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WRITTEN COMMENTS - *EL PODER DEL CONSUMIDOR* (MEXICO)

**Consultation of UN Special Rapporteur on the RtF: COVID-19 & the Food Crisis: May – June 2022**

1. ***What were the most difficult food-related challenges you or your community faced during the pandemic? What policies were missing or poorly implemented? What challenges do you anticipate in the future?***

In our response to this question, we wish to draw attention to the corporate activities employed during the pandemic that presented great food-related challenges and had an impact on the guarantee of the right to food. During the confinement caused by COVID-19, the ultra-processed and sugar-sweetened beverage industry, as well as the breastmilk substitute industry, deployed its strategy and machinery to position its products among the population and displace the consumption of traditional and healthy foods, taking advantage of the lack of accessibility and availability of healthy foods.

**Corporate practices of the ultraprocessed products industry during COVID-19**

***Policy Opposition to the Front-of-pack Warning Label***

**Background:** In 2020, just as the coronavirus pandemic was unfolding in Mexico and around the world, Mexico implemented a new labeling policy for front-of-pack labelling, in which warning labels were placed on the packages of food and beverages to warn consumers if a product was “excessive” in salts, fats, added sugars or calories. The aim of the policy is to protect the right to adequate food, health, children`s rights, and the consumer`s right to information and prevent obesity and chronic disease.

The Mexican warning label was lauded as one of the most robust and comprehensive front-of-pack labels by UNICEF, PAHO, civil society organizations and experts. **Nevertheless, various strategies were used by the ultra-processed and sugar-sweetened beverage industry to delay, weaken or block the initiative in order to protect their interests. Importantly, the industry used the pandemic as a justification to delay the implementation of the warning label, despite the recognition among experts that the warning label policy, would help to protect Mexicans from the unhealthy foods that were causing vulnerabilities to coronavirus.**

**Lobbying:** One of the most visible and intense strategies, was that industries lobbied against the warning label policy vis-a-vis trade associations and chambers such as the Mexican Council of the Consumer Products Industry (ConMéxico), the Confederation of Industrial Chambers (CONCAMIN), the Mexican Business Council (CCE), the National Chamber of the Transformation Industry (CANACINTRA) and the National Association of Producers of Soft Drinks and Carbonated Waters (ANPRAC). Through these trade associations, they tried to interfere in the different policy development processes, arguing that there was not enough scientific evidence to support the initiative or that the implementation of a policy of this nature would affect the economy of the corporations, which would cause job losses.[[1]](#endnote-1)

**Legal actions:** In February 2020, CONCAMIN filed a writ of unconstitutionality against the warning label, which they won, giving rise to a provisional suspension of the implementation of the norm, however, weeks later the injunction was revoked due to pressure from civil society, academia, and international organizations.[[2]](#endnote-2)

**Importantly, in 2020, a few months before the warning label was about to be rolled out, and exactly one day before Mexico suffered its first loss due to COVID-19, CONCAMIN released a document pleading with the government to delay the implementation of the warning label for 3 years, using the pandemic as a justification, and in particular the “projected economic effects” of the pandemic.[[3]](#endnote-3),[[4]](#endnote-4)**

Meanwhile, in 2020, Coca-Cola FEMSA promoted an injunction against the “warning label”, arguing that the reform would have negative effects on its products and its business.[[5]](#endnote-5) On the other hand, the then president of the trade association ConMéxico, Jaime Zabludosvsky, confirmed in interviews in October 2020 that his association also filed injunctions against the new warning label. In addition, about 50 of the trade association´s members imposed injunctions against the warning label.[[6]](#endnote-6)

As the industry was attempting to block and delay this evidence-based health policy, it was simultaneously presenting itself in the public eye as a socially responsible company dedicated to supporting the health and wellbeing of Mexicans, as we illustrate in the next section.

***Social responsibility***

From the start of the pandemic, the food and beverage and breastmilk substitute industries attempted to frame themselves as “part of the solution”. **Corporations and their bankrolled foundations developed initiatives to donate food and beverages to low-income communities; doing so under the guise of social responsibility and in the interest to garner goodwill from the government and the public. These actions were particularly problematic because ultra-processed foods stood out among the foods donated and also because these public actions create a smokescreen that obscured their private actions to lobby against policies in the public interest.**

One corporate promotional activity carried out under the guise of social responsibility was an initiative of Nestle, FEMSA (the Coca Cola bottler in Mexico) and a pharmacy in which with each purchase of one can of formula, these companies pledged to donate three cans to vulnerable babies in the States of Veracruz and other Southeastern parts of Mexico.[[7]](#endnote-7) This example is particularly problematic because such promotions are in violation of the International Code for Breastmilk Substitutes.[[8]](#endnote-8) Nevertheless, they were common during the pandemic.

Nestlé Mexico donated 50 million pesos to pantries aimed at 400 thousand people in communities living with economic vulnerability, the pantries included sweet cereals, milk formulas, dairy products, soluble coffee, and sweetened juices for babies. In addition, they donated 7.1 million to the Mexican Red Cross and the General Health Council for the purchase of medical equipment and 8.3 million to hospitals specializing in food from the Nestlé Health Science brand, Nestle Waters bottled water, and coffee machines.[[9]](#endnote-9) The donation of milk formula is particularly problematic because it is a violation of the WHO International Code on Breastmilk Substitutes.

Kellogg’s Latin America donated $1 million in cash and food through the United Way food bank network and the Global Foodbanking Network; pantries included branded sugary cereals, dairy products, potato chips, canned foods, hygiene products, sweeteners, and table salt.[[10]](#endnote-10)

In a monitoring activity of industry donations carried out in the initial months of the pandemic, *El Poder del Consumidor* identified over 30 corporate donations, many of which included the donation of ultra-processed foods. *Jumex* donated sugar-sweetened beverages, such as fruit drinks and juices, Krispy Kreme donated 15,000 donuts.

For its part, Industrial Mexicana de Coca-Cola in its Foundation Coca-Cola 2020 Annual Results Report, mentions that they donated more than 4 million liters of bottled water to 300 cities and 345 hospitals. 1.4 million of medical supplies to IMSS (public) hospitals and delegations of the Mexican Red Cross; 108,104 people benefited with pantries and hygiene kits; and 7,239 women benefited through financial aid and training.[[11]](#endnote-11) It is worth mentioning, that in Mexico, Coca Cola has been aptly criticized for its excessive water use and ample contracts to extract water often in areas where local residents do not even have sufficient water supply or adequate infrastructure for its delivery.

***Marketing of ultra-processed foods and beverages***

Advertising on traditional media and especially on social networks was a frequent way in which ultra-processed and sugary drinks corporations positioned their products to consumers during the pandemic.

With schools closed due to the pandemic in March 2020, in April the Ministry of Public Education launched the Learn at Home (*Aprende en Casa*) program to enable remote learning. *Aprende en Casa* is an educational program aimed at children and adolescents to receive educational content on public TV and online during the school closures, which lasted from March 2020 until August 2022 after which a hybrid model was adopted.

***El Poder del Consumidor* monitored the marketing on the online platforms where the official educational content was being streamed during the pandemic and found that in an average school day, students received up to 20 advertisements for ultra-processed and sugary drinks on these platforms that served to promote the consumption of these products and which represented a violation of children's rights and the right to food.[[12]](#endnote-12)** This evidence shows that even in the educational space, children were being targeted by ultra-processed food and beverage companies. Whereby in the physical school, such marketing is banned, equivalent restrictions did not apply to the online educational space during the pandemic and companies were taking advantage of this.

Furthermore, an informal monitoring exercise of the marketing of ultra-processed food and beverages present on TV during the pandemic, also showed that the food and beverage industry and advertising industries worked to take advantage of the zeitgeist of the time to promote their products. They engaged with emotions linked to the pandemic such as loneliness, stress-induced eating, and ideas of “comfort food” to sell their products, and transmitted the message that eating their products would create happiness or reduce the anxiety brought on by the confinement. This type of marketing is problematic because it exploits some of the existing and potentially harmful emotional relationships that people have with foods. Ultra-processed food companies also diversified their vending strategies, making it even easier to have their products delivered to one´s house or in a “contactless” manner.[[13]](#endnote-13) **The marketing carried out by the food and beverage industry during the pandemic encouraged the consumption of the very foods that make individuals vulnerable to obesity, chronic disease and ultimately, severe cases of COVID.**

In the first year of the pandemic, there were also marketing strategies employed to circumvent the front-of-pack labeling policy described above. For example, one of the achievements of the warning labeling was that as part of this policy, the product packages with warning labels could not use characters or celebrities, or other elements directed at children on their product packages. However, some brands tried to evade this element of this regulation. Bimbo, which makes packaged bread, and cakes, tried by various means not to remove its character from the packaging, it even chose to the engrave the bear mascot on its products or use other brands to position it.[[14]](#endnote-14)

On the other hand, with regard to marketing on packages, many brands began to make their front and back side of the package look exactly alike with the only difference being that the “warning label” was only on the veritable front side, in order to conceal the warning label and confuse the consumer and the supermarket staff.[[15]](#endnote-15)

The examples described above illustrate how corporate political activities had an impact on the right to food during the pandemic, and indicate the types of policies that could have been implemented to curb these impacts, the latter of which will be described further in Question 3.

1. ***What are some ways you changed how you ate or produced food to overcome the challenges brought on by the pandemic? What policies helped you tackle the food crisis? What actions, campaigns, or coordination mechanisms have you organized that changed some aspects of a food system?***

**Changes in food practices**

The covid-19 pandemic has had great consequences on food practices and patterns at a global level, among them the exacerbation of food insecurity. As the period of confinement progressed, instability was generated in the food system, with declines in production, transportation, and supply, as well as rising prices of food, which had repercussions for people who live in economic vulnerability. In addition to the effects on the food system, there were increases in unemployment, access to health services, and a decreased income among people in formal employment.

In the Mexican case, the problem of food insecurity has been a constant public health problem, according to the National Survey of Health and Nutrition 2018 (ENSANUT 2018), it was reported that 55.5% of households in Mexico experienced food insecurity, 32.8% experienced mild, 14.1% moderate and 8.6% severe food insecurity. This problem was more serious in rural than urban localities.[[16]](#endnote-16) Meanwhile, the Continuous National Survey of Health and Nutrition during Covid-19 showed an increase in food insecurity to 59.4%; with 38.6% of cases being mild, 13% moderate, and 7.8% severe.[[17]](#endnote-17)

A visible phenomenon during the covid-19 pandemic was the increase in the acquisition and consumption of sugar-sweetened beverages and in some groups of other categories of ultra-processed foods (see the following table).

|  |  |  |  |
| --- | --- | --- | --- |
| Group | Consumed Food & Beverages | 2018  (%) | 2020  (%) |
| Preschoolers | Snacks, sweets, and desserts  Sweet cereals  Sugar-sweetened beverages | 62.7  47.4  82.4 | 56.6  43.7  85.7 |
| Children (aged 5-9) | Snacks, sweets, and desserts  Sweet cereals  Sugar-sweetened beverages | 64.6  52.9  85.7 | 54.1  56.7  90.9 |
| Adolescents (aged 10-19) | Snacks, sweets, and desserts  Sweet cereals  Sugar-sweetened beverage | 53.7  35.2  85.7 | 46.1  35.5  90.7 |
| Adults (20+) | Snacks, sweets, and desserts  Sweet cereals  Sugar-sweetened beverage | 35.4  33.9  85.8 | 29.8  35.9  86.7 |

**Civil Society Actions & Campaigns**

During the pandemic, at *El Poder del Consumidor*, and in coordination with our *Nutritional Health Alliance of Mexico*, we carried out a variety of activities to promote the development and implementation of policies to curb the consumption of ultra-processed foods to protect the right to food and curb the impacts of the pandemic in Mexico. We developed a mass-media campaign indicating the importance of unprocessed foods in protecting immune health and preventing obesity and chronic disease.[[18]](#endnote-18) We had press conferences and developed other materials to show the impact of ultra-processed foods in weakening the immune system and creating vulnerabilities for infectious diseases, including coronavirus. We fought back against industry arguments and legal attempts to delay and overturn elements of the front-of-pack labeling policy.

We monitored the food and beverage marketing on e-learning platforms and had press conferences to inform the public about our findings as well as inform and demand changes within the Ministry of Education. We developed materials and trained health educators working in schools about the links between healthy diets and healthy immune systems.[[19]](#endnote-19) We put pressure on the Ministry of Education to prohibit the sale of ultra-processed foods in schools once schools reopened in order to prevent obesity and vulnerabilities to coronavirus.[[20]](#endnote-20) We also carried out monitoring activities to document and raise awareness of the health-harming actions of the food and beverage industry during this time. In particular, we raised awareness of violations of the Code on Breastmilk substitutes and the pervasive marketing of ultra-processed foods during the pandemic.[[21]](#endnote-21),[[22]](#endnote-22) In addition, we developed guidelines for receiving donations from the food and beverage industry during the pandemic and sent letters to local governments and administrators to urge them to take caution in accepting donations.[[23]](#endnote-23)

1. ***How should the food system in your country be changed in order to ensure better access to adequate food for everyone?***

Before the pandemic hit there was a lack of sufficient food policies in Mexico to tackle all forms of malnutrition and NCDs and a lack of safeguards against corporate influence in food governance spaces. However, with the onset of the pandemic, this lack of regulation and safeguards became even more pronounced and consequential. The food-related policies that would have helped curb the impacts of COVID on the right to food are those policies that are necessary not only during public health emergencies but always. Such policies must be based on a human-rights framework and must prioritize the participation of those most vulnerable to malnutrition and NCDs. Such policies include:

1. A strong marketing regulation to limit children and adolescents´ exposure to, and the power of, food and beverage marketing in all media channels (TV, digital media, billboards).
2. The implementation of the WHO Code on Breastmilk substitutes into national legislation, especially to prevent the promotion of breastmilk substitutes and the protection of breastfeeding during emergencies.
3. The prohibition of the marketing of ultra-processed foods not only in schools but on e-learning platforms and a prohibition on the sale and provision of ultra-processed foods in schools to promote health and healthy immune systems in order to combat COVID-19, obesity, and NCDs.
4. development of legislation, policy and protocols to protect against undue corporate influence and conflicts of interest in policy spaces (policy development, implementation and evaluation), including tools to assess the risks of, and inform government engagement with the private sector.
5. The development of guidelines to guide the receipt of food donations during health emergencies and natural disasters.
6. Policies to protect and promote agroecology and local and territorial markets and that guarantee the rights of small-scale producers with the goal of strengthening regional food systems and dismantling the power and concentration of agroindustrial supply chains.
7. ***What type of international support, coordination, and cooperation is necessary to overcome the food crisis?***

International coordination and cooperation in necessary to overcome the food crisis and create a more democratic food system. The reformed UN CFS is an appropriate place to develop international policy convergence and coordination of food systems and to respond to the COVID-19 crisis. The CFS should respond to this need and act according to their mandate. At the same time, for CFS coordination to be effective, more dissemination and monitoring of CFS policy tools needs to take place at the national level. Furthermore, there needs to be greater political will among Member States in the CFS and in other spaces of global food governance in order to develop global coordination and cooperation that serves the interests of those most vulnerable to malnutrition.

The civil society and indigenous people´s mechanism plays a very important role in the reformed CFS and their participation is essential in the development of effective global coordination. That being said during the pandemic the negotiation of the VGFSyN demonstrated a lack of consideration and a sidelining of the demands of civil society. The frenzied way in which the Guidelines were negotiated in a virtual format, giving little consideration to the toll the pandemic was taking on small-scale producers and social movements, the failure of the Guidelines to adequately refer to UNDROP, to sufficiently protect and promote agroecology, and to defend a rights-based approach while at the same time promoting private sector involvement in food systems policy is evidence of such sidelining. The CFS must recognize and prioritize the voices of the CSM to succeed in effective global coordination.

Furthermore, international trade tools and agreements should ensure alignment with health and public interest objectives and ensure they do not violate the right to food. Member States should ensure that their policies do not harm the rights and livelihoods of those living beyond their borders and governments must ensure that their participation in international trade and financial institutions and multilateral organizations works to advance the rights of the most vulnerable not just their national interests.

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2. https://elpoderdelconsumidor.org/2020/03/la-alianza-por-la-salud-alimentaria-de-la-que-somos-parte-denuncia-a-concamin-de-intentar-suspender-publicacion -of-new-labelling-norm/ [↑](#endnote-ref-2)
3. https://elpoderdelconsumidor.org/2020/03/mexico-se-enfrenta-a-pandemia-de-covid-19-en-medio-de-la-epidemia-de-obesidad-y-diabetes/ [↑](#endnote-ref-3)
4. https://elpoderdelconsumidor.org/2020/03/mexico-se-enfrenta-a-pandemia-de-covid-19-en-medio-de-la-epidemia-de-obesidad-y-diabetes/ [↑](#endnote-ref-4)
5. <https://www.eluniversal.com.mx/cartera/coca-cola-femsa-solicita-amparo-contra-nuevo-etiquetado> [↑](#endnote-ref-5)
6. <https://www.forbes.com.mx/negocios-empresas-buscaran-mas-amparos-nuevo-etiquetado-conmexico/> [↑](#endnote-ref-6)
7. https://ncdalliance.org/why-ncds/covid-19/map-unhealthy-industry-responses [↑](#endnote-ref-7)
8. https://elpoderdelconsumidor.org/2020/05/nos-sumamos-a-la-denuncia-a-femsa-y-nestle-por-violar-codigo-de-naciones-unidas-al-promocionar-sucedaneos-de-leche-materna-aprovechando-pandemia-de-covid-19/ [↑](#endnote-ref-8)
9. <https://www.nestle.com.mx/media/pressreleases/respondiendo-a-la-contingencia> [↑](#endnote-ref-9)
10. <https://www.kelloggs.com.mx/es_MX/content/articulos/responsabilidad-corporativa/kellogg-latinoamerica-dona-1-millon-de-dolares-para-programas-de-alimentacion-y-covid19.html> [↑](#endnote-ref-10)
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12. <https://elpoderdelconsumidor.org/2021/04/llamamos-a-la-sep-a-proteger-a-la-infancia-de-la-comercializacion-en-las-plataformas-educativas-de-aprende-en-casa/> [↑](#endnote-ref-12)
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15. <https://elpoderdelconsumidor.org/2021/06/entrada-en-vigor-de-la-segunda-fase-del-etiquetado-revela-cumplimiento-e-incumplimiento-para-algunas-categorias-de-alimentos-y-bebidas/> [↑](#endnote-ref-15)
16. <https://ensanut.insp.mx/encuestas/ensanut2018/doctos/informes/ensanut_2018_informe_final.pdf> [↑](#endnote-ref-16)
17. <https://ensanut.insp.mx/encuestas/ensanutcontinua2020/doctos/informes/ensanutCovid19ResultadosNacionales.pdf> [↑](#endnote-ref-17)
18. https://elpoderdelconsumidor.org/2020/11/lanzan-campana-corta-por-lo-sano-para-recuperar-la-salud-alimentaria-y-combatir-las-epidemias-de-obesidad-diabetes-y-fortalecernos-frente-a-la-covid-19/ [↑](#endnote-ref-18)
19. https://miescuelasaludable.org/materialesinformativos/ [↑](#endnote-ref-19)
20. https://elpoderdelconsumidor.org/2021/08/ante-el-regreso-a-clases-las-escuelas-deben-dejar-de-ser-fabricas-de-enfermedades-para-ninas-ninos-y-adolescentes/ [↑](#endnote-ref-20)
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