

***Does the World Need a Human Rights Based Convention on Healthy Diets? Exploring the role of Food Corporations towards the Rights to Adequate Food and Health***

**Report from the Parallel Side Event during the 3<sup>rd</sup> United Nations Forum on Business and Human Rights, Geneva 1-3 December 2014**

**2 December 2014, 16h15 – 18h  
Room XXII, Palais des Nations**

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**BACKGROUND**

This side event was organized by the Norwegian Centre for Human Rights and partners during the 3rd United Nations Forum on Business and Human Rights, Geneva 1-3 December 2014. It was the first follow-up to the international conference held at the Norwegian Centre for Human Rights, University of Oslo, Norway, on September 11 and 12, 2014. This conference focused on the role and impact of transnational food-related corporations on the human rights to adequate food and health and to adequate livelihoods (standard of living).

The Oslo Conference included prominent international experts in the fields of public health, social development and human rights. They sought to identify human rights problems and concerns arising from the activities of the food-related corporations involved in the production, processing and marketing of food products and non-alcoholic beverages.

Participants at the Oslo Conference emphasized that the role and impact of the food and beverage industry cannot be underestimated. Corporations are having an increasing influence on the determinants of both the livelihood of food producers and the health of consumers. Their impacts on the human rights to adequate food and health need to be much better understood and responsibly managed. On that basis, the Oslo Conference called for further explorations of legal and quasi-legal instruments, especially the UN Guiding Principles on Business and Human Rights, and for analyses of whether such instruments can be used to: (i) improve government regulations of corporate practices; and (ii) promote better respect for human rights by corporations (with focus on the right to an adequate standard of living/livelihood, and the rights to food and health).

The conference adopted a statement containing a set of recommendations, among which an appeal to relevant intergovernmental institutions to make progress towards the adoption of a framework convention to promote and protect healthy diets, and to actively contribute to the further concretization of the UN Guiding Principles on Business and Human Rights applied to the food sector. In order to advance this discussion, the following issues were in focus at the side event in Geneva:

- Can a human rights-based Convention on healthy diets, as proposed at the World Health Assembly in May 2014, be a positive contribution to the tasks mentioned above?
- How did the recent Second International Conference on Nutrition (ICN2, held in Rome in November 2014) deal with the issue, and which controversies (if any) have emerged?
- Can the UN Guiding Principles on Business and Human Rights inform and inspire the formulation and process towards the adoption of such a convention?
- Can such a sector-oriented approach, with special focus on the food industry, be a positive contribution to the further development and application of the UN Guiding Principles on Business and Human Rights?
- Can the initiation of negotiations regarding the proposed Convention generate conflicts between corporate interests and regulatory state legislations to protect consumers from unhealthy marketing practices regarding food products (especially to children)?

Side event programme and panelists

Asbjørn Eide, Professor emeritus., Norwegian Centre for Human Rights, University of Oslo:

*Summary of the Oslo Conference and purpose of the present session*

Tim Lobstein, Director of Policy, World Obesity Federation, London:

*Introduction to the theme of the side event*

Francesco Branca, Director, Department of Nutrition for Health and Development, WHO:

*How did the Second International Conference on Nutrition deal with issues of relevance to the theme?*

Christoph Stückelberger, Director and Founder of Globethics.net and Prof of Ethics, University of Basel

*Ethical perspectives on human rights in the food business sector*

General discussion

## PANELIST PRESENTATIONS

**Asbjørn Eide** summed up the main topics and recommendations of the Oslo conference that inspired this side event. The conference focused on the role of corporations and other business enterprises in regard to the human right of all to adequate, safe and affordable food, requiring standards that have long been recognized but are frequently not attained. The conference also addressed the intertwining of the right to adequate food with other human rights, notably those with respect to health, gainful employment and adequate standard of living.

In his introduction, Eide assumed that participants in the Forum agreed that we need private businesses and the market, as well as governments to (individually and collectively) regulate them and their

activities from a human rights perspective. We also expect corporations to respect human rights and be accountable for their conduct, to show due diligence in avoiding harmful human rights impact and preferably to contribute actively and directly to a better realization of human rights for all. This is why this Forum exists, and the reason why it created such a good opportunity to advance the discussions initiated in Oslo on the application of the Guiding Principles on Business and Human Rights. We need to explore the practical ways to enhance their implementation through a sector-oriented approach, and here we start by the food sector and the potential need of a legally binding instrument.

The Oslo conference discussed at some length the now dominant role and power of major commercial undertakings in the food sector in the agricultural field, areas of industrial production, processing, trade, and marketing of foods and drinks. Their role and activity may be in potential conflict with human livelihood and health, especially of the most vulnerable and marginalized groups in society, from farm to mouth. We know of the problems in the production side (hunger, livelihoods, production, undernourishment) and that paradoxically the majority of hungry people live in rural areas where food is produced. Rural women are particularly hard hit, and often their sources of water for production, as well as for hygiene and cooking, are scarce and drained away by commercial reorganisation of water supplies. Rural hunger is in part caused by displacement of people from their traditional agricultural land, which in turn is due to extensive land acquisitions, sometimes called land grabbing, partly by corporations and partly by external governments. It may also be due to factors associated with the climate crisis, with flooding and droughts. We know that undernourishment is a major factor in child mortality from infectious diseases. Even though there have been substantial improvements in child mortality, there is still a long way to go, and the multiple impacts of corporate activities need to be investigated to ensure accountability.

Of great importance in this regard are the various recent guidelines and principles to support sustainable development and responsible investments in agriculture and food systems built on human rights norms and principles. These include: the *Voluntary Guidelines on the Responsible Governance of Tenure in Land, Fisheries and Forests in the Context of National Food Security*, adopted by Committee on World Food Security (CFS) on 11 May 2012; the *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication*, adopted by the FAO Committee on Fisheries on 10 June 2014; and the *Draft Principles for Responsible Investments in Agriculture and Food Systems*, launched by a CFS Intergovernmental Working Group on PRAI, on 11 August 2014.

The focus of this side event is, however, on the other side of the coin: the consumer side, which has received less attention in a governance and human rights context. We see the multiple burden of diet-related health conditions, including the explosive increase in noncommunicable diseases (NCDs), overweight and obesity globally, often concurrently with the sustained high levels of poverty-related undernutrition. While some corporations have made good progress on labour rights, there is still a risk that some of them are actually pushing through investments and practices that are contributing to increase poverty, inequality and unhealthy lifestyles. Corporations are heavily involved in the processing and marketing of food. Not all food marketed is healthy. On the contrary, 35 million people die annually of NCDs, 80% of them in low- and middle-income countries, representing a marked epidemiological

transition from infectious to chronic diseases and – concerning the chronic NCDs – a transition from richer to poorer countries and to the poorest part of populations everywhere.

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**Tim Lobstein**, in introducing the main theme of the side event, focused on how the globalization of food is increasingly replacing traditional food systems and diets with less healthy food. He made the case that under and overnutrition are one problem. There are very direct links between the two: a child is more likely to get obese if they are stunted, or if the mother was undernourished before or during pregnancy. He challenged the usual argument from the food industry that says that “there is no such thing as *bad food*, only a *bad diet*”. Lobstein argues that yes, we can define what bad food is. *Bad food* is what is recommended not to eat, or to eat less of. *Good food* are those recommended to eat, or to eat more of. This based on national dietary guidelines, for example from countries such as Malaysia, Australia, Sri Lanka, among many others.

Lobstein gave a range of examples of how the relentless marketing of unhealthy food and beverages by multinational corporations, including to children and youth, negatively affect diets across the world leading to increased prevalence of obesity. Food corporations are promoting bad food in poor communities, expanding their markets with foods that are inferior. Industrialized weaning food is not helping the infant to move from a milk-based diet to a family diet, as they are supposed to. The products corporations are promoting (with the use of heavy market strategies) are not the ones which help support family to eat healthily. As examples, he mentioned:

- the Nestle floating supermarket in the Amazon;
- mobile retailers/vendors in low-income areas selling soft drinks, noodles, cookies, cake are replacing the traditional markets/street markets,;
- Nestlé promoting its unhealthy products with marketing directly to children, which is not permitted under European law;
- Coca-Cola developing micro-distributions centres in Africa, where local people are encouraged to become tradesmen for the beverage, in the name of reducing poverty and supporting the Millennium Development Goals (this includes a special programme for women to ‘empower’ them economically through selling Coca-Cola);
- sales boosted by advertising: rapid increases in soft drink advertising expenditure by PepsiCo and Coca-Cola in the Middle East in the last decade, McDonald’s opening hundreds of new stores in the Middle East. In these countries, the marketing practices are associated with rapid weight increase in children.

We have seen these companies say they take human rights seriously in their labour force. They say they have corporate social responsibility. But they are not considering the products which these companies produce and their health impact – as we do with the tobacco industry. What is needed is the replacement of bad food with good ones, rather than corporations saying they act responsibly.

Lobstein recognised that there are many factors that have been driving the increase in child obesity worldwide over the last thirty years, but stressed that one factor in particular is very clear and, he believed, very deliberate. The producers of cheap processed foods have spent considerable amounts of money promoting their products directly to children. They use a number of strategies – the design of the food itself, the sweetness and flavourings, the shape and textures and especially the colours; the design of the packets and the attractive characters and animals they put on the packets. The companies spend huge amounts of money encouraging children to recognise and recall the brand name, using TV, cinema and now online, digital and social media to promote the brand and associate the brand with cartoons, film characters, gifts and good feelings. The foods they promote are not the healthiest, not the fresh fruits and vegetables, not the fresh fish, lean meat or wholegrain breads. The amount they spend vastly outweighs the amount available for health promotion. In response, consumer and public health groups have campaigned to control marketing to children for many years, but so far with limited success.

Because of these concerns, the World Obesity Federation joined with Consumers International to prepare a proposition on a Global Convention on Healthy Diets. Presented during a side event at the World Health Assembly in 2014, the proposition has over 300 supporting organizations and individuals, among others the previous UN rapporteurs on the right to food, Olivier de Schutter, and on the right to health, Anand Grover.

Smaller nations particularly find it hard to resist the power of investors, trade agreements and the influence of large food corporations; they therefore need protection at a wider level than just the nation state. A global convention on healthy diets would challenge the trade liberalisation of unhealthy foods and would be an important tool for such countries. The proposed convention calls for stronger governance at national and international level.

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**Francesco Branca** reported on how the Second International Conference on Nutrition (ICN2), organized by FAO and WHO in Rome in November 2014, dealt with issues of relevance to this theme. This was a big event, convened 22 years after the first one, with over 2000 participants including ministers of agriculture, health and others, government representatives, civil society and businesses. The outcomes of the conference were a political declaration and a framework for action, as well as a request to the United Nations General Assembly to endorse a Decade of Action on Nutrition (2016-2025). These outcomes documents addressed, among other things, the increasing role of food corporations in food systems, recognized trade as both helpful and harmful to food security, emphasized the need for multistakeholder mechanisms coupled with safeguarding mechanisms, and addressed healthy diets in relation to implications for countries' economies.

He provided information showing that there is extensive concern in nutrition circles about the problems of obesity and harmful composition of peoples' diets, particularly among the urban population in developing countries and among the poor also in developed countries. The multiple forms of malnutrition are happening concomitantly: in the same communities, one often finds hunger, overweight and micronutrient deficiencies. The very serious increase in noncommunicable diseases such

as cancers, diabetes and heart diseases is also recognized. Aggravating factors are inequalities, lack of access to health, water, education climate change, and environmental degradation.

The vision of the conference was to promote coherent policies, coordinated action among different actors and sectors, diversified, balanced and healthy diets, and making sure that our food system can provide all this. Through the political declaration, 10 commitments were agreed upon, and the framework for actions sets out 60 policy and programme options for implementation. The human rights approach is seen fundamental for the implementation of these strategic documents.

Branca mentioned some examples of key issues and how they are being addressed by the outcome documents:

- **Food systems: are they functional?** The Declaration states in §10 that “current food systems are being increasingly challenged to provide adequate, safe, diversified and nutrient rich food for all that contribute to healthy diets due to, inter alia, constraints posed by resource scarcity and environmental degradation, as well as by unsustainable production and consumption patterns, food losses and waste, and unbalanced distribution”. There is an underlying question about the current food systems and their capacity to cope with the challenges.
- **Role of Trade:** The Declaration states in §11 that “trade is a key elements in achieving food and nutrition security”, and in §13e that “excessive volatility of prices of food and agricultural commodities can negatively impact food security and nutrition, and needs to be better monitored and addressed for the challenges it poses”. These are real challenges to the full realization of the right to adequate food.
- **Government leadership:** The Declaration states in §15g that countries commit to “develop policies, programmes and initiatives for ensuring healthy diets throughout the life course, starting from the early stages of life to adulthood, including of people with special nutritional needs, before and during pregnancy, in particular during the first 1,000 days, promoting, protecting and supporting exclusive breastfeeding during the first six months and continued breastfeeding until two years of age and beyond with appropriate complementary feeding, healthy eating by families, and at school during childhood, as well as other specialized feeding”.
- **Multistakeholder partnerships:** The Declaration states in §14c that “collective action is instrumental to improve nutrition, requiring collaboration between governments, the private sector, civil society and communities”.
- **Protecting consumers:** The Declaration states in §14i that “governments should protect consumers, especially children, from inappropriate marketing and publicity of food”, in addition to the promotion, protection and support to exclusive breastfeeding during the first six months, under §15g.

There was reluctance among many governments to recommend strong public health measures to counteract the harmful trends that implicate food corporations. Governments have primary responsibility for taking action at country level, in dialogue with a wide range of stakeholders. However, the Framework for Action adopted at the conference is voluntary, with set of policy options and strategies that governments, acting in cooperation with other stakeholders, *may* incorporate as appropriate in their work. This reflects the reluctance among countries for legally binding instruments.

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**Christoph Stückelberger** addressed ethical perspectives on human rights in the food business sector. He shared the underlying concerns on unhealthy eating, and highlighted the need for an adequate allocation of responsibilities between the different actors involved – the corporations and other business enterprises at different stages in the food chain – from producers, via processors, to marketers and retailers; the governments both in exporting and importing countries, and the consumers. From one perspective there was the food environment facing and influencing the consumer, through advertising and through the way in which the food was displayed and located in the retailing food shops. Management of and influence on this food environment was in part the responsibility of the corporations and the retailers, but it was also an area of responsibility for the governments through relevant public health regulations and through interventions in the pricing of healthy versus unhealthy food. But consumers had also a responsibility to make healthy choices of food for themselves and their children and youth. The exercise of this responsibility by consumers would in turn be dependent on their capacity to distinguish between healthy and unhealthy compositions of their diet, and that capacity might depend on their education and the information provided by health authorities. Three types of obligations the right is related to: refrain from doing harm; protect; act proactively overcoming the situation. These three categories are valid for the issue of a global convention.

He made five key points:

- **Recognition of the right to food is an ethical priority.** In the public perception, when we speak about human rights there is still the perception that they are political, but not economic, social, basic rights. But it is obvious that if you do not have water and food you die and your political rights are meaningless. Therefore, the right to food and water are the precondition for all other human rights. The human right to food is not just to food as such, but to safe, affordable and adequate food.
- **From an ethical point of view, different actors have different responsibilities.** Pressing questions are: who is responsible? For what exactly (junk food? advertising?)? For how long (can one be blamed years after for some consequences)? What are the means to take responsibility (financial, spiritual, organizational, emotional)? Responsible to whom (who is the instance)? The issue of different responsibilities is important, as one can put the blame on the consumer, or on the companies, or on the government, or on the media.

- **What does it mean: adequate, safe and affordable food?** There are decades of debate about this, but it is a good process to enlarge the definition of what is safe and adequate (non-junk food, for example). Especially in emerging countries, it is not more a question of having enough calories/food, but having the right food, good food. It is a question of affordability, as junk food is also cheap. Enlarging the definition of good food is important, it is not only about hunger and malnutrition.
- **What are the actors?** The focus today is on the business and obviously, the producers of food are key actors. What was shown from previous speakers is valid from an ethical point of view, as you cannot only ask the consumers to act, but all stakeholders. The main message is that such a topic cannot be solved by one single actor, we have to call on the responsibility of food companies, combined with states as regulators, with consumers, with trade, with advertisers, with educators (schools, parents, grandparents), health insurances and other that have economic incentives or sanctions (these are key to regulate the market on that). A key issue is the responsibility of consumers – we cannot deny that consumers remain responsible for their own body and the health of their body.
- **What should be done/can be done?** This debate on a convention is a very interesting effort to launch the debate, even if voluntary at this stage. Guidelines on business and human rights are building a base where we could attach this discussion on a framework convention for healthy diets. But this debate should be seen in the context that food means more than eating, calories. There are belief systems and different worldviews involved.

## GENERAL DISCUSSION

More than 70 persons attended this side event. The responses by the attendees to the presentations made were quite positive, encouraging further work in this field. Many questions were asked, giving the panelists opportunities to elaborate on and clarify the points they had made. A point of discussion was among others the advantages of considering opportunities for, not only developing a global convention on healthy diets, but also to use existing regulations, conventions and principles (such as the Guiding Principles) to promote healthy diets.

There was a general agreement among the participants that the issues addressed in the side-event should be pursued further. The participants appeared to endorse the sector-oriented approach to the implementation of the Guiding Principles on Business and Human Rights, and that the food system(s) constituted a sector that should be given high priority.

Other issues discussed include:

- Double standards: companies selling the same product in Europe without palm oil, while in Indonesia the same is sold with a health claim that palm oil is good for health.
- Is it tactical/strategic to talk about an international convention, since we do not have any good precedence for this type of instrument being acceptable for governments, ratified by governments?

What we have is the Guiding Principles. Is not that a better instrument in the sense that it has a better chance of succeeding because of its acceptance?

- What is the role of the corporations in giving balanced information? Marketing messages are not the same as educational messages, and the public should receive material that is independent, and this is not part of the industry's job. The industry should not take over what a government advisory panel on nutrition should be doing.
- This should not be an either/or discussion. The discussion on a new legally-binding instrument should happen in parallel to discussions on a sector-oriented approach to the implementation of the Guiding Principles. It is the process that matters. Many non-legally binding instruments after some years become more and more binding, legal steps are taken. However, it is important to be aware that there is a certain fatigue internationally for new instruments, conventions, etc.
- Strategic policies: one of the assumptions to succeed is to create win-win situations and get support for your ideas. Where would the win be for consumer and governments is not so hard to identify, but what would the upside be to businesses? Why would they join this endeavour?
- Incentives to business: there are businesses we want to encourage, the producers of good food as fruits, vegetables, fish. It is also bad business to market where people die early. But maybe there is no incentive for junk food producers, maybe they will only respond through legal challenges, regulatory challenges, rather than offer an incentive (because they will take the incentive, but they will not change).
- A company may act more responsibly if it is close to the communities where it operates. The company feels responsible for the community. But in a globalized market it is much more difficult, the connection with the community is much less present.
- Consumer behaviour: when the consumers raise the issue, companies can react – not always, but there are cases where they are responsive to market demand. Incentive: they do not want to lose their market, so there is no choice but to change.
- It is a cultural issue and a dignity issue: instead of being offered a local drink, being offered a bottled drink? Where is the dignity in this?
- Not any one of these instruments, on its own, would be sufficient. We need an approach for food looking at the entire value chain. The fact that we have such a big misalignment in some areas is the problem – you can invest in nutrition education as much as you like, but if the market pressure for other foods is so big, will it work? Consumers say they want skimmed milk, the companies say ok, but then they use all the fat for something else, that they market heavily and sell.
- Enforcing the tobacco convention is still a challenge, the tobacco corporations still fight. But tobacco could simply not be produced, whereas food we need to survive.
- It is really important to have a good dialogue with the private sector, we want to improve the affordability of fruits and vegetables. The inefficiency of the value chain must be addressed: 60% of tomato production in Nigeria is lost because of post-harvest losses. This is an opportunity and for that the dialogue is important.
- We need to discuss more on food waste. One element in the Zero Hunger campaign is zero waste. This is a very complex issue, the loss happens at different levels, but the majority happens in post-

harvest. Therefore cold chains and storage are so important. But there are also issues around portion sizes and expiry date – this leads to huge food losses.

- In cultures where leaving food on the table is a sign of social wealth we need to change the culture to reduce food loss. This is also a cultural issue.
- Does the world need a convention? Yes. But how do you like to see the world with a healthy diet without the sustainability of the food production, especially when it comes to tenure, landgrabbing, biofuels? When we talk about efforts to create a global convention, it has to consider food production.
- On sustainability, the language is clearly there. The nutrition community has certainly joined forces with the environmental community. But we need to be more clear about what sustainable diets are and what it means in different contexts. It may not be the same in every country. It will certainly be one of the main elements of the post-2015 development agenda.