Director General of Health
Private Bag X828
Pretoria
0001

For the attention of the Director: Food Control

By email: foodcontrol@health.gov.za

Children's Institute and partners' submission on draft Regulation R3337 on the Labelling and Advertising of Foodstuffs: *Protecting child health – a child-rights imperative*

The Children's Institute – with endorsements from the list of signatories below - welcomes and supports the National Department of Health's (NDOH) DRAFT REGULATIONS R3337 on LABELLING AND ADVERTISING OF FOODSTUFFS which draw on the latest science to give effect to children's rights to be protected from foods and beverages that are harmful to their life-course health.

We commend NDOH's efforts to protect South Africans' health by providing evidence-based and easy-to-understand front-of-package warning labels (FOPWLs) on foods harmful to health, and by introducing restrictions that will protect children from the marketing of foods that are harmful to their health in line with the latest recommendations from the World Health Organization (WHO).

We anticipate that measures introduced by R3337 will help curb the rising tide of obesity and non-communicable diseases (NCDs) – at both individual and structural level - by empowering all South Africans - including children - to make more informed and healthy food choices, and by motivating industry to reformulate their products and create a healthier food environment.

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About the Children's Institute

The Children's Institute (CI) is an interdisciplinary policy research unit located in the Faculty of Health Sciences, University of Cape Town where we explore the tensions between policy, practice, and children's lived realities; and draw on this evidence base to advocate for laws and services that enable all children to thrive.

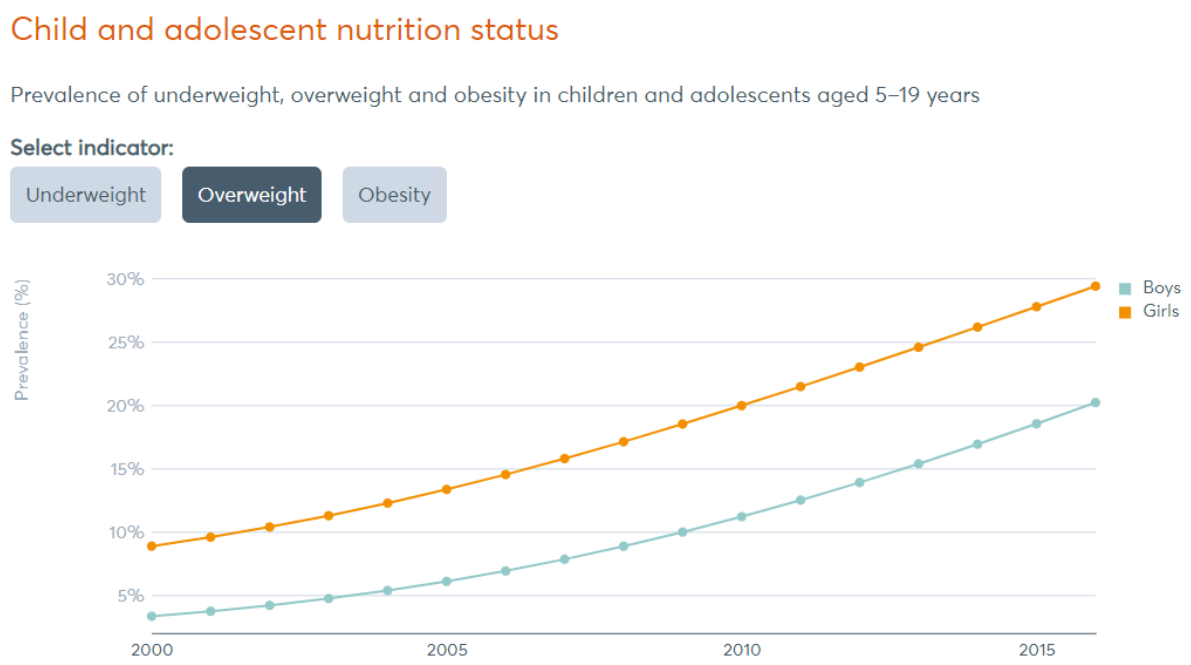
Our work is widely recognised and relied upon by government, academia, civil society groups, international, regional, and national human rights bodies, donors, and the news media. Through our unique blend of scholarly research, teaching and expertise in knowledge translation and advocacy we have helped enhance policy design, implementation, and practice in the fields of social assistance, child protection and early childhood development – and improve access and the quality of services for millions of children and their caregivers.

Motivation

We welcome the draft Regulations Relating to the Labelling and Advertising of Foodstuffs (R3337) and the National Department of Health's efforts to create a healthier food environment for South Africa's children based on our analysis of the high and growing burden of malnutrition and NCDS the increasingly obesogenic nature of the South African and global food system, and the State's responsibility to promote, protect, respect and fulfil children's rights to health, nutrition and optimal development

Why should we be concerned about child nutrition?

- The 2020 issue of the *South African Child Gauge* focused on the slow violence of malnutrition (May, Witten & Lake, 2020). It noted that **1 in 4 children under five are stunted. A further 1 in 8 are overweight or obese** (Department of Health et al, 2019) which is double the global average. Both forms of malnutrition increase children's risk of becoming over-weight or obese as adolescents – and developing diet-related NCDs such as diabetes, hypertension and heart disease. In other words, we need to intervene in early childhood nutrition to break a lifelong and intergenerational cycle of ill-health and poverty.
- The following graph from the *2020 Global Nutrition Report* illustrates how overweight in childhood and adolescence is increasing in South Africa:



- **Overweight and obesity is also increasing in adulthood - affecting 2 in every 3 women in South Africa** – driving an increase in NCDs which are projected to become the leading cause of ill-health and death in sub-Saharan Africa. For example, while the prevalence of diabetes remained mostly unchanged in western Europe, from 1980 to 2014 it has more than doubled in sub-Saharan Africa to levels that are now higher than in high-income countries as thrifty phenotypes meet ultra-processed foods. NCDs are occurring at younger ages and more aggressively in low- and middle-income countries. (Wang et al, 2016)

- In other words**, malnutrition is a kind of slow violence –** a violence that occurs slowly and out of sight – and we are often not aware of the problem until the child's health and development are seriously compromised. Yet malnutrition casts a long shadow across the life course: While undernutrition stunts children's physical growth and cognitive development, undermining their health, education and employment prospects, overnutrition similarly drives an intergenerational cycle of poverty and ill health that comes at great cost to individual children, their families and SA society.

What is driving this burden of child malnutrition?

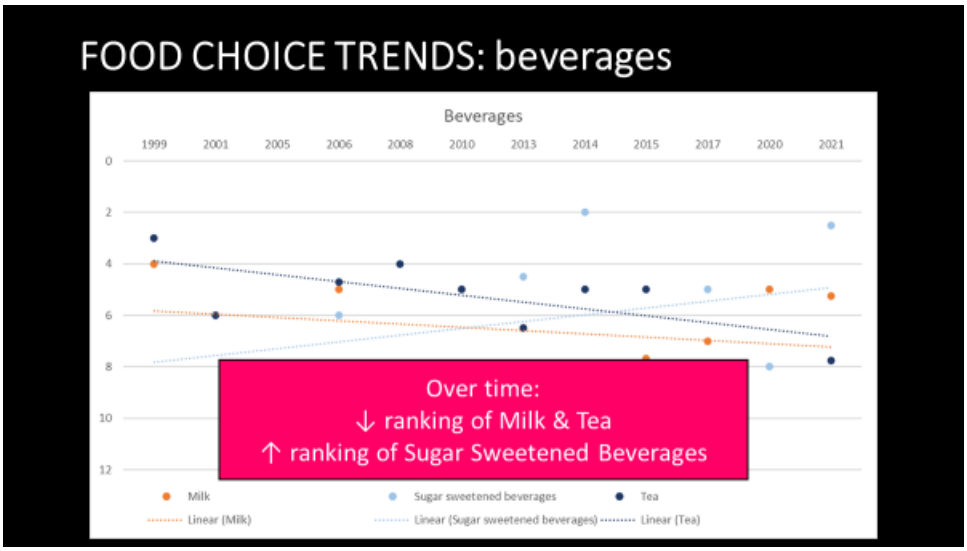
- The 2020 Child Gauge helps us **understand child nutrition in context –** and to look beyond individual behaviour to identify the systemic and structural drivers of malnutrition.
- It describes the way in which poverty and inequality shapes children's dietary intake, living conditions and care arrangements. For example, **60% of South Africa's children live below the poverty line,** 30% of children do not have access to water on site, 11% have no electricity, and 20% travel more than 30 minutes to reach their health care facility. (Statistics South Africa 2021)
- Therefore, it's not surprising that only 29% of children are developmentally on track (Early Learning Outcomes Project,2018) OR that malnutrition continues to be a key driver of under-five mortality in SA – with 1 in 2 hospital deaths associated with moderate or severe acute malnutrition.

What is the role of the food industry?

- Yet families in South Africa are stuck between a rock and a hard place, as our individual food choices are also shaped in powerful ways by our local food environment and the broader food system which is driven primarily by profit rather than creating foods that are good for the health of people and the planet.
- Global food corporations are expanding markets in the global South, directly targeting children as consumers, and flooding local markets with cheap, ultra-processed foods e.g. soft drinks, sweets, breakfast cereals and salty snacks.
- These foods – low in nutrients, high in sugar, salt and saturated and trans fats – are helping to fuel a rapid rise in obesity and NCDs, and many children now live in communities where healthy foods are increasingly unaffordable or unavailable. (Swart et al. 2020)
- Recent data show that 57% of deaths in South Africa are now from NCDs, up from 41% in 2010 and 39% in 2000. (World Bank)
- Much of this growing burden of disease can be attributed to a changing food environment as sales of sugar-sweetened beverage and non-essential foods rose rapidly in South Africa from 2004–2018 following the proliferation of supermarkets and fast-food chains. (Reardon, 2021)

As a result, children are eating more unhealthy, obesogenic foods:
For example, the Soweto Birth-to-Thirty Cohort Study found that:

- Fast-food consumption (McDonalds, Steers, and KFC) increased with age and the top five fast-food items were fried chips, vetkoek, fried fish, pies and boerewors rolls.
- 60 – 70% of adolescents bought tuckshop food ≥ 10 times a week, ate fast food ≥3 times a week, drank sweetened beverages ≥ 2 times/week and ate 9 – 10 confectionary items/week.
- By 17 years of age, fast-food contributed more than half of the recommended daily salt intake and 3 x the recommended daily intake of added sugar.
  (Feeley et al, 2012, Feeley et al 2013, Feeley et al 2014.)
- From the systematic review of all dietary intake studies in South Africa between 1997-2019, Kruger et al. 2022 described how sugar-sweetened beverages increased in ranking whilst the ranking of milk and tea reduced over time for children.



(Slide prepared by Mariaan Wicks, North West University)

Why is marketing of harmful foods to children a problem?

- The WHO has identified marketing of unhealthy foods and beverages to children as a key driver in the global childhood obesity pandemic. (WHO 2016)
- Frequent exposure to food marketing influences children's food knowledge, preferences, consumption, diet quality and health. (Boyland et al 2016, Cairns et al 2013)
- Children are **a lucrative market,** as they are highly receptive to new tastes, exert a powerful influence on the food tastes and purchasing power of their parents and communities, and this early exposure can set a lifelong preference for sweet, salty and ultra-processed foods.
- International fast-food companies spend over $5 million a day marketing unhealthy foods to children. (Prevention Institute)
- These ads use **sophisticated marketing techniques to exploit children's fantasies and** longing for love, home, freedom and independence to build brand loyalty (Lewis et al, 2020) and we encourage you to take a closer look at some of the adverts for breakfast cereals, chocolates, fizzy drinks and fast foods with fresh eyes.

- These kinds of adverts tap into children's love of family, friends and community - all the things that bring us joy from family celebrations to falling in love and coming of age.
- So, we buy these foods as treats for our children without realising the damage that these empty calories – low in nutrients - high in sugar, salt, trans and unsaturated fat – are doing to children's health or the ways in which these adverts are exploiting children's consumer status, and manipulating their behaviour (Lewis et al. 2020)

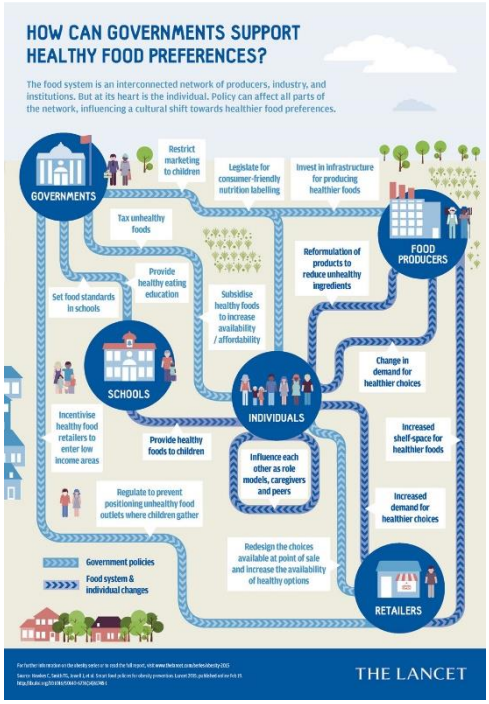
Did you know?

- The average child exposed to unhealthy food marketing consumes more food in general and is more likely to choose to eat an unhealthy food option. (Smith et al 2019, Gilbert-Diamond et al 2017, Boyland et al, 2013)
- The presence of marketing strategies is associated with higher product unhealthiness:
    - In Belgium, almost 90% of food products with child directed marketing on package, were considered unhealthy (Aerts and Smith, 2019) and preliminary analyses in SA suggest a similar scenario, where **unhealthy food products were more frequently advertised on television in SA than healthy food and beverages.**
    - Advertising expenditure on carbonated drinks accounted for over 60% (ZAR 2220 million) of the total expenditure on sugar-sweetened beverages. Based on expenditure patterns, TV was the preferred medium of advertisements, with companies prioritizing children's and family viewing time. (Boachie et al 2023)
    - **The most persuasive technique used in the food marketing for children has little to do with the quality of the product but rather draws the child to themes of fun, happiness, adventure** and other imagery instead of any product information (Mills, 2016).
    - On SA television these persuasive strategies were used more in ads for unhealthy food.
    - These findings are **in breach of the South African Marketing to Children Pledge and suggest a failure of the industry self-regulation system**. (Yamoah et al 2021)
    - In a study done in South Africa, parents found these marketing strategies to be ethically and morally wrong and showed great concern regarding the amount of foods high in sugar and fat being advertised to children on TV and **the use of personalities and free gifts to promote products** (Fonseca, 2010).

What is the state's responsibility?

The Lancet obesity series published in 2015 found that:

"Today's food environments exploit people's biological, psychological, social, and economic vulnerabilities, making it easier for them to eat unhealthy foods. This reinforces preferences and demands for foods of poor nutritional quality, furthering expanding unhealthy food environments. Regulatory actions from governments and increased efforts from industry and civil society will be necessary to break these vicious cycles."



The Lancet series called on governments to step in to transform local food environments and support healthy food choices. It recognised how dietary preferences are set early in childhood and adolescence – and it included a recommendation to restrict marketing of harmful foods to children.

These recommendations echoed an earlier call by the World Health Organisation to protect children from the marketing of harmful foods and beverages:

- In 2010 the World Health Assembly adopted Resolution 63.14 calling on states to **protect children from the marketing of food and non-alcoholic beverages.** (WHA 2010) and accompanied by a set of recommendations to guide the regulation of marketing to children (WHO, 2010)
- These recommendations resonate with the broader 2008 **Human Rights Council Framework on Business & Human Rights** which highlights corporates' responsibility to respect human rights **and the need** for States to develop strong monitoring and reporting systems and the political will and power to enforce these regulations.

Previous efforts, limited progress

- The national Department of Health first introduced **Regulation 429** of the Foods, Cosmetics and Disinfectants Act to restrict the marketing of unhealthy food to children in 2014.
- **Guideline 14** of the draft regulations provided specific criteria relating to the age of children (0 to 18 years), the timeslots in which unhealthy food marketing may not occur, the type of health messages used, and the definition of unhealthy foods.
- And the **Strategy for the Prevention and Control of Obesity in South Africa 2015 – 2020** included a similar focus on responsible and ethical marketing of food by the food industry.
- Yet following pushback from the food industry, the draft regulations have not been finalised.
- SA's failure to put in place regulations to protect children from the marketing of unhealthy food and beverages was identified as one of the critical gaps in South Africa's national nutrition policy framework by the 2020 Global Nutrition Report and needs to be addressed as a matter of urgency.

National nutrition policies

Implemented national food and NCD policies

Food-based dietary guidelines	Legislation for mandatory salt iodisation	Sugar-sweetened beverage tax	Policy to reduce salt/sodium consumption	Policy to limit saturated fatty acid intake
Yes	Yes	Yes	Yes	No
Policy to eliminate industrially produced trans fatty acids	Policy to reduce the impact of marketing of foods and beverages high in saturated fats, trans fatty acids, free sugars, or salt on children	Operational policy, strategy, or action plan to reduce unhealthy diet related to non-communicable diseases	Operational, multisectoral policy, strategy or action plan for non-communicable diseases	Operational policy, strategy or action plan for diabetes
Yes	No	Yes	No	No

Source: Global Nutrition Report 2020

This was followed by the most recent 2023 guidance from the WHO calling on States to introduce mandatory restrictions to protect children of all ages from the harmful impact of food marketing. These restrictions should: use a government-led nutrient profile model to identify and restrict the marketing of foods high in fact, sugar and salt, and be sufficiently comprehensive to minimise the risk of industry subverting the regulations by migrating its marketing to other media. (WHO Guidelines 2023)

In addition, the WHO Guidelines motivate for policies to protect children from both exposure to, and the power of, marketing, where:

- Exposure is the reach (percentage of people in a target market who are exposed) and frequency (the number of times an average person is exposed) of a marketing communication, message or action.
- Power refers to the extent to which a marketing communication, message or action achieves its communications objectives, and is influenced by the creative content and strategies used. The power of food marketing to persuade children relates to techniques appealing to children, including promotional characters, branding, emotional appeals, games, engagement techniques, interactive or downloadable content, and celebrity endorsements.

The failure of self-regulation

- A common refrain from the food and beverage industry is that self-regulation of harmful marketing directed at children has been successful and is industry's continued preference. This contention however, is not supported by evidence, and in fact the weight of evidence is that self-regulation – even in contexts with efficient regulatory systems – has failed – partly because self-regulatory actions such as commitments and pledges lack clear and specific

provisions, measurable targets and enforcement provisions. The evidence is overwhelming that self-regulatory schemes seeking to protect children from harmful commercial exploitation have had little to no impact on harmful marketing directed at children. (Clark et al, 2020)

- Examples of such evidence can be seen in several jurisdictions:
  - **Mexico** – those companies that had voluntarily signed up for self-regulation still focused 93% of their advertisements on unhealthy food and beverages. (Theodore et al 2017)
  - **Australia** – the introduction of self-regulation to prevent children being exposed to unhealthy fast-food advertising had no impact. (Hebden et al, 2011)
  - **Spain** – after the introduction of the Spanish code of the self-regulation of food and drinks advertising directed at children under the age of 12 years resulted in an increase of such advertising between 2008 and 2012. (Leon-Flandez et al, 2017)
  - **United States of America (USA)** – the United States has an Interagency Working Group on Foods Marketed to Children guidelines. Only 1.4% of child targeted food advertising met all aspects of the Guidelines. (Hingle et al, 2015)
  - **USA** – voluntary advertising industry guidelines to protect underage youth exposure to alcohol advertising has not prevented alcohol brands popular with underage drinkers advertising in magazines with high underage readership. (King et al, 2017)
  - **Canada** – participation in the Canadian Children's Food and Beverage Advertising Initiative had no impact on whether companies promoted unhealthy foods and beverages during programmes with high numbers of child viewers. (Kent et al, 2018)
  - **New Zealand** – almost 90% of unhealthy food advertisements are shown during children's peak viewing times in direct contravention of industry self-regulation agreements. (Vandeviivere,et al 2017)

- Existing self-regulation schemes have failed and have left children highly exposed to extensive marketing of unhealthy products. Expecting industry to self-regulate themselves is akin to putting a fox in the hen house. Self-regulation is not a viable strategy and is largely to the benefit of industry. It is imperative that self-regulation is not considered a serious option to regulate marketing. Our Constitution has at its core the duty to protect the wellbeing of children – it is incumbent upon the state to reject a commercialised view of childhood. (Woodrow et al, 2007) As was recently argued "the policy choices being made today will shape our societies' wellbeing for years to come […] we propose one overarching question to guide countries' efforts: are we making the world better for children?" (The WHO-UNICEF-Lancet Commissioners, 2020)

The effectiveness of mandatory regulations

- Chile was the first country to introduce mandatory front of pack warning labels (FOPWL) in 2016, and they have helped **t**o shift social norms and behaviour leading to a 24% drop in sugary drink purchases and significant declines in sodium (–37%), and calories from sugar (–27%), and saturated fat (–16%) (Taille, 2020, 2021) – with changes in attitudes to unhealthy food purchases driven in part by the warning labels and in part by children encouraging their mothers not to purchase unhealthy foods. (Corvalan 2019, Correa et al, 2019)

- It is important to note that FOPWLs were introduced in Chile as part of broader suite of interventions including restrictions on the marketing of unhealthy foods to children, and the banning of high salt, sugar and fat foods in schools – and that such a coordinated approach is likely to have greater impact than FOP labels alone.

- Other early adopters of FOPWL labels and marketing restrictions include Peru, Argentina and Mexico.

Protecting and empowering children - A child-rights imperative

- The state has an obligation to fulfil, respect, promote and **protect** children's rights to nutrition, health, survival and development, as well as their rights to information and protection from economic exploitation.

- In addition, all decisions affecting a child or group of children must be guided by the general principle that **children's best interests are of paramount importance**. (Constitution, Section 28 (2))

- These rights are **interdependent and indivisible**. For example, the right to nutrition is dependent on children's right to know when foods are harmful to their health, and withholding this information would violate their best interests.

- This means that industry's freedom of expression must be limited to ensure that it's marketing practices do not violate children's best interests and their rights to health, information, protection and guidance in line with their evolving capacities.

The interpretation of children's constitutional rights should also be **guided by international law** including the General Comments issued by the United Nations Committee on the Rights of the Child to guide implementation:

- For example, every child has the right to be free from economic exploitation (UNCRC Articles 32 and 36) This means children need to be protected from manipulative marketing practices that allow industry to take advantage of children's vulnerabilities, including their emotions, and their limited ability to process and evaluate information, including the increasing use of children's personal data to enable brands to directly target children.

General Comment 16 therefore issues clear guidance on the State's role to protect children from harmful business practices:

- *States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights. Such measures can encompass the passing of law and regulation, their monitoring and enforcement, and policy adoption that frame how business enterprises can impact on children's rights. States must investigate, adjudicate and redress violations of children's rights caused or contributed to by a business enterprise. A State is therefore responsible for infringements of children's rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements.*

And **General Comment 25** on the rights of children in the digital environment calls form similar protective measures:

- *States parties should encourage the use of digital technologies to promote healthy lifestyles, including physical and social activity. They should regulate targeted or age-inappropriate advertising, marketing and other relevant digital services to prevent children's exposure to the promotion of unhealthy products, including certain food and beverages, alcohol, drugs and tobacco and other nicotine products.*

The State must also report to the UN Committee on progress towards the realisation of children's rights in South Africa. The UN Committee's most recent **Concluding Observations (2016)** in response to South Africa's Second Periodic Report calls on the South African government to:

- *"Regulate the marketing of unhealthy foods to children in order to address the rise in child obesity and introduce strategies that enable poor households to access healthy food."*

South Africa is due to report to the UN on its progress in addressing this issue as part of the State's Third Periodic Report later this year.

The precautionary principle

We also urge the State to adopt the precautionary principle and to take proactive steps to protect the health and best interests of children based on the best available evidence we have at this time. Waiting for absolute and conclusive research can potentially put a generation of children at unnecessary risk – as was the case with lead poisoning and tobacco smoking where we delayed too long before taking action. (WHO Europe, 2004)

The 1998 Wingspread Consensus Statement on the Precautionary Principle states that: "*When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically*."

The precautionary principle places the burden of proof on the proponents of an activity rather than on the victims or potential victims of the activity. It upholds the public's right to informed consent, and it requires States to put anticipatory measures in place to protect people – and especially children - from unnecessary risks and potential harm.

General statement of support for R3337

We therefore welcome and support the National Department of Health's DRAFT REGULATIONS R3337 on LABELLING AND ADVERTISING OF FOODSTUFFS which draw on the latest science to give effect to children's rights to be protected from foods and beverages that are harmful to their health.

We commend NDOH's efforts to protect South Africans' health by providing evidence-based and easy-to-understand front-of-package warning labels on foods harmful to health, and introducing restrictions that will protect children from the marketing of foods that are harmful to their health.

We anticipate that measures introduced by R3337 will help curb the growing tide of obesity and NCDs, by: empowering all South Africans - including children - to make more informed and healthy food choices; protecting children from exploitative marketing practices; and motivating the food and beverage industry to reformulate their products and create a healthier food environment for South Africa's children.

Specific elements of the R3337 that we support

1. A strong evidence base

a) Nutrient profiling model to identify unhealthy foods

We support the use of the proposed nutrient profiling model (NPM) as it is evidence-based and fit for purpose, (Frank 2021) as it has drawn on the NPMs used in other countries to successfully adopt FOPWL systems and adapted this to the South African context. It uses clear cutoff points to identify foods that are harmful to health because of their high sugar, saturated fat and/or salt content, or because they contain non-sugar sweeteners.

b) Mandatory front-of-package warning labels on unhealthy foods

Understanding what is in the food we eat is essential if consumers are to be equipped the knowledge to make informed and healthy choices. But the current nutrition facts panels are written in small print and technical language that is difficult for consumers and especially children to understand. We therefore support the NDOH's efforts to introduce mandatory nutrition panels on food packaging (Regulation 46) alongside the mandatory FOPWL system (Regulation 51) to ensure FOPWL can be effectively implemented and monitored.

c) Easy-to-understand warning labels

We strongly support Regulation 51 which introduces mandatory FOPWLs so that consumers are able to easily identify food and beverages high in sugar, salt, saturated fat, or containing non-sugar sweeteners. These FoPWLs will enable consumers to make informed and healthier decisions about the foods they purchase and moderate South African's consumption of foods and beverages that are harmful to health.

The simple, black triangular warning labels have been tested among South African consumers (Bopape, 2021) including a randomised control trial (Bopape, 2022) and have proven easy for South Africans to understand and identify unhealthy foods containing excessive amounts of these nutrients of concern. FOPWL's may therefore encourage South African consumers to choose healthier diets.

d) FOPL location and size

We also support Regulation 51 (2) and Annexure 10 that describes how FOPWLs will be placed on the front, top right-hand corner of the package and cover 25% of the front of the packaging. This will ensure that warning labels are easily seen by consumers at all points of sale, including vending machines.

e) Warnings for artificial sweeteners

We also support the NDoH's inclusion of warnings for artificial sweeteners, given growing concerns that children's consumption of artificial sweeteners affects their sweetness preferences later in life (Appleton, 2018) as well as their gut health (Archibald, 2018). In addition, the 2023 WHO guidelines on the use of non-sugar sweeteners, recommends that non-sugar sweeteners should not be used as a means to achieve weight control or reduce the risk of NCDs. This approach is particularly pressing given increased consumption of artificial sweeteners following industry reformulation of sugar-sweetened beverages to reduce the sugar content following the introduction of the Health Promotion Levy (Sugar Tax).

f) Prohibition of health and nutrition claims

Many of these products are marketed as being healthy and nutritious despite containing excessive amounts of salt, sugar and fat. So, we welcome the NDOH's efforts to prohibit industry from making health and nutrition claims on foods and beverages with FoPWL (Regulation 51 (5)). The inclusion of vitamins and minerals in foods high in salt, sugar and fat is concerning as it provides an opportunity for industry to emphasize the benefits of the added vitamins and minerals whilst there is no biological evidence that any micronutrient can cancel out the negative effect of excessive amounts of salt, sugar and fat.

2. Inclusion of marketing restrictions

a) A special focus on children

We are particularly pleased to see that the NDoH has included mandatory marketing restrictions on foods that carry FOPWL which are in line with the most recent World Health Organisation recommendations to restrict the marketing of unhealthy foods to all children (WHO, 2023).
We are also pleased that the definition of children corresponds to the definition of children in section 28 of the Constitution and UN Convention of the Rights of the Child, and in so doing recognises that children's right to protection from the marketing of products harmful to health extends to adolescents. This is particularly important given that the findings of the Birth-to-Thirty Soweto Cohort Study which found that fast-food consumption increased with age, AND because adolescents are likely to be more vulnerable to industry advertising than adults, as the teenage brain

is hypersensitive to pleasure and reward, and their frontal cortex (the part of the brain responsible for decision-making and self-control) is not yet fully developed. (Harris et al, 2023; Pechman et al, 2005)

b) Marketing is not limited to advertisements

Industry draws on a variety of marketing techniques aimed to build relationships with consumers and brand loyalty. (WHO, 2023) We therefore commend the inclusion of specific restrictions (Regulation 52) on the use of free gifts, incentives and figures that may attract children (celebrities, cartoons, animations etc.). From a public health perspective, these products should not be marketed to consumers, and at the very least, the regulations should be further strengthened to limit hildren's exposure to the marketing of products carrying FOPWL across a range of media and settings (see note below). But, if these products do continue to be advertised to adult consumers then we support the inclusion of FOPWLs (Regulation 52(2)) and warning messages (Regulation 52(3)&(4)) in any advertisement of these products.

3. Inclusion of infant formula

We support the NDoH's decision to include FOPWL on commercial milk formula for ages older than 6 months. (Regulation 51 (4)) We also urge the NDoH to introduce plain packaging of formula milk in its revision of the R991 regulations relating to foods for infants and young children as recommended in the Lancet 2023 Breastfeeding Series (Rollins et al, 2023), and this should be done ASAP within the broader context of strengthening all programmes and policies to protect, promote and support breastfeeding.

4. Six-month timeline for implementation

We support the six-month timeline (Regulation 77 (4)) for implementation of the front-of-package warning labels and marketing restrictions which will give industry ample time to reformulate products and redesign packaging to abide with the regulations.

Recommendations on how to further strengthen R3337

1. Expand the proposed marketing restrictions

We recommend that these marketing restrictions are further strengthened to cover the full range of marketing techniques and channels used to target the consumers of unhealthy food and beverages, including both traditional and digital marketing.

The terms "advertising" and "marketing" should therefore be defined broadly to cover the full range of products, types of programming, times, settings used to market these products and brands

including techniques such as sponsorship, product placement, sales promotion, point-of-purchase displays and philanthropic activities - and industry funding of research and nutrition education.

Ideally the State should introduce a full ban on the marketing and advertising of products that carry FOPWL in order to protect everyone from the marketing of foods that are harmful to health. At the very least, the following mandatory restrictions should be introduced to align R3337 with the most recent guidance from the WHO to protect children from the marketing of foods harmful to health (WHO, 2023).

a) Prohibiting the depiction of children and adolescents on packaging, advertising and marketing materials.

Section 52 states that advertisements of foods carrying a FOPWL will not be allowed to depict "children in mixed groups with young adults older than 18". In order to align with the WHO recommendations to protect children from the harms of marketing, we recommend extending this to prohibit the depiction of any children in advertisements of products with FOPWL.

c*) Restricting children's exposure to advertising of products carrying FOPWL on TV and other channels*

The WHO (2010) recommends that States should introduce measures to reduce both the power of, and children's exposure to, the marketing of foods that are harmful to health. While R3337 incorporates a number of strategies to reduce the power of marketing targeted at children, it needs to do more to limit children's exposure to the marketing of foods with FOPWL across a range of settings and platforms. For example, countries that have restricted the marketing of unhealthy foods and beverages on television have found this has to be effective in reducing children's exposure to marketing by 35% in Chile and 52% in the UK. (Dillman Carpentier et al, 2020; OFCOM, 2010)

We therefore recommend that the NDoH prohibits the advertising of foods with FOPWLs on TV – with strict penalties for broadcasters, advertising and food companies that do not comply. These restrictions should not just be limited to TV. They should be extended to all forms of multimedia entertainment including radio and social media to ensure that industry does not migrate to other channels in an effort to circumvent TV restrictions.

b) Prohibiting advertisements or sale of products carrying FOPL in schools and child-centred settings

The South African school food environment is not conducive to healthy eating due to the many unhealthy foods sold by school tuck shops or food vendors. Better regulation of which foods can be marketed and sold at schools is therefore needed in order to create a healthier food environment for South Africa's children.

Banning the marketing and sale of products that carry FOPWL at schools is strongly recommended based on Chile's success in adopting a three-pronged strategy that included the introduction of FOPWL, marketing restrictions and prohibiting the sale of unhealthy foods in schools. This combined approach successfully decreased the purchasing of unhealthy products of nutrients of concern in Chile, (Taille, 2021) and did not come at the cost of employment, wages or profits for the food and beverage industry. (Paraje et al, 2022)

These prohibitions should also be extended to other settings where children gather. These include, but are not limited to, ECD centres, schools, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises.

d) Restricting "point of sale" marketing

Products carrying FOPL should not be allowed to be promoted in supermarkets or retail outlets, nor should there be point of sale marketing or displays on the shelves. This includes the placement of products carrying FOPWLs in positions that tempt children or adult consumers to make impulse buys for example, where customers are trapped in queues waiting at the checkout points.

e) Prohibiting the food and beverage industry from providing nutrition education to the public and sponsoring educational and scientific events

Industry marketing practices also include the direct provision of nutrition education programmes, and the sponsorship of academic conferences to promote their products to health and allied professionals. South Africa's R991 Regulations relating to Foodstuffs for Infants and Young Children, and the 2023 WHO's Clarification on Sponsorship of Health Professional and Scientific Meetings by Companies that Market Foods for Infants and Young Children: Information Note both include measures to ensure that health and nutrition education are protected from commercial interests. This includes prohibiting manufacturers or distributors of commercial milk formula from providing health and nutrition education to the general public, and from sponsoring educational events for health and allied professionals such as congresses, workshops or seminars. These prohibitions should be extended to manufacturers and distributors of foods with FOPWLs, and there should be full disclosure of any conflicts of interest related to research funded by the food and beverage industry.

2**. Introduce robust monitoring and enforcement mechanisms**

The 2010 WHO Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children, state that: "The policy framework should specify enforcement mechanisms and establish systems for their implementation. In this respect, the framework should include clear definitions of sanctions and could include a system for reporting complaints."

The lack of clear monitoring and enforcement plans is therefore of grave concern, given that industry-led attempts at self-regulation have failed with food and beverage companies violating their own voluntary pledges such as the Pledge on Marketing to Children, the Consumer Goods Council of South Africa 2009 Pledge, and the South African Food & Beverage Code.

It is therefore essential to put in place mandatory regulations, and an effective monitoring and enforcement mechanism (for example, an easy-to-access hotline) to enable reporting of violations and ensure compliance (UNICEF, 2021). This should include sanctions for non-compliance such as the penalties outlined in Regulation R991 (Section 21) which include the filing of criminal proceedings, fines and the removal of products off the market. Additional enforcement mechanisms such as preventing the sale or procurement of products from non-compliant producers should also be

considered. Lessons from enforcing restrictions on the marketing of alcohol and tobacco products may also prove useful in identifying best practices.

In conclusion

The Children's Institute reiterates its support of the NDoH's pro-active, precautionary and child-centred approach to protecting South Africa's health from the marketing of foods that are harmful to health, as part of its broader strategy to reduce the burden of obesity and NCDs.

We note industry's opposition to the previous R429 regulations, and global evidence of industry efforts to dilute or delay policy reform, so we encourage the South African government to uphold its primary mandate to put children's health before corporate profits, and to protect children's constitutional rights and best interests which are to be considered of paramount importance in any matter effecting a child.

Endorsements

Organizations

1. Child Health Priorities Association
2. Centre for Child Law, University of Pretoria
3. Institute for Life Course Health Research, University of Stellenbosch
4. Division of Community Paediatrics, University of the Witwatersrand
5. SAMRC/Wits Centre for Health Economics and Decision Science (PRICELESS SA)
6. Advocacy Committee, Department of Paediatrics and Child Health, University of Cape Town
7. Philani Maternal and Child Health and Nutrition Programme
8. School of Public Health, University of the Western Cape
9. Biowatch South Africa
10. People's Health Movement

Individuals

1. Professor Julian May, UNESCO Chair in Science and Education for African Food Systems
2. Distinguished Professor Linda Richter, DSI-NRF Centre of Excellence in Human Development, University of the Witwatersrand
3. Professor Rina Swart, Nutrition Lead DSI-NRF Centre of Excellence in Food Security, University of the Western Cape
4. Professor Mark Tomlinson, Institute for Life Course Health Research, University of Stellenbosch
5. Professor Chris Scott, Chairperson of the Global Task Force for Musculoskeletal Health and Director of Clinical Research Unit, University of Cape Town
6. Professor Jo Wilmshurst, Director African Paediatric Fellowship Programme, Department of Paediatrics and Child Health, University of Cape Town
7. Professor Emeritus Peter Cooper, Department of Paediatrics and Child Health, University of the Witwatersrand
8. Professor Scott Drimie, South African Food Lab and Center for Complex Systems in Transition, Stellenbosch University
9. Professor Rachel Wynberg, Bio-economy Research Chair, University of Cape Town
10. Associate Professor, Wiedaad Slemming, Children's Institute, University of Cape Town
11. Extraordinary Professor Tanya Doherty, School of Public Health, University of the Western Cape, Health Systems Research Unit, South African Medical Research Council
12. Associate Professor Neil McKerrow, Department of Paediatrics and Child Health, University of KwaZulu-Natal
13. Dr Thandi Wessels, Department of Paediatrics and Child Health, University of Stellenbosch

14. Dr Jaco Murray, Department of Paediatrics and Child Health, University of Stellenbosch
15. Dr Natasha Rhoda, Department of Paediatrics and Child Health, University of Cape Town
16. Sameer Rahim, Department of Paediatrics and Child Health, University of Cape Town
17. Dr Thandi de Wit, Department of Paediatrics and Child Health, University of Cape Town
18. Dr Max Kroon, Department of Paediatrics and Child Health, University of Cape Town
19. Dr Gabriel Urgoiti, RX Radio
20. Noluyolo Ngomani, RX Radio
21. Dr Sa-eeda Chippendale, Department of Paediatrics and Child Health, University of Cape Town
22. Dr Michelle Meiring, Department of Paediatrics and Child Health, University of Cape Town
23. Professor Lisanne du Plessis, Division of Human Nutrition, Stellenbosch University
24. Associate Professor Emeritus Michael Hendricks, Department of Paediatrics and Child Health, University of Cape Town
25. Associate Professor Maylene Shung-King, School of Public Health, University of Cape Town
26. Dr Claire Proctor, Department of Paediatrics and Child Health, University of Cape Town
27. Lori Lake, Children's Institute, University of Cape Town
28. Dr Jenny Nash, Specialist Family Physician, Amathole District Clinical Specialist Team
29. Dr Sara Jewett Nieuwoudt, School of Public Health, University of the Witwatersrand
30. Associate Professor Sanjay Lala, Department of Paediatrics and Child Health, University of the Witwatersrand
31. Associate Professor Emeritus Anthony Westwood, Department of Paediatrics and Child Health, University of Cape Town
32. Professor Mignon McCullough Department of Paediatrics and Child Health, University of Cape Town, Department of Paediatrics and Child Health, University of Cape Town
33. Dr Nomlindo Makubalo, District Paediatrician, Nelson Mandela Bay, Eastern Cape
34. Dr Rajas Naidoo, District Clinical Specialist Team, West Rand, Gauteng
35. Professor Ashraf Coovadia, Department of Paediatrics and Child Health, University of the Witwatersrand
36. Professor Emeritus, Louis Reynolds, Department of Paediatrics and Child Health, University of Cape Town
37. Professor Steve Reid, Primary Health Care Directorate, University of Cape Town
38. Dr Eva Perez
39. Dr Katie Pereira-Kotze, Senior Nutrition, First Steps Nutrition Trust
40. Dr Zakira Mukuddem-Sablay, Department of Paediatrics and Child Health, University of Cape Town

41. Dr Sue Philpott, Disability Action Research Team (DART)
42. Professor Gayle Sherman, Department of Paediatrics and Child Health, University of the Witwatersrand, National Institute for Communicable Diseases
43. Petronell Kruger, Senior Lecturer, SAMRC/Wits Centre for Health Economics and Decision Science (PRICELESS SA)
44. Dr Jawaya Shea, Child Health Unit, Department of Paediatrics and Child Health, University of Cape Town
45. Dr Gill Schermbrucker, Department of Paediatrics and Child Health, University of Cape Town
46. Dr Shamiel Salie, Department of Paediatrics and Child Health, University of Cape Town
47. Dr Gill Riordan, Department of Paediatrics and Child Health, University of Cape Town
48. Dr Dave Le Roux, Department of Paediatrics and Child Health, University of Cape Town
49. Professor Leslie London, School of Public Health, University of Cape Town
50. Professor Asha George, School of Public Health, University of the Western Cape
51. Dr Mary Morgan, Head, Department of Paediatrics and Child Health, Grey's Hospital
52. Dr Elmarie Malek, Department of Paediatrics and Child Health, University of Stellenbosch
53. Inger Hendry, Department of Paediatrics and Child Health, University of Cape Town
54. Professor Emeritus Andrew Argent, Department of Paediatrics and Child Health, University of Cape Town
55. Dr Ingrid Le Roux, Philani Maternal and Child Health and Nutrition Programme
56. Dr Florence Tushemerirwe, School of Public Health, Makerere University

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