

## Multi-stakeholder Consultation on “Corporate Influence in the Political and Regulatory Sphere”

### Working Group on the issue of human rights and transnational corporations and other business enterprises

Questionnaire submitted by:



**CLAS**  
Coalición América Saludable

The **Healthy Latin America Coalition (HLAC)** (in Spanish **Coalición Latinoamericana Saludable - CLAS**) is an alliance of more than 200 Latin American non-government organizations whose purpose is to prevent and control chronic, non-communicable diseases (NCDs)

in the region (heart, cancers, respiratory, diabetes, mental, obesity, stroke, etc.) Its members include medical societies, patient organizations, health NGOs, consumer NGOs, religious and academic entities. Founded in 2011, it aims to reduce inequities, promote human rights, and support effective policies with impact on risk factors and determinants of NCDs. In addition to this General List <https://www.clasonline.org/miembros/>, there is a list for advocacy discussions.

Supported by:



**1. What is your understanding of undue corporate influence in policy and regulatory matters? What challenges have you observed? Could you think of any concrete examples in activities or operations of your organization?**

Non-communicable diseases (NCDs) are the leading cause of death in the world. According to the World Health Organization (WHO), these diseases cause 41 million (71%) deaths each year, more than 15 million people die from "NCD premature" deaths (between the ages of 30 and 69 years). 85% of these "premature" deaths occur in low- and middle-income countries, and more than 75% of all NCD deaths are in low- and middle-income countries<sup>1</sup>.

NCDs can be prevented if a healthy environment is guaranteed and effective public policies are implemented to ensure healthy habits such as proper nutrition (understood as a reduction in the consumption of sodium, trans fats and sugars), weight control, regular physical activity, reduction of tobacco consumption and exposure to second-hand smoke, and reduction of alcohol consumption. NCDs mainly affect vulnerable social sectors that are exposed to unhealthy environments and do not have the same access to education and health as wealthier sectors<sup>23</sup>. For example, a study<sup>4</sup> conducted in Argentina showed that adolescents whose parents have lower levels of education are more likely to be obese than those whose parents have higher levels of education.

In that sense, it has been demonstrated that children are suffering the consequences of living in an unhealthy environment. A report conducted by UNICEF in 2021, demonstrated that the estimated prevalence of overweight and obesity in children under 5 years is 7.5%. Additionally, 3 out of every 10 children aged 5 to 19 years old in the region are overweight<sup>5</sup>. Similarly, approximately 43 million children aged 13 and 15 years consumed tobacco in 2018<sup>6</sup> worldwide. In Latin American countries the percentage of youth who consume tobacco exceeds 20%, for example, Dominican Republic (25.3%), Argentina (20.2%) and Colombia (20.2%)<sup>7</sup>. Furthermore, in Latin America more than 370,000 people die each year from diseases caused by tobacco

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<sup>1</sup> WHO; Noncommunicable diseases. Available at: <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases#:~:text=Key%20facts,%2D%20and%20middle%2Dincome%20countries>

<sup>2</sup> La Obesidad en la Pobreza: Un nuevo reto en la salud pública; PAHO. Disponible online en: <https://iris.paho.org/handle/10665.2/4006>

<sup>3</sup> FAO, FIDA, OMS, PMA y UNICEF. 2021. The State of Food Security and Nutrition in the World. 2021. Transforming food systems for food security, improved nutrition and affordable healthy diets for all. Roma, FAO. <https://www.fao.org/publications/sofi/2021/en/>

<sup>4</sup> UNICEF, FIC Argentina. Brechas sociales de la obesidad en la niñez y adolescencia: Análisis de la Encuesta Mundial de Salud Escolar (EMSE). 2016. Available at (in Spanish): <https://www.unicef.org/argentina/informes/brechas-sociales-de-la-obesidad-en-la-ni%C3%B1ez-y-adolescencia>

<sup>5</sup> UNICEF; Childhood overweight: A call for prevention in Latin America and the Caribbean; 2021. Available at: <https://www.unicef.org/lac/media/30446/file/Childhood-overweight-report-rev-ed.pdf>

<sup>6</sup> WHO; WHO launches new report on global tobacco use trends. Available at: <https://www.who.int/news/item/19-12-2019-who-launches-new-report-on-global-tobacco-use-trends>

<sup>7</sup> WHO Tobacco Epidemic Report. 2021.

consumption. Regarding alcoholic beverages, surveys show that alcohol consumption starts early In Latin America countries between 11% (Venezuela and Colombia) and 24% (Uruguay) of adolescents consume to the point of intoxication (heavy episodic drinking in the last 30 days)<sup>8</sup>.

Numbers on obesity, tobacco and alcohol consumption among children and adolescents in Latin America show an increase in the consumption of unhealthy products. This is mainly due to the behavior of companies (generally transnational corporations -TNCs-) that, through abusive and often misleading marketing actions, promote their products, generating false expectations and minimizing the health consequences they generate<sup>9</sup>. In this sense, it is mainly children and adolescents who are most exposed to the actions of these companies that direct their marketing strategies to these age groups in order to promote the consumption of their products. These corporate practices have often been referred to as the “commercial determinants of health” in the understanding that corporate activities shape the environments and determine the availability, promotion, and pricing of consumables that affect health<sup>10</sup>.

Exposure to tobacco marketing has been shown to be one of the main causes of initiation<sup>11121314</sup> of tobacco use. The evidence on the impact of tobacco advertising on young people is conclusive: a 2003 review<sup>15</sup> of nine studies involving more than 12,000 young people showed that tobacco advertising and promotion increase the likelihood that adolescents will start smoking. Every year the tobacco industry invests more than USD 9 billion to advertise its products.<sup>16</sup>

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<sup>8</sup> World Health Organization Data. Available at [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/heavy-episodic-drinking-\(youth-15--19-years\)-past-30-days-\(-\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/heavy-episodic-drinking-(youth-15--19-years)-past-30-days-(-))

<sup>9</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6706978/>

<sup>10</sup> Kickbusch I, Allen L, Franz C. The commercial determinants of health. *Lancet* 2016; 4:e895–6; Stuckler D, McKee M, Ebrahim S, Basu S. Manufacturing epidemics: the role of global producers in increased consumption of unhealthy commodities including processed foods, alcohol, and tobacco.

<sup>11</sup> Paynter J y Edwards R; El impacto de la promoción del tabaco en el punto de venta. Una revisión sistemática. *Investigación sobre nicotina y tabaco*, Vol 11, núm 1; 25-35; Enero 2009.

<sup>12</sup> Cunningham R, y Kyle K; El caso del control del empaquetado genérico de tabaco, 4, 80-86; 1995.

<sup>13</sup> Pollay r; Más de lo que parece: sobre la importancia de la comercialización minorista de tabaco. *Tobacco Control* , 16, 270-274; 2007.

<sup>14</sup> Wakefield, M. A. et al.; El paquete de cigarrillos como imagen: nueva evidencia de los documentos de la industria tabacalera. *Control del tabaco*, 11 (Suppl. 1), 173-180; 2002

<sup>15</sup> Lovato C, Linn G, Stead LF, Best A. Impacto de la publicidad y promoción del tabaco sobre el aumento del comportamiento de fumar entre los adolescentes; 2003

<sup>16</sup> <https://www.who.int/news/item/29-05-2020-stop-tobacco-industry-exploitation-of-children-and-young-people>

Similarly, it has been shown that food marketing also targets children.<sup>171819</sup> There is clear evidence of the influence of unhealthy food advertising on children's preferences, orders and consumption, which contributes to an increase in overweight and obesity. For example, a study<sup>20</sup> conducted among mothers of children aged 3 to 9 years in Argentina, Brazil and Mexico showed that respondents believe that advertising influences children's purchase requests for all products.

Finally, numerous studies show the impact of exposure to alcohol advertising and promotion on consumption in young people, leading to earlier initiation and excessive consumption<sup>21</sup> and altering expectations and beliefs about drinking alcoholic beverages<sup>22</sup>. It is not only the marketing content of alcohol that is of concern, but also the magnitude of exposure of young people<sup>23</sup>.

As it has been demonstrated, TNCs that market unhealthy products mainly direct their marketing resources to the younger population in all Latin American countries. For this reason, this population segment is the most affected by the practices of these companies and require immediate government action. The Thematic Report on "Business and Human Rights: Inter-American Standards", from REDESCA is very clear on this front "in all cases, the IACHR recalls that States must establish and enforce legal frameworks and adopt measures that effectively prevent, address, and punish negative commercial impacts on the rights of children and adolescents, taking additional measures that are necessary."<sup>24</sup>

In this context and although most countries in the region have made progress with tobacco control measures<sup>25</sup>, these policies are not sufficiently successful in reducing these corporate practices. One of the main reasons is the deliberate interference actions of tobacco companies. Tobacco industry continues to develop aggressive strategies to increase their sales, prevent the sanctioning and implementation of effective policies to limit the marketing, advertising and

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<sup>17</sup> Allemandi, L., Castronuovo, L., Tiscornia, M. V., Ponce, M., & Schoj, V. (2018). Food advertising on Argentinean television: are ultra-processed foods in the lead?. *Public health nutrition*, 21(1), 238-246.

<sup>18</sup> Kelly B, Vandevijvere S, Ng S, et al. Global benchmarking of children's exposure to television advertising of unhealthy foods and beverages across 22 countries. *Obesity Reviews*. 2019;1–13. <https://doi.org/10.1111/obr.12840>

<sup>19</sup> Allemandi, L., Castronuovo, L., Tiscornia, M. V., Gutkowski, P., Gijena, J., & Nessier, C. (2020). Nutritional quality, child-oriented marketing and health/nutrition claims on sweet biscuit, breakfast cereal and dairy-based dessert packs in Argentina. *Cadernos de Saúde Pública*, 36.

<sup>20</sup> PAHO; Recommendations from a Pan American Health Organization Expert Consultation on the Marketing of Food and Non-Alcoholic Beverages to Children in the Americas; 2011. Available at: [https://iris.paho.org/bitstream/handle/10665.2/3594/9789275116388\\_eng.pdf?sequence=1&isAllowed=y](https://iris.paho.org/bitstream/handle/10665.2/3594/9789275116388_eng.pdf?sequence=1&isAllowed=y)

<sup>21</sup> Anderson P, Avalon de Bruijn", Kathryn Angus, Ross Gordon y Gerard Hastings; Impacto de la publicidad del alcohol y la exposición a los medios sobre el consumo de alcohol en adolescentes: una revisión sistemática de estudios longitudinales; *Alcohol y alcoholismo*, N° 44(3):229-43; 2009

<sup>22</sup> Jones-Webb R, Toomey TL, Short B, Murray DM, Wagenaar A, Wolfson M.; Relaciones entre la disponibilidad de alcohol, la ubicación de bebida, el consumo de alcohol y los problemas de bebida en adolescentes; *Uso y abuso de sustancias*; 32(10):1261-85; 1997.

<sup>23</sup> Bonomo Y, Coffey C, Wolfe R, Lynskey M, Bowes G, Patton G. Resultados adversos del consumo de alcohol en adolescentes; *Adicción*; 96(10):1485-96; 2001.

<sup>24</sup> [https://www.oas.org/en/iachr/media\\_center/PReleases/2020/014.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/014.asp)

<sup>25</sup> Tobacco control legislation in different Latin American countries available online at: <https://www.tobaccocontrolaws.org/legislation>

consumption of tobacco products, and their ongoing efforts to improve their deteriorated image in the eyes of public opinion. Given the degree of tobacco industry interference in health policies to reduce smoking, international organizations have urged governments to ensure transparency in their relation with the tobacco industry and to prevent it from participating in the design and implementation of tobacco control policies<sup>26</sup>.

The objectives of the tobacco industry and the implementation of public health policies have been internationally recognized as irreconcilable<sup>27</sup>. When a government admits its influence, it is protecting the profits of tobacco transnational corporations at the expense of the lives and health of the entire population. The tobacco global industry interference index, is a very good example to address this situation<sup>28</sup>.

There are numerous examples in Latin America that expose the actions of the tobacco industry in obstructing tobacco control policies, and it has been evidenced that the same interference strategies are being used in almost all the countries of the region<sup>29</sup>, even during the COVID19 pandemic<sup>30</sup>. These corporations use diverse tools to increase their profits and interfere with the enactment of public policies: they create their own health institutes, buy scientific consultants to disseminate biased researches that benefit their interests, and sponsor individual scientists, signing research agreements with public and private institutions, sponsoring pediatric, nutrition and diabetes associations, among other tactics<sup>32</sup>. And as if this were not enough, they have also becoming investors in the development of COVID-19 vaccines (the WHO recently denied the approval of the emergency distribution of the COVID-19 vaccine (Covifenz) due to pharmaceutical company Medicago Inc ties with the tobacco giant Philip Morris International<sup>33</sup>).

In this regard, several countries in the Region have been hindered in their efforts to implement measures to restrict tobacco advertising based on generally false arguments. These arguments have been amply refuted by international evidence and the jurisprudential decisions of the

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<sup>26</sup> Latin America Regional Tobacco Interference Index 2021: <https://globaltobaccoindex.org/region/latin-america/2021>

<sup>27</sup> FCTC: Art. 5.3.

<sup>28</sup> Global Tobacco Industry Interference Index; 2021: Available at: <https://globaltobaccoindex.org/#:~:text=The%20Global%20Tobacco%20Industry%20Interference%20Index%20is%20a%20survey%20to,Tobacco%20Control%20>

<sup>29</sup> Tabacaleras en la Mira: Las Estrategias Publicitarias de Massalin Particulares y Nobleza Piccardo violan la legislación vigente [Big Tobacco Under Scrutiny: Advertising Strategies By Massalin Particulares And Nobleza Piccardo Breach Current Legislation]. Available at: [http://www.cargentina.org/wp-content/uploads/2017/11/150522\\_tabacaleras\\_en\\_la\\_mira\\_nal.pdf](http://www.cargentina.org/wp-content/uploads/2017/11/150522_tabacaleras_en_la_mira_nal.pdf) (in Spanish)

<sup>30</sup> Desenmascarando a la industria tabacalera en tiempo de COVID-19 – Reporte regional; 2020. Available at (in Spanish): [https://www.ficargentina.org/wp-content/uploads/2020/07/2007\\_Reportel\\_Regional\\_T.pdf](https://www.ficargentina.org/wp-content/uploads/2020/07/2007_Reportel_Regional_T.pdf)

<sup>31</sup> e Global Health Advocacy Incubator (GHAI); Facing Two Pandemics How Big Food Undermined Public Health in the Era of COVID-19; 2020. Available at: <https://advocacyincubator.org/wp-content/uploads/2020/11/GHAI-Facing-Two-Pandemics-Report-November-2020.pdf>

<sup>32</sup> Business and Human Rights: Inter-American Standards; Special Rapporteurship on Economic, Social, Cultural and Environmental Rights REDESCA; 2019. Available at: [http://www.oas.org/en/iachr/reports/pdfs/Business\\_Human\\_Rights\\_Inte\\_American\\_Standards.pdf](http://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf)

<sup>33</sup> <https://www.corporateaccountability.org/media/canada-stop-pmi-covid-19-vaccine/>

Supreme Courts of the countries of the region. Among these arguments, the violation of freedom of expression and the guarantee to do business as a legal industry<sup>34</sup> stand out. However, beyond the broad consensus<sup>35</sup> that exists at the regional level on the constitutionality of the measures for a complete ban on tobacco advertising, tobacco TNCs continue to threaten governments with legal actions that hinder the sanction or implementation of these measures. Countries such as Argentina<sup>36</sup>, Panama<sup>37,38</sup>, Uruguay<sup>39</sup>, Peru<sup>40</sup> and Colombia<sup>41,42</sup> have been sued by tobacco companies to prevent the implementation of effective policies.

The main obstacle to the ratification of the Framework Convention on Tobacco Control, mainly in Argentina, is the lobby of the tobacco industry that, during the last 15 years, has opposed

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<sup>34</sup> “It also claims the unconstitutionality of the provincial law because it violates constitutional principles and guarantees, for it underscores that the total and arbitrary ban instituted by the local law is the opposite of reasonable regulation, which exceeds the power of local police, injures reasonableness, wounds the principle of equality, and impairs freedom of expression and free enterprise”. *Nobleza Piccardo v. Provincia de Santa Fe*, 188/2006 (42-N)/CS1, Corte Suprema de Justicia (2015)

<sup>35</sup> *Restricciones a la Publicidad y la Promoción del Tabaco y la Libertad de Expresión. ¿Tensión de Derechos?*; Óscar Cabrera, Paula Avila Guillén y Juan Carballo. Available at (in Spanish): [http://ri.conicet.gov.ar/bitstream/handle/11336/22852/CONICET\\_Digital\\_Nro.8d07e2d6-ca8b-40e5-989c4054e11ce3d2\\_A.pdf?sequence=2&isAllowed=y](http://ri.conicet.gov.ar/bitstream/handle/11336/22852/CONICET_Digital_Nro.8d07e2d6-ca8b-40e5-989c4054e11ce3d2_A.pdf?sequence=2&isAllowed=y)

<sup>36</sup> *Nobleza Piccardo S.A.I.C. y F. c/ Provincia de Santa Fe*, 188/2006 (42-N)/CS1, Corte Suprema de Justicia (2015). Available at: <https://www.tobaccocontrollaws.org/litigation/decisions/ar-20151027-nobleza-piccardo-v.-provincia->

<sup>37</sup> *British American Tobacco Panama S.A. et al. s/ nulidad del Decreto Ejecutivo 611 de 2010*, Corte Suprema de Justicia - Sala en lo Contencioso Administrativo [Supreme Court of Justice - Administrative Chamber] (2016). Available at: <https://www.tobaccocontrollaws.org/litigation/decisions/pa-20160803-british-american-tobacco-panam>

<sup>38</sup> *a Prensa S.A. v. General Directorate of Public Health of the Ministry of Health (Panamá)*; 2020. Available at: <https://www.tobaccocontrollaws.org/litigation/decisions/pa-20200305-la-prensa-s.a.-v.-general-dire>

<sup>39</sup> *Philip Morris SÀRL v. Uruguay*. Available at: [Philip Morris SÀRL v. Uruguay | Tobacco Control Laws](https://www.tobaccocontrollaws.org/litigation/decisions/ur-20151005-philip-morris-sarl-v.-uruguay)

<sup>40</sup> *INVERSIONES EIVISSA S.A.C. vs. Ministerio de Salud*, Lima Superior Court of Justice (2015). Available at: <https://www.tobaccocontrollaws.org/litigation/decisions/pe-20151005-inversiones-eivissa-s.a.c.-v.->

<sup>41</sup> *Caceres Corrales vs. Colombia*; Sentencia Nro. C-830/10; Corte Constitucional de Colombia; 2010. Available at: <https://www.tobaccocontrollaws.org/litigation/decisions/co-20101020-caceres-corrales-v.-colombia>

<sup>42</sup> *American Tobacco Colombia vs. Ministerio de Salud*, Expediente N° 2012-00607-01, Consejo de Estado [State Council] (2015). Available at: <https://www.tobaccocontrollaws.org/litigation/decisions/co-20150924-british-american-tobacco-colom>

ratification through false arguments<sup>43444546</sup> based on a misinterpretation of the articles of the Convention.

The strategies being developed by the ultra-processed food and beverage industry are similar to those being developed by the tobacco industry<sup>47</sup>. Large food and beverage corporations have not only created their own health institutes, but are also sponsoring individual scientists, making research agreements with public and private institutions, sponsoring associations of pediatricians, nutritionists, diabetes, etc.<sup>4849</sup>. In addition, these industries have collaboration agreements with various governmental institutions in most of the countries in the region. Their collaboration involves mainly social programs (physical activity, campaigns to promote healthy lifestyles, anti-hunger campaigns, etc.) that serve as social marketing while strengthening their brand and products. Companies support ministers and officials who serve their interests. Afterwards, these officials work for the industry and, from the industry, they may return to the public sector, always defending industry interests. This industry invests millions of dollars in lobbying, funding political campaigns, and interfering with public health policies<sup>505152</sup>.

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<sup>43</sup> Declaration for Argentina's ratification of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) - May 2021. Available at: [https://www.ficargentina.org/wp-content/uploads/2021/05/2021\\_Declaration\\_FCTC.docx.pdf](https://www.ficargentina.org/wp-content/uploads/2021/05/2021_Declaration_FCTC.docx.pdf)

<sup>44</sup> Por qué Argentina debe ratificar el Convenio Marco para el Control de Tabaco. FIC Argentina. Available at: [https://www.ficargentina.org/wp-content/uploads/2021/05/2104\\_CMCT.pdf](https://www.ficargentina.org/wp-content/uploads/2021/05/2104_CMCT.pdf)

<sup>45</sup> Raul Mejia, MD, Ph.D, Verónica Schoj, MD, Joaquin Barnoya, MD, MPH, María Laura Flores, y Eliseo J. Pérez-Stable, MD, Estrategias de Obstrucción de la Industria Tabacalera del CMCT en Argentina. Disponible en inglés en: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2630219/>

<sup>46</sup> El Fantasma del Comercio Ilícito: El Falso Argumento de la Industria Tabacalera para Obstaculizar la Implementación de Medidas Fiscales a los Productos de Tabaco. Available at (in Spanish): [https://www.ficargentina.org/wp-content/uploads/2016/11/181106\\_CI\\_final.pdf](https://www.ficargentina.org/wp-content/uploads/2016/11/181106_CI_final.pdf)

<sup>47</sup> The corporate playbook is composed of five main strategies: 1. Protect the UPP industry's reputation and brands through corporate washing; 2. Influence policies through multilateral bodies to delay implementation and threaten countries with legal and economic concerns; 3. Divert attention from its corporate responsibility on the damage to environmental and human health to blame individuals for their behaviors; 4. Imply that their products contribute to health, the environment, and society while blocking the development and implementation of healthy food policies; and 5. Seek loopholes in regulations to continue promoting ultraprocessed products. Global Health Advocacy Incubator (GHA) - Campaign for Tobacco-Free Kids (CTFK). Behind the labels: Big Food's War on Healthy Food Policies. November, 2021. Available at: <https://UPPindustrywatch.net>

<sup>48</sup> Corporate and Accountability; Victory! Coca-Cola cuts ties with shady industry group; 2021. Available at: <https://www.corporateaccountability.org/blog/victory-coca-cola-cuts-ties-ils/>

<sup>49</sup> CLAS; Recommendations to protect public health policies from interference by the ultra-processed food, beverage, tobacco and other health risk products industry. Available at (in Spanish): [http://www.ficargentina.org/wpcontent/uploads/2016/06/conflictosintereses\\_recomendaciones\\_clas.pdf](http://www.ficargentina.org/wpcontent/uploads/2016/06/conflictosintereses_recomendaciones_clas.pdf)

<sup>50</sup> She Took On Colombia's Soda Industry. Then She Was Silenced; The New York Times; 2017. Available at: <https://www.nytimes.com/2017/11/13/health/colombia-soda-tax-obesity.html>

<sup>51</sup> FIC Argentina; Lessons learned from tobacco control: court decisions that ratify public health policies; 2020. Available at: [https://www.ficargentina.org/wp-content/uploads/2019/12/2001\\_argumentos\\_juridicos\\_ingles.pdf](https://www.ficargentina.org/wp-content/uploads/2019/12/2001_argumentos_juridicos_ingles.pdf)

<sup>52</sup> Global Health Advocacy Incubator (GHA) - Campaign for Tobacco-Free Kids (CTFK). Behind the labels: Big Food's War on Healthy Food Policies. November, 2021

One of the main arguments used by food companies to hinder regulatory initiatives for the implementation of front-of-package warning labels on food products is based on the consideration that these policies are an obstacle to international trade, especially for those countries in the region that are members of regional trade blocs -as it happens in other global trade blocs, such as the European Union<sup>53</sup>-, such as MERCOSUR<sup>54</sup> (Common Southern Market). In addition, arguments based on the violation of international trade commitments have also been widely used in several countries with the aim of preventing the application of front -of-package labeling based on scientific evidence<sup>56</sup>. However, there is currently no legal or judicial impediment to support these companies' arguments to avoid labeling measures regulation. On the contrary, international scientific evidence is clear regarding the relevance of measures such as front-of-package labeling for obesity prevention and health protection<sup>57</sup>.

Finally, alcoholic beverage companies have also developed interference strategies to hinder the implementation of effective policies to reduce alcohol consumption. Mainly in wine and beer producing countries, such as Argentina, there have been strong campaigns<sup>58</sup> against marketing restriction measures and tax increases. In both cases, the interests of alcohol companies prevailed over public health interests. It is very concerning, for example, how tobacco industry documents reveals a study of the evolution of Corporate Affairs in the Miller Brewing Company<sup>60</sup>.

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<sup>53</sup> A spoonful of sugar. How the food lobby fights sugar regulation in the EU. Available at: [https://corporateeurope.org/sites/default/files/a\\_spoonful\\_of\\_sugar\\_final.pdf](https://corporateeurope.org/sites/default/files/a_spoonful_of_sugar_final.pdf)

<sup>54</sup> UNICEF and Instituto de Salud Pública (México); Experiences in the design and implementation of front-of-pack nutrition warning labels in Latin America and the Caribbean. Available at: <https://www.unicef.org/lac/media/29541/file/Labeling-regional-experiences.pdf>

<sup>55</sup> Ríos, Cerra and Curry; Etiquetado frontal de alimentos en Argentina y Brasil: barreras y facilitadores jurídicos; 2020. Available at (in Spanish): <https://aldiaargentina.microjuris.com/2020/04/21/etiquetado-frontal-de-alimentos-en-argentina-y-brasil-barreras-y-facilitadores-juridicos/>

<sup>56</sup> FIC Argentina; Lessons learned from tobacco control: court decisions that ratify public health policies; 2020.

<sup>57</sup> WHO; Report of the commission on ending childhood obesity; 2016. Available at: [https://apps.who.int/iris/bitstream/handle/10665/204176/9789241510066\\_eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/204176/9789241510066_eng.pdf)

<sup>58</sup> Vuelven a permitir las publicidades de vino en la Ciudad de Buenos Aires"; Pura Ciudad. Available at (in Spanish): <https://www.puraciudad.com.ar/vuelven-a-permitir-las-publicidades-de-vino-en-la-ciudad-de-buenos-aires/>

<sup>59</sup> Marcha atrás con el nuevo impuesto al vino y al espumante"; www.cronista.com. Available at (in Spanish): <https://www.cronista.com/economiapolitica/El-Gobierno-dio-marcha-atras-y-no-impondra-nuevos-tributos-al-vino-20171109-0074.html>

<sup>60</sup> McCambridge, Garry, Kypry and Hastings; Using information to shape perception": tobacco industry documents study of the evolution of Corporate Affairs in the Miller Brewing Company; 2022. Available at: [https://link.springer.com/epdf/10.1186/s12992-022-00843-3?sharing\\_token=HEA7SshkM\\_qFg7uWjwTDRm\\_BpE1tBhCbnw3BuzI2RMp3bVOi658jIJxvj5hnsUSPNGsxn-NrH0EgAayAECCGAzA0e3dsouaelprqlq4NrUQ5uuUgl-aROlyTb2Q30fg3CHC4JbH44bEI5pTX0Rht-6gtBckHRn8zshEDwatkNILu-II\\_6aoappox1gqwVZR](https://link.springer.com/epdf/10.1186/s12992-022-00843-3?sharing_token=HEA7SshkM_qFg7uWjwTDRm_BpE1tBhCbnw3BuzI2RMp3bVOi658jIJxvj5hnsUSPNGsxn-NrH0EgAayAECCGAzA0e3dsouaelprqlq4NrUQ5uuUgl-aROlyTb2Q30fg3CHC4JbH44bEI5pTX0Rht-6gtBckHRn8zshEDwatkNILu-II_6aoappox1gqwVZR)

<sup>61</sup> NCDAlliance; New report exposes growing influence of the alcohol industry in the Latin America and Caribbean region; 2020. Available at: <https://ncdalliance.org/news-events/news/new-report-exposes-growing-influence-of-the-alcohol-industry-in-the-latin-america-and-caribbean-region>



## 2. Do you think there is a kind of political engagement by businesses that could be defined as appropriate or necessary? Could you please share concrete examples?

The duty of the States regarding the supervision of companies to avoid adverse impacts on human rights is set out in the UN Guiding Principles on Business and Human Rights. Companies, in turn, have a responsibility to identify and mitigate the negative impacts of their operations on the right to health<sup>62</sup>. Nevertheless, it has been recognized internationally that the objectives of the tobacco industry and the implementation of public health policies are irreconcilable<sup>63</sup>.

In relation to policy commitments, several industries have advocated these approaches as "sensible regulation" and "good governance," often applying these rhetorical frameworks to oppose the "nanny state" and "big government"<sup>64,65,66,67</sup>. However, evidence shows that industry approaches have had no effectiveness in protecting public health. Companies in Mexico, which had signed self-regulation commitments, influenced children indirectly by targeting other audiences and by developing marketing actions during family television programs, which are also watched by children<sup>68</sup>.

Studies show that self-regulated alcoholic beverage marketing codes in Brazil suffer from vague language, and are routinely violated by the alcohol industry itself. The consequence is that self-regulation delays effective state regulation.<sup>69</sup>

In this context, the data show that binding forms of government-led, independently adopted and fully enforced regulation, with clear objectives, timelines and sanctions, have the greatest impact and effect<sup>70</sup>.

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<sup>62</sup> Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs; 2020. Available at: [https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning#\\_edn14](https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning#_edn14)

<sup>63</sup> WHO, FTCT.

<sup>64</sup> Chau JY, Kite J, Ronto R, Bhatti A, Bonfiglioli C. 2019. Talking about a nanny nation: investigating the rhetoric framing public health debates in Australian news media. *Public Health Res. Pract.* 29(3):e2931922

<sup>65</sup> Coggon J. 2018. The nanny state debate: a place where words don't do justice. Rep., Fac. Public Health, Univ. Bristol Law School, London. <https://www.fph.org.uk/media/1972/fph-nannystatedebate-report-final.pdf>

<sup>66</sup> Hawkins B, Holden C. 2013. Framing the alcohol policy debate: industry actors and the regulation of the UK beverage alcohol market. *Crit. Policy Stud.* 7(1):53–71

<sup>67</sup> Weishaar H, Collin J, Smith K, Grüning T, Mandal S, Gilmore A. 2012. Global health governance and the commercial sector: a documentary analysis of tobacco company strategies to influence the WHO Framework Convention on Tobacco Control. *PLOS Med.* 9(6):e1001249

<sup>68</sup> Théodore and et; Pitfalls of the self-regulation of advertisements directed at children on Mexican television; 2016. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/ijpo.12144>

<sup>69</sup> Noel J, Lazzarini Z, Robaina K, Vendrame A. 2017. Alcohol industry self-regulation: Who is it really protecting? *Addiction* 112(Suppl. 1):57–63

<sup>70</sup> Kelley Lee and Nicholas Freudenberg; Public Health Roles in Addressing Commercial Determinants of Health; *Annual Review of Public Health* 2022 43:1, 375-395. Available at: <https://www.annualreviews.org/doi/full/10.1146/annurev-publhealth-052220-020447>

### **3. What measures could States take to prevent and address corporate political activities that may undermine the State's ability to protect human rights and businesses' responsibility to respect human rights?**

In the context of NCDs prevention, current regulations and government plans focus on the prevention of risk factors, without including a more general perspective on human rights and business. However, international evidence<sup>717273</sup> shows that the most effective measures to reduce the consumption of unhealthy products, such as ultra-processed foods, sugar-sweetened beverages, alcoholic beverages and tobacco products, are those that control the activities of the companies that manufacture and promote these products. Especially those activities related to marketing and promotion strategies.

Several countries in the Latin American Region have promoted regulations that restrict the marketing of unhealthy foods<sup>74</sup>, alcoholic beverages<sup>75</sup> and tobacco products<sup>76</sup>. Similarly, policies that establish measures to guarantee access to truthful information<sup>77</sup> on the contents of the packages of these products also seek to limit the actions of these companies.

Likewise, there are guidelines that establish the need to promote and guarantee transparency in companies' relationships with governments, as there are clear conflicts of interest between unhealthy product companies and public health measures<sup>7879</sup>.

In this framework, all South American countries (except Argentina) have ratified the Framework Convention on Tobacco Control (FCTC<sup>80</sup>), making it part of their legal system. This Convention is the first public health treaty sanctioned within the framework of the WHO and establishes a package of effective measures to reduce tobacco consumption. Among several measures, the FCTC includes in its article 5.3<sup>81</sup> guidelines to prevent tobacco industry interference in the design and implementation of tobacco control policies. Thus, all FCTC Member States are required to ensure that tobacco companies do not interfere with policy and legislative processes.

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<sup>71</sup> WHO; Obesity and overweight; 2017. Available at: <https://www.who.int/news-room/fact-sheets/detail/obesity-and-overweight>

<sup>72</sup> Dalia Stern, Lizbeth Tolentino y Simón Barquera, Revisión del etiquetado frontal: análisis de las Guías Diarias de Alimentación (GDA) y su comprensión por estudiantes de nutrición en México Autores, Instituto Nacional de Salud Pública. (2011)

<sup>73</sup> She Took On Colombia's Soda Industry. Then She Was Silenced; The New York Times; 2017

<sup>74</sup> Such as Chile Law 20.606; Mexico Law NOM-051; Argentina Law 27.642

<sup>75</sup> The most important are Costa Rica, Law 9047 and Regulatory Decree 37.739; Ecuador, Law No. PANGR-2013-0175 and Paraguay, Law 836.

<sup>76</sup> Such as Argentina, Law 26.687; Uruguay, Law 18.256; Colombia, Law 1335; and Panamá, Law 13.

<sup>77</sup> See footnote No 61..

<sup>78</sup> WHO, FTFC, Art. 5.3.

<sup>79</sup> PAHO; Preventing and Managing Conflicts of Interest in Country-level Nutrition Programs: A Roadmap for Implementing the World Health Organization's Draft Approach in the Americas.

<sup>80</sup> Framework Convention on Tobacco Control. Available at: <https://fctc.who.int/publications/i/item/9241591013>

<sup>81</sup> Guidelines for implementation of Article 5.3. Available at: <https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3>

In this same line the Protocol to Eliminate Illicit Trade on Tobacco Products (first Protocol of the FCTC), addresses the issue clearly by saying, “In implementing their obligations under this Protocol, Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry”.<sup>82</sup>

States have the duty to ensure that no undue influence, whether real or perceived, on interests other than the public good, is exerted on individuals or institutions responsible for public decision making. All of this in order not to affect the integrity and confidence in the public policies implemented<sup>83</sup>. Specifically, in order to avoid tobacco industry interference in the implementation of public policies, it has been internationally recommended to States that they should not accept, support or endorse tobacco companies to carry out or participate in public education or youth initiatives, directly or indirectly, related to tobacco control<sup>84</sup>.

In this sense, WHO advises States, in order to avoid industry interference, to develop a legal framework with binding rules and sanctions for non-compliance. In addition, they should develop a written policy on conflicts of interest and codes of conduct (for experts, professionals, the scientific community) that establish clear rules on what types of behavior are prohibited<sup>85</sup>.

Furthermore, countries such as Argentina, Panamá<sup>86</sup> and Mexico have made commitments to identify and expose conflicts of interest within governments that promote the approval of measures for the prevention of NCDs. In this regard, in Argentina, for example, within the framework of the Open Government initiative, the members of the Advisory Committees within the Ministry of Health must sign a conflict of interest declaration. The declaration must indicate if they receive money from companies that manufacture unhealthy products or groups or institutions related to them<sup>87</sup>. Finally, the Colombian constitutional Court ruled about “Congressmen do have to declare impediment when laws are voted that favor their financiers”<sup>8889</sup>.

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<sup>82</sup> Protocol to Eliminate Illicit Trade on Tobacco Products. Available at: <https://fctc.who.int/protocol/overview>

<sup>83</sup> PAHO; Preventing and Managing Conflicts of Interest in Country-level Nutrition Programs: A Roadmap for Implementing the World Health Organization’s Draft Approach in the Americas. Available at: <https://www.paho.org/en/documents/preventing-and-managing-conflicts-interest-country-level-nutrition-programs-roadmap>

<sup>84</sup> See footnote No. 66.

<sup>85</sup> See footnote No. 67.

<sup>86</sup> Panamá, Executive Decree No 178/2018.. Available at (in Spanish): <https://www.tobaccocontrolaws.org/files/live/Panama/Panama%20-%20Executive%20Decree%20No.%20178%20-%20national.pdf>

<sup>87</sup> Argentina, III Open Government Plan 2017-2019. Available at (in Spanish): [https://www.opengovpartnership.org/wp-content/uploads/2017/07/Argentina\\_Action-Plan\\_2017-2019.pdf](https://www.opengovpartnership.org/wp-content/uploads/2017/07/Argentina_Action-Plan_2017-2019.pdf)

<sup>88</sup> DeJusticia; Conflicto de intereses por parte de congresistas financiados por la industria: un asunto constitucional pendiente; 2021. Available at (in Spanish): <https://www.dejusticia.org/litigation/conflicto-de-intereses-por-parte-de-congresistas-financiados-por-la-industria-un-asunto-constitucional-pendiente/>

<sup>89</sup> Colectivo de Abogados; Congresistas sí tienen que declarar impedimento cuando se votan leyes que favorecen a sus financiadores: Corte Constitucional; 2021. Available at (in Spanish): <https://www.colectivodeabogados.org/congresistas-si-tienen-que-declarar-impedimento-cuando-se-votan-leyes-que-favorecen-a-sus-financiadores-corte-constitucional/>

**4. What are good practices that business could implement to avoid undue political influence or engaging in political activities that negatively impact human rights?**

We refer to question 2.

**5. What are the specific human rights risks posed by corporate influence in the political and regulatory sphere to groups in most vulnerable situations such as women and girls, indigenous communities, human rights defenders, persons with disabilities, persons with different sexual orientation or gender identity or migrant workers?**

The previously mentioned statistics on obesity, tobacco and alcohol consumption among children in Latin America show a high consumption of products that have the capacity to compromise their right to health. Among the causes of these numbers are the lack of compliance with the States' obligations to address this problem and the behavior of the companies involved<sup>90919293</sup>. Corporations direct their marketing strategies to increase their sales, especially to children and adolescents. At the same time, they prevent the adoption and implementation of effective policies to limit the commercialization, advertising and consumption of these products in accordance with human rights standards.

The American Convention on Human Rights establishes the obligation of Member States to adopt measures to guarantee and protect the rights recognized therein, such as the right to life (Article 4)<sup>94</sup>. Furthermore, the Protocol of San Salvador explicitly recognizes the obligation to protect the right to health through measures to ensure the highest attainable standard of health and well-being and to prevent disease (Article 10). Article 12 of the Protocol also recognizes the right to adequate nutrition<sup>95</sup>. For its part, the Committee of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has pointed out that States incur international

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<sup>90</sup> Health is Not Negotiable. Civil Society against the Tobacco Industry's Strategies in Latin America. Case Studies 2010-2012. Available at: [https://www.ficargentina.org/wp-content/uploads/2017/11/reportes\\_de\\_casos\\_lsns\\_ingles.pdf](https://www.ficargentina.org/wp-content/uploads/2017/11/reportes_de_casos_lsns_ingles.pdf)

<sup>91</sup> Allemandi and et; Nutritional quality, child-oriented marketing and health/nutrition claims on sweet biscuitbreakfast cereal and dairy-based dessert packs in Argentina; 2020. Available at: [https://www.ficargentina.org/wp-content/uploads/2020/10/2010\\_Scielo.pdf](https://www.ficargentina.org/wp-content/uploads/2020/10/2010_Scielo.pdf)

<sup>92</sup> Clark and et; A future for the world's children? A WHO–UNICEF–Lancet Commission; 2020. Available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32540-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32540-1/fulltext)

<sup>93</sup> General comment No. 25 (2021) on children's rights in relation to the digital environment.

<sup>94</sup> Special Rapporteurship on Economic, Social, Cultural and Environmental Rights REDESCA Business and Human Rights: Inter-American Standards; 2019.

<sup>95</sup> Commentary on the Inter-American Court of Human Rights Judgment in the Indigenous Communities of the Lhaka Honhat Asociation (Our Land) vs Argentina case. Available at: [https://redib.org/Record/oai\\_articulo3255652-comentario-a-la-sentencia-de-la-corte-interamericana-de-derechos-humanos-en-el-caso-comunidades-ind%C3%ADgenas-miembros-de-la-asociaci%C3%B3n-lhaka-honhat-nuestra-tierra-vs-argentina](https://redib.org/Record/oai_articulo3255652-comentario-a-la-sentencia-de-la-corte-interamericana-de-derechos-humanos-en-el-caso-comunidades-ind%C3%ADgenas-miembros-de-la-asociaci%C3%B3n-lhaka-honhat-nuestra-tierra-vs-argentina)

responsibility by failing to address private practices that endanger women's health and the right to information<sup>96</sup>.

Effective policies for the prevention of NCDs have been widely recognized by international evidence and human rights organizations<sup>979899</sup> as mechanisms for the protection of the right to health<sup>100</sup>, interpreted as an essential part of the right to life and including the right to adequate food. In this regard, several United Nations Human Rights Committees<sup>101102103</sup> have requested States to adopt tobacco control measures to guarantee the right to health. Similarly, all UN Member States recognized the need to promote measures that prevent NCDs as a fundamental part of the 2030 Agenda and the Sustainable Development Goals<sup>104</sup>. It has also emerged from several documents issued by the World Health Organization (WHO) and the Pan American Health Organization (PAHO)<sup>105106</sup>.

Regarding the need to control TNCs that market unhealthy products, there is also international consensus on the relevance of avoiding conflicts of interest and restricting their corporate actions.

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<sup>96</sup> Member countries are obliged, according to Article 12 of the Covenant on Economic, Social and Cultural Rights and General Comment 14, to take all measures to protect persons within their jurisdiction, including violations of the right to health by third parties, particularly in relation to the right to health by third parties, in particular “*marketing and consumption of tobacco*”

<sup>97</sup> General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24).

<sup>98</sup> “*To be effective, a comprehensive ban should address all persons or entities involved in the production, placement and/or dissemination of tobacco advertising, promotion and sponsorship.*”; Guidelines for implementation of Article 13 Tobacco advertising, promotion and sponsorship; Purpose and Objectives, Point e).

<sup>99</sup> The Committee on Economic, Social and Cultural Rights, the body that reviews the International Covenant on Economic, Social and Cultural Rights, included non-communicable disease prevention policies in the list of priority issues to be addressed by the Argentine State in official sessions in 2018. Available at: [E/C.12/ARG/Q/R.4 \(ficargentina.org\)](https://www.ficargentina.org/E/C.12/ARG/Q/R.4)

<sup>100</sup> Constantin et al; A human rights-based approach to non-communicable diseases: mandating front-of-package warning labels; 2021. Available at: <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-021-00734-z>

<sup>101</sup> General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)\*. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vHCIs1B9k1r3x0aA7FYrehINUfw4dHmIOxmFtmhaiMOKH80ywS3uq6Q3bqZ3A3yQ0%2B4u6214CSatnrBIZT8nZmj>

<sup>102</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women to Argentina; 2010. Available at: <https://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ARG-CO-6.pdf>

Concluding observations of the Committee on the Elimination of Discrimination against Women to Argentina; 2016. Available at: <https://www.refworld.org/docid/583862e94.html>

<sup>103</sup> Committee on Economic, Social and Cultural Rights considers report of Argentina; 2011. Available at: <https://www.ohchr.org/en/press-releases/2011/11/committee-economic-social-and-cultural-rights-considers-report-argentina>

<sup>104</sup> 2030 Agenda and the Sustainable Development Goals. Available at: <https://sdgs.un.org/goals>

<sup>105</sup> Addressing and Managing Conflicts of Interest. Available at: [http://apps.who.int/iris/bitstream/handle/10665/206554/9789241510530\\_eng.pdf?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/206554/9789241510530_eng.pdf?sequence=1)

<sup>106</sup> Addressing and Managing Conflicts of Interest; Page 14: “*(...) regulating the marketing of food and non-alcoholic beverages to children, and regulating the marketing of complementary foods*”

Within this framework, the WHO has developed a document on conflict of interest<sup>107</sup> and has recognized the relevance of restricting the advertising<sup>108</sup> of these products as an effective mechanism to protect health.

In conclusion, it is essential that in order to guarantee the effective enjoyment of the rights recognized in the Inter-American and UN systems, States adopt measures for the prevention of NCDs in accordance with the aforementioned standards, limit the participation of tobacco, unhealthy food, sugar-sweetened beverages and alcoholic beverages enterprises in the design of policies, restrict the marketing of these products as much as possible and guarantee access to accurate information to encourage consumers to make healthier choices.

## **6. How does corporate influence in the political and regulatory sphere impact the ability of victims of business-related human rights abuses to seek access to effective remedies? What specific challenges do rights holders face in accessing effective remedies?**

In terms of NCD prevention and control of TNCs that market unhealthy products, the jurisprudence from the courts of countries in the region is mainly based on the protection and recognition of the constitutionality of measures adopted by governments and challenged by companies. Until now, in Latin America, there have only been a few individual judicial decisions against companies for their actions violating the right to health in Argentina, which have not yet been confirmed by its Supreme Court of Justice<sup>109110111</sup>.

This situation may be due to the lack of maturity on the part of the community to recognize the responsibility of tobacco, unhealthy food, sugar-sweetened beverages and alcohol TNCs in the violation of the right to health through the promotion of their products. Furthermore, even though there is sufficient evidence demonstrating the damage caused to health and the consequences of NCDs on health costs, many governments in the region are still permeable to the influence of these companies in the political sphere, thus conditioning the judiciary.

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<sup>107</sup> For the first time, the Inter-American Commission on Human Rights (the Commission) considered the intersection of tobacco control, non-communicable diseases, and human rights. More information available at: <https://oneill.law.georgetown.edu/update-on-iachr-hearing-on-tobacco-control-and-human-rights/>

<sup>108</sup> In 1998, 52 state and territory attorneys general signed the Master Settlement Agreement (MSA) with the four largest tobacco companies in the U.S. to settle dozens of state lawsuits brought to recover billions of dollars in health care costs associated with treating smoking-related illnesses. Tobacco industry internal documents are available at [Industry Documents Library \(ucsf.edu\)](https://www.industrydocuments.ucsf.edu/)

<sup>109</sup> Ríos and Cerra; Responsabilidad de las empresas de cigarrillos por los daños causados en la salud: un análisis desde la perspectiva de salud pública. Comentario al fallo “Q., M. A. c/ Nobleza Piccardo S.A. y otros s/ daños y perjuicios”; 2020. Available at (in Spanish): <https://drive.google.com/file/d/1SM2fs9Y4vi7HNU0JqduJtAK0cMlgONOI/view>

<sup>110</sup> Baldassare v. British American Tobacco Argentina; 2020. Available at: <https://www.tobaccocontrol.org/litigation/decisions/ar-20201228-baldassare-v.-british-american>

<sup>111</sup> Brazil sues tobacco companies; FCTC. Available at: <https://untobaccocontrol.org/impldb/brazil-sues-tobacco-companies/>

In the same order of ideas, these companies have sufficient economic and political power to prevent any potential legal case against them from moving forward<sup>112</sup>. A clear example of this situation can be seen in the actions for damages against cigarette companies, which in the last 20 years have obtained decisions in their favor, to the detriment of cancer victims<sup>113</sup>.

## **7. What recommendations on this topic would you like the Working Group to include in its report?**

States have the duty to ensure that no undue influence, whether real or perceived, is exerted on interests other than the public good, so as not to affect the integrity of and confidence in the public policies implemented<sup>114</sup>. States should decisively counter undue influence of corporations on government decision-making by strengthening legal frameworks and safeguarding the policies that protect the right to health.

As it has been mentioned throughout this document, it has been demonstrated that companies act to protect their commercial interests to the detriment of public health. To protect human rights, measures must be taken to avoid interference by the tobacco, food and alcohol industries in establishing and implementing public health policies<sup>115</sup>.

In addition, States are required to enact effective policies to ensure that NCD prevention regulations are based on scientific evidence and are independent of corporate interests. In this context, a political commitment to avoid conflicts of interest is not enough, but the enactment of mandatory regulations is required. Examples such as Article 5.3 of the FCTC and its Guidelines<sup>116</sup>, Art 4.2 of the Protocol to Eliminate Illicit Trade on Tobacco Products is fundamental for the promotion of positive measures that limit the interference of industries that sell unhealthy products and protect the implementation of effective measures for the protection of health.

In turn, in terms of effective policies for the prevention of NCD risk factors, States should regulate the activities of these industries, which are increasingly implicated in the global NCDs epidemic, in order to mitigate the detrimental impact their actions have on the enjoyment of the right to health and other rights. In this order of ideas, there are several examples in the Latin American region of regulations that have been based on scientific evidence and have survived corporate interference. These should be included in the Working Group's report.

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<sup>112</sup> Tobacco Free Kids; Litigation spotlight: PHILIP MORRIS V. URUGUAY. Available at: <https://www.tobaccofreekids.org/what-we-do/global/legal/trade-and-investment/philip-morris-v-uruguay>

<sup>113</sup> ML Flores, J Barnoya, R Mejia, E Alderete, E J Pérez-Stable; Litigios en Argentina: Desafiar a la industria tabacalera; Control de Tabaco; 2006;000:1–7. doi: 10.1136/tc.2004.010835

<sup>114</sup> Preventing and Managing Conflicts of Interest in Country-level Nutrition Programs: A Roadmap for Implementing the World Health Organization's Draft Approach in the Americas; 2021.

<sup>115</sup> Framework Convention on Tobacco Control; Art. 5.3.

<sup>116</sup> WHO FCTC; Guidelines for implementation. Available at: <https://theunion.org/sites/default/files/2020-11/WHO%20FCTC%20Implementation%20Guidelines.pdf>

Regarding tobacco control, it is possible to mention legislation that has established a comprehensive ban on advertising, promotion, sponsorship and display of tobacco products, based on the evidence provided by the FCTC (article 13 and its Guidelines<sup>117</sup>). Countries such as Colombia<sup>118</sup>, Uruguay<sup>119</sup>, Panama<sup>120</sup> and México<sup>121</sup> are examples of best practices in relation to effective policies to stop abusive tobacco marketing and to promote health, in accordance with international standards. Uruguay has also advanced with health warning policies<sup>122</sup> that restricted beyond the recommended minimum and defeated Philip Morris International in an international arbitration process that aimed to reverse an effective policy to protect health.

We also urge States to consider taking legislative action or promote the existing laws, where necessary, to deal with civil, criminal and any other type of liability of the tobacco industry, including compensation where appropriate, in line with article 19 of the FCTC, for all the damages to health, environment and other that this transnational corporation is causing. Brazil is a good example of a State that currently has file a sue against tobacco industry for health recovery costs<sup>123</sup>.

Concerning obesity prevention, the policy of front-of-package warning labels is recommended by international evidence, such as the Special Rapporteur on the right to health, to be the most effective for the protection of the right to health<sup>124</sup>. In this context, Chile has been a pioneer in advancing with regulations that impose labels on unhealthy food and beverage packages warning consumers about the excessive content of critical nutrients such as sugar, salt, saturated fats, and trans fats. Peru, Uruguay, Mexico and Argentina<sup>125</sup>, more recently, have followed Chile's example<sup>126</sup>. In turn, both Chile and Argentina have enacted laws that have restricted the marketing

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<sup>117</sup> WHO; Guidelines for implementation of Article 13 Tobacco advertising, promotion and sponsorship. Available at: <https://fctc.who.int/publications/m/item/tobacco-advertising-promotion-and-sponsorship>

<sup>118</sup> Colombia, Law No1.335. Available at: <https://www.tobaccocontrolaws.org/files/live/Colombia/Colombia%20-%20Law%20No.%201335.pdf>

<sup>119</sup> Uruguay, Law No 18.256. Available at: <https://www.tobaccocontrolaws.org/files/live/Uruguay/Uruguay%20-%20Law%20No.%2018.256.pdf>

<sup>120</sup> Panamá, Law 13, available at: <https://www.tobaccocontrolaws.org/files/live/Panama/Panama%20-%20Law%2013%20of%202008.pdf>; Resolution 415/2016, available at (in Spanish): <https://www.tobaccocontrolaws.org/files/live/Panama/Panama%20-%20Res.%20No.%200405%20of%202016%20-%20national.pdf>; and Resolution 953/2018, available at (in Spanish): <https://www.tobaccocontrolaws.org/files/live/Panama/Panama%20-%20Res.%20No.%200953%20of%202018%20-%20national.pdf>

<sup>121</sup> México; Decree Amending the General Law on Tobacco Control; 2022. Available at: <https://www.tobaccocontrolaws.org/files/live/Mexico/Mexico%20-%20Decree%20Amd%27ing%20General%20Law%20for%20Tobacco%20Control.pdf>

<sup>122</sup> According to Art. 9 of Law 18.256, health warnings must occupy "(...) *at least 50% (fifty percent) of the total exposed surfaces*".

<sup>123</sup> <https://www.reuters.com/article/us-brazil-tobacco-lawsuit-idUSKCN1SS2DN>

<sup>124</sup> Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs; 2020. Available at: <https://www.ohchr.org/en/statements/2020/07/statement-un-special-rapporteur-right-health-adoption-front-package-warning>

<sup>125</sup> Argentina, Lay 27.642. Available ar (in Spanish): <https://www.boletinoficial.gob.ar/detalleAviso/primera/252728/20211112>

<sup>126</sup> Chile, Law 20.606. Available at (in Spanish): <https://www.leychile.cl/Navegar?idNorma=1041570>



of unhealthy products to children and adolescents. The Argentine and Mexican regulations have also become examples of effective regulations for the protection of health by implementing the nutrient profile developed and promoted by the Pan American Health Organization and the prevention of obesity.

In relation to alcohol abuse, although international evidence is clear on the need to restrict advertising and control corporate marketing actions of alcohol companies, there is no example in Latin America of regulations that meet international standards<sup>127</sup> for health protection.

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<sup>127</sup> WHO; Alcohol Policy Scoring: Assessing the level of implementation of the WHO Global strategy to reduce the harmful use of alcohol in the Region of the Americas; 2018. Available at: <https://iris.paho.org/handle/10665.2/49679>