Position Paper
Non-communicable Diseases (NCDs)

The Foundation for International Human Rights
Reporting Standards

16 July 2018
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I. INTRODUCTION

The Foundation for International Human Rights Reporting Standards (FIHRRST) is an international non-governmental organization dedicated to the respect, protection and fulfilment of human rights. Targeting the areas of business and human rights, human rights cities, and religious beliefs and other social issues, FIHRRST (www.fihrrst.org) develops and promotes standards by which adherence to human rights principles can be demonstrated.

As a non-governmental organization, based in Indonesia and specializing in business and human rights (BHR), we do not claim to be health experts. We trust reports indicating that seventy-one per cent of the total deaths in Indonesia are due to NCDs; and that the probability of dying, between the ages of 30 and 70, from the main NCDs (i.e. cancer, diabetes, cardiovascular diseases, chronic respiratory diseases) is approximately twenty-three per cent. Yet, from a BHR perspective we are concerned that the discourse regarding ways to address NCDs in our community and around the world leaves out the private sector. How can we protect an individual’s right to health, right to life, and right to information if we do not allow corporations to be part of the solution? When one considers how much business influences the way in which we live, we can’t. Business has to be part of the solution. It is in this spirit, FIHRRST provides this written response to accompany our oral intervention, made during Civil Society Hearing in New York on 5 July 2018.

FIHRRST fully supports the proposition that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,” including access to information, “the benefits of scientific progress,” and other resources that can potentially improve their quality of life despite their initial engagement in acts that are contraindicated. Making available to the public information and resources about innovations or scientific advancements that can potentially diminish the risk of NCDs is a duty of all States. A State’s failure to do that for which it is responsible and/or that which is required by international and national law (in some cases), resulting in substantial harm (to individuals, groups, and property), is a human rights violation by omission.

Ideally, the best way to minimize the risks of NCDs is to either make purposeful lifestyle changes or not engage in unhealthy practices (e.g., smoking, harmful use of alcohol, physical inactivity, unhealthy diet) in the first place. This can be a very daunting endeavour for many individuals and societies when one considers that 82% of 16 million premature NCD-related deaths occur in developing countries, where knowledge of or access to healthier alternatives/options is limited. Therefore, efforts to prevent and control the prevalence of NCDs, spearheaded by the United Nations General Assembly (UNGA) and the World Health Organization (WHO), are an admirable step forward.

To this end, FIHRRST believes that the multi-stakeholder and multisectoral responses addressing the prevention and control of NCDs should include not only education and policy initiatives from public health organizations and like-minded advocates, but should also incorporate scientific innovations from all companies or industries claiming to offer less harmful alternative/products that can aid in the fight against NCDs. These businesses should be given an opportunity to discuss with policymakers the nature of their products, while at the same time giving policymakers the option to challenge the claims the companies have made.

If policymakers objectively conclude that the corporate claims have merit, and indeed these

3 UN Declaration of Human Rights (UNDHR), Article 25
4 UNDHR, Article 19; International Covenant on Civil and Political Rights (ICCPR), Article 19
5 International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 15(1)(b), see also UNDHR, Article 27.
alternatives/products are less harmful than the conventional products, then information regarding these less harmful products should be made available to consumers currently consuming the other more conventional products. FIHRRST believes that failure to inform the public about these less harmful products is a dereliction of the State’s duty to provide its citizens with access to information, the benefits of scientific progress, and other resources that can potentially improve their quality of life.

II. Less Harmful Products7 and NCDs

The discourse surrounding the implementation of LHPs as a countermeasure to NCDs is often discussed as one of multiple possible public health interventions that seek to prevent and control the prevalence of NCDs in society. For instance, the World Health Organization (WHO) found that diets high in sodium and low in potassium contributes to high blood pressure and increases the risk of heart disease and stroke.8 The inclusion of sodium substitutes, where appropriate, has been found to have a positive effect of lowering blood pressure,9 thereby reducing the likelihood of some cardiovascular diseases.

The WHO recently has also reported that obesity rates among children and adolescents “have risen tenfold in the past four decades.”10 While food marketing, polices and pricing are found to be the leading causes of this global issue,11 the high popularity of video games has certainly exacerbated the problem. Gaming has contributed to increase physical inactivity or sedentary lifestyles in children.12 Certain studies have indicated that active video games (AVGs) (including Wii fit Plus, Dance Dance Revolution, and UFC Personal Trainer) designed, in part, to promote physical activity and improve physical fitness, do indeed have a “small but definite effect on BMI and body composition in overweight and obese children;”13 and high intensity exergaming (HiE) may have “beneficial arterial adaptations and health in children.”14

On the other hand, more than seven million people die of tobacco-related illness each year.15 The burden of tobacco-related illness and death is heaviest on low- and middle-income countries.16 Products such as nicotine replacement therapy (NRT) (gum, transdermal patches, and nasal sprays) have been shown to increase the rate of smoking cessation by 50% to 60%,17 while e-cigarettes are “95% less harmful to health than normal cigarettes, and when supported by smoking cessation service, help most smokers to quit tobacco altogether.”18

7 Here, we define less harmful products (LHPs) as innovations that are designed to or have the effect of minimizing the risk of NCDs. Examples of LHPs include trans-fat free and sugar-free foods, low sodium products, smokeless tobacco, and AVGs.
11 Ibid.
13 Ralph Maddison, Louise Foley, Chinoa Ni Mhurchu, Yannan Jiang, Andrew Jull, Harry Prapavessis, Maea Hohepa, and Anthony Rodgers, “Effects of Active Video Games on Body Composition: A Randomized Controlled Trial,” The American Journal of Clinical Nutrition, Vol. 94 (No. 1)(1 July 2011), 156. The long-term impact of AVGs on physical activity and cardiovascular health remains inconclusive. More research is needed, but the Maddison study suggests that if used appropriately AVGs may help reduce obesity in children.
14 Andrew Mills, et. al., 809.
16 Ibid.
While we fully support any discourse that addresses LHPs as one of several interventions that prevent or control risk of NCDs, including opinions that assert that these innovations do not protect public health, FHRRST understands the discussion must also consider human rights. We maintain that individuals and societies have a right to make decisions about their health. To do so, the public must utilize their right to access information as well as their right to take advantage of the benefits of scientific innovation (including LHPs). “If people are deprived of information relevant to their health, they will necessarily be deprived of choices that might protect their health.”

III. Less Harmful Products and Human Rights

The ability to enjoy “the highest attainable standard of physical and mental health,” including taking advantage of the benefits that results from a State’s duty to “prevent, treat and control epidemic, endemic, occupational and other diseases,” is a right of all humans. This right is violated when among other acts, States deny its people access to the benefits of scientific progress, a guaranteed right in and of itself. According to Cruz del Valle Bermúdez, access to the advances of technology and science (in this case antiretroviral drugs) guarantees the sick “the preservation of the minimum needed conditions [to possibly prolong] life […] and in [the] long term the eventual cure of the disease that afflicts them.” It also ensures that society has an opportunity to make informed decisions when considering activities such as family planning, or when simply examining “both the possible improvements offered by scientific advances and their potential side effects or dangerous usages.”

On the other hand, the right to science is inherently linked to the overall right to information. The right to information, enshrined in both the UNDHR and ICCPR, is a fundamental right of all citizens. The Right poses on States not only a negative obligation to not arbitrarily interfere in the person’s ability to acquire information, but a positive obligation to make information available to the public, or system in place to make available to the public information. In other words, except for narrowly tailored restrictions designed to protect both public and private interests from substantial harm, the right to access information cannot be denied.


20 ICCPR, Article 12, Article 12(2)(c).

21 ICESCR, Article 15(b).

22 Cruz del Valle Bermúdez y otros v. MSAS s/ampro, 1999. Case brought before the Supreme Court of Venezuela. Petitioners claimed the State had failed to provide the necessary treatment and medication to address their disease (HIV/AIDS), thereby violating their Constitutional rights to life, health, liberty, and personal security, non-discrimination, and the benefit of science and technology.

23 Report of the Special Rapporteur in the Field of Cultural Rights, Farid Shaheed, New York, 12 May 2012 (A/HRC/20/26), para. 22. See also, Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica, 2012. Case brought before the Inter-American Court of Human Rights. As a result of national law, the Petitioners were denied access to IVF technology. The Court concluded “the right to have access to scientific progress in order to exercise reproductive autonomy and the possibility to found a family gives rise to the right to have access to the best health care services in assisted reproduction techniques,” and a ban on IVF treatments was a disproportionate and unnecessary restriction.

24 Artavia Murillo et al.

25 The Right to Information is addressed in Article 19 in both Covenants.

26 OSCE, “International Mechanisms for Promoting Freedom of Expression, a Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression,” 6 December 2004

27 See McGinley and Egan v. United Kingdom (1998). In this case, the Court held “…absence of any countervailing public interest” a positive obligation arises when there are “hidden adverse consequences on the health … an effective and accessible procedure [must] be established which enables such persons to seek all relevant and appropriate information…”

28 OSCE. see Brustle v. Greenpeace eV (2012), where the European Court of Justice considered the patentability of inventions that required prior destruction of human embryo; Article 19 of UNDHR also indicates that the right to information cannot be restricted unless, the restriction is “(a) for the respect of the rights or reputations of others;
In the discussion before us, there is no obvious reason to exclude stakeholders that promote LHPs from being allowed to share their scientific innovations. There is no evidence that their products will cause substantial harm to a State’s public or private interests. Keeping their findings and/or innovations away from the public sphere is denial of access to information and a potential human rights violation by omission.

a. Human Rights Violation by Omission

The failure of States to make available to the public information regarding LHPs, either as a result of apathy, complacency, or neglect, may prove to be a human rights violation by omission. FIHRRST recognizes that a human rights violation may be attributed to a State when it can be shown that the State, or agent of the State, either by act or omission, failed to meet its international obligations. Consider Özyrdiz v. Turkey. In that case, the Petitioner lost nine of his relatives and his home following a methane explosion in a landfill located near the settlement. The Court determined that the Turkish Government knew or should have known an explosion could occur and did nothing to repair or resolve the problem with the landfill. In other words, the harm experienced by the Petitioner may be attributed to Government because of its inaction (a failure to eliminate or minimize the risk; a dereliction in duty to inform the victims of the risks of building their homes near the landfill) or failure to protect the life of its citizens.

During the Bhopal gas tragedy, “forty tons of toxic gas spewed from the [Union Carbide] factory and scorched the throats, eyes, and lives of thousands of people” living in around the site, as a result of gross corporate and government negligence. The toxins also leached into the water supply as a result of the gas leak and toxic-waste dump practices, resulting in physiological and psychological defects/abnormalities of the residents living in and around the 70-acre site. Mandavilli describes the situation best, “If people were to paint a red cross on every door that harbors illness, as they did during the bubonic plague in England, few doors in Annu Nagar, a small town in Bhopal, would remain unmarked.” Unlike Özyrdiz, the Indian Government, after a series of reactionary Indian Supreme Court rulings, made attempts to reduce the harm suffered by the people living near the Union Carbide (UCC) factory. Yet, the Government’s efforts have been superficial at best. The residents still have inconsistent access to clean drinking water; the soil remains very toxic; the Government has done little to accurately assess the environmental and human harm caused by the leak; the UCC and other corporate entities have not been held accountable; and the Government has not informed new residents of the risks that come with living near the factory. The Indian Government’s role in the Bhopal gas tragedy and its minimal efforts to rectify the consequences of the leak, may one day prove to be a human rights violation by both commission and omission.

In the present discussion, we do not claim that States are denying their citizens access to all LHPs. We


30 European Court of Human Rights (2004).

31 Apoorva Mandavilli, “The World’s Worst Industrial Disaster is Still Unfolding,” The Atlantic Daily, 10 July 2018, https://www.theatlantic.com/science/archive/2018/07/the-worlds-worst-industrial-disaster-is-still-unfolding/560726/. In this case, Union Carbide Corporation was negligent in maintaining the factory’s safety system. The factory supervisor also ignored plant protocol during the incident; he chose to address the problems with the leak after his tea break. In addition, very few people working in and living around the factor knew what to do in case of a major gas leak. Over 25,000 people have died as a result of the tragedy.

32 Ibid.

33 Ibid.

34 Ibid. The UCC settled in 1989 for $470 million in damages. However, the terms of the settlement allowed UCC to claim no responsibility for the leak.
recognize that most States, particularly low- and middle-income countries, have at least one or more LHP on the market. Some States even have national policies in place that to seek to reduce risks of NCDs with LHPs as one method of prevention and control. However, we do maintain that their efforts are, at best, minimal. Access to information or the scientific benefits of all LHPs is not available to all individuals and societies. There may be a number of legitimate explanations for such absence, including inconclusive data on the health impact the product has on the population, economic feasibility, and so on. Yet, informing the public about the risks associated with NCDs and the scientific benefits of all LHPs is low-cost. Implementing a procedure that allows citizens to access this scientific information is affordable, as well. Therefore, a State must honestly assess its resistance to open access to information and/or open access to the benefits of scientific innovation. Unless the information, science, and/or innovation will cause substantial harm, the information should be made available to the public. A failure to do so may one day prove to be a human rights violation by omission.

b. Business and Human Rights

FIHRRST understands that the obligation for human rights realization is not just the duty of States. We maintain that companies manufacturing LHPs have a responsibility to respect human rights as well. Unlike States, who must protect the rights of their citizens, corporations have the freedom of choice. They make a conscious decision to ensure that the human rights principles, as set out in the UNDHR and the Guiding Principles for Business and Human Rights (UNGPs), are respected. If companies are willing to assess the human rights harms of their product, interpret and act on the findings, track responses, communicate, without prejudice; and where there is harm, provide an effective remedy, they must be welcomed to the table.  

FIHRRST believes in the principle: “do no harm.” We would like, in an ideal world, to see harm-free products on the market. On the other hand, we recognize that in most situations harm can only be lessened. Take the sugar, for example. Sugar is known to increase the risk of diabetes. Since the public has become more aware of the dangers of sugar consumption, manufacturers have marketed products either low in sugar or sugar-free. Yet, consumers know that these products (i.e., sugar-free) may have a laxative effect. They do not expect, however, the low sugar or sugar-free product to put them in a diabetic coma. In other words, FIHRRST subscribes to the Principle of Double Effect, products can be harmful but allowable if the benefits outweigh the potential harmful effects the product will have on the consumer; i.e. the benefits associated with those LHPs seeking to reduce the risk of NCDs outweigh any side effects associated with use of the product.

IV. Our Point-of-View

While FIHRRST advocates for the inclusion of all stakeholders in the fight against NCDs, including those businesses that promote LHPs, FIHRRST is not a proponent of any one stakeholder. We simply want to bring a human rights perspective to the discussion. In keeping with our oral intervention made during Civil Society Hearing in New York on 5 July 2018, and our review of General Assembly’s HLM3 NCDs: Zero Draft Outcome Document, we would respectfully like to share our views on the following:

- OP1. “... engaging decisive and bold actions across government and with all stakeholders, including civil society and the private sector, and by ensuring that issues relating to non-communicable diseases receive an appropriate, coordinated, comprehensive and integrated whole-of-society response;”

Comment: All stakeholders include corporate entities that may have contributed to the high prevalence of NCDs. If these stakeholders would like to become part of the solution, they should be welcomed. Without their input, a whole-of-society response cannot be achieved.

• OP6. “Take the necessary measures to recognize the **rights to health across the life-course** in keeping with human rights obligations and addressing the specific health needs of children and other groups more vulnerable to non-communicable diseases;”

  **Comment:** Recognition of the right to health includes providing the public access to information, including information about scientific innovations. The public should be empowered to take control of their health through informed decision-making.

• OP8. “Scale up the implementation of the commitments made in 2011 and 2014 to reduce tobacco use, harmful use of alcohol, unhealthy diets and physical inactivity taking into account, as appropriate, recommended interventions for the prevention and control of non-communicable diseases;”

  **Comment:** While elimination is the goal, reduction is the key and all scientifically proven LHPs need to be in policy considerations.

• OP10. “Promote and implement policy, legislative, regulatory measures, including fiscal as appropriate, aiming at minimizing the impact of risk factors, promote healthy diets and lifestyles;”

  **Comment:** These policy, legislative and regulatory measures should support the inclusion of scientifically proven LHPs as ways to minimize the impact of risk factors.

• OP11. “Accelerate the implementation of WHO Framework Convention on Tobacco control by its States parties, while calling for its universal ratification. Continue to implement tobacco control measures without any tobacco industry interference, taking into account the fundamental and irreconcilable conflict of interest between the tobacco industry and public health;”

  **Comment:** We recognize that there is no discernible health benefit to combustible tobacco use. Research indicates that ninety-eight percent of tobacco-related deaths are due to the use of combustible products.\(^\text{36}\) Certainly, too many lives are lost due to this deadly addiction. However, we do not advocate the exclusion of the tobacco industry in the discussion on NCDs. Research also suggests that non-combustible products are less dangerous that combustible tobacco products.\(^\text{37}\) Therefore, the tobacco industry should be able to “mitigate the adverse human rights impacts that are directly linked to their operations, products or services.”\(^\text{38}\) If they can be part of the solution, excluding them from the discussion goes against the overall mission to reduce NCDs.

On the other hand, the tobacco industry should be recognized in the same manner as other industries that produce goods that increase the risk of NCDs. For instance, the sugar or sweetener industry produces products (e.g. soda, candy, etc.) that increase the risk of diabetes. This industry freely markets goods that claim to be low in sugar or sugar-free. Like tobacco, they are part of the problem and part of the solution.

• OP12. “Empower the individual to make informed choices by providing the appropriate environment, strengthen health literacy through formal education, implement mass media campaigns that educate the public about the harms of smoking/tobacco use and second hand smoke, implement social marketing campaigns to reduce the intake of total fat, saturated fats, sugars and salt, and promote the intake of fruits and vegetables and implement mass media campaigns to support behavioural change of physical activity levels;” \[^{\text{OP12.alt}}\]


\[^{\text{37}}\] Ibid.

about the harms of smoking/tobacco use and second hand smoke; OP12. alt bis Promote, with specific media campaigns, healthy and sustainable diets and physical activity;]

Comment: While we agree whole-heartedly with this particular outcome, a concerted effort must be made to develop a comprehensive plan that incorporates a full range of approaches that provide a public health benefit. This plan should include initiatives that promote the inclusion of all scientifically proven innovations that may provide a public health benefit and influence policies that seek to minimize NCDs.