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

**Introduction**

This document aims to present evidence on how the ultra-processed food and beverage industry in Colombia has influenced public policies aimed at non-communicable disease (NCD) prevention and improving health. It was written by three civil society organizations working on the promotion of public health regulations to guarantee the right to health and access to adequate food of people in Colombia: The Center for the Study of Justice, Law, and Society (Dejusticia); Red PaPaz; and José Alvear Restrepo Lawyers Collective (CAJAR).

1. ***What is your understanding of undue corporate influence in policy and regulatory matters?***

The Global Burden of Disease Study estimates that approximately one-third of deaths worldwide are attributable to behavioral risk factors. These factors include the consumption of unhealthy food products produced by the ultra-processed food and beverage industry, such as foods that are high in sodium, fats, and sugars (Mialon et al., 2020).

Nonetheless, many countries, especially those in the global South, have yet to implement adequate regulatory measures aimed at controlling and preventing NCDs (Miller & Harkins, 2010). This is due in part to the influence of industries and economic sectors opposed to developing policies that protect individuals’ rights to health and access to adequate food. These actors have employed a range of strategies to influence public health policies and public opinion.

The political influence of industries, referred to as corporate political activity (CPA), represents a significant barrier to the development and implementation of effective public health policies for the prevention of NCDs (Mialon & Gomes, 2019). Undue corporate influence in policy and regulatory matters can be defined as the exercise of corporate power on a public servant (whether an elected official or any other decision maker) to achieve a particular result that will benefit corporate interests. This influence has been wielded by various industries, including tobacco, alcohol, asbestos, and sugary beverages and ultra-processed foods. Due to their negative impact on health, these corporate practices are increasingly referred to as the “commercial determinants of health” in the literature (Kickbusch et al., 2016).

The activities of the ultra-processed food and beverage industry have been shown to have immediate and noticeable effects on people’s perceptions and behavioral patterns, which can lead to the increased consumption of unhealthy products and, as a result, can alter individual and population health outcomes. Preventing and mitigating such impacts is an urgent necessity, particularly for Latin American and Caribbean countries, where food systems are being increasingly influenced by this industry.

A remarkable documentation of this situation is a study by Mialon and Gomes (2019) showing how the food industry applied six different CPA strategies to influence public health policies and public opinion in 15 countries in the region. In the countries studied, the authors found more than 200 examples of CPA between 2017 and 2018. They show how the industry frames the NCD debate by focusing on individuals, with a particular emphasis on physical activity and personal responsibility, thus avoiding a discussion of the industry’s role in the increase of these diseases.

For many decades, CPA has obstructed pro-public health regulations that could have saved millions of lives (Madureira Lima & Galea, 2018; Mialon et al., 2020). Industry actors are a type of political actor, strategically involved in policy making to promote their commercial interests. In Colombia, CPA has been used to delay the adoption of key obesity prevention measures, including the adoption of a tax on sugary drinks (Mialon et al., 2020; Liga Contra el Silencio, 2018); measures to regulate the selling and marketing of ultra-processed products to children in schools (Rozo Angel, 2017; Rozo Angel, 2019); and other bills that threaten corporate economic interests (Liga Contra el Silencio, 2018).

This situation is not new in Colombia. According to one newspaper report, industries such as the ultra-processed food and beverage industry and the tobacco industry have been lobbying against public health measures for years. Importantly, these industries take advantage of legal loopholes to influence decision makers (Cuestión Pública, 2019).

1. ***What challenges have you observed? Could you think of any concrete examples in activities or operations of your organization?***

One concrete example is Colombia’s recent adoption of the front-of-package labeling law (known as the Junk Food Law). This case highlights the many forms that the ultra-processed food and beverage industry has used to prevent the adoption of policies aimed at protecting the rights to health and to adequate food.

During the four years this bill was being debated in Congress, we observed several forms of interference:

First, ultra-processed food and beverage companies influenced the debate on front-of-package labeling through heavy ***direct lobbying*** before legislators. Legislators’ first attempt to pass a law on front-of-package labeling was in 2018. However, this bill was delayed for a year and was eventually shelved without debate when one of the commissions in charge of studying it closed the session impetuously. There is also evidence showing that the ultra-processed food and beverage industry held private meetings with several members of Congress prior to the bill’s debate (Liga Contra el Silencio, 2019a; Mialon et al., 2020). Additionally, the industry made significant donations to four of the country’s main political parties.

Second, agreements between corporations and the government to satisfy specific demands were deemed normal, showing a corporate ***capture of State decision spaces***. In Colombia, there is a widespread public belief that the government must provide special treatment to corporations because they are important sources of employment and tax revenue. This has meant that in almost all State decisions, the well-being of corporations is considered first. A poignant example of this type of influence occurred in 2019: While civil society organizations and academia were urging Congress to adopt a law requiring front-of-package warning labels on ultra-processed products as recommended by the Pan-American Health Organization, the Office of the Vice-President was conducting secret negotiations with the industry. These negotiations led to the execution of an agreement on August 5, 2019, establishing that no laws regarding front-of-package warning labels on ultra-processed food would be adopted (Colombia Productiva, 2019). In addition, it stated that the government and corporations would agree on a specific type of label that was less informative to consumers but friendly toward industries (“circle model)” (Colombia Productiva, 2019).

In February 2020, the president and the minister of health unveiled Colombia’s new labels (circle model), which had been agreed on with the corporate delegates. Meanwhile, civil society organizations and academia were advocating before Congress for the adoption of front-of-package warning labels on ultra-processed food based on scientific evidence free from conflicts of interest, as recommended by international standards (Pūras, 2020). However, when the law (which later became the Junk Food Law, or Law 2120 of 2021) was about to pass final debate in Congress, the Ministry of Health issued a regulation (Resolution 810 from 2021) adopting the circle model that had been previously agreed on with food and beverage corporations (Infobae, 2022).

Two lawsuits are currently underway—one aimed at striking down the regulation on the grounds that it breaches the Junk Food Law (Dejusticia, 2021b), and another urging the Ministry of Health to adopt a regulation based on the best scientific evidence available free from conflicts of interest, and not on an agreement with the industry (Class Action: Red PaPaz v. Ministry of Health and Others, 2019).

In addition to the example of front-of-package labeling, we have witnessed other forms of CPA aimed at intimidating public health organizations, increasing corporate influence in State decision spaces, and directly stopping other obesity prevention measures:

* ***Revolving doors***: A frequent “revolving door” has created a strong bond between the government and corporations. One example of this phenomenon is the investigation conducted by the Superintendence of Industry and Commerce in 2016 against the organization Educar Consumidores for supposed misleading advertising in a TV commercial that informed consumers about the health consequences of regularly consuming sugary drinks. The original complaint was initiated by Postobón, a leading sugary drink company in Colombia. The company’s lawyer was a former head of the superintendence. This may explain the entity’s quick response to the complaint, which banned the organization from running the TV commercial (Superintendencia de Industria y Comercio, 2016; Dejusticia & Educar Consumidores, 2018) .
* ***Capture of State decision spaces***: Congress’ conflict-of-interest regime allows gray practices by its members that facilitate industry capture. For example, under a previous law, legislators were allowed to vote on bills favoring industries that had funded these legislators’ own campaigns. This law was struck down by the Constitutional Court in November in the ruling C-302/2021. However, during the time that the law was in force, undue corporate influence was allowed in the legislative process. The Constitutional Court held that members of Congress must exclude themselves from participating in, discussing, and voting on bills or legislative acts related to those who financed their campaigns (Dejusticia, 2021a; Colectivo de Abogados José Alvear Restrepo, 2021).
* ***Presentation of biased evidence***: Corporations have sought to invalidate public health arguments by promoting experts with conflicts of interest. For example, the scientific foundation ILSI Norandino, the Latin American regional branch of the International Life Sciences Institute, is funded largely by the industry and has been involved in many cases of biased evidence (Cerosetenta, 2019). And in parallel, corporations use media allies to criticize and try to suppress evidence that does not conform to their interests (Cuestión Pública, 2019). In Colombia, during the congressional discussion of the front-of-package food labeling bill in 2019, food industry actors promoted their preferred front-of-package labeling system, the “guideline daily amount,” and sought to discredit the bill (Mialon et al., 2020).
* ***Creation of economic alarm***: Corporations often put forth arguments to create economic alarm, exaggerating the economic impacts that the adoption of human rights- or public health-oriented policies might entail. Such arguments have been demonstrated in recent investigative journalism (see Liga Contra el Silencio, 2019a).
* ***Private financing of political party campaigns***: The ultra-processed food and beverage industry has financed the political campaigns of several parties in Colombia. Although this funding goes to the political party and not the candidate, it shows how economic power acts as a form of political influence (Liga Contra el Silencio, 2019b).
1. ***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?***

Measures that States could take in this regard include the following:

* Adoption of a guiding principle that private corporations must be regulated by public institutions and that private partnerships may never regulate public affairs.
* Creation of a regulatory framework that strictly regulates corporate lobbying.
* Creation of a strong regulatory framework to prevent the private financing of political campaigns.
* Strict regulation of the financing of scientific research, especially that related to the environment, health, and food. Such regulation must prevent research with conflicts of interest from influencing public decision-making.
* Regulation of public functions to avoid revolving doors.
* Approval of transparency protocols in the relationship between public officials and representatives of private corporations.
1. ***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?***

Undue corporate influence on policies and regulations poses a significant risk to the rights to health and to adequate food of vulnerable populations, particularly **children, women, and indigenous people**. As explained above, there are several reported cases in Colombia in which corporations have exercised their influence on the government to prevent the adoption of higher standards of protection for the rights to health and to adequate food, including front-of-package warning labels on ultra-processed products, taxes on sweetened beverages, restrictions on the sale of ultra-processed products in schools, and regulations on advertising to children. These four policy measures have been recommended by the World Health Organization and the Pan-American Health Organization as cost-effective forms of preventing obesity and overweight.

***How does opposing these policy measures affect the health of vulnerable groups?***

Even when malnutrition—including both undernutrition and overweight/obesity—is due to different causes, food intake is the most significant factor, as shown by various studies (Vos et al., 2020). There is a large evidence base describing the impact that the marketing of unhealthy foods, namely those with high caloric density and poor nutritional content, has on children, women, and indigenous and Afro-descendant communities. Such impacts relate not only to these groups’ consumption of such products at the time of exposure to advertising, promotion, or sponsorship but also to their eating habits in subsequent years (Barr-Anderson et al., 2009). In Colombia, the consumption of unhealthy food products has increased dramatically in recent years, displacing the intake of nutritional food. Available data reveal that nearly nine out of ten **schoolchildren** (86.9%) do not meet the requirement for the consumption of fruits and vegetables recommended by the World Health Organization; meanwhile, an estimated 74% of children and young people drink sugary or fizzy drinks one or more times a day (Ministerio de Salud y Protección Social, 2018). The consequences of these preferences are significant for the health of Colombia’s population.

Among children, malnutrition associated with vitamin D deficiency leads to physical, cognitive, and speech delays, as well as behavioral and learning problems (UNICEF, 2019); among adults, it leads to a higher risk of autoimmune diseases, such as multiple sclerosis and type 1 diabetes (Holick & Chen, 2008). According to Colombia’s most recent National Survey of the Nutritional Situation, half of **children** between the ages of five and twelve lack sufficient levels of vitamin D (Instituto Colombiano de Bienestar Familiar, 2015).

In parallel, obesity has impacts on various parts of the body, mainly the liver and muscle tissue (Yeste & Carrascosa, 2011), and is associated with a higher risk and earlier onset of chronic NCDs (Aguilera et al., 2021). With regard to **children**, it affects social interactions and can lead to anxiety, depression, low self-esteem, eating disorders, and poor school performance. In Colombia, 24.4% of children between the ages of five and twelve suffer from obesity (Instituto Colombiano de Bienestar Familiar, 2015), reflecting an increase of approximately 500% in ten years. The adolescent population between 13 and 17 years of age with excess weight has also suffered an increase, to 17.9% (Instituto Colombiano de Bienestar Familiar, 2015).

Moreover, malnutrition affects women disproportionately. Women who are undernourished are more vulnerable to iron deficiency, which places them at greater risk of anemia (UNICEF, 2019). Likewise, pregnant women who suffer from some type of micronutrient deficiency are at greater risk of a weakened immune system, dying during childbirth, and decreased productivity. According to recent data, 24% of pregnant women aged 13–49 are anemic; by the same token, 15.5% of Colombian women have this condition, with indigenous women (28.4%) and Afro-descendant women (24.5%) suffering disproportionately (Instituto Colombiano de Bienestar Familiar, 2015). Moreover, 46.9% of women have insufficient vitamin D levels; of this group, 46.5% are **indigenous**.

Data also reveal that **women** are at major risk of suffering from obesity and being overweight: 22.4% of women, compared to 14.4% of men, suffer from these conditions. Furthermore, 40% of pregnant women are obese (Instituto Colombiano de Bienestar Familiar, 2015). Obesity during pregnancy can have a range of negative health outcomes, including miscarriage and increased risk of hypertensive disorders such as preeclampsia (Leddy et al., 2008).

Finally, in the **indigenous population**, the stunting indicator among children is 29.6%, three times higher than the prevalence in children who do not belong to a specific ethnic group (10.0%). In indigenous children between five and twelve years of age, it is 29.5%, almost five times higher than the prevalence among children who do not belong to an ethnic community (6.5%). The preschool-age indigenous population has a prevalence of acute malnutrition twice as high as the non-indigenous preschool-age population (Instituto Colombiano de Bienestar Familiar, 2015).

In terms of indicators of excess weight, there are minor differences between the indigenous and Afro-descendant population, on the one hand, and those not belonging to an ethnic community, on the other. For example, the prevalence of excess weight among indigenous and Afro-descendant children aged four and younger is 5.5% and 5.4%, respectively, compared to a prevalence of 6.5% among their non-indigenous and non-Afro counterparts (Instituto Colombiano de Bienestar Familiar, 2015). As can be seen, these figures are not substantially different, showing that excess weight in small children affects all children similarly.

1. ***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?***

Remedies to children

The Colombian Constitution and the Code for Children and Adolescents establish that all proceedings involving the protection of the rights of children and adolescents must be decided within the shortest time possible. Moreover, they set forth that in case of conflict with other rights, children’s rights must always prevail. However, these rules have not been followed by Colombian authorities, particularly when proceedings involve large corporations. There are several well-documented cases in which complaints filed before the Superintendency of Industry and Commerce, the Communications Regulations Commission, and the National Food and Drug Surveillance Institute have not been decided even though they involve the protection of children.

For example, in the case of the Communications Regulations Commission, there was one complaint filed by Red PaPaz denouncing a television channel’s airing of a commercial by a beverage company that had been previously suspended for misleading advertising by the National Food and Drug Surveillance Institute. Both the channel and the sanctioned beverage company belong to the same business conglomerate. After conducting the proceedings, the commission concluded that the television channel could not have been expected to know that the advertising message had been suspended, even though, as just mentioned, it is part of the same conglomerate as the company (Red PaPaz, 2021). This is just one example among many demonstrating the formidable challenges that must be overcome when proceedings are conducted against corporations. Not only are proceedings often slow, but they also frequently disregard the protection of children’s rights.

In addition, in the few cases in which authorities have imposed fines on corporations for violating children's rights, there have been no effective remedies to protect such rights in the future. For example, in 2019, the Constitutional Court issued sentence T-145/2019 ordering the Communications Regulations Commission to protect children’s rights. Although the ruling was recognized as an important achievement in favor of public health (El Espectador, 2019), to date the commission has not implemented the remedies ordered by the court.

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

We ask the Working Group to do the following:

* Recognize that when companies exercise any form of political activity, either directly or indirectly, that negatively affects human rights, they are infringing their duty to respect human rights.
* Call on the Colombian government to prioritize public health principles and scientific evidence over industry claims and interests when adopting public policies and regulations aimed at addressing problems such as obesity, overweight, and the increase in NCDs.
* Call on the Colombian government to enact a regulation on front-of-package labeling that follows international standards, applicable domestic law, and scientific evidence free from conflicts of interest.
* Call on the Colombian government to regulate the lobby of congresspeople and to design measures ensuring that all industry interactions with congresspeople are transparent and public.
* Call on the Colombian government to regulate “revolving doors” between high-level government posts and the ultra-processed food and beverage industry.
* Call on the Colombian government to prevent and sanction the practice of corporate interference in the development of public policies seeking to guarantee human rights, especially the rights to adequate food, to health, and to the environment.
* Call on the Colombian government to prevent private corporations from being involved in any legislative or regulatory processes concerning public health.

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