cooperation between member States to reduce the impact of cross-border marketing of unhealthy foods and beverages (1.5).
- Require settings such as schools, childcare settings, children's sports facilities and events to create healthy food environments (1.8).
- Increase access to healthy foods in disadvantaged communities (1.9).

Source: World Health Organization, 'Report of the Commission on Ending Childhood Obesity', WHO, January 2016, pp. 18–20.

PART 3

THE CRC AND A CHILD RIGHTS APPROACH TO OBESITY AND NCD PREVENTION

Part 3 identifies how some articles in the Convention on the Rights of the Child are relevant to food marketing, and outlines a child rights approach to advancing the global objective of ending childhood obesity. A child rights approach to unhealthy food marketing offers a powerful and universally applicable way to consider children as rights holders who are central to any policy discourse. While reflecting and incorporating the provisions of the CRC, this approach should complement, rather than exclude, existing strategies and processes.



THE CRC AND A CHILD RIGHTS APPROACH TO OBESITY AND NCD PREVENTION

Unhealthy food marketing reaches children at home, in the classroom, the playground, the sporting arena, and their online or virtual environment. This proliferation of marketing has been accompanied by a transformation in the nature of such marketing, which has become far more integrated and immersive. Children's ability to critically distinguish the purpose and nature of marketing is central to their ability to make rational and conscious choices as such decisions will have an effect on many aspects of their life, including their health and development.

In this regard, the Convention on the Rights of the Child and the WHO Recommendations are mutually reinforcing: While the Convention outlines the legal obligations of governments to protect children from the harmful impact of unhealthy food marketing, the Recommendations provide evidence-based guidance as to how this goal can be achieved.

The CRC provides the basis for a normative child rights approach to obesity and NCD prevention. Through its articulation of a wide array of rights, the Convention establishes a platform to regulate unhealthy food marketing to children by establishing the obligations of governments.

3.1 THE CONVENTION ON THE RIGHTS OF THE CHILD

Building on the International Bill of Human Rights, the CRC acknowledges and addresses the unique sensitivities of children and their need for special protection. More specifically, as the most ratified human rights instrument in the world, the CRC provides the legal framework for a child rights approach to obesity and NCD prevention. Through its articulation of a wide array of rights, the Convention establishes a platform to regulate unhealthy food marketing to children by establishing the obligations of governments. The text of relevant articles is highlighted throughout this section; a table summarizing the specific child rights established in the CRC and other human rights instruments is provided in the annex. While the CRC outlines obligations for governments, General Comment No. 16, the Children's Rights and Business Principles as well as expert guidance show how the CRC can be applied to businesses.

The CRC has 54 articles and three Optional Protocols,⁹¹ the Convention constructs the legal foundations upon which state duties and the responsibilities of non-state actors towards children are configured.⁹² As an international human rights treaty, governments that ratify the Convention are legally bound to uphold their commitments.

In its amalgamation of civil and political, as well as social, economic and cultural rights, the Convention on the Rights of the Child symbolizes the indivisible and interrelated nature of all human rights.⁹³ In its affirmation of children as individual rights holders, distinct from their parents, it illustrates a human rights approach that reflects the importance of children as social actors in their own right.⁹⁴

The Convention also recognizes, however, that while children should be accorded a say in the realization of their rights (as outlined in article 5,

respect for the views of the child), their evolving development requires extra consideration and a unique approach that balances their rights and the need for parents and government to uphold the enforcement of these rights on their behalf (as outlined in article 12 on parental guidance). While acknowledging children's autonomy and its importance, the vulnerabilities unique to childhood are also recognized. Therefore, the role of parents and the government, in all aspects of child development, assumes increased significance when viewed from the perspective of the CRC. This is particularly true in relation to the intersection of children's rights and unhealthy food marketing.

The CRC can be viewed as a framework of substantive rights, general principles and procedural obligations. Together, these strands underpin the practical and operational delivery of the rights contained within the Convention, as outlined below.

Substantive rights: The CRC is a 'living instrument' that can meet the realities, challenges and demands

of the twenty-first century. Since its entry into force on 2 September 1990, it has centralized children's rights within the legislative and judicial systems of many decision-making bodies, with the result that adherence to and respect for child rights is now a near-universal metric in law and policy.

General principles: Four main principles that guide the delivery of all the rights enshrined in the CRC are outlined in the box below and discussed throughout this report as relevant to implementing the WHO Recommendations.⁹⁵

Implementation: When governments ratify the CRC, they are accountable for its implementation, including specific procedures required to advance children's rights. As contracting parties, they have entered into a binding agreement, asserted in article 4, to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention."



FOUR PRINCIPLES FOR INTERPRETING THE CONVENTION ON THE RIGHTS OF THE CHILD

1. Non-discrimination (article 2): While article 2 does not contain a free-standing guarantee against discrimination, it does however ensure that States parties must ensure the fulfilment of the fundamental rights and freedoms set forth in the Convention without discrimination. Containing both positive and negative obligations, the Committee on the Rights of the Child has been unequivocal in its elaboration that the non-discrimination principle can only be meaningfully put into operation through the implementation of applied, positive and proactive measures.^[1]

2. The best interests of the child (article 3): The best interests principle occupies a central position within the CRC and requires that the best interests of the child shall be taken as a primary consideration in all actions concerning children. The best interests principle ensures that children's welfare and well-being is a thought of first importance in all actions which affect them.

3. The right to survival and development (article 6): Children, by nature, require extra protection due to their developing minds, which make them notably susceptible to manipulation. This expansive right encapsulates the child's right to have her or his overall well-being promoted and enhanced. Article 6 necessitates a holistic approach that considered the impact of marketing on the physical, psychological, spiritual, social, emotional, cognitive, cultural and economic development of the child.^[2]

4. Respect for the child's views (article 12): Article 12 enshrines every child's right to have his or her views heard in all matters that affect them, with such views to be given due weight in accordance with the child's age and maturity. Broadly conceptualized as a right to participate,^[3] it mandates governments to provide for and facilitate the participatory engagement of children and young people to express their views – thereby recognizing them as social agents with individual entitlements and a say in the realization of their rights.

[1] Committee on the Rights of the Child, 'General Comment No. 13: The right of the child to freedom from all forms of violence', CRC/C/GC/13, United Nations, 18 April 2011, para. B(1).

[2] See, for example: Committee on the Rights of the Child, 'General Comment No. 20 on the Implementation of the Rights of the Child during Adolescence', CRC/C/GC/20, United Nations, 6 December 2016.

[3] Committee on the Rights of the Child, 'General Comment No. 12: The right of the child to be heard', CRC/C/GC/12, United Nations, Geneva, 20 July 2009; and Lansdown, Gerison, *Every Child's Right to Heard: A resource guide on the UN Committee on the Rights of the Child General Comment No. 12*, Save the Children UK on behalf of Save the Children and UNICEF, London, 2011.

The Committee on the Rights of the Child directs each government to submit an initial report two years after ratifying the CRC and periodically every five years⁹⁶ to account for its progress in fulfilling these rights. In response to these reports, the Committee issues Concluding Observations on the country's performance, evaluating progress made and obstacles to be overcome.⁹⁷ Through distribution of General Comments, it provides guidance to assist governments in implementing the rights in question.

The Committee on the Rights on the Child has issued 20 General Comments to date. They traverse a range of issues, from those pertaining to specific rights – such as health, education and freedom from violence – to overarching and procedural issues, such as the best interests of the child. In the context of the expectations required of national governments in their enforcement and delivery of rights, this guidance frequently refers to the deliberations and conclusions of other treaty monitoring bodies.⁹⁸

3.2 THE VALUE OF A CHILD RIGHTS APPROACH

A child rights approach to unhealthy food marketing offers a powerful and universally applicable way to consider children as rights holders who are central to any policy discourse. While reflecting and incorporating the provisions of the CRC, this approach should complement, rather than exclude, existing strategies and processes.

There are two defining elements to a child rights approach:

1. It identifies children as rights holders and governments as the corresponding duty bearers, and works towards strengthening children's capacities to understand and realize their rights and governments' capacities to meet their obligations.
2. It emphasizes that standards and principles derived from international human rights treaties should guide all policies that have potential impacts on children.

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

Accountability – A child rights approach guarantees a degree of accountability, by both holding stakeholders to their commitments, as well as, by providing an opportunity to proactively put effective remedies into place,

should rights be violated. A children's rights approach can also be used to monitor commitments made, for example, by governments as an intrinsic part of their follow-up to ratification of the Convention, including through public and independent assessments of performance, with the help of recommendations from the Committee on the Rights of the Child.

Legitimacy – The rights of all children are derived from universally recognized treaties, conventions and other internationally agreed upon standards. Because children's rights are inalienable and universal, there is an inherent legitimacy to the language of human rights and value in the perspectives and language that accompany a child rights approach.

Advocacy tool – A child rights-based approach provides an opportunity to build strategic alliances, coalitions and networks with other actors who share a similar vision and pursue common objectives. In relation to childhood obesity, this approach is likely to foster the involvement of a broad range of actors who may not have viewed the issue of marketing unhealthy food to children as raising concerns. In turn, this is likely to help galvanize political will to ensure that governments fulfil their commitments under the CRC.

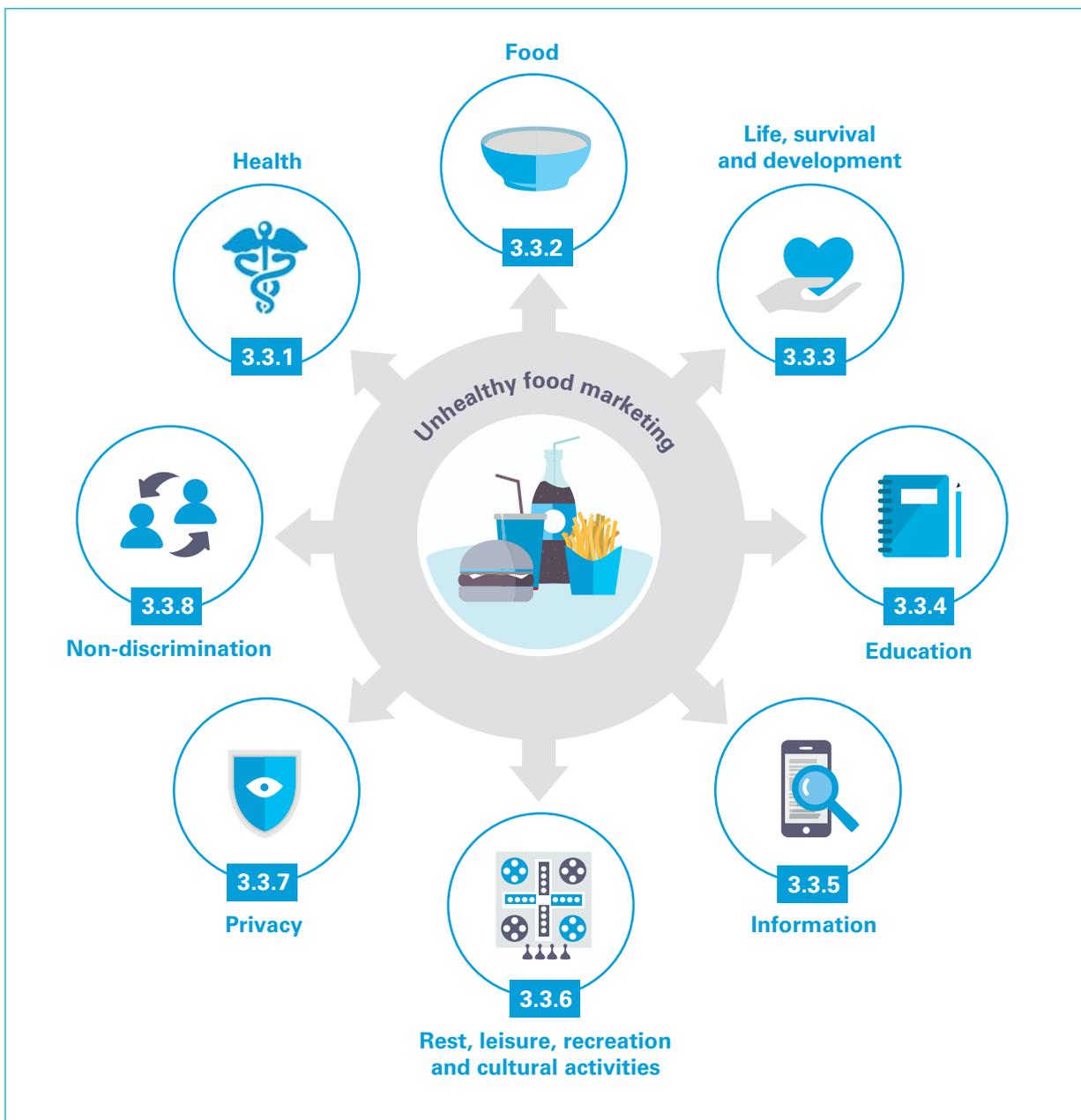
Empowerment – Once the concept of 'rights' is introduced in policymaking, the rationale for limiting unhealthy food marketing to children no longer derives merely from the fact that children have needs but also from the fact that they have rights.

3.3 CHILD RIGHTS IMPACTED BY UNHEALTHY FOOD MARKETING

The methodological approach underpinning this report involves a systematic review of child rights declared in the CRC that are negatively affected by unhealthy food marketing, together with an examination of the relevant guidance issued by international treaty monitoring bodies, and an assessment of the evidence pertaining to such practices from a child rights perspective. This section identifies the direct effects of marketing unhealthy food to children as it impacts the core rights to health; food; survival and development; education; information; rest, leisure, recreation and cultural activities; privacy; and non-discrimination.

Food marketing can have an impact on several children’s rights

FIG. 7: Overview of children’s rights impacted by food marketing



3.3.1 HEALTH



EVERY CHILD'S RIGHT TO HEALTH

Convention on the Rights of the Child Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a) To diminish infant and child mortality;
- (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
- (d) To ensure appropriate pre-natal and post-natal health care for mothers;
- (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
- (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

The right to the enjoyment of the highest attainable standard of health is protected by the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women – as well as article 24 of the CRC – among other international human rights instruments. This right is also protected in such regional instruments as the European Social Charter, the African Charter on Human and Peoples' Rights, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador). As further evidence of its importance, the right to health has been upheld by many international declarations over the years.¹⁰⁰

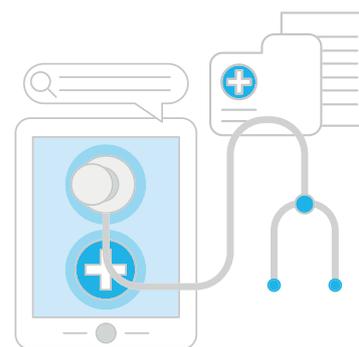
Considering the wide participation in multilateral treaties that establish the right to health, as well as the wide acceptance of non-binding instruments dealing with the right to health, there is a strong argument to suggest that the right also exists in customary international law.¹⁰¹

As a “global, national and individual concern,”¹⁰² the applicability of the right to health is evident in numerous contexts and has a far-reaching effect. This has been confirmed by interpretative guidance issued by the Committee on Economic, Social and Cultural Rights, on article 12 of the International Covenant on Economic, Social and Cultural Rights,¹⁰³ and the Committee on the Rights of the Child, on article 24 of the CRC.¹⁰⁴ Four key points are outlined below;

1. Defining the child's right to health – The Constitution of the World Health Organization defines health as “a state of complete physical, mental and social well-being, rather than merely the absence of disease or infirmity.”¹⁰⁵ This extensive understanding has clearly influenced the public health foundation for, among others, the General Comment No. 15 of the Committee on the Rights of Child, which interprets children's right to health as “an inclusive right, extending not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinant of health.”¹⁰⁶

Broadly defined, the right to health has an important role to play in the prevention of diseases, including non-communicable diseases, which can only be effectively prevented if the environments in which children live are changed to promote healthier choices.¹⁰⁷ The wording of article 24 CRC supports such a wide interpretation of the right to health and its relevance to NCD and obesity prevention.¹⁰⁸ In particular, paragraph 2 refers to the need for appropriate measures that reduce infant and child mortality, and to combat disease and malnutrition through the provision of adequate nutritious foods, among other actions.

As noted by the Committee on the Rights of the Child, children's health is affected by many factors that have changed over the past 20 years and are likely to continue to change.¹⁰⁹ Governments are therefore encouraged to prioritize issues that have received little attention to



Broadly defined, the right to health has an important role to play in the prevention of diseases, including non-communicable diseases, which can only be effectively prevented if the environments in which children live are changed to promote healthier choices.

date and should ensure, among other things, the availability of safe and nutritionally adequate food and a healthy and safe environment.¹¹⁰

2. Applying a comprehensive, life-course approach

–The right to health requires that governments consider health risks and opportunities beginning with the neonatal stage through childhood, adolescence and into adulthood. Embracing the life course is essential to understanding how health problems in childhood affect public health in general, because each stage of the child’s development has an impact on subsequent phases.¹¹¹

Undernutrition, micronutrient deficiency and obesity are different dimensions of malnutrition that must be addressed together. Because many developing countries face a dual burden of undernutrition and obesity, addressing these urgent issues is likely to extend to reshaping food-production systems for the promotion of sustainable diets.¹¹² Sustainability, in turn, requires a long-term national plan that is supported and ingrained as a national priority.¹¹³

3. Fulfilling the right to the highest attainable standard of health

–This takes into account the child’s biological, social, cultural and economic preconditions, and the resources available to the government, supplemented by resources from entities such as companies, non-governmental organizations and the international community. Although the right to health is not a right to be healthy, as such, it amounts to a right to the conditions and services that ensure the enjoyment of the best health standards attainable under existing circumstances. Consequently, it mandates the provision of equality of opportunity for every child to enjoy the highest attainable standard of health.

Governments must fulfil children’s right to health to the maximum extent of their available resources and, where needed, within the framework of international cooperation.¹¹⁴ In particular, this requires developing, implementing and regularly monitoring national programmes to address the underlying determinants of health, including unhealthy diets and other NCD risk factors.

As the Committee on the Rights of the Child recognized, most child illnesses, disabilities and deaths could be prevented if sufficient resources were directed towards applying the available knowledge and technologies for prevention, treatment and care.¹¹⁵

4. Enabling children to make informed choices regarding lifestyle, including healthy eating and physical activity

– Article 24 of the CRC highlights children’s need for information on all aspects of health education to realize their right to health and to enable them to make informed choices regarding lifestyle, including healthy eating and physical activity. This is particularly important in educational settings, as explained by the Office of the United Nations High Commissioner for Human Rights: “Schools have an essential role to play in health promotion. Information should be provided as a core part of school curricula, through health services and in other settings targeting children who are not in school. Health information materials should be designed in collaboration with children and disseminated in a wide range of public settings and social media.”¹¹⁶

In light of evidence linking unhealthy food marketing to childhood obesity the Committee concludes that children’s exposure to fast foods should be limited. The WHO Recommendations provide guidance that can be applied by all actors to restrict such marketing and reduce the negative impact on children, particularly on children’s right to health.

The need to address the impacts of unhealthy food marketing on children’s right to health is explicitly addressed in CRC General Comment No. 16, which reads: “The activities and operations of business enterprises can impact on the realization of article 6 in different ways.” For example, the marketing to children of products such as “foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health.”¹¹⁷

As such, marketing of this type should be regulated and its availability, for example in schools and other places, should be controlled.¹¹⁸ This has been echoed by a growing number of statements from various United Nations entities. In support of this, the Special Rapporteur on the right to health has urged governments to “ban the advertising, promotion and sponsorship of all children’s sporting events, and other sporting events which could be attended by children, by manufacturers of alcohol, tobacco and unhealthy foods.”¹¹⁹ This report refers specifically to the WHO Recommendations and illustrates very convincingly how they promote a rights-based approach by requesting governments to restrict unhealthy food marketing to children, particularly in settings where children gather.

The Committee on the Rights of the Child has also identified the issue of unhealthy food marketing and its relationship to childhood obesity as a child rights concern. In several country reports, the Committee has urged governments – particularly those in countries facing high rates of childhood obesity – to regulate the marketing of unhealthy food as part of their obligations under article 24 of the CRC. The box below provides a few examples.

In light of the interdependence and indivisibility of human rights, the realization of the right to health is indispensable for the enjoyment of all the other rights, while achieving the right to health is dependent on the realization of many other rights. For example, article 24 of the CRC refers specifically to nutrition and breastfeeding, as well as to access to education. The next sections therefore proceed to consider which other rights enshrined in the Convention can be linked to comprehensive approaches to implement the WHO Recommendations.



COUNTRY REPORTS THAT ADDRESS UNHEALTHY FOOD MARKETING TO CHILDREN

In 2012, the Committee on the Rights of the Child expressed concern at the high incidence of obesity among children in Canada and at the “lack of regulations on the production and marketing of fast foods and other unhealthy foods, especially as targeted at children.”^[1]

Similarly, in 2015, the Committee called on **Switzerland** to “strengthen measures to address overweight children and obesity, promote a healthy lifestyle among adolescents, including physical activity, and take the necessary measures to reduce food marketing pressure on children with regard to food high in fat, sugar and salt.”^[2]

The Committee also recommended that **Poland** “collect data on child nutrition, covering both undernutrition and overweight, and further develop measures for improved child nutrition, which should include regulations to restrict advertising and marketing of junk, salty, sugary and fatty foods and their availability to children.”^[3]

After noting the paucity of data available on measures to address obesity, overweight and the marketing of unhealthy food, the Committee urged the **United Arab Emirates** to “regulate the marketing of unhealthy food, especially when such marketing is focused on children, and regulate the availability of such food in schools and other places.”^[4]

The Committee expressed concern about the high level of obesity among children in **Brazil** and their vulnerability to unregulated advertising promoting unhealthy food. Consequently, it recommended that “the State party take all necessary measures to address obesity among children, including by promoting healthy lifestyles and raising awareness of healthy nutrition. The Committee also recommends that the State party establish a regulatory framework for advertisements, with a view to protecting children from misleading advertising.”^[5]

Chile was similarly urged to “strengthen measures to address underweight and overweight among children, promote a healthy lifestyle that includes physical activity and take the necessary measures to reduce the pressure of food marketing on children, in particular with regard to food high in fat, sugar and salt.”^[6]

Expressing concern at “the increase in the prevalence of obesity among children and the aggressive marketing of unhealthy food targeting children” in **South Africa**, the Committee recommended that the government should “regulate the marketing of unhealthy foods to children in order to address the rise in child obesity, and introduce strategies that enable poor households to access healthy food.”^[7]

[1] Committee on the Rights of the Child, ‘Concluding Observations on Canada’, CRC/C/CAN/CO/3-4, United Nations, 6 December 2012, para. 63.

[2] Committee on the Rights of the Child, ‘Concluding Observations on Switzerland’, CRC/C/CHE/CO/2-4, United Nations, 26 February 2015, para. 57(b).

[3] Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Poland’, CRC/C/POL/CO/3-4, United Nations, 30 October 2015, para. 37(d).

[4] Committee on the Rights of the Child, ‘Concluding Observations on the Second Periodic Report of the United Arab Emirates’, CRC/C/ARE/CO/2, United Nations, 30 October 2015, para. 58(b).

[5] Committee on the Rights of the Child, ‘Concluding Observations on the Combined Second to Fourth Periodic Reports of Brazil’, CRC/C/BRA/CO/2-4, United Nations, 30 October 2015, para. 58.

[6] Committee on the Rights of the Child, ‘Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Chile’, CRC/C/CHL/CO/4-5, 30 October 2015, United Nations, para. 59(c).

[7] Committee on the Rights of the Child, ‘Concluding Observations on the Second Periodic Report of South Africa’, CRC/C/ZAF/CO/2, United Nations, 27 October 2016, paras. 53(e) and 54(d).

3.3.2 FOOD



EVERY CHILD'S RIGHT TO FOOD

Convention on the Rights of the Child Article 24

2. States Parties shall pursue full implementation of this right [highest attainable standard of health] and, in particular, shall take appropriate measures...

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition...

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

As acknowledged by the Committee on Economic, Social and Cultural Rights (CESCR), the body responsible for monitoring implementation of the Covenant, "The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone."¹¹⁹ The term 'adequate food', however, is imprecise, and the CESCR hints at difficulties with a more detailed definition of this criterion in stating that it is "to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions."¹²⁰ While freedom from hunger clearly constitutes the core minimum content of the right to food, we can also identify broader concerns regarding the adequacy and nutritional value of available food.

The official website of the United Nations Special Rapporteur defines the right to food as requiring "regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear."¹²¹

Therefore, a central aspect of the right to food is the notion of 'adequacy', which refers to the children's need for nutritious food. As such, efforts must look beyond the presence of calories and other macronutrients to consider the true nutritious value and impact on overall health.¹²² A further component is the concept of 'dietary needs', which "implies that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation."¹²³

Governments have a duty to respect, protect and fulfil the right to food.¹²⁴ The obligation to protect means that governments must pass and enforce laws to prevent this right from being violated, and establish bodies to investigate and provide effective remedies, including access to justice, if the right to food is violated. The obligation to fulfil includes facilitating access and requires that governments

take positive action to identify vulnerable groups and implement policies to improve their access to adequate food.

Regarding the private sector, “by selling unsafe food or marketing food with misleading information, food businesses may undermine people’s access to adequate food.”¹²⁵ By promoting nutritiously poor food, food and media businesses undermine children’s access to adequate food and healthy diets. The current Special Rapporteur on the right to food has pointed out that marketing campaigns used by the food and beverage industry to target children and adolescents bear much of the responsibility for

increasing the levels of chronic diseases related to obesity.¹²⁶ In recommendations specifically related to the marketing of unhealthy food products to children, the Special Rapporteur maintains that:

- Governments should regulate marketing, advertising and the promotion of unhealthy foods, particularly to women and children, to reduce their visibility and increase the visibility of healthier options, for example, by requiring supermarkets to display fruits and vegetables in more noticeable and accessible locations.
- The food industry should not market, promote or advertise unhealthy foods, especially to children.¹²⁷

3.3.3 LIFE, SURVIVAL AND DEVELOPMENT



EVERY CHILD’S RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

Convention on the Rights of the Child – Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

The right to life, survival and development represents both a free-standing right and a permeating human right that influences the execution of other rights. The responsibility of governments to promote children’s optimal development is one of the cornerstones of the Convention.¹²⁸

Article 6 has been described as “the most fundamental of all human rights of the child” and embodies the requirement to go far beyond mere survival, necessitating States parties to create “an environment which enables all children under their respective jurisdiction to grow up in a healthy and protected manner, free from fear and want, and to develop their personality, talents and mental and physical abilities to their fullest potential consistent with their evolving capacities.”¹²⁹ Thus, ‘development’ must be interpreted as a holistic concept by governments, with implementation measures aimed to achieve the optimal development for all children.¹³⁰

In identifying the connection between the right to health and the marketing of unhealthy food, the Committee on the Rights of the Child advises that upholding the right to life, survival and development necessitates implementation of preventive measures, including regulation and monitoring of advertising and marketing.¹³¹ As noted by the Special Rapporteur in the field of cultural rights, “Many products, behaviours and attitudes promoted by commercial advertising are harmful to people’s health.¹³² Meaningful attainment of the child’s right to development, therefore, can only be achieved if it includes the requirement for government to regulate marketing practices that have harmful effects on children, in their best interests for their optimal development.

3.3.4 EDUCATION



EVERY CHILD'S RIGHT TO EDUCATION

Convention on the Rights of the Child

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

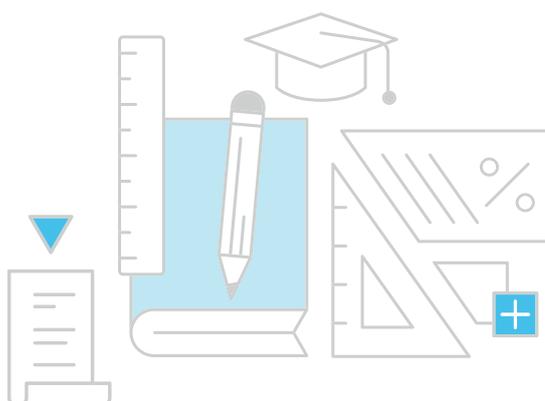
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Articles 28 and 29 of the CRC collectively promote an expansive model of education that encourages the full and holistic development of the child. In its first General Comment, the Committee on the Rights of the Child asserts that the goal of education “is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence,”¹³³ which could be extended to include education that fosters children’s ability to make well-balanced decisions regarding nutrition and healthy living.

While article 28 ensures the right to education in terms of access to and enjoyment of the various stages within the educational cycle,¹³⁴ article 29 mandates the ethos and character that should accompany the delivery of that right. In developing the child’s personality, talents and mental and physical abilities to their fullest potential, children should be equipped with the necessary skills to make free, informed and reasonable decisions regarding their personal, social, physical, psychological and spiritual development. Such skills are clearly not limited to traditional literacy and numeracy abilities but include the skills to make well-balanced decisions including developing a healthy lifestyle.¹³⁵

The Committee has been clear on the nexus between the right to education and child development, and the important and positive effects that this has on children, including their health. In Concluding Observations on Hungary, it explicitly affirmed the significance of these links by expressing concern “about the growing problem of nutritional disorders, including obesity, which result from a lack of education on nutrition and a lack of access to suitable food, as well as a lack of food containing iodine and iron.”

Since marketing strategies play a key role in preparing children for their broader engagement with life, and for their role in the marketplace, settings where children gather should be free from all forms of unhealthy food marketing to children, as encouraged by WHO Recommendation 5.



3.3.5 INFORMATION



EVERY CHILD'S RIGHT TO APPROPRIATE INFORMATION

Convention on the Rights of the Child - Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 17 encapsulates the right of children to receive appropriate information for the promotion of their social, spiritual and moral well-being, and physical and mental health. It stresses the important role of the media, and the government duty to encourage guidelines for protecting children from information and material that is harmful. The Committee on the Rights of the Child has woven the requirements of this article into many of its General Comments.

General Comment No. 16 advises that information must be beneficial to children and their development, and emphasizes the responsibility of both government and private media companies to abide by this requirement. Because children may perceive all types of media as unbiased, and marketing can have a powerful influence on children's self-esteem, governments need to ensure that marketing does not have adverse impacts by adopting appropriate regulations and encouraging businesses to observe codes of conduct.¹³⁷

In General Comment No. 20, on the implementation of the rights of the child during adolescence, the Committee recognizes that "access to information encompasses all forms of media" and that "particular attention needs to be given to the digital environment, as adolescents increasingly use mobile technology and as social and digital media become the primary means through which they communicate and receive, create and disseminate information."¹³⁸ A recent Ofcom study found that an increasing percentage of teens aged 12-15 turn to Google for "true and accurate information," but only a minority can correctly identify camouflaged forms of marketing such as native content and sponsored links.¹³⁹ The inability to distinguish factual content from content promoting unhealthy foods and beverages poses a risk to both children's right to health, as well as their right to access information in the ways outlined by article 17 CRC.

The Committee has also acknowledged the role of non-state actors and encouraged governments to require that businesses conduct child rights due diligence with a view to identifying, preventing and mitigating the impact of risks on children's rights when using digital technologies.¹⁴⁰ In building on previous guidance, the Committee outlines expectations for the private sector regarding children's rights, as well as of governments in their regulation of private sector activities within their jurisdictions – in alignment with the United Nations Guiding Principles on Business and Human Rights discussed in more detail in Section 4.2 of this report.

3.3.6 REST, LEISURE, RECREATION AND CULTURAL ACTIVITIES



EVERY CHILD'S RIGHT TO REST, LEISURE, RECREATION AND CULTURAL ACTIVITIES

Convention on the Rights of the Child – Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

The Committee on the Rights of the Child acknowledges the growing “body of evidence indicating the extent to which [digital] environments, as well as the amounts of time children spend interacting with them, can also contribute to significant potential harm to children.” Children’s increased attention to online, electronic and screen-related activities (including many forms of explicit and implicit digital marketing) results in reduced physical activity, disrupted sleeping patterns, and an increase in obesity and other related illnesses.¹⁴¹

Therefore, the Committee urges governments to “review policies concerning the commercialization of toys and games to children, including through children’s television programmes and directly related advertisements.”¹⁴² More specifically, the Committee advises that governments respond to this shift towards screen-related recreation by regulating unhealthy food marketing to children to ensure the meaningful attainment of their right to play. This is particularly relevant in light of the increasingly immersive marketing techniques used to promote unhealthy food (see Section 2.1.3). Playing such games should not be conditional on exposure to unhealthy food marketing.¹⁴³

3.3.7 PRIVACY



EVERY CHILD'S RIGHT TO PRIVACY

Convention on the Rights of the Child - Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

The right to privacy is endorsed in multiple international instruments,¹⁴⁴ reflecting a deep appreciation of the “fundamental importance, and enduring relevance, of the right ... and of the need to ensure that it is safe-guarded, in law and in practice.”¹⁴⁵ It crosses and covers a sweeping range of spheres that relate to every human person – including their identity, integrity, autonomy, sexuality, family, home and correspondence.¹⁴⁶

In outlining the contours of the right to privacy in the domain of international law, the European Court of Human Rights has held that it encompasses privacy of communications including mail, telephone and email interactions.¹⁴⁷ Traditionally, the right to privacy has guarded against the excesses of government intrusion into the private domain of the individual, including their family, home and correspondence,¹⁴⁸ and protects the individual against “unlawful and arbitrary interference.”¹⁴⁹ The invention and public adoption of computers forced an expansion in the understanding of privacy to include a right to the protection of personal data.¹⁵⁰ Today, there are more than 100 national data privacy laws around the world, many of which closely mimic European standards.¹⁵¹

While the right to privacy is now well-established in international law, understandings of privacy have continued to differ significantly across cultures, societies, ethnic traditions and time.¹⁵² Technological advancements and the public adoption of the internet have also recast the meaning and scope of the right to privacy, and catalysed recent key United Nations resolutions and reports making clear that human rights apply equally offline and online,¹⁵³ that interferences with privacy can only be justified when necessary, proportionate and in accordance with the law,¹⁵⁴ and that privacy obligations are extraterritorial.¹⁵⁵

The change wrought by new technologies have particular meaning for children's enjoyment of the right to privacy. Children's aptitude in digital communications, paired with their natural credulity, lack of cognitive defences and inexperience, makes children the most coveted demographic in the digital marketing universe. Responding to this opportunity, the digital marketing sector today deploys a range of marketing techniques that exploit the way in which children use the internet (primarily through mobile devices and tablets, with a preference for social networks, video-sharing platforms and games) and their particular vulnerabilities as consumers (including their limited advertising literacy and natural naiveté). Many of these techniques rely upon the generation and collection of extensive personal data about children's identity, browsing habits and emotional responses to advertising. While the benefits of Internet usage are diverse, the risks associated with online activity are particularly acute for children. It is crucial to ensure that their right to participate in the digital environment does not depend on being exposed to unhealthy food marketing, or upon the exploitation and improper acquisition of their personal data.

Accordingly, the role of the private sector is inseparable from the vindication and enforcement of the right to privacy. In this regard, the Committee on the Rights of the Child states that contracting parties to the Convention will be “in breach of their obligations when they fail to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children.”¹⁶⁰

Private human data has become a valuable and lucrative commercial source and, therefore, the commodification of private data as a commercial strategy raises serious questions regarding the right to privacy. It has been argued that unhealthy food marketing to children, particularly that which depends upon the collection and analysis of children's personal data in order to target and profile children online, should be considered as a form of economic exploitation within the scope of article 32 CRC – although the article focuses explicitly on child labour, this right could be extended to the right of the child to be free from any form of economic exploitation.¹⁶¹

The subtle, sophisticated and enhanced marketing strategies adopted by the private sector engage the child's right to privacy in ways that transcend the original concept of the basis of the right. The government's duty to protect and advance the right to privacy must meet the current global realities of pervasive collection, storage and retention of children's data, and the disaggregation of such data according to their individual preferences, choices and behaviours. This contradicts the fundamental concept of the right to privacy, amounting to an interference with this right whether or not those data are subsequently accessed or used.¹⁶²



THE EUROPEAN UNION GENERAL DATA PROTECTION REGULATION

The General Data Protection Regulation ("GDPR") will come into force in May 2018. As with existing European data protection law, it will place an important and, at times, onerous check on companies collection and use of personal data, including for digital marketing purposes. In an important development, the GDPR introduces for the first time a number of children-specific protections. These include:

- In the case of online services, companies process data of children aged 16 or older, unless parental consent is obtained. If Member States so legislate, this threshold can be reduced as low as 13 years.^[1]
- When obtaining consent from children aged over 16 (or 13), or from their parents, companies must ensure that consent amounts to a clear affirmative act, and is freely given, specific, informed and unambiguous.^[2]
- Companies must inform children of their rights as a data subject in clear and plain language, and in a concise, transparent, intelligible and easily accessible form.^[3]
- Companies must extend specific protections to children, in particular regarding marketing and profiling, and data processing when services are offered directly to children.^[4] Children should not be subjected to automated decision-making or profiling which results in legal effects or other serious impacts.^[5]

A further important impact of the GDPR is that the Regulation stipulates that cookies, where they are used to uniquely identify a device, or in combination with other data, the individual associated with or using a device, should be treated as personal data.^[6] This is particularly important in the context of advertising as many advertising actors deploy third-party cookies to track individuals, including children, without first obtaining consent.

Other areas of European Union regulation currently under review will also have an impact upon digital marketing to children. The Audiovisual Media Services Directive looks likely to be expanded to include within its jurisdiction video-sharing platforms, and will require platforms and publishers to restrict content that "may be harmful" to children, including advertising. The current draft of the new e-Privacy Regulation restricts the use of third-party cookies without informed consent, which would necessarily impact upon digital advertising activities.

[1] Article 8 GDPR

[2] Article 4(1) GDPR

[3] Article 12(1) GDPR

[4] Article 38 GDPR

[5] Article 71 GDPR

[6] Article 30 GDPR

3.3.8 NON-DISCRIMINATION



EVERY CHILD'S RIGHT TO NON-DISCRIMINATION

Convention on the Rights of the Child – Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

The right to non-discrimination is interpreted broadly to include circumstances and behaviours that are overtly discriminatory and policies that are covertly discriminatory. This includes policies with an intentional purpose of discrimination, but also the effect or outcome of discrimination whether or not discrimination was intended.

After article 1 defines a 'child' as every human being under 18 years old, non-discrimination is the overarching principle throughout the CRC. The Convention states that "children are born with fundamental freedoms and the inherent rights of all human beings and should not be discriminated against because they are children."¹⁶³

The right to non-discrimination is protected in three primary ways: Article 2(1) acts as a guiding principle and an 'umbrella' right,¹⁶⁴ specifying that there will be no discrimination against the child in respect of the rights provided under all articles in the CRC. Other articles include explicit protection against particular types of discrimination, e.g., article 28, which covers the right of the child to education on the basis of equal opportunity, and article 23, regarding children with disabilities. And article 2(2) protects children from unreasonable discrimination and punishment in all aspects of the child's life, regardless of whether these aspects are covered elsewhere in the CRC.

The right to non-discrimination is interpreted broadly to include circumstances and behaviours that are overtly discriminatory and policies that are covertly discriminatory.¹⁶⁵ This includes policies with an intentional purpose of discrimination, but also the effect or outcome of discrimination whether or not discrimination was intended. It applies, for example, to commercial content that promotes gender and/or racial stereotypes that perpetuate discrimination.

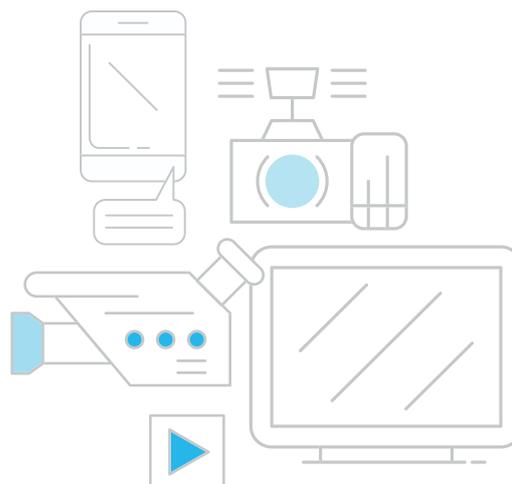
Governments must be proactive in tackling discrimination,¹⁶⁶ looking 'upstream' to identify the causes of discrimination, rather than just the discriminatory event itself.¹⁶⁷ This brings about a specific duty to monitor situations, and to collect and analyse disaggregated data relating to the background and circumstances of children and their families, as well as systematic data.¹⁶⁸ Such duties may at times become obligations to take affirmative action to diminish or eliminate the conditions that cause or perpetuate discrimination.¹⁶⁹ (It should be noted that affirmative action must also be non-discriminatory.)

Protecting children from discrimination that is reinforced through media outlets and communication tools, including unhealthy food marketing, falls within the duties of government. Issues that require specific attention in this respect include:

Exposure to marketing – Children tend to be exposed to marketing more than adults,¹⁷⁰ and children in groups with lower socio-economic status tend to be exposed to greater degrees of marketing,¹⁷¹ as shown in many media, including television,¹⁷² magazines,¹⁷³ outdoor advertising¹⁷⁴ and placement of fast-food outlets.¹⁷⁵ Moreover, such marketing is often specifically targeted towards these groups,¹⁷⁶ thereby amplifying their pre-existing vulnerabilities. This becomes even more of a concern because digital marketing methods can target children with precision.¹⁷⁷

Impact of marketing – Children are also more susceptible to unhealthy food marketing than adults (see Section 2.1.4), and the vulnerabilities are amplified in children who are members of lower socio-economic status groups, including children from lower- and middle-income countries.¹⁷⁸ It has been found, for example, that these children tend to make changes in their food preferences after only brief exposure to marketing.¹⁷⁹ Furthermore, overweight and obese children – who may already have been negatively impacted by unhealthy food marketing – are also more susceptible to such marketing than non-overweight children.¹⁸⁰

Prevalence of obesity – The exposure of disadvantaged children to unhealthy food marketing is all the more troubling because there is an inverse association between the socio-economic position of the child and his or her family, and the child's obesity status.¹⁸¹ This is exaggerated in some groups, particularly in relation to ethnicity,¹⁸² sex¹⁸³ and other family circumstances.¹⁸⁴ These obesity-related inequalities are likely to continue throughout the child's life course,¹⁸⁵ and thereby also have a harmful impact on health and longevity in their adult lives.¹⁸⁶



Stigmatization – Obese children are more likely to face adverse consequences in life as a result of their obesity. Stigmatization, for example, may even be an intentional part of public health campaigns.¹⁸⁷ Assuming that a child's health can be interpreted as part of 'other status' under article 2 CRC, governments are required to protect children against discrimination due to obesity. In some circumstances, obesity may be classified as 'a disability',¹⁸⁸ which would require governments to ensure the protections established in the CRC, article 23: "A physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community."

Based on the evidence, it is imperative to protect children from discrimination by introducing well-designed restrictions on marketing unhealthy food. Further, it is arguable that marketing restrictions are likely to have a greater positive impact on disadvantaged children,¹⁸⁹ thereby contributing to greater equalities in health.¹⁹⁰

3.4 THE ROLE OF PARENTS

As established in article 18 CRC, parents or legal guardians have the primary responsibility for bringing up a child. They are entrusted with nurturing, protecting and helping their children grow and develop, not least by promoting healthy forms of behaviour. Governments are expected to support this role, respecting “the responsibilities, rights and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance” in exercising their rights (article 5).¹⁸⁹¹

Child development and the experiences of childhood are inextricably connected to the wider social and environmental factors that shape, control and influence children’s lives.¹⁹² Governments have a duty to shape these factors, in line with the wording of the CRC, and the structure of international human rights law regarding the fundamental relationship of a government to its citizens.¹⁹³

In article 18, the CRC recognizes that countries should provide “appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.” In relation to the right to health, governments are obligated to make sure that “all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition”(article 24).

Even when parents are fully aware of what constitutes a healthy diet, they may not realize the harmful impact that unhealthy food marketing has on their children and their rights. They also must deal with the strong effects of children’s ‘pester power’, which is often fortified by marketing. Much of children’s exposure to marketing takes place outside the home, leaving parents unaware of the extent to which their children are unprotected from the effects of unhealthy food marketing. The issues are multiplied in relation to digital marketing, as parents may have limited awareness of children’s online activities, or lack the knowledge to help them navigate the digital environment or restrict their access to unhealthy food marketing.¹⁹⁴

It is vital that governments support and assist parents – to the maximum extent of their available resources – providing education that offers the knowledge parents and children need, and the living conditions necessary for children’s health and optimum development.¹⁹⁵ As underscored throughout this report, even though the WHO Recommendations do not explicitly refer to the CRC, they should guide our interpretation of what the CRC requires from governments to ensure they uphold their legal obligation to protect children’s rights. This approach would empower parents and help them care for their children by leading to positive changes in the environments that encourage obesity.



ON THE GOVERNMENT'S RESPONSIBILITY TO SUPPORT CHILDREN AND THEIR FAMILIES

“Parents or other primary caregivers play a central role in promoting healthy child development and strongly influence children’s socialization. ... Although the role and rights of mothers are often – and rightly – given emphasis, the role and rights of fathers are also very important, as are those of grandparents and other members of the extended family.” – Dainius Puras, Special Rapporteur on the right to health (A/70/213, United Nations, 30 July 2015, para. 69.)

“The family, in its diverse forms and arrangements, refers to the essential environment for the well-being, protection and development of children and adolescents ... States should develop policies and services that support families and strengthen their parenting competencies so that all children can grow in healthy family environments.” – Special Rapporteur on the right to health (A/HRC/32/33, United Nations, 4 April 2016, paras. 46, 47)

PART 4

CONCLUSION: PLACING CHILDREN'S BEST INTERESTS FIRST AND FOREMOST

Part 4 discusses how the CRC's core principles – and the United Nations Guiding Principles on Business and Human Rights – can be applied by government and business to systematically support the child's best interests in general and specifically to ensure that marketing practices respect children's rights.



CONCLUSION: PLACING CHILDREN'S BEST INTERESTS FIRST AND FOREMOST

Article 3 of the CRC requires that the best interests of children be a primary consideration in all actions concerning them, whether undertaken by public or private institutions, courts of law, or legislative bodies. Article 4 of the CRC then requires governments take all available measures to make sure children's rights are respected, protected, and fulfilled. These articles have a pivotal position within the Convention's legal configuration, and have been described as the "normative axis around which decisions relating to children revolve"¹⁹⁶ In General Comment No. 14, the Committee on the Rights of the Child asserts that article 3 aims to ensure the holistic development of the child, along with full and effective enjoyment of all the rights recognized in the Convention.¹⁹⁷

The article's wording strongly supports a broad interpretation¹⁹⁸ covering all stages of the policy process, from development to implementation, monitoring and evaluation – including efforts to revise legislations, judicial and administrative decisions, and the development and implementation of projects, programmes and services that have an impact on children.¹⁹⁹ This incorporates decisions and actions that indirectly affect children, as well as those have a direct impact on, for example, childcare, health services and education.²⁰⁰

The best interests of the child: A threefold principle

Underpinning article 3 of the CRC, the Committee on the Rights of the Child outlines a conceptual framework that highlights three parts to the 'best interests of the child':

1. A substantive right – the individual personal right of the child to have her or his best interests taken as a primary consideration;

2. A fundamental, interpretative legal principle – when a legal provision is open to more than one meaning, it must be interpreted in a way that best serves the child's best interests; and

3. A rule of procedure – any decision that is likely to have an impact on the best interests of the child must include an evaluation of the potential impacts.

4.1 EMBEDDING CHILD RIGHTS IN GOVERNMENT PROCESSES

Taking the best interests of the child as a primary concern – and so upholding their legal obligations to the CRC – governments should incorporate the 'best interests' principle into all actions to develop, implement and assess policies that have a potential impact on children and young people. As recommended by the Committee on the Rights of the Child, this includes being able to explain how children's best interests have been respected in decision making and how their interests have been weighed against other considerations.

General Comment No. 16 underscores that making the best interests of the child a primary concern, specifically with regard to their healthy development,

requires adapting measures of implementation "according to the context" and "includes preventative measures such as effective regulation and monitoring of advertising and marketing industries." Such adaptations might, for example, involve assessing proposed policy, legislation, regulations, budgets or other administrative decisions to understand their impact on children's right.

Such approaches should also seek children's views on issues that effect them. Children have rarely been heard regarding the impacts unhealthy food marketing has on them, and on their rights more specifically, even though this is required by the CRC, as discussed in the box on the following page.

As the Committee on the Rights of the Child makes clear, rhetorical statements that children's rights should be supported are not sufficient: The means must be in place to ensure that commitments to child rights are upheld effectively.²⁰¹ To fully implement the WHO Recommendations, governments will need to adopt evidence-based policies to reduce the impact of unhealthy food marketing on children.

Along with capacity building for this purpose, the regulation of marketing practices is likely to involve a broad range of government sectors and agencies. Depending on the country, this could include the treasury and such ministries as those with authority for regulating health; trade, commerce, industry or

business; food and agriculture; legal and consumer affairs; information, media or communications; family affairs and child protection; education; or culture and sport. Some countries have entrusted specific ministries for this purpose, with responsibility allocated jointly.

Specialized agencies that could provide valuable information and services include those responsible for child protection, consumer protection and fair trading, broadcasting and communications, and food and agriculture. It would also be useful to engage an ombudsperson for child or consumer protection. The establishment of a working group on this issue can help address disagreement within government by building a consensus and avoiding the risk of having various departments taking different stances.



THE RIGHT OF THE CHILD TO BE HEARD AND THE EVOLVING CAPACITIES OF THE CHILD

Article 12 of the CRC is broadly seen as securing the right to be heard and the right to participate,^[1] implying that children will be listened to and taken seriously. In turn, this is connected to article 5, on recognizing and supporting the child's evolving capacities. As Gerison Lansdown has noted, "It is through participation that children are empowered to take greater responsibility for the exercise of their own rights as they gain confidence and competence to make informed choices."^[2]

Article 5 embraces two related tenets – the recognition of the child as an active participant in her or his own development, and the responsibility of parents and/or caregivers to provide the appropriate direction and guidance for children in realizing their rights.^[3] This principle reflects the balance sought in the Convention between promoting children's agency and participation in matters that affect them, while simultaneously affording them the necessary protection considering their relative immaturity and youth.^[4]

Article 12 is also indivisible from article 3 on the 'best interests' principle. As described by the Committee on the Rights of the Child, the two articles have complementary roles: Article 3 aims to realize the child's best interests, while article 12 "provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests" – one cannot be correctly applied without meeting the requirements of other. Similarly, by facilitating the essential role of children in all decisions affecting their lives, article 3 reinforces the functionality of article 12.^[5]

In order to convert the right to be heard and have their views respected into a sustainable reality, children must be considered systematically in all decision-making processes, with their empowerment and participation as a central focus of childcare and protection strategies and programmes.^[6] They should also have opportunities to contribute to the development of legislation, policies, strategies and design of services to ensure the implementation of their rights as outlined in the CRC.^[7]

[1] See, for example: Committee on the Rights of the Child, 'General Comment No. 12: The right of the child to be heard', CRC/C/GC/12, United Nations, Geneva, 20 July 2009; and Lansdown, Gerison, *Every Child's Right to Heard: A resource guide on the UN Committee on the Rights of the Child General Comment No. 12*, Save the Children UK on behalf of Save the Children and UNICEF, London, 2011.

[2] Lansdown, Gerison, 'Evolving Capacities and Participation' (prepared for the Canadian International Development Agency), International Institute for Child Rights and Development, December 2003, p. 17. See also: Lansdown, Gerison, 'Promoting Children's Participation in Democratic Decision-Making', Innocenti Insight, UNICEF Innocenti Research Centre, Florence, Italy, 2001, <www.unicef-irc.org/publications/pdf/insight6.pdf>.

[3] Kamchedzera, Garton, 'Article 5: The child's right to appropriate direction and guidance', in *A Commentary on the United Nations Convention on the Rights of the Child*, Brill Publishers, Leiden, The Netherlands, 2012.

[4] Lansdown, Gerison, 'The Evolving Capacities of the Child', Innocenti Insight, UNICEF Innocenti Research Centre, Florence, Italy, p. ix.

[5] Committee on the Rights of the Child, 'General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration', CRC/C/GC/14, United Nations, 29 May 2013, para. 43.

[6] Committee on the Rights of the Child, 'General Comment No. 13: The right of the child to freedom from all forms of violence', CRC/C/GC/13, United Nations, 18 April 2011, para. 3(e).

[7] Committee on the Rights of the Child, 'General Comment No. 17 on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts', CRC/C/GC/17, United Nations, 17 April 2013, para. 19.

The intersectoral dialogue required for the successful implementation of the WHO Recommendations will extend beyond government to build as broad a consensus as possible, nationally and regionally. It may include involving industry in a discussion towards the identification of feasible practices and standards that systemically address child rights issues. Consumer and public health organizations can also be engaged to help raise awareness of the relationship between unhealthy food marketing and childhood obesity and of the importance of implementing effective regulations to restrict such marketing.²⁰² They also have an important role to play in helping build capacity, in independent monitoring of government and industry activities, and in advocating wherever may be necessary in favour of more effective regulatory interventions.

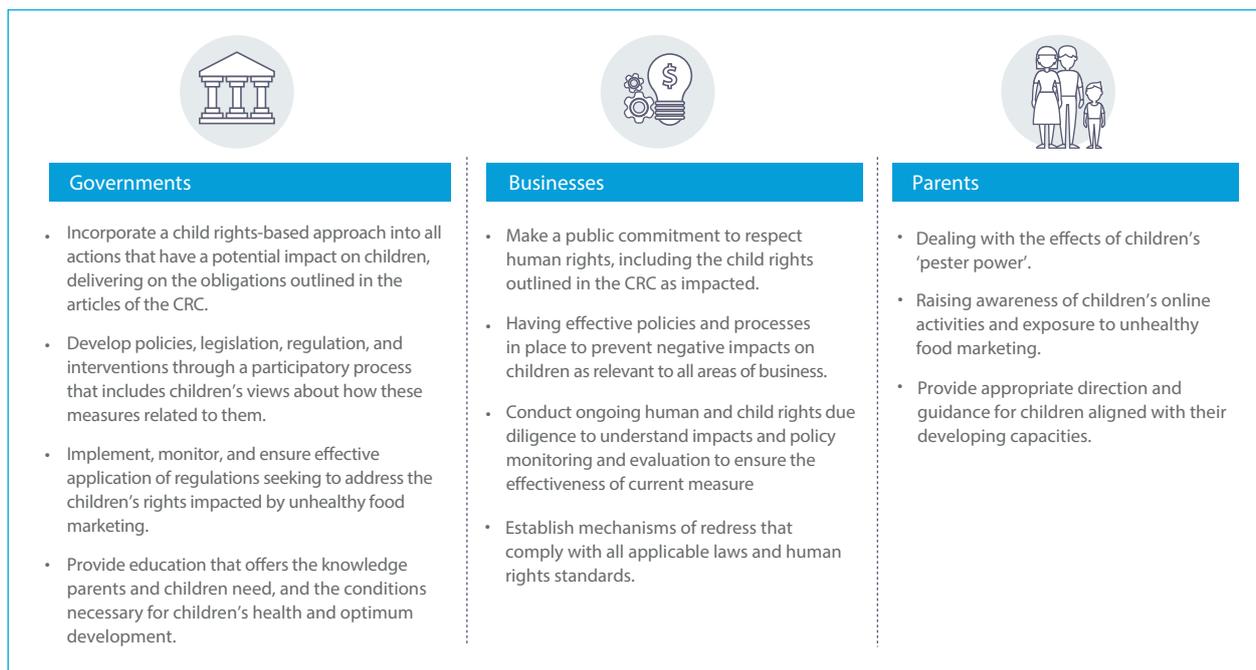
Child rights organizations have a crucial role in ensuring that advertising and marketing practices are considered in light of the CRC, and that children's rights are taken into account. Parents, families and teachers' organizations can further support this process. In addition, academics and lawyers specializing in a range of disciplines – including marketing, consumer protection, food, trade and children's rights – should be involved in the discussions on regulating unhealthy food marketing.

The multisectoral component of food marketing regulations calls for the integration of a broad range of policies, and only a coordinated intervention from multiple government sectors will achieve the objectives pursued. In practice, it is necessary to develop appropriate mechanisms to ensure that child rights concerns are addressed across all relevant sectors of government, in the process referred to as 'mainstreaming'.

Public health mainstreaming implies that a high level of public health protection should not be pursued only via earmarked, distinct policies, but must be incorporated in all policy areas. Mandatory child rights impact assessments should be embedded in the policy process (i.e., legislated domestically) and help ensure that the best interests of the child are systematically taken into account.²⁰³

Putting children's best interests first

FIG. 8: Responsibilities of different actors





THE THREE-PART RESPONSIBILITY OF GOVERNMENT: RESPECT, PROTECT AND FULFIL HUMAN RIGHTS

The International Bill of Human Rights – collectively, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights – forms the foundation of the human rights legal framework. In the development of human rights law, it has led to the establishment of specific human rights treaties protecting amongst others, the rights of women, children, minority groups and people with disabilities.

Such protections, however, do not operate in the abstract, but require the active and continuous involvement of governments in implementing their commitments.[1] The threefold duty – to respect, protect and fulfil human rights – has become an inseparable element of human rights law, guiding governments in the realization of their obligations and as the measure for assessing how well they are carrying out their obligations.[2]

More specifically, the obligation to **respect** obliges states to refrain from interfering in the enjoyment of children's rights.

The obligation to protect requires states to **protect** children under its jurisdiction from children's rights violations by third parties such as companies, but also from threats coming from natural or human-made risks. This specific obligation can be preventive or remedial in nature and results in the taking of immediate operational actions or in the form of legislative enactments.

The obligation to **fulfill** demands that states realize children's rights in practice. This can imply the adoption of legislative or administrative measures to create the necessary legal, institutional and procedural basis in which the potential negative impacts of food marketing on children's rights can be accommodated.

Furthermore, the United Nations Guiding Principles on Business and Human Rights installed the three-pillar 'Protect, Respect and Remedy' framework. The first pillar of the UN Framework includes the state duty to protect against human rights abuses committed by companies, through appropriate policies, regulation and adjudication. Governments have discretion to decide what measures to take, but the treaty bodies indicate that both regulation and adjudication are appropriate.[3]

The third pillar requires governments to fulfil the rights of everyone who could not otherwise enjoy their human rights. To ensure that this standard is met, States must take appropriate measures within their territory and/or jurisdiction to ensure that when human rights abuses by companies occur, those affected have access to effective remedies. This implies the establishment of an effective remedy infrastructure through judicial, administrative, legislative or other appropriate means.

[1] See, for example: Fredman, Sandra, *Human Rights Transformed: Positive rights and positive duties*, Oxford University Press, Oxford, UK, 2008.

[2] In 1999, for example, the Committee on Economic, Social and Cultural Rights stated, "The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil" [emphasis in the original]. Committee on Economic Social and Cultural Rights, 'General Comment 12: The right to adequate food', E/C.12/1999/5, Economic and Social Council, United Nations, Geneva, 12 May 1999, para. 15. See also: Office of the United Nations High Commissioner for Human Rights, 'Key Concepts on ESCRs: What are the obligations of States on economic, social and cultural rights?', OHCHR, <www.ohchr.org/EN/Issues/ESCR/Pages/WhataretheobligationsofStatesonESCR.aspx>.

[3] Ruggie, John, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31, United Nations, 21 March 2011, para. 9.

4.2 INCORPORATING CHILDREN’S RIGHTS IN CORPORATE POLICIES AND PRACTICES

In 2013, the Committee on the Rights of the Child issued General Comment No. 16 on state obligations regarding the impact of the business sector on children’s rights.²⁰⁴ The Committee notes that although there is no international legally binding instrument on the business sector’s responsibilities vis-à-vis human rights, in practice, government duties extend beyond state-controlled services and institutions, and the responsibilities to respect child rights also apply to private actors and business enterprises.²⁰⁵

This statement followed the unanimous adoption of the United Nations ‘Protect, Respect and Remedy’ Framework for Business and Human Rights’ by the Human Rights Council in 2008.²⁰⁶ The United Nations ‘Guiding Principles on Business and Human Rights’ was then developed in 2011 to provide a roadmap for implementing this Framework.²⁰⁷ Also UNICEF, UN Global Compact and Save the Children developed the Children’s Rights and Business Principles (CRBP) in 2012 providing guidance to companies on the actions they can take to respect and support children’s rights.²⁰⁸

Together, the United Nations Guiding Principles on Business and Human Rights and the Protect, Respect and Remedy Framework for Business and Human Rights underscore the importance of complementary responsibilities, to be taken by all stakeholders, as indication of a shared commitment to their effective application.

This ‘complementary responsibility’ includes the responsibility of business actors. In fact these two documents represent a baseline international consensus on the responsibility of business to respect human rights.²⁰⁹ More specifically, the United Nations Guiding Principles on Business and Human Rights sets the expectation that business’ conduct adhere to these foundational principles:

- The development of adequate measures to prevent, address, and remediate for adverse impacts;
- The declaration of commitments and execution of activities that support and contribute to the enjoyment of the rights; and
- The establishment of operations that do not undermine States’ ability and efforts to ensure these rights.²¹⁰



The United Nations Guiding Principles on Business and Human Rights go a step further and outlines specific operational principles to be embedded into business culture; operational principles that can and should be applied to the context of marketing. For example, business can begin to meet its responsibility to children’s rights by:

Policy Commitment: Incorporating commitments to children’s rights within marketing codes of conduct, including a commitment to prevent marketing of unhealthy foods to children. Ensuring that these commitments are approved by the most senior level of the business, as well as, shared internally, with external stakeholders along the marketing value chain, and made publically available.

Human Rights Due Diligence: Embedding children’s rights into ongoing human rights due diligence. This process should enable the business to: assess how the rights outlined in the CRC are impacted by the marketing of its products and services; integrate findings into its decision making; develop actions that mitigate identified risks as a result of its own activities or as a result of its business relationships; track the effectiveness of applied measures; and communicate these efforts internally and externally.²¹¹

Remediation: Establishing legitimate processes (including formal judicial, administrative and legislative processes) to remediate adverse impacts.²¹² This includes, all impacts stemming from the marketing of company products, encompassing marketing developed by the company, “contributed to” by the company, or “directly linked to” the company.²¹³

The Children’s Rights and Business Principles - Principle 6: “Use marketing and advertising that respect and support children’s rights”

The guidance for Principle 6 underscores the premise that companies should ensure that their promotional communications, no matter which media outlets, platforms and formats are employed, do not have an adverse impact on children. They should also comply with the standards of business conducts in World Health Assembly instruments related to marketing health. In their efforts to go beyond ‘respect’ and move towards a commitment to advance children’s rights, companies are also encouraged to use marketing that promotes positive self-esteem and healthy lifestyles.^[1]

UNICEF has released a set of tools on children’s rights due diligence for companies including guidance on policy commitments and codes of practice^[2], child rights impact assessments^[3], corporate reporting^[4] and stakeholder engagement^[5].

[1] United Nations Children’s Fund, ‘Principle 6’, UNICEF, Geneva, <www.unicef.org/csr/195.htm>.

[2] Children’s Rights in Policies and Codes of Conduct, UNICEF, Geneva, <<https://www.unicef.org/csr/policy.htm>>.

[3] Children’s Rights in Impact Assessments, UNICEF, Geneva, <<https://www.unicef.org/csr/assessments.htm>>.

[4] Children’s Rights in Sustainability Reporting, UNICEF, Geneva, <<https://www.unicef.org/csr/reporting.htm>>.

[5] Engaging Stakeholders on Children’s Rights, UNICEF, Geneva, <<https://www.unicef.org/csr/engagement.htm>>.

Specific to the marketing of unhealthy foods and beverages, all of the above should be aligned with the standards set out in the WHO Recommendations on the marketing of foods and beverages to children.

Additionally, it is important to note that policies, processes, and practices developed to respect the full range of children’s rights impacted by unhealthy food marketing should be universally applied, granting equal rights to children everywhere. The United Nations Guiding Principles on Business and Human Rights states that:

*“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”*²¹⁴

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ANNEX

KEY ARTICLES OF THE CRC AND OTHER HUMAN RIGHTS INSTRUMENTS RELATED TO REDUCING THE IMPACTS OF FOOD MARKETING ON CHILDREN

The International Bill of Human Rights – collectively, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights – is the foundation for protecting human rights. In the development of human rights law, it has led to advancements in a number of areas, including the rights of women, children, minority groups and people with disabilities. While the Convention on the Rights of the Child is the only human rights treaty dedicated to children’s rights, it is rooted in this framework. The tables in this annex show specific links between the CRC and international human rights instruments that are particularly pertinent to unhealthy food marketing.



THE RIGHT TO HEALTH

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 24 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.</p>	<p>International Covenant on Economic, Social and Cultural Rights Article 12 (1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination Article 5 (e) States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ... (iv) The right to public health, medical care, social security and social services.</p>

The right to health in the context of marketing and advertising

- An expansive definition health is adopted by the Committee on the Rights of the Child, which is similar to the WHO definition of health: “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”²¹⁴ According to the Committee on the Rights of the Child, to satisfy their obligations under the right to health, States have an obligation to ensure access to nutritionally adequate, culturally appropriate and safe food.²¹⁵
- As the Special Rapporteur in the field of cultural rights noted, “Many products, behaviours and attitudes promoted by commercial advertising are harmful to people’s health and social relationships, as well as to the environment.”²¹⁶ The food industry spends billions of dollars on persistent and pervasive promotion and marketing of unhealthy food. The Committee on the Rights of the Child advises that children’s exposure to ‘fast foods’ should be limited and marketing of these foods, especially when focused on children, “should be regulated and their availability in schools and other places controlled.”²¹⁷
- As the United Nations Special Rapporteur on the right to health has argued: “Owing to the inherent problems associated with self-regulation and public–private partnerships, there is a need for States to adopt laws that prevent companies from using insidious marketing strategies. The responsibility to protect the enjoyment of the right to health warrants State intervention in situations when third parties, such as food companies, use their position to influence dietary habits by directly or indirectly encouraging unhealthy diets, which negatively affect people’s health. Therefore, States have a positive duty to regulate unhealthy food advertising and the promotion strategies of food companies. Under the right to health, States are especially required to protect vulnerable groups such as children from violations of their right to health.”²¹⁸ Further, the Rapporteur urges States to “ban the advertising, promotion and sponsorship of all children’s sporting events, and other sporting events which could be attended by children, by manufacturers of alcohol, tobacco and unhealthy foods.”²¹⁹
- The responsibilities of media organizations outlined by the Committee on the Rights of the Child include “promoting health and healthy lifestyles among children; providing free advertising space for health promotion; ensuring the privacy and confidentiality of children and adolescents; promoting access to information; not producing communication programmes and material that are harmful to child and general health; and not perpetuating health-related stigma.”²²⁰

THE RIGHT TO FOOD

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 24 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition.</p> <p>Article 27 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.</p>	<p>Universal Declaration of Human Rights Article 25 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.</p> <p>International Covenant on Economic, Social and Cultural Rights Article 11 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food.</p>

The right to food in the context of marketing and advertising

- While freedom from hunger clearly constitutes the core minimum content of the right to food, we can also identify broader concerns regarding adequacy and nutritional value of available food. The Committee on Economic, Social and Cultural Rights provides that: "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients."²²¹
- By promoting nutritiously poor food, food and media business actors undermine children's access to adequate food and healthy diets. The obligation to protect means that States must pass and enforce laws to prevent powerful people or organizations, including business actors, from violating the right to food. As the United Nations Special Rapporteur on the right to food has noted: "It is unacceptable that when lives are at stake, we go no further than soft, promotional measures that ultimately rely on consumer choice, without addressing the supply side of the food chain. ... Food advertising is proven to have a strong impact on children, and must be strictly regulated in order to avoid the development of bad eating habits early in life."²²²

THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 6</p> <p>1. States Parties recognize that every child has the inherent right to life.</p> <p>2. States Parties shall ensure to the maximum extent possible the survival and development of the child.</p>	<p>Universal Declaration of Human Rights</p> <p>Article 3</p> <p>Everyone has the right to life, liberty and security of person.</p> <p>International Covenant on Civil and Political Rights</p> <p>Article 6</p> <p>1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.</p>

The right to life, survival and development in the context of marketing and advertising

- The Committee on the Rights of the Child states that marketing to children of such products as cigarettes and alcohol, as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives, can have a long-term impact on their health.²²³
- Upholding the right to life, survival and development of children necessitates the implementation of preventive measures, including the effective regulation and monitoring of advertising and marketing industries, and the environmental impact of business.²²⁴

THE RIGHT TO EDUCATION

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 28</p> <p>1. States Parties recognize the right of the child to education...</p> <p>The Committee recognizes the central function played by education in equipping children with the necessary life skills which are indispensable for facing the many challenges life presents. Such skills are not limited to traditional literacy and numeracy abilities but include the skills to make well-balanced decisions including developing a healthy lifestyle.</p>	<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Article 13</p> <p>1. The States Parties to the present Covenant recognize the right of everyone to education.</p>

The right to education in the context of marketing and advertising

- The Committee on the Rights of the Child recognizes the central function of education in equipping children with the life skills that are indispensable for facing the many challenges life presents. Such skills are not limited to traditional literacy and numeracy, but include the skills to make well-balanced decisions including developing a healthy lifestyle.²²⁵
- The increased prevalence of marketing and advertising in schools and universities unambiguously impacts upon the child's right to education. As the Special Rapporteur in the field of cultural rights states, "The sponsoring of school material and educational content reduces the freedom educational institutions have for developing the most appropriate and highest-quality curriculum for their students."²²⁶ Similarly, the World Health Organization has stated that settings where children gather, including schools, should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars or salt.²²⁷

THE RIGHT TO ACCESS APPROPRIATE INFORMATION

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 17 States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.</p>	<p>International human rights instruments encapsulate this right within the right to freedom of expression.</p>

The right to access appropriate information in the context of marketing and advertising

- States have obligations to encourage the mass media, including private media, to disseminate information and materials of social and cultural benefit to the child, for example regarding healthy lifestyles.²²⁸
- States must ensure that marketing and advertising do not impact adversely on children’s rights, by adopting appropriate regulation and encouraging enterprises to adhere to codes of conduct and the use of clear and accurate product labelling and information that allow parents and children to make informed consumer decisions.²²⁹ States are therefore urged to regulate and/or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.²³⁰
- The Special Rapporteur on the right to health maintains that: “States should make sure that advertisements and promotion by food corporations convey accurate and easily understandable information on possible ill effects of their food products ... States should formulate laws and a regulatory framework with the objective of reducing children’s exposure to powerful food and drink marketing. Such regulations should ensure that the food industry provide accurate and reader-friendly nutrition information when advertising their products.”²³¹

THE RIGHT TO LEISURE, RECREATION AND CULTURAL ACTIVITIES

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 31</p> <p>1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.</p> <p>2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.</p>	<p>International Covenant on Economic, Social and Cultural Rights</p> <p>Article 1</p> <p>1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</p> <p>International Covenant on Economic, Social and Cultural Rights</p> <p>Article 15</p> <p>1. The States Parties to the present Covenant recognize the right of everyone:</p> <p>(a) To take part in cultural life.</p>

The right to leisure, recreation and cultural activities in the context of marketing and advertising

- The Committee on the Rights of the Child acknowledges that play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills.
- Children’s right to leisure, recreation and cultural activities is directly impacted by advertising and marketing practices that enforce and sustain the commercialization of their play environment.
- Noting that “growing dependence on screen-related activities is thought to be associated with reduced levels of physical activity among children, poor sleep patterns, growing levels of obesity and other related illnesses,” the Committee on the Rights of the Child expressed the further concern that: “Many children and their families are exposed to increasing levels of unregulated commercialization and marketing by toy and game manufacturers. Parents are pressured to purchase a growing number of products which may be harmful to their children’s development or are antithetical to creative play ... Global marketing can also serve to weaken children’s participation in the traditional cultural and artistic life of their community.”²³²
- In acknowledging the emerging and central role of information and communication technologies in children’s lives, the Committee connects the role of marketing and media to the context of a child’s right to play and recreation.²³³ Specifically, it asserts that contracting States should “review policies concerning the commercialization of toys and games to children, including through children’s television programmes and directly related advertisements, with particular regard to those promoting violence, girls or boys in a sexual way and reinforcing gender and disability stereotypes” – and limit children’s exposure to advertising during their peak viewing hours.²³⁴

THE RIGHT TO PRIVACY

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 16</p> <p>1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.</p> <p>2. The child has the right to the protection of the law against such interference or attacks.</p>	<p>Universal Declaration of Human Rights</p> <p>Article 12</p> <p>No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.</p> <p>International Covenant on Civil and Political Rights</p> <p>Article 17</p> <p>1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.</p> <p>2. Everyone has the right to the protection of the law against such interference or attacks.</p>

The right to privacy in the context of marketing and advertising

- Marketing and advertising practices have an immediate impact on children’s right to privacy. As targets of directed, ubiquitous and sophisticated marketing strategies, children and young people are particularly vulnerable to strategies that fail to account for their developmental and/or cognitive ability to differentiate between the purpose, form and nature of a particular advertisement. These practices become all the more serious if individual children have been targeted as a result of a breach in their right to privacy.
- The collection, storage and retention of data pertaining to children and young people – and the disaggregation of data according to individual preferences, choices and behaviours – militates against the very concept of the right to privacy. As observed by the United Nations High Commissioner for Human Rights, “The collection and retention of communications data amounts to an interference with privacy whether or not those data are subsequently used or not.”²³⁵
- While children have the right to participate on online mediums and take advantage of the many benefits of technological advancements, States Parties to the CRC must ensure that children are neither exposed to harmful or injurious material nor their own private and personal online behaviours tracked and monitored for subsequent targeted marketing.

THE RIGHT TO NON-DISCRIMINATION

Convention on the Rights of the Child	Other international human rights instruments
<p>Article 2</p> <p>1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.</p> <p>2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.</p>	<p>Universal Declaration of Human Rights</p> <p>Article 2</p> <p>Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...</p> <p>International Covenant on Civil and Political Rights</p> <p>Article 2</p> <p>1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p>

The right to non-discrimination in the context of marketing and advertising

- Children should not be discriminated against because of their protected characteristics, or the protected characteristics of their parents, when it comes to all the other rights in the CRC. They must also not face unreasonable discrimination and punishment in any aspect of their child life.
- Fulfilling the right to non-discrimination requires preventing direct and indirect discrimination, and taking positive steps to eliminate the conditions which perpetuate discrimination.
- Children tend to be exposed to food marketing more than adults, and are more susceptible to the effects of marketing – both of which are heightened in children from lower socioeconomic groups. Children tend to make food preference changes even after only brief exposure to marketing, which is exaggerated in children who are overweight or obese.
- Children also suffer from discrimination due to their overweight or obesity.

ENDNOTES

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89. For example, in his message to the United Nations high-level meeting on progress achieved in the prevention and control of NCDs, 10 July 2014, then United Nations Secretary-General Ban Ki-moon called on the private sector to stop marketing unhealthy foods to children (‘Private Sector Should Stop Marketing Unhealthy Foods to Children, Urges Secretary-General in Message to Meeting on Non-Communicable Diseases’ (press release), United Nations, 10 July 2014, <www.un.org/press/en/2014/sgsm16013.doc.htm>).

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92. See generally: Van Bueren, Geraldine, *The International Law on the Rights of the Child*, Martinus Nijhoff Publishers, 1995. See also: Hodgkin, Rachel, and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, 3rd ed., United Nations Children's Fund, 2007.

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99. See, for example: Friant-Perrot, Marine, and Amandine Garde, 'L'impact du marketing sur les préférences alimentaires des enfants', *Rapport pour l'Institut national de prévention et d'éducation pour la santé*, 15 September 2014.

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104. Committee on the Rights of the Child, 'General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health', CRC/C/GC/15, United Nations, 17 April 2013.

105. Preamble to the Constitution of the World Health Organization, as adopted by the International Health Conference, New York, 22 July 1946, <<http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>>.

106. Committee on the Rights of the Child, 'General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health', CRC/C/GC/15, United Nations, 17 April 2013, at para. 1.

107. The importance of supportive environments is a core focus of ECHO in the 'Report of the Commission on Ending Childhood Obesity', published by the World Health Organization in January 2016.

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112. See, for example: De Schutter, Olivier, 'The Right to an Adequate Diet: The agriculture-food-health nexus', Report of the Special Rapporteur on the right to food, A/HRC/19/59, United Nations, 26 December 2011, paras. 37–47. This recommendation is echoed in the SDGs and in the Rome Declaration marking the outcome of ICN2.

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114. More generally, CRC article 4 provides that "with regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation." On the relationship between budgetary decision-making and the CRC, and child rights-based budget analysis, see: Nolan, Aoife, 'Economic and Social Rights, Budgets and the Convention on the Rights of the Child', *International Journal of Children's Rights*, vol. 21, no. 2, 2013, pp. 248–277.

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- 121.** Office of the United Nations High Commissioner for Human Rights, 'Special Rapporteur on the Right to Food', OHCHR, Geneva, <www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx>.
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- 126.** Elver, Hilal, 'Interim Report of the Special Rapporteur on the Right to Food', A/69/275, United Nations, 7 August 2014, para. 40.
- 127.** Respectively: *Ibid.*, paras. 64(f), 66(b).
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- 129.** Nowak, Manfred, 'Article 6: The Right to Life, Survival, and Development', in *A Commentary on the United Nations Convention on the Rights of the Child*, edited by A. Alen, et al., Martinus Nijhoff Publishers, Leiden, The Netherlands, 2005, pp. 1–2.
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- 132.** Shaheed, Farida, 'The Impact of Commercial Advertising and Marketing Practices on the Enjoyment of Cultural Rights', Report of the Special Rapporteur in the field of cultural rights, A/69/286, United Nations, 8 August 2014, para. 48. The advertising and marketing of life-threatening products such as cigarettes and other tobacco products also affect the child's right to life and survival. See, for example: Cabrera, Oscar, and Lawrence O. Gostin, 'Human Rights and the Framework Convention on Tobacco Control: Mutually reinforcing systems', *International Journal of Law in Context*, vol. 7, no. 3, 2011, pp. 285–303. On the relationship between tobacco control and fundamental rights, see: Dresler, Carolyn, and Stephen Marks, 'The Emerging Human Right to Tobacco Control', *Human Rights Quarterly*, vol. 28, 2006, pp. 599–651; and Crow, Melissa E., 'Smokescreens and State Responsibility: Using human rights strategies to promote global tobacco control', *Yale Journal of International Law*, vol. 29, no. 1, 2004, pp. 209–250.
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