

Outcome Document

Roundtable

Child right protection and industry advertisement, promotion and sponsoring (APS) in the Non-Communicable Disease crisis

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**university of
 groningen**



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Introduction

Industry advertisement, promotion, and sponsoring aimed at getting children and young people hooked on their products is one of the main and ongoing challenges in combatting the global crisis of noncommunicable diseases (NCDs). Recent reports concerning '[A Child Rights-Based Approach to Food Marketing](#)' and from the [Independent High-Level Commission on NCDs](#) are just two examples of this issue being high on the political agenda. Furthermore, the launch of the second WHO Civil Society Working Group on NCDs will bring together civil society organizations and global health experts to develop a much needed and integrated approach to the NCD crisis. Based on human rights law and the Convention on the Rights of the Child (CRC) in particular, governments have obligations to protect children from economic exploitation and any harm caused by third parties like the tobacco and food and beverages industry. However, despite these obligations and to protect the best interest of the child, State responses are severely lacking.

Against this backdrop, the [European Scientific Network on Law and Tobacco \(ESNLT\)](#) as led by the [Global Health Law Groningen Research Centre](#) of the University of Groningen (NL), hosted a roundtable to bridge academia, and policy and practice to set the scene for multidisciplinary and cross-sectoral collaboration in this important domain.

Aims and Envisioned Outcomes

The overall aim of this roundtable was to draw support for the use of a child rights-based approach and generate a better understanding of the successes and potential constraints thereof that need further analysis. The roundtable went beyond outlining the relevance of a child-rights approach and instead focused on how to *use* human rights-based approaches in this area, we specifically aimed to:

- Discuss in what ways the CRC is standard setting in adopting APS-bans.
- Share experiences and evaluate concrete examples of the use of a child-rights approach in domestic and international NCD responses (e.g. taxation measures) and in practice (e.g. lobbying or other efforts to influence policy development).
- Identify new and emerging issues faced by relying on the CRC and a child-rights approach to introduce APS bans.
- Explore new opportunities for multi-stakeholder and multisectoral collaboration to further advocate for child rights approaches to address industry behavior across NCD control.
- Determine areas in need of further research in order to encourage domestic NCD regulation to control industry APS building on a child-rights approach.

NB: Across all aims, we strived to take a holistic approach and address all risk factors integrally instead of continuing to working in silo approaches.

The aim of the roundtable was to work towards a concrete outcome document. Based on experience shared and conclusions drawn, we aimed to conclude a list of key action areas for both policy and practice, as well as academia. The outcome document aimed to answer, what existing research could be used better in advocacy and policy work, and what areas require further research?

Opening Statements

The roundtable began with opening remarks from Prof. Brigit Toebes. She briefly introduced the topic and how it relates to the ongoing work at the Global Health Law Groningen Research Centre.

Dr. Marie Elske Gispén also gave opening remarks in which she provided an overview of the work done by the Global Health Law Groningen Research Centre, the European Scientific Network on Law and Tobacco (ESNLT), and the rationale behind hosting the roundtable. She then provided a brief overview of an ongoing project on Child Rights and Tobacco control which has been funded by the Dutch Cancer Society in which APS bans have been a topic of interest throughout the course of this

project. She further introduced the aims for the day including the envisioned end result being an outcome document.

Panel 1: Global Perspectives: an overview

This session included presentations from WHO and UNICEF. The presentations provided us with updates on current challenges, approaches, and success in child-rights protection and industry regulation around the globe.

Dr. Benn McGrady from WHO provided an overview of the current work being done concerning APS bans the areas of tobacco, alcohol, food and breast milk substitutes. Only tobacco is regulated by a binding agreement, the Framework Convention on Tobacco Control (FCTC) and only domestic tobacco control regulations benefit from comprehensive monitoring by the WHO.

Kristen Kephelas from UNICEF discussed the shift in focus from undernutrition to overweight and obesity. Currently in the works is the 2018 World's Children Report which will focus on the theme of nutrition and a WHO-UNICEF toolkit which focuses on guidelines for marketing and children.

Panel 2: Insights from Academia: an overview

This session intended to provide an overview of academic research into different aspects of NCD control, child rights protection and industry regulation.

Dr. Amandine Garde discussed the EU and the efforts made in terms of NCD prevention and control. While the Convention on the Rights of the Child (CRC) is a source of general principles for EU law, this has not led to a child rights-based approach to NCD regulations. Moreover, while the EU has many tools at their disposal to reduce NCDs it was conveyed that the EU has failed to use them effectively.

Dr. Leslie London discussed the problem with alcohol consumption in South Africa. Exposure to alcohol, targeted advertising towards children, and liquor outlets on school property are just a few of the ongoing concerns. Reliance on a child rights-based approach is a beneficial approach to increase APS bans in the country.

Dr. Katharina Ó Cathaoir discussed food regulation and child rights in the context of the Committee on the Rights of the Child. She discussed challenges faced by the committee in order to provide expert advice on a wide range of topics. She further highlighted the challenges faced by social media and digital marketing when it comes to targeting children.

Group Discussions:

After a general discussion, participants split up into small groups to address the role each of the following three topics play in implementing a child-rights based approach, low- and middle-income countries, intersectionality and vulnerability, and trade. All groups were asked to come up with concrete recommendations based on the following questions as relevant to the theme of their group:

1. What are the emerging opportunities for drawing upon a child rights-based approach to advance and support NCD regulation and APS bans?
2. How can we best disseminate the accumulated knowledge on a wider scale and foster collaboration, and what can be concrete action for all stakeholders involved (e.g. civil society organizations, policy makers, etc.)

After the individual discussion the group rejoined and summarized what was discussed.

Group 1: Low-and middle-income countries

- There is the need for an increase in political will to act. Advocacy can play a key role in this respect and is further supported by civil society and the academic community. However, we must bear in mind that civil society space is constrained in some countries.
 - It may be an option to consider using public health networks as an entry point when civil society activity is constrained (e.g. EQUINET, based in Zimbabwe).
- Generally, better evidence is needed on which strategies to restrict marketing work best. Developing countries often don't have their own data and are in need of evidence research. This evidence will serve to help shape policies and identify why some policies fail.
- Engaging regional blocs such as the East Africa Community, Southern African Community can lead to effective regulations (e.g. there is a group of public officials who regulate pesticide with funding from the Swedish International Development Cooperation Agency (SIDA)). Courses can also be arranged in a similar fashion.
- There is added value in engaging with broader academic and civil society networks rather than solely those focusing on NCDs (e.g. Equity and Health in Eastern and Southern Africa).
- Low- and middle-income countries' needs can be addressed in WHO plans for the development of an online academy.
- Increase support for bilateral academic collaboration (e.g. Collaboration between the University of Groningen based in the Netherlands and Mzumbe University based in Tanzania).
- It is important to engage with partners that have natural links with the concerned ministries (e.g. Finance – World Bank / UNDP).
- We should engage regional development banks (e.g. Asian Development Bank works on fiscal policies).
- Increase awareness and use of web-based opportunities for sharing best practice cases. For example, the World Federation of Public Health Nutritionists has set up a mechanism for reporting conflicts of interest which can then be consolidated into lessons and shared.
- Engage with the Committee on the Rights of the Child especially when a parallel report is pending. It is also important to engage with local civil society organizations.
- One strategy may be to bring a test case in a country with a relevant constitution (e.g. South Africa).
- Develop or make use of coalitions of NCD advocates and NGOs working on child rights (e.g. NCD Alliance).
- Mapping of law schools teaching public health law and encouraging coverage of NCDs (e.g. African Association of Schools of Public Health Associations is having a meeting in Kampala late 2019 and aims to link the school of public health with law schools teaching health law)

- Train public health professionals and equip them with core competencies such as the inclusion of human rights and law in Masters of Public Health graduate training. This would in turn further stimulate dialogue between those working in public health and law.

Group 2: Intersectionality and vulnerability

- It remains important to include intersectionality and the notion of vulnerable groups in our own networks and any outreach activities.
 - While doing so it is important to place emphasis on intersectionality and not solely make use of the term vulnerable as it may lead to stigmatization.
- Defining what constitutes a vulnerable group is key and it is the intersection of a number of factors that makes certain groups more vulnerable than others.
- Education remains inherently linked to health inequalities.
- It remains an issue that certain vulnerable groups are specifically targeted in the context of marketing.
- WHO data, to date, does not include a clear overview of real health inequalities.
 - NCD data should be from a health inequalities perspective in order to demonstrate intersectionality's of vulnerability and not just focus on specific 'classic' subgroups.
 - This data should furthermore be addressed from a qualitative perspective and not a solely quantitative perspective.
- While aims to create a smoke free world with below 5% of people smoking are admirable, it remains true that the likelihood that the 5% will include individuals from vulnerable groups.
- It is key to argue for a shift of the burden of proof in terms of accountability mechanisms and determining the de facto impact of legislation.
- While developing regulations for marketing we should simultaneously ensure that this includes all potential avenues for exposure to marketing.
- It is crucial that input is received directly from the child and not solely from those that represent the interests of the child.
- How you present the topic of intersectionality and vulnerability varies greatly depending on the group you are addressing.

Group 3: Trade

- In Norway the industry is very vocal concerning their trade rights. This in turn frames the Norwegian approach to regulating in which the first aim is to ensure that they do not violate trade rights before they even consider not violating the rights of the child.
 - Efforts are being made to ensure that this process reverses, where the State will first aim to ensure that the rights of the child are protected and then address not violating trade rights.

- However, in order to effectively navigate the trade regime, it may be beneficial to frame arguments from a trade rights perspective while simultaneously addressing a child rights-based approach.
- There are three key areas of tension currently being faced in this field:
 - Marketing on product packages and the corresponding intellectual property rights (e.g. WTO dispute concerning Australia's tobacco plain packaging legislation).
 - The renegotiation of preferential trade agreements should include provisions that deal with the digital economy.
 - Cross-border broadcasting and the difficulties faced on placing limits and the ability to restrict this form of advertising.
- The GATS agreement is relevant for marketing in the digital space such as via smart phones and is separate from the retail environment.
- Ensuring trade rules are not violated will require shifting the paradigm. While we can call on governments to uphold the best interests of the child in order to get them to act, we also need to ensure that they are protected (e.g. against trade litigation threats from affected industries).
- The 'trade card', often used by affected industries to halt regulation, is becoming weaker, especially when being pitted against State efforts to protect children.
- We need to determine how to improve the interaction with trade lawyers and others working in the field.
- There is a need for increased capacity in how regional integration organizations engage with advertising restrictions.
- It remains difficult for NGOs to do advocacy work when it comes to ensuring that relevant trade issues up for discussion take into account NCDs and the protect the best interests of the child. They are in need of support that will push for action.
- Addressing the relevant trade issues will require challenging tech companies that facilitate digital advertising.
 - This also includes addressing the practice of profiling the end use of personal data collected.
- In order to effectively engage with tech companies this will require finding alliances and getting everyone on the same page. However, it will not be easy to align interests and create these alliances.
- Trade lawyers are responsible for protecting regulatory space and limit regulation abroad. Their interest in this field ultimately depends on the domestic political economy.
- In the context of tobacco control it is important that domestic trade personnel are also sensitized to tobacco control alongside their trade expertise.

Concluding Remarks:

At the end of the meeting every participant provided a short statement including their take home messages. It was concluded that:

Bringing together a diverse set of actors working in this field has the added benefit of taking a step forward in bridging the gap between different disciplines. Bringing everyone together to share their experiences and challenges has highlighted avenues for future collaboration.

This is a complex field dominated by profitable global industries (non-silo “giants”). Progress has been made in terms of interdisciplinarity at the network level between policy makers, advocates, civil society, and academia. Efforts have been made with the aim to learn to speak ‘each other’s language’. However, we should further aim to embrace the complexity and integrate the various relevant sub-disciplines of law, involve different communities and thereby break the silos in order to achieve success. This ultimately requires catching up to industries which are already very skilled in this respect.

Moreover, one of the key challenges being faced concerns regulating digital and cross border marketing and the failure to address these issues will make all other efforts de facto ineffective. This has to date been the biggest stumbling block governments face. It is key that we use the tools at our disposal more effectively and that we all engage more with the human rights system.

There is also the need to further socialize the topic in international law and public health education. Increasing the exposure of this multi-disciplinary topic to the up and coming professionals is key. Engaging with students and universities will also enable the number of individuals with expertise in this field to expand significantly.

There is significant potential for the work being done by the ESNLT to expand to address other NCD risk factors and increase its visibility. This can also be done through further collaboration with existing networks and increasing the number initiatives taken to bring experts together to identify capacity gaps and stimulate further research, advocacy and policy work.

Key Action Areas and Observations for the Future:

Based on the discussions a few key observations were repeatedly discussed by the different actors around the table. The following points may serve as guidance for future research, advocacy and policy work. This list is in no way exhaustive and aims to reflect larger issues of the discussion.

- WHO measurement of country performance with respect to the implementation of regulations targeting the four main behavioral risk factors is limited by a number of factors including *inter alia*, limits in capacity and the lack of specific guidelines to measure regulations against, thereby prohibiting a truly qualitative assessment.
- As a whole, there are generally few examples of domestic best practices using a child-rights based approach in this field.
- Increased collaboration between international organizations and bodies including, WHO, UNICEF, OHCHR and the Human Rights Committee and the Committee on the Rights of the Child could help to reduce capacity gaps and overlaps in work product. Sole reliance on the UNIATF to facilitate this collaboration is not a viable option
- The recommendations issued by the Committee on the Rights of the Child are insufficient in terms of adequately addressing the NCD crisis. The Committee as a whole is overworked and

does not always possess the relevant expertise. The Committee would greatly benefit from being provided with this technical knowledge.

- Increased efforts to submit shadow reports (parallel reports) can provide valuable insight to committee members that may not have expertise in this field. Alongside increased reporting, a thematic day addressing these issues could be organized.
- The Special Rapporteur on the Right to Health could be asked to initiate action to bring increased attention to this field.
- A general lack of capacity is felt by all actors working in this field. This leaves the actors working towards reducing NCD incidence at a disadvantage in comparison to powerful industry actors such as the tobacco industry that possess substantial resources to thwart efforts to increase regulations targeting NCD risk factors.
- It remains key that international organizations, NGOs, civil society organizations and academia increase collaboration in order to truly eliminate the silo-based approaches currently in practice.
- Ensure that education of public health and law professionals includes an introduction to each respective field in order to further ensure collaboration and further highlight what each expertise brings to the table.

Appendix 1: Programme

Practical details

The meeting took place on Tuesday 25 June, 12.30-17.00 in Room C2 of [Maison de la Paix](#) in Geneva, Switzerland.

12.30-13.15	Lunch
13.15-13.30	Welcome and introduction <i>Brigit Toebes & Marie Elske Gispen</i>
Panel one	Global perspectives
13.30-13.40	Perspectives from the World Health Organization <i>Benn McGrady</i>
13.40-13.50	Perspectives from UNICEF <i>Bernadette Gutmann</i>
13.50-14.00	Q&A
Panel two	Insights from academia
14.00-14.15	EU and NCD control: the role of children's rights <i>Amandine Garde</i>
14.15-14.30	Alcohol regulation and children's rights <i>Leslie London</i>
14.30-14.45	Food regulation and children's rights <i>Katharina Ó Cathaoir</i>
14.45-15.00	Q&A
15.00-15.15	Break
Discussion	
15.15-15.25	Recap of aims and envisioned outcome <i>Brigit Toebes</i>
15.25-15.50	General discussion (plenary)
15.50-16.30	Thematic discussions (break out in groups)
16.30-17.00	General discussion and conclusions (plenary)

Appendix 2: List of Participants

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