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| Type of Stakeholder (please select one) | Member State  Observer State  **Other (please specify): International Non-Governmental Organization** |
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| Can we attribute responses to this questionnaire to your State publicly\*?  \*On OHCHR website, under the section of SR health | Yes  Comments (if any): **N/A** |

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March 31, 2023

# United Nations Special Rapporteur on the Right to Health

# In the matter of: Consultation to contribute to thematic report on “Food, nutrition and the right to health”

# Dear Ms. Tlaleng Mofokeng,

Juan Carballo, Legal Coordinator of the Food and Nutrition Portfolio from the Global Health Advocacy Incubator (GHAI), presents this submission for the consultation to contribute to the thematic report on “Food, nutrition and the right to health” to be presented before the UN General Assembly. GHAI, a program of Campaign for Tobacco-Free Kids (CTFK), is a global public health non-governmental organization that supports civil society organizations (CSOs) that advocate for public health policies that reduce disease and death. Two of our various public health initiatives include the Food Policy Program (FPP) and the Cardiovascular Health Program (CVHP), whose objectives are to create healthier food environments for all by reducing the consumption of unhealthy products while also encouraging healthier diets.

The purpose of this brief is to present important highlights, concerns and best practices to be considered in the recommendations of the thematic report, as resources like this are critical to call on governments to prioritize evidence-based healthy food and nutrition policies in their public health agendas moving forward.

The direct connection between food and nutrition and the right to health is essential to materialize the universality, indivisibility, interdependency and interrelationships of human rights. According to the Vienna Declaration and Program of Action on Human Rights (1993), *“[t]he international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis”*.[[1]](#endnote-2) This means that human rights are entitlements for everyone without distinction that must be understood holistically and cannot be analyzed independently from each other. The advancement of one right has direct implications for some others, and public policies must consider this when being developed and implemented.

In this context, governments have specific duties of *protecting, respecting, and fulfilling* human rights for their full enjoyment by the populations under their jurisdiction and beyond, under the principles of international cooperation. These duties can be specifically translated into obligations related to the prevention and treatment of diseases through ensuring adequate food and nutrition under the right to the highest attainable standard of health enshrined in article 12 of the International Covenant of Economic, Social & Cultural Rights, and its connected rights.[[2]](#endnote-3) It is also worth noting that the human right to health and its primary connected rights, such as adequate food and nutrition, water and sanitation, and a healthy environment, among others, have the attribute of progressive realization. This characteristic means that, despite some immediate obligations from States regarding these rights, they “have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of the right”.[[3]](#endnote-4) Furthermore, progressiveness aims to acknowledge the constraints related to the limited available resources and the commitment to take concrete steps through all appropriate means to guarantee their full enjoyment, without regressing on the level of guarantee of the rights already reached.

In our responses to the official questionnaire, we incorporate these cross-cutting considerations and a recognition of the complexity of food systems and environments, while providing a global perspective based on our advocacy experience working with CSOs worldwide.

***Question No. 1 - What are the major factors that challenge quantitatively and qualitatively adequate access to food and nutrition in your country and/or community (including external to your country)? Taking into consideration the underlying determinants of health, in what ways do they contribute to health inequities?***

During the last decades, the nutritional transition led by the introduction of **ultra processed food and beverage products** (UPPs) in global markets has played a significant role in the displacement of traditional, natural, and nutritious foods in people’s diets.[[4]](#endnote-5) The consumption of UPPs is associated with adverse human and planetary health outcomes; their consumption is linked to diet-related non-communicable diseases (NCDs) such as diabetes and cardiovascular disorders,[[5]](#endnote-6) and their manufacturing procedures are associated with unsustainable environmental practices that promote predatory exploitation of natural resources (E.g. water to produce soft drinks), encourage monoculture and pesticides utilization, among other issues that directly contribute to climate change and social inequities (E.g. land grabbing issues).[[6]](#endnote-7),[[7]](#endnote-8)

In connection with these complexities around UPPs, the UN Special Rapporteur on the Right to Adequate Food has highlighted that the core content of the right implies “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”, and that adequate diets should prioritize being “socially and environmentally sustainable over the mere provision of cheap calories”.[[8]](#endnote-9) However, based on our experience working with multiple organizations at a country level, **the major factors that challenge access to adequate food and nutrition quantitatively and qualitatively are: (a) corporate practices of the private sector,** which include influencing decision-making tables and societies as a whole, directly threatening people’s rights enjoyment and exacerbating health inequities;together with **(b) the lack of structural, holistic and effective policies regarding food environments,** as it will be explained below**.**

First, the UPP industry[[9]](#footnote-2) has strongly increased its sales and presence in low-and-middle-income countries (LMIC) and this trend is expected to continue, challenging diet-related NCDs prevention in the long run.[[10]](#endnote-10) Evidence shows that their marketing strategies of unhealthy foods specifically target LMIC, showcasing healthier products in richer countries.[[11]](#endnote-11) The most worrisome element is that among their activities in LMIC, these strategies disproportionally target groups such as children, which require special protection according to international standards.[[12]](#endnote-12),[[13]](#endnote-13) UPPs are more widely available in LMI communities compared to other urban areas.[[14]](#endnote-14) Even in middle- and high-income countries such as the US, Black and Latino children are more exposed to energy-dense and nutrient-poor foods than other groups.[[15]](#endnote-15) This is concerning as the industry plays a major role in shaping people’s food choices through their aggressive marketing strategies and other **commercial health determinants**[[16]](#footnote-3).[[17]](#endnote-16)

Another significant contributing factor that has hampered access to adequate food is the lack of comprehensive policies that ensure the availability and affordability of nutritious foods to all. Food desserts where access to affordable and healthy food options is limited or non-existent can result in communities relying on UPPs to fulfil their basic needs – even in rural areas with food production activities – what materializes a human rights violation under the lens of adequacy of the human right to food and nutrition.[[18]](#endnote-17) The multiple dimensions of accessibility require the guarantee of permanent and regular access, in a socially fair way, to food practices that are adequate to the biological and sociocultural aspects of the individual and the sustainable use of the environment. These dimensions include: addressing the needs of each phase of life and special dietary needs; respecting food culture and the dimensions of gender, race, and ethnicity; accessibility from a physical and financial point of view; being harmonious in quantity and quality; complying with the principles of variety, balance, nutrition, and pleasure; and utilizing appropriate and sustainable production practices. As an example, the Caribbean Community countries import more than 80 percent of the food they consume with a high proportion being calorie-dense, and high in fat and sugar.[[19]](#endnote-18) Because these imports tend to be more affordable than healthy alternatives, governments may be less inclined to implement measures for their reduced consumption given rising food insecurity.

In this context, it is worth mentioning that during the **COVID-19 pandemic**, levels of food insecurity increased rapidly around the world in relationship with multiple forms of malnutrition. While there were many conditions that contributed to this, the UPP industry’s behaviour during the public health emergency exacerbated the risks of people living with NCDs.[[20]](#endnote-19) Companies marketed their unhealthy products as immune boosters and even donated UPPs under corporate social responsibility (CSR) initiatives, knowing that people with NCDs were at greater risk of mortality and severe disease regarding COVID. Additional information about this topic is included in response to question No. 4.

Thus, from our perspective as a global organization working on food policy in multiple regions, in addition to the diverse conditions that influence accessibility to healthy foods, industry practices and the lack of State action to implement robust policies are the main obstacles to ensuring access to adequate food and nutrition.

***Question No. 2 - What legislative or regulatory measures (such as those related to nutrition standards, labelling, marketing, procurement in institutional settings including – but not limited to – schools and prisons, and fiscal measures) have been considered or adopted in your country and/or community to improve food and nutrition, especially for persons in vulnerable situations? Where relevant, how are those measures being enforced?***

The intake of unhealthy products is one of the main modifiable risk factors for NCDs.[[21]](#endnote-20),[[22]](#endnote-21),[[23]](#endnote-22) Hence, States have the human rights duty to intervene and take effective policies to prevent and reduce the conditions associated with this risk factor.[[24]](#endnote-23) Consequently, public health organizations have recommended adopting measures to discourage the consumption of UPPs and promote the consumption of fresh or minimally processed foods.[[25]](#endnote-24),[[26]](#endnote-25) These require a comprehensive State response, which includes preventing third parties, including businesses, from interfering with the enjoyment of the right to health and its connected rights, as indicated by Dr. Püras.[[27]](#endnote-26)

In terms of adopted measures, Argentina, Brazil, Chile, Colombia, Mexico, Uruguay, Peru and Venezuela have passed **front-of-package warning labeling (FOPWL) regulations** to inform consumers about the excess of nutrients of concern in packaged products. Argentina, Colombia and Mexico’s regulations also include precautionary warnings when the products contain caffeine and/or artificial sweeteners, indicating that these are not recommended for children.[[28]](#endnote-27) However, in some countries, implementation has not yet started or is low due to industry push-back. Industry has also reformulated its products to fall out of the nutritional thresholds and avoid warning labels and complementing restrictions -such as marketing ones.[[29]](#endnote-28)

In addition, **public facilities** such as schools represent key spaces where to reach an enormous proportion of the population to ensure long-term healthy lifestyles. Brazil has a unique national school meals program (PNAE) which has been complemented by subnational regulations from Rio Grande do Sur, Bahia, Minas Gerais, and others.[[30]](#endnote-29) In Argentina, the healthy diet law also aims to restrict the sale and marketing of products with labels in school facilities and established that public procurement should prioritize products without labels; however, implementation is still low and further national and sub-national coordination is needed. Chile also restricts the marketing and sale of products with labels in schools. In Costa Rica, the Supreme Court confirmed the constitutionality of a measure challenged by the UPP industry which prohibited selling products with excess sugars or fat in educational.[[31]](#endnote-30) Recently, unhealthy food products were banned from being sold and marketed in educational facilities in Uruguay, through the modification of Law 19140.[[32]](#endnote-31) In Peru, the Ministry of Health approved specific guidelines that prohibits the sale of products with FOPWL in public and private schools. In Barbados, the recently introduced School Nutrition Policy ensures school meals meet age-appropriate PAHO nutritional standards. The Policy also restricts the consumption of SSBs in schools, as well as places limits on foods high in fat, salt and sugar.

**Fiscal policies** such as taxation of sweetened and processed drinks are recommended as alternatives to improve food environments and reduce the NCDs burden.[[33]](#endnote-32) Countries such as Barbados, Chile, Colombia, Mexico, Peru, South Africa[[34]](#endnote-33), and recently Pakistan, have implemented taxes on drinks high-in sugars and/or sweeteners, as this trend is spreading globally since countries can regulate NCDs risk factors, generate an additional source of revenue and even earmark it for health promotion policies.

Regarding **marketing regulations**, many FOPL policies in Latin America such as the ones in Argentina, Chile, and Peru, have tied labeling policies to marketing restrictions directed at children. These regulations include different measures such as: prohibitions on the packages of products with warnings to have cartoon characters or other advertising elements to draw children’s attention; restrictions on TV ads in particular times in which children are usually watching; limitations on products with labels to be sold, marketed or offered in school environments; inclusion of FOPWL in any type of advertisement, among others. However, evidence shows that stricter and more comprehensive policies are needed to effectively protect this group from the exposure to “predatory commercial practices” used by the corporate sector.[[35]](#endnote-34) In particular, digital marketing and sponsorship practices represent challenging regulatory areas, as it will be highlighted in response No. 6.

Also, the WHO has made global elimination of industrially produced trans fatty acids (iTFA) a priority.[[36]](#endnote-35) WHO has called on governments to enact mandatory measures to eliminate iTFA from national food supplies. Such measures "are currently in effect for 3.4 billion people in 60 countries (43% of the world population); of these, 43 countries have best-practice policies in effect, covering 2.8 billion people (36% of the world population)."[[37]](#endnote-36) To achieve this goal, some countries have banned partially hydrogenated oil (e.g. Thailand, Cananda), some have established a mandatory limit of 2g iTFA per 100g of total fat (e.g. Bangladesh, India, South Africa), and some have utilized a hybrid of those approaches (e.g. Argentina).

In conclusion, while there has been some specific progress to address unhealthy diets, States can do better on this front through the fulfillment of their human rights obligations within all areas of government and state levels. There is still a long way to go to ensure robust policies are adopted, implemented, and that are specifically designed to address the conditions that make people vulnerable when it comes to adequate food and nutrition.

***Question No. 3 - In your context, have any legislative or regulatory measures attempted to simultaneously address undernutrition, on the one hand, and diet-related non-communicable diseases such as diabetes, cardiovascular diseases, and cancer, on the other hand? In doing so, have they been successful? Please provide concrete examples.***

Food insecurity related to the double burden of malnutrition is a global issue. The coexistence of both undernutrition and overweight and/or obesity is threatening the right to health of millions of people globally.[[38]](#endnote-37) According to the previsions of the last report about the status of nutrition and food security around the world, around 670 million people will continue with hunger in 2030, which represents the same proportion of the population with hunger in 2015 when the 2030 Sustainable Development Goals Agenda was set.[[39]](#endnote-38) Simultaneously, childhood obesity worsened, and adult obesity almost doubled in the last 20 years, impacting individuals, communities and societies productivity, well-being, and the enjoyment of fundamental rights.[[40]](#endnote-39)

These figures show that food environments are becoming more and more problematic, and the agrobusiness food system in which the world is living is at the centre of that discussion. States should consider these issues cross-cuttingly across all public policies, and the inclusion of healthy diets and nutrition should be considered as part of comprehensive agendas to promote and ensure safe, healthy, nutritious and sustainable diets for all populations.[[41]](#endnote-40),[[42]](#endnote-41) In this context, the UPP industry has used nutri-washing strategies[[43]](#footnote-4) to position their products and brands in the fight against hunger: false solutions that position commodities that are linked to disease, adverse environmental outcomes, and inadequate nutrition. Therefore, public policies that promote and ensure access to natural and fresh foods are essential while also holistic measures across the food systems.

In Latin America, a relevant example of such policies is the Federal School Meals Program (PNAE) in Brazil, which works to address the double burden of malnutrition while also promoting healthier and fairer food systems while specifically protecting children. The PNAE is a significant role model school meals program for the region and the world because it leverages schools as a place for healthy food policy interventions and fosters new drivers for food systems such as procurement from small rural entrepreneurs. The PNAE aims to contribute to the growth and biopsychosocial development, learning, school performance, and the promotion of healthy eating habits of students, through actions of food and nutrition education and the provision of meals that cover their nutritional needs during the school term. The principles of the program include: the use of healthy, varied, and safe foods that respect food culture and traditions; universality; community participation in social control; and the right to *school meals,* considering students that need specific attention such as those who live in vulnerable conditions. Under the PNAE, school meals should be prepared based on the use of fresh or minimally processed foods in order to respect the nutritional needs, eating habits, and food culture of the locality and be based on sustainability, seasonality, and agricultural diversification of the region and promoting adequate and healthy food; meet cultural specificities, be adapted to suit students diagnosed with special dietary needs or students with disabilities, disorders, etc.; mandatorily limit the supply of certain products, among others.

Moreover, PNAE encompasses *food and nutrition education* to encourage the voluntary adoption of practices and healthy food choices that collaborate for learning, students' health, and the individual's quality of life. Lastly, PNAE is linked with a *procurement system* that promotes local and sustainable agriculture. According to Law No. 11,947, of the total financial resources provided by the National Fund for Educational development, within the scope of the PNAE, at least 30% must be used in the acquisition of foods directly from family farming and rural family entrepreneurs or their organizations, prioritizing agrarian reform settlements, traditional indigenous communities and *quilombola* communities.

In conclusion, it is essential for States and the global community to re-evaluate the current food systems structure which has led to multiple levels of malnutrition to exist without adequate public policies to address such phenomenon. Interventions such as PNAE are examples to follow, improve, and allow States to include multiple measures to address the complexity of the food environment in one policy package, including a human rights-based approach.

***Question No. 4 - Beyond diet-related non-communicable diseases, food and nutrition are also relevant in relation to infectious diseases and other illnesses. For example, contaminated food can lead to foodborne illnesses, poor nutrition can make persons more susceptible to infectious diseases, and individuals living with infectious diseases and other chronic illnesses may have unique dietary requirements for health. Please describe any challenges and progress made in this regard in your country and/or within your community.***

When the epidemiological transition appeared to put chronic diseases at the centre of global health priorities, the COVID-19 pandemic brought infectious diseases to the discussion again, highlighting the intrinsic and concerning connections between the two: NCDs weaken the immune system and make people more susceptible to infectious diseases and related complications; infectious diseases can exacerbate chronic conditions and interfere in their treatment; chronic conditions also make harder for the body to fight infections and make people more propense to develop severe illnesses and death.[[44]](#endnote-42),[[45]](#endnote-43),[[46]](#endnote-44) Despite these implications, the UPP industry leveraged the public health emergency as an opportunity to market its products, and be portrayed as a good corporate citizen needed in the solution while also fighting against the advancement of food and nutrition policies and worsening people’s health conditions around the world, as it will be highlighted below.[[47]](#endnote-45)

During the pandemic, most countries’ public health agendas’ priorities drastically shifted towards mobilizing resources to prevent and treat the virus, addressing its consequences on people’s health and society and economy in general, and providing access to vaccines. Healthcare systems collapsed and this highly affected those who needed permanent care such as people living with NCDs. Food and nutrition insecurity increased globally, disproportionally affecting particular groups and communities;[[48]](#endnote-46),[[49]](#endnote-47) lockdown policies disrupted supply chains and boosted an economic recession that deepened existing inequalities and threatened the enjoyment of fundamental human rights, among other adverse outcomes.Even today, many countries are still investing a lot of efforts to recover from the pandemic, and while COVID-19 was definitely an issue that necessarily required all the attention, data rapidly emerged about people with diet-related diseases being more susceptible to complications and death from COVID-19.[[50]](#endnote-48),[[51]](#endnote-49),[[52]](#endnote-50) Therefore, as malnutrition makes individuals more susceptible to infectious diseases, ensuring adequate nutrition is the first step to fully enjoy the right to health.

As noted earlier, above all the challenges that the connections between infectious diseases and chronic conditions have, the COVID-19 emergency represented a unique opportunity for UPP corporations and other unhealthy commodity industries to position themselves as part of the solution to the problems they are themselves creating. They used multiple strategies to increase the sale of their products and improve their public image, including -but not limited to- the following:

1. **Coupling solidarity pandemic relief actions with aggressive marketing of unhealthy products which helped polish their corporate image and reputation.** For instance, Coca-Cola – a leading transnational company in the sweetened beverages market – donated health equipment and medical supplies worldwide.[[53]](#endnote-51),[[54]](#endnote-52),[[55]](#endnote-53) Moreover, the company employed cause marketing campaigns linking their products to charitable causes to make consumers feel good about a social cause.[[56]](#endnote-54) While help and support was needed from multiple sectors, the company transformed the health crisis into a marketing opportunity.
2. **Positioning their unhealthy products as essential.** For example, the UPP industry used multiple strategies to position processed foods as safe, stating that these products were manufactured using measures that reduce the risk of contamination.[[57]](#endnote-55) Companies also promoted UPPs as immunity boosters, generating misperceptions in the public and undermining the value of natural and fresh foods.[[58]](#endnote-56),[[59]](#endnote-57)
3. **Carrying out philanthropic actions while actively lobbying against public health policies to prevent and address NCDs.** While public health policies were more urgent than ever, the industry directed efforts to influence and delay legislation and regulation in its favor, even using pandemic-related arguments. To illustrate this, it’s useful to cite an example from Mexico, where the Mexican Council of Consumer Products requested to postpone the implementation of FOPWL in the country, a recommended public health measure.[[60]](#endnote-58),[[61]](#endnote-59)
4. **Donating their products to vulnerable populations contributing to worsening health conditions and risks.** The UPP industry donated ultra-processed food and drinks to vulnerable populations, including to children in school programs and low-income groups, contributing to worsening health conditions like obesity, diabetes and cardiovascular disease and exacerbating undernutrition with nutritionally poor foods and beverages.[[62]](#endnote-60),[[63]](#endnote-61),[[64]](#endnote-62),[[65]](#endnote-63),[[66]](#endnote-64)

 In essence, even though the pandemic brought light to the interconnections between infectious diseases and chronic conditions for public health, COVID-19 dominated global health priorities during the past years. The UPP industry took advantage of the emergency to heavily position its unhealthy products and protect its reputation while influencing and delaying regulation. This context showed that it is crucial for States to address the root causes of chronic diseases and prioritize adequate nutrition as a crucial step towards ensuring the full enjoyment of the right to health.

***Question No. 5 - Multi-stakeholder approaches to food and nutrition are often affected by power asymmetries that exclude persons and communities in situations of vulnerability.***

* 1. ***Please provide concrete examples of the barriers and opportunities for these persons or communities, such as Indigenous peoples, women, children, and migrants, to participate in national and/or international policymaking processes pertaining to food and nutrition, including the process of participation.***
  2. ***What proactive steps or good practices can you report on taken by the State to engage in activities to strengthen people's access to and utilization of resources for food security in this regard?***

Multi-stakeholder initiatives (MSI) have lately become the main platform used by the UPP industry to exert corporate influence in policy making and implementation of food and nutrition policies, undermining public health regulations to address NCDs. There is mounting evidence about how UPP and other unhealthy commodity industries have influenced legal and political environments to delay, weaken or impede evidence-based regulations on their risky products while threatening fundamental human rights and planetary and human health. [[67]](#endnote-65),[[68]](#endnote-66),[[69]](#endnote-67),[[70]](#endnote-68),[[71]](#endnote-69),[[72]](#endnote-70),[[73]](#endnote-71),[[74]](#endnote-72),[[75]](#endnote-73),[[76]](#endnote-74)

Multiple strategies are used to interfere policy making direct lobby, producing biased research, positioning alternative corporate solutions[[77]](#endnote-75), portraying themselves as an indispensable actor to social, economic, environmental, and even health problems through **corporate washing**[[78]](#footnote-5) practices that legitimate companies and products before the public.[[79]](#endnote-76)

MSI are in search of corporate privileged access to regulatory matters, in formal scenarios of decision-making and through the known public-private partnerships (PPP). This approach is characterized by power imbalances among the different stakeholders, allowing private actors to exert and perpetuate unequal power relationships against communities, CSOs and other groups. In addition, the institutionalization and normalization of industry participation prioritizes industry-oriented solutions allowing co-governance structures of government and industries where private interests prevail over public rights and protection. Lately, platforms such as Scaling Up Nutrition (SUN) have chosen MSI mechanisms to foster co-governance spaces around food and nutrition, threatening the public interest. The UN Sp. Rapporteur on the Right to Food stated in 2016 about SUN that:

*“As a self-described “movement”, it has no accountability to the United Nations or other intergovernmental body or process. While business partnerships are promoted, there is no careful management of corporate involvement to ensure that it is confined to implementation, without influencing public health and nutrition policymaking. Conflicts of interest have also been identified where businesses involved in the initiative were simultaneously marketing foods leading to obesity and non-communicable diseases.” [[80]](#endnote-77)*

This platform has given industry representatives unprecedented access to the public health domain. Large corporations are embedded in SUN’s leadership structure and member countries are strongly encouraged to invite them to national MSI. SUN manages a narrative of neutrality while providing weak disclosure of its intrinsic conflicts of interest and supporting markets approaches that incentivize technical interventions that enhance UPPs, without recognizing power imbalances.[[81]](#endnote-78)

In conclusion, the main failures of MSI and PPP are: (a) human rights are used as a superficial narrative without acknowledgment of States’ obligations around them, so these initiatives usually push for market-based solutions; (b) people are viewed as consumers instead of right holders, pushing an individualistic and fragmented approach that consider populations as windows for business opportunities and not part of society and nature; (c) food is seen as a commodity rather than a public interest matter, attached to the current agro-industrial model which is unsustainable and excludes marginalized groups such as indigenous peoples and peasant communities; (d) unrecognized power dynamics as structural determinants of food injustice; (e) limited definition of "nutritious" diets which does not consider issues such as gender balance, equity, cultural and spiritual values, planetary health, working conditions, among others. [[82]](#endnote-79) 

States should mandatorily implement regulations to prevent and manage conflicts of interest[[83]](#footnote-6) (COI) at all levels of government and applicable to all individuals and organizations that are part of the policy-making processes. However, it’s worth mentioning that this type of initiatives, as they are today, may not be efficient in addressing industry accountability from influencing policy making because they usually spotlight the responsibility on one part (policymakers, researchers, etc.) and not the other (industry).

For instance, the Corporación Colectivo de Abogados José Alvear Restrepo in Colombia filed an unconstitutionality claim to challenge the amendment of Law No. 5/199284 which allowed legislators to participate in discussions and vote on bills relevant to economic sectors that funded their electoral campaigns. The Court ruled that the amendment under study was unconstitutional since it violated the superior purposes that the legislative activity must serve common good and public interest. The Court found that the challenged measure appears to allow legislators with COI to discuss topics that benefit economic sectors which have financed their political campaigns, ignoring the fact that legislators are public servants at the service of the State and its people, and not of private funders; moreover, it also ignores that the ultimate goal of the COI regime is to guarantee the prevalence of the general interest and the correct functioning of a pluralistic democracy.[[84]](#endnote-80)

**Question No. 6 - What is the impact of gentrification, development, technology, industry activity and deforestation on food security? Please share some concrete examples.**

Considering a broad conception of food security and responding in accordance with the growing evidence that links UPPs with harmful planetary and health outcomes, which are outlined in response to question No. 7, there is value in highlighting the specific implications of industry practices related to the sophistication of diverse marketing strategies used by the UPP industry, which is relying on technological progress. Moreover, it is key to understand the challenges of moving regulatory efforts forward in-country.

Regarding the **impact** of advertising, promotion and sponsorship (APS) practices from the UPP industry, our report entitled [“Marketing Exposed: A Global Public Health Threat for Food Policy”](https://uppindustrywatch.net/) found four key reasons why UPPs marketing threatens public health that justify comprehensive regulations. These are the following:

1. **Marketing generates a harmful domino effect by creating unhealthy food environments, burdening countries with sicker populations, and other negative results.** This entails that the industry puts the burden of NCDs on individuals, promote ineffective self-regulatory efforts, and weaken policy making scenarios arguing they are a key actor in food and health governance. For example, in Spain, because of the imminent ban on advertising of unhealthy products in traditional and digital media (including influencers), numerous criticisms of the regulatory efforts appeared in the media. These stated that educational initiatives are more effective than advertising restrictions, and that childcare is the exclusive work of parents.[[85]](#endnote-81),[[86]](#endnote-82),[[87]](#endnote-83),[[88]](#endnote-84),[[89]](#endnote-85) In the UK, Kellogg’s legally challenged marketing regulations on online and offline ads of junk food arguing that the restrictions failed to consider that consumers eat its products with milk or yoghurt, which elevates the profile of its products.[[90]](#endnote-86),[[91]](#endnote-87)
2. **Marketing is more than APS and includes corporate washing actions that allow the industry to be positioned in policy making spaces.** For decades, the industry has positioned itself in the frontlines of the fight against hunger, climate change and other social crisis. In Ukraine, Red Cross partnered with Coca-Cola to promote corporate volunteering and they promote this through online ads.[[92]](#endnote-88)
3. **Marketing of unhealthy foods is aggressive, insidious, and everywhere.** The industry has effectively connected its products as goods to satisfy indulgence and pleasure while displacing traditional food culture. In Brazil, Nestlé introduced a floating supermarket in the Amazon, which flooded the region with UPPs that boosted and obesity epidemic among children and displaced traditional eating patterns.[[93]](#endnote-89),[[94]](#endnote-90),[[95]](#endnote-91)
4. **Marketing puts children and adolescents at risk of becoming victims of commercial exploitation due to the corporate saturation of unhealthy products in the market.** The industry uses children’s imagery in its marketing strategies, including as “Kidsfluencers” on social media. Moreover, companies target its products to young consumers in places where children should be specially protected such as schools. For instance, a brand from FERRERO launched a global campaign called “Kinder Joy of Moving” intending to help children enjoy physical activity. It is argued to be absolutely non-commercial and not geared towards profit; however, its implementation encompasses a strong presence in schools, partnerships with governments, and connections with parents, teachers and children.[[96]](#endnote-92)

In terms of considering the main challenges to comprehensively regulate marketing practices of the UPP industry, it is useful to consider the following factors, to push for robust recommendations for States in this sense:

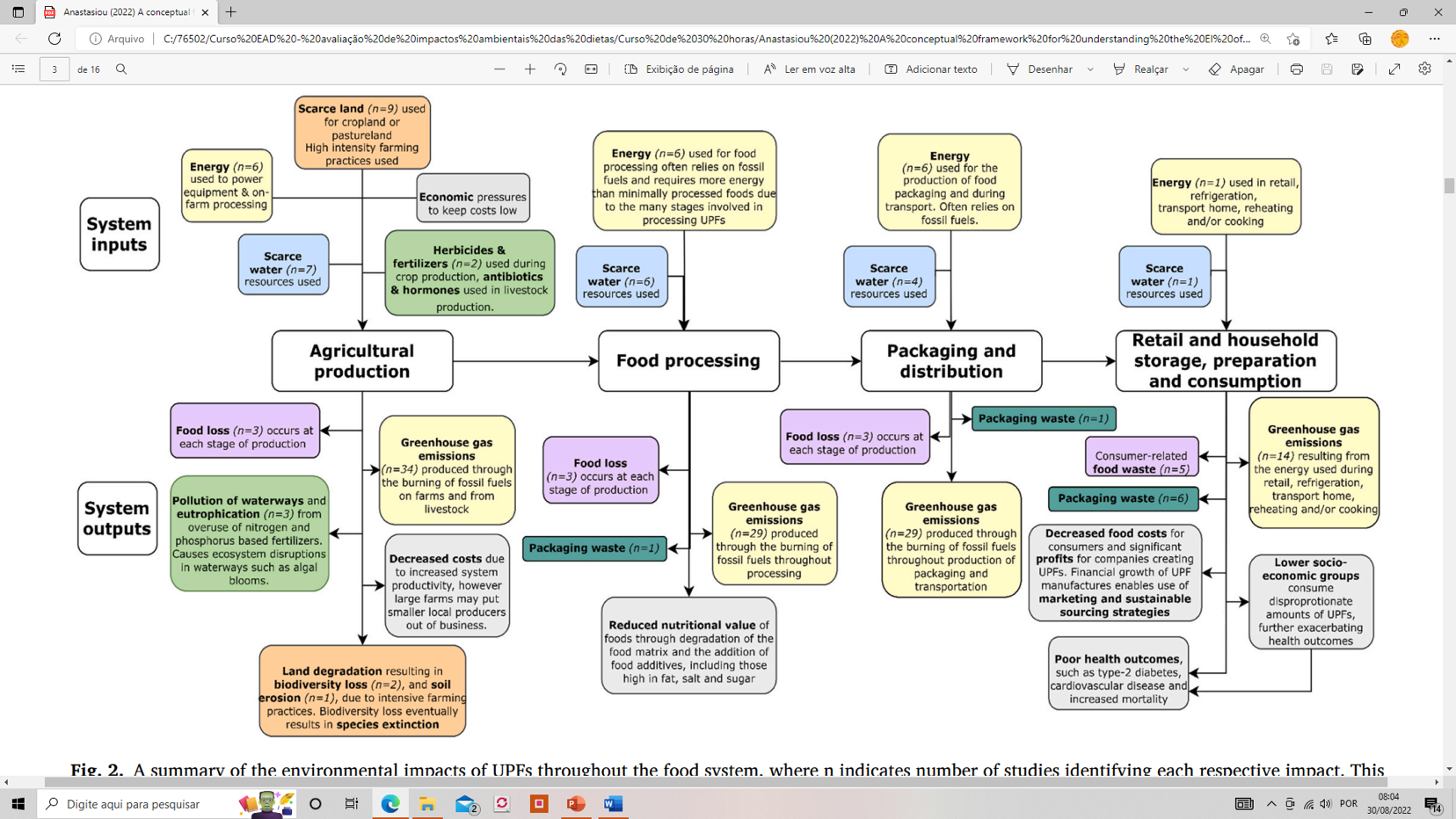
1. Regulations that only direct efforts to restrict marketing only directed/targeted at children may not be enough to protect them effectively from exposure to harmful marketing practices of unhealthy products, so broader solutions are required to guarantee their full enjoyment of the right to health. However, when moving these policies forward, industry push-back is enormous and could require strict proportionality tests to advance which could put profits before health.
2. Marketing advances faster than regulation responding to rapidly evolving technology which includes sophisticated strategies such as artificial intelligence and neuromarketing tools, which involves the use of advances in the neurosciences to develop commercial strategies so that messages are directly sent to the brain, “circumventing rational decision-making.”[[97]](#endnote-93)
3. Digital marketing presents specific challenges related to its cross-border nature, privacy concerns due to the vast amount of information collected by digital marketing companies, and the ultra-targeted nature of online ads that make it hard to enforce regulations effectively. Moreover, influencers can also be a challenging area to regulate given the content they create many times appear to be organic and protected under the individual freedom of speech.
4. Defining online and offline marketing practices can be challenging as there is a lack of consensus among different stakeholders about, for instance, whether CSR initiatives could be considered as an advertising effort. Following the Framework Convention on Tobacco Control, the definition of marketing should be broad enough to regulate all marketing strategies of products and brands that are harming our human and planetary health.

**Question No. 7 - Please provide examples related to the impact of food production, on the right to health of the population living or the people working in or near the areas of production/cultivation?**

UPPs are highly unsustainable products.[[98]](#endnote-94),[[99]](#endnote-95) Based on our work around promoting policy change regulating UPPs as a NCD risk factor, the critical role that industry practices play across the supply chain threatening the full enjoyment of the right to health is clear. As these actors create negative externalities throughout the food systems, it is useful to outline some of the main adverse environmental impacts of these unhealthy foods and beverages:

1. The production of UPPs require large amounts of water, which can put a strain on local water resources. UPPs consume 393.4 liters (about 103.93 gal) of water and 2.21 square meters per 1000 kcal of food produced. [[100]](#endnote-96) In areas where water is already scarce, the production of UPPs can exacerbate the problem and affect the health of the population by reducing their access to clean drinking water. Moreover, the waste generated by UPP consumption also generates water contamination. For instance, Coca-Cola has exploited water resources in Chiapas, Mexico, generating potable water scarcity in the region while also promoting consumption of sodas.[[101]](#endnote-97) Moreover, the company and other UPP corporations are the leading world plastic polluters.[[102]](#endnote-98)
2. UPPs require intensive land-use crops such as sugar, corn, palm oil and soy. As these crops are generated under the agribusinesses-oriented food systems, the use of land leads to deforestation and the destruction of natural habitats, which can have a negative impact on the health of the population living in or near these areas. This phenomenon can also lead to land grabbing situations affecting particular communities or groups who are displaced from their territories. For instance, Agropalma S.A. (a company that supplies palm oil to Nestlé) expelled quilombola communities from their traditional territories in Brazil.[[103]](#endnote-99) In Indonesia, companies such as Pepsico, Nestlé, and Unilever, were accused of purchasing palm oil through illegal rainforest destruction.[[104]](#endnote-100)
3. Food production can also impact the availability of nutritious food in certain areas, as highlighted in response to question 1. If production is focused on crops that are not particularly nutritious or if there is limited access to fresh produce, people living or working in these areas may be at increased risk for malnutrition and other health issues. For instance, according to a global OXFAM report, at least 70% of the world’s poor people live in rural areas, and women represent at least 50% of the agricultural labour force in developing countries.[[105]](#endnote-101) In addition, economic impact, the production of UPPs is driven by corporate interests and profit motives, which contribute to economic inequality and limit the ability of local communities to control their food systems.
4. UPPs require long transportation distances encouraged by extensive supply chains that can lead to unsustainable practices due to extensive carbon emissions, with immeasurable consequences across the supply chain.[[106]](#endnote-102),[[107]](#endnote-103)
5. Last but not least, marketing strategies coming from the UPP industry is another practice that can threaten food security. Marketing should be broadly understood to include advertising, promotion and sponsorship strategies with the potential to position a product or brand and influence consumer behaviours; therefore, CSR initiatives which allow corporations to be seen as part of the solution are also marketing tactics that allow companies to wash their image or reputation before different audiences. Many CSR initiatives around the world are linked to food banks whose valuable aim to fight hunger has been tweaked by the private sector to provide cheap calories –through UPPs - to those groups that need nutritious and healthy food the most.[[108]](#endnote-104),[[109]](#endnote-105)

Furthermore, the following graph briefly describes these impacts across the food supply chain[[110]](#endnote-106):



The unsustainability of UPP is clear. Its production and consumption have significant negative environmental, social, and health impacts across the supply chain, mainly affecting populations that are already in situations of vulnerability. The need for comprehensive policy changes that make industry accountable and put sustainability and human rights at the centre and before profits is urgent to ensure the full enjoyment of the human right to health and its connected rights.

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