

Rights-based strategizing to reduce negative commercial impact on diet and health of children and adolescents: recent experiences- and prospects?



Photo: Christian B. Astrup

Report from a workshop organized by FoHRC:
Food, Human Rights and Corporations

*At the Norwegian Centre for Human Rights, Asbjørn Eide Seminar Room,
Cort Adelers gate 30, Oslo, Norway Monday 17th June 2019 at 14.00-16.30*

About the organizer

Food, Human Rights and Corporations (FoHRC) is an interdisciplinary academic research and action initiative based at the University of Oslo in cooperation with the OsloMet – Oslo Metropolitan University - and selected partner civil society organizations.

FoHRC's main interest lie in the impact of corporations on peoples' right to food throughout their operations and to explore how various human rights mechanisms/instruments can be used to promote corporate respect for human rights in the food sector. To read more about FoHRC, please visit: <https://www.jus.uio.no/smr/english/research/projects/fohrc/>

Background and purpose of the workshop

In its Annual Report on Responsible Investment in 2018, the Norwegian Bank Investment Management (NBIM) reviewed and presented the dialogue NBIM had with the companies where Norway invests through the Government Pension Fund Global («Oljefondet») in 2018. One of the new initiatives NBIM was initiating was establishing an ownership dialogue with several producers of breast-milk substitutes (BMS). The Lancet estimated in 2016 that 823 000 children under 5 years of age could survive annually if properly breastfed the first years of life. Although there are several reasons why children are not being breastfed, one major reason is the aggressive and unethical marketing of BMS. BMS companies have for years been under critique for their often unethical marketing methods that easily mislead parents to stop breastfeeding and start using BMS which may negatively impact infants' health and development. However, the critique has primarily been targeted towards the companies and not the *investors* in the companies. Thus the aggressive and often unethical marketing of unhealthy junk foods, especially directed towards children, by large food companies in which NBIM invests, might warrant a similar discussion targeting both companies *and* investors.

Misleading marketing is an important factor also in the global epidemic of rising child obesity. When established in childhood, obesity tends to persist into adulthood and is associated with increases in non-communicable diseases (cancer, diabetes Type 2, and cardiovascular diseases). Thus the aggressive and often unethical marketing of unhealthy junk foods, especially directed towards children, by large food companies in which NBIM invests, might warrant a similar discussion targeting both companies *and* investors.

A campaign initiated by Save the Children Norway (Redd Barna) in 2017-18 targeted NBIM as one of the largest investors in the BMS industry globally, as the first of its kind. What was the strategy used by Save the Children towards NBIM? Can NBIM put pressure on these companies to make them respect children's right to adequate food for good nutrition and health?

FoHRC decided to invite to an expert workshop to learn about this and to discuss if there are lessons learned that can be adapted to other scenarios where older children's and youth's diets and nutritional health is the concern.

In a child rights perspective, governments have a key role to play when it comes to regulating marketing practices that may negatively affect children's health. Any UN Member State that is party to the Convention on the Rights of the Child, as well as to other relevant human rights conventions, is under obligation to protect their children in many ways, including from health-threatening behaviour by third parties. The Norwegian Cancer Society has taken a first active step to a dialogue with the Norwegian health authorities regarding the way Norway is in dissonance with this principle and how it can more explicitly be implemented in the future. FoHRC wanted to hear about this first step as a basis for discussion about which next steps could pursue the issue.

What exactly should and can be done to counteract unhealthy commercial behaviour in these contexts? WHO published a set of recommendations on regulation of marketing of unhealthy foods and beverages to children almost ten years ago¹ and later followed-up with guiding principles for implementation of these recommendations². This work has now been further advanced including through the preparation of a draft practical guidance for governments (as well as civil society and academia) worked out by WHO and UNICEF, built on the recommendations but going into greater depth by providing aid that will be needed for framing the issue in a children's rights context. In collaboration with UNICEF in Geneva and Norway the workshop included a review of the guidance and what would be the remaining issues to be solved before its finalization later in 2019.

Finally, the 2011 UN Guiding Principles for Business and Human Rights (UNGPs)³ addresses both the responsibility of businesses to protect all human rights relevant to their operations and States in light of their obligatory role to protect their people's rights, including by regulative measures. FoHRC wanted to see the issues at stake within that broad context of the UNGPs. The short workshop would be focused on the obligations of the Norwegian state, whether as investor or regulator in the best interest of the child, but with the hope that some further ideas could be raised that might be of use also to other global actors.

¹ WHO (2010): Set of recommendations on the marketing of foods and non-alcoholic beverages to children https://apps.who.int/iris/bitstream/handle/10665/44416/9789241500210_eng.pdf;jsessionid=3CCFB3670E231F33844B2669715BFBC2?sequence=1

² WHO (2012): A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children https://apps.who.int/iris/bitstream/handle/10665/80148/9789241503242_eng.pdf?sequence=1

³ OHCHR (2011) Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

About this report

The following parts of the report first provide summaries of the introductions by the three presenters, from Save the Children Norway (keynote talk), the Norwegian Cancer Society, and UNICEF/Geneva. Their full power point presentations are linked up together with the report at the FoHRC website.

They are followed by a commentary by Bård Anders Andreassen at the Norwegian Centre for Human Rights, who also sets the issues in the framework of the UN Guiding Principles for Business and Human Rights. This built up to a plenary debate which is summarized in the words of the discussants themselves.

The programme follows below. The list of workshop participants is found in Annex 1, an overview of the speakers, commentator and moderators in Annex 2, and some topics emerging from the workshop for further discussion are listed in Annex 3.

Programme

- Welcome and brief introduction (FoHRC) (14.00-14.15)

Moderators throughout the afternoon *Anne Lene Løvhaug, Faculty of Health Sciences, Oslo Metropolitan University*, and *Peris Jones, Norwegian Centre for Human Rights, Faculty of Law, UiO*, introducing three speakers with up 15 minutes each: (14.15-15.00)

- Aggressive marketing of Breast Milk Substitutes (BSM) as a human rights issue: the strategy applied by Save the Children Norway to question investments in BMS companies by the Government Pension Fund Global (“Oljefondet”)
Kjersti Koffeld, Senior Advocacy Advisor, Save the Children Norway
- Are the Norwegian health authorities not fulfilling their obligations under the Convention on the Rights of the Child to protect the rights to adequate food and to health of children and adolescents?
Marianne Hammer, Head, Legal Section, Norwegian Cancer Society
- Work in progress by WHO and UNICEF for a child rights-based approach to unhealthy food marketing towards children: a toolkit connecting WHO recommendations with the Convention on the Rights of the Child.
Bernadette Gutmann, Child Rights and Business Specialist, Private Sector Engagement, UNICEF/Geneva

COFFEE AND TEA BREAK (15.00-15.15)

- Comments by *Bård Anders Andreassen, Professor, Norwegian Centre for Human Rights, Faculty of Law, UiO* (10 min) (15.15-15.30)
- Discussion – panel and plenary: (15.30-16.20)
 - What can we learn from the particular BMS-focused strategy towards the Pension Fund for other “unhealthy investments”?
 - To what extent will or should the Norwegian Cancer Society’s initiative be followed up with the Norwegian Government and made an example for others?
 - How do we foresee the forthcoming WHO/UNICEF toolkit can aid in strategizing for the rights to adequate food and diet-related health of children at all ages?

16.20 Brief summing up

16.30 Closure (FoHRC)

Formal presentations

Link to presentation by:

1: [Save the Children Norway](#) (“Redd Barna”)

Senior Policy Advisor for Health *Kjersti Koffeld*



Aggressive marketing of Breast Milk Substitutes (BMS) as a human rights issue: the strategy applied by Save the Children Norway to question investments in BMS companies by the Government Pension Fund Global (“Oljefondet”)

The industry vs. breastfeeding

The global breast milk formula industry is huge and growing at an unproportioned rate to its need, often at the expense of breastfeeding. In low and middle-income countries, bottle feeding poses a threat to children’s health not only because they are deprived of the protective factors in breastmilk, but also that it is hard to keep up to hygienic standards, as well as being an unnecessary expense to poor households. The Lancet medical journal concluded in a research series in 2016 that 823 000 children under 5 could have been saved globally every year, if they were optimally breastfed. In 1981 the World Health Organization (WHO), agreed on the WHO International Code of Marketing of Breastmilk Substitutes (often referred to as “the Code”), aimed at restricting marketing of BMS and protecting breastfeeding. The Code calls on countries to enact it in national laws and regulations to give it legal effect and addresses companies to regard themselves responsible for operating according to the principles and aims of the Code.

Targeting investors

Campaigning against the BMS industry is not a new idea, the Nestlé boycott campaign starting in the 80s is still alive, accompanied by campaigns like DanoNo and Baby Milk Action. However, campaigns have usually targeted the manufacturers, which differs from the approach taken by Save the Children Norway (SCN) where the campaign explored the opportunity of targeting investors for the first time. Investors are in position to make impact beyond consumer action, not only because they possess the power to divest, but also because they have leeway to execute active ownership.

In the report *Don’t Push It – why the formula industry must clean up its act* (2018), Save the Children and partners call on the investment community to use their position to change corporate practice harmful to children. Specific investor names are not used in the report. However, SCN had already identified the Government Pension Fund Global (often referred to

as the Norwegian Pension Fund and managed by the Norwegian Bank Investment Management, NBIM) as the target for our campaign. The Norwegian Pension Fund is the world's largest sovereign wealth fund, investing in more than 9000 companies worldwide and has a market value of 9,200 billion Norwegian krone (NOK) as of June 2019 (equals more than 1,000 billion (1 trillion) USD). The Fund is one of the biggest investors in the BMS industry globally. NBIM is accountable to the Norwegian population and aspires to be an ethical fund caring about children's rights; they therefore became the obvious target for the campaign in Norway. NBIM manages the fund on behalf of the Ministry of Finance, which owns the fund on behalf of the Norwegian people.

Save the Children Norway and BMS

SCN as the largest independent child-rights organization globally has always had a rights-based approach to the issue of the aggressive and unethical marketing of BMS. Breastfeeding is closely associated with children's right to survival and health, and the Committee on the Rights of the Child has firmly placed this as a human rights issue in their general comment number 15 on the right to health.

SCN's engagement with the BMS issue dates to 2015, when SCN gave input to a revised edition of NBIM's expectation document on children's rights, based on the findings in a report commissioned by SCN the same year. This work prepared the ground for an advocacy and public facing campaign aimed at making NBIM initiate a dialogue with the manufacturers of BMS. The first report SCN commissioned in 2015/16 elaborated on how code violations related to the Fund's ethical guidelines. This was an internal report which helped to build SCN's understanding and knowledge of the Fund's involvement and guidelines and how they relate to BMS, to better prepare the campaign. The second report commissioned by SCN examined how NBIM could use the Fund's revised expectations document on children's rights as a starting point for an active dialogue with BMS companies. Although SC shared the findings with NBIM they were not considered by NBIM at this point. We realized we had to change tactics and started to collect evidence of Code violations to catch NBIM's interest in the issue.

Public campaigning

Throughout 2017, we worked on a strategy for influencing NBIM with help from the legal owners of the fund, the Norwegian people. We worked alongside an ad-hoc coalition spearheaded by Save the Children UK including Alive & Thrive, Helen Keller International, 1000 days, Global Citizen, Public Citizen, Action Against Hunger, the Bill and Melinda Gates Foundation. The coalition aimed to reach a global audience to push companies towards Code compliance. In parallel, the report *Don't Push It* was developed, presenting evidence for systematic code violations across the sector and setting out recommendations for change. Due to conflicting interests, the campaign group unfortunately failed to sign off a global campaign targeting companies and investors, and it dissolved in January 2018. SCN decided to move on with a national campaign based on the research of the Lancet in 2016,

communication material collected in Cambodia and Norway, the *Don't Push It* report, and with our strategy towards NBIM.

In a meeting with NBIM in April 2018, SCN presented the findings of the *Don't Push It*-report and video clips of code violations found in Cambodia and stressed the need for NBIM to perform active leadership towards the companies. A documentary about the BMS industry and the role of the NBIM was launched by SCN and our partner Hacienda Film some days after the meeting. We also launched a petition for people to take action and were active on Twitter and Facebook, actively engaged with health professionals and students of nursery, midwifery and nutrition, and got a good media reach with two national newspapers publishing printed articles on the campaign. SCN was quoted in all articles and was a result of pro-active media pitches from SCN. One of the newspapers published a follow-up article when NBIM announced that they are in dialogue with the companies. We strategically targeted medical journals/journals for health professionals, and saw coverage in the *Midwives' Journal*, *Journal for Medical Doctors*, *Journal for Nurses*, and the *Journal for Nutritionists* to name a few. Unions and associations endorsed and publicly supported the campaign in blogposts or by sharing our campaign in social media, like the Norwegian Association of Nutritionists and the Norwegian Association of Medical Doctors.

In February 2019, NBIM announced that it had initiated a dialogue with 10 BMS companies: *"In 2018, we initiated a dialogue on responsible marketing with producers of breast-milk substitutes. The aim of the dialogue was to learn more about the companies' policies for marketing these products, assessing the risks to children's rights, and monitoring this in their value chains. Our expectations on children's rights provide a basis for following up responsible marketing at portfolio companies. Breastfeeding is closely associated with child health and survival. Misleading marketing of breast-milk substitutes can pose a risk to children's fundamental rights."*

SCN is now in contact and dialogue with NBIM providing detailed input on which specific issues they should highlight in their ownership dialogue with the BMS companies.

Please note: The accompanying slides series is published with this report.

Link to presentation by:

2: [The Norwegian Cancer Society \(NCS\)](#)

Senior Legal Advisor *Marianne Hammer*



NCS has a long experience with using legal argumentation in NCS's cancer control work, but is less experienced with using human rights in practice. Recently however NCS took its first active step towards using a human rights-approach to protect children from marketing of unhealthy food and drinks in Norway. In December 2018 NCS sent a letter to the Norwegian Ministry for Health and Care where they challenged the Ministry to do a legal assessment on how the Ministry consider Norway's obligations under the Convention on the Rights of the Child (CRC) to protect children and youth against the marketing of unhealthy food products and non-alcoholic beverages. NCS attached to the letter their own legal assessment where NCS concluded that, in their opinion, Norway does not fulfill its obligation under CRC today. NCS's key experiences so far include:

- There is a great need for legal training in human rights in the government administration, including among the health authorities.
- Human rights are often difficult to understand: Politicians and other stakeholders will not consider human rights important unless public health advocates and authorities manage to make these obligations as concrete and clear as possible.
- CRC has a potential for having a strong impact on public health, but then public health needs to speak loud about children's rights. Today the major concern for the authorities seems to be not to violate the industry's trade rights to avoid a possible future court case. Children's right to health, on the other hand, seems almost absent from the awareness of the authorities.
- It is important that more stakeholders start using children's right to health in their advocacy work, at least as regards:
 - The best interests of the child: Ask the Government to document how it has considered the best interests of the child in political matters affecting children;
 - The children's rights to be heard: Ask the Government whether children actually have been heard ... in political matters affecting children;
 - Refer to WHO recommendations when explaining how to realize children's right to health in practice.

Please note: The accompanying slides series is published with this report.

3: UNICEF

Bernadette Gutmann, UNICEF/Geneva



In every region of the world, childhood overweight and obesity is a rapidly growing child health and nutrition issue. As part of the nutrition agenda, UNICEF is addressing the issue of marketing of food and non-alcoholic beverages to children as a child rights issue. This means that children are legally entitled to action by governments to ensure the enjoyment of their rights under the Convention of the Rights of the Child to adequate food, the highest standard of health, and life, survival, and development. UNICEF and other international organizations like the World Health Organization (WHO) have identified the marketing of unhealthy food and non-alcoholic beverages as a driver of childhood overweight and obesity. UNICEF is developing a practical guidance in collaboration with WHO that will help regulators reform and update food marketing policies.

The practical guidance has been in progress since August 2018 with expectation of launching it by the end of year 2019, building on the advocacy opportunities that the CRC Anniversary will present. UNICEF and WHO have been drawing on key insights from a group of experts, civil society members, academia and policy makers to build the practical guidance. Following the meeting in Oslo, UNICEF added members of the Oslo Human Rights Working Group to the reference group and will reach out for input on the draft practical guidance before finalizing it.

The practical guidance:

- Builds upon the WHO's "Set of recommendations on the marketing of foods and non-alcoholic beverages to children", the Convention on the Rights of the Child, and the United Nations Guiding Principles on Business and Human Rights;
- Follows underlying principles of a child rights-based approach to ensure that strategies are comprehensive and legally enforceable, with children's best interest at the forefront of all considerations;
- The scope encompasses the effects of marketing on children's food preferences, purchase requests, and eating behaviours; case studies and examples of best practices from various countries and regions at different points in the policymaking

process; and concrete steps to guide policies including their development, implementation, and monitoring and evaluation;

- Identifies the challenges to reforming food marketing policies such as the complexity of today's digital world, the lack of consideration for adolescents over age 12, and the overarching political economy of food marketing that impacts government capacity to regulate

The objective of the practical guidance is to build capacity among UNICEF and WHO offices as well as public policy makers for the development of policies that address this issue from a child-rights based approach. It shall also be used by academia and civil society. The practical guidance is meant to streamline recommendations and strategies from both WHO and UNICEF on this issue and to add value to and strengthen existing guidelines.

Please note: The accompanying slides series is available on request.

Commentary to the three presentations

Bård A Andreassen, Norwegian Centre for Human Rights



Firstly, I am indeed impressed. Clearly - in spite of the challenges – this is a thriving field, well reflected in the three well-prepared interventions. They all refer to human rights based strategizing, that is strategizing anchored in International Human Rights Law (IHRL). This points to the function of human rights as an evaluation framework for law and public policy. From the presentations we are reminded that human rights framing has a strategic function in demanding accountability from the state – increasingly also from companies. Human rights can be contrasted with other strategic argumentation (for instance financial strategies), but as a set of ethical principles and legal norms, human rights cannot be replaced – rather, they are complementary to other strategic argumentation. These insights are important in reflecting on how to address marketing of unhealthy foods to children.

The business and human rights agenda is a relatively new field. A boost in legal reasoning and practical efforts came with the adoption of the UN Guiding Principles on Business and Human Rights (UNGP) by the Human Rights Council in June 2011. They made clear that businesses have direct human rights duties. From the three-pillars framework of the UNGP (protect, respect and remedy), business have duties to respect and provide remedies (a shared responsibility with the state). Since June 2014 (based on a Resolution by the Human Right Council), there has also been an on-going work to develop a “Legally Enforceable Treaty on Business and Human Rights”. A Zero Draft of a Treaty has now examined in a UN Intergovernmental Working Group, and a *Revised Draft* based on the Zero Draft was adopted by the Working Group in July 2019.

The UNGP *respect* pillar of business puts much emphasis on the importance of making *Due Diligence analysis* of corporations’ potential impact on human rights. Private enterprises should make a *human rights risk analysis* of their businesses.

Hence, businesses should be part of the solution and not just a problem; we need institutional processes of change in the business community to internalising new values. We should not be naïve about this – businesses are mainly driven by other motives than human rights. These motives are most often legitimate and highly needed: Production, job creation, profit maximization for investment etc. Yet, an underlying idea of human rights due diligence analysis is that businesses should also become part of solutions, and not just be seen as obstacles to respect for human rights. This remains a field of debate and controversy, and more evidence about good practices (and bad!) should be collected and systematized. Some positive signs: More than 9000 companies are now registered in the Global Compact system; 24 National Actions Plans on B/HR have been adopted by parliaments around the world, and 22 are in process of being developed, with National Institutions for Human Right or NGOs are stepping in to take a lead in 7 more countries. The vibrant discussion in the annual Geneva Forum on business and human rights (organised since 2012) has contributed energy and vitality into the on-going public discourse on companies’ human rights responsibilities.

Voluntary vs legal strategies is a key dimension, and a battleground in the debate, often engaging lawyers on the side of legal and obligatory strategies and the business community, political communities and others on part of pragmatism, gradualism and voluntary strategies. Some, among them myself (and also John Ruggie) are advocates for combined strategies, and integrated approach. Changing institutional practices (of companies), and value systems and “mind-sets” among employees and employers alike, entail demanding social and organisational processes that take time and require much more than only a stronger legal regime. With reference to self-regulation and the tobacco convention experience; in spite of huge and positive progress, there are limits of regulation – thus smoking is still there, yet at a much lower level than it used to be before law-based regulation were introduced in a fast-growing number of countries.

Marketing is a key issue in the debate on how to counter wide-spread obesity and overweight as a public health concern. Yet, where does marketing happen? Here, and in our time, we must not overlook the importance of social media and new forms of messages and symbol exchange, as indeed were pointed out in some of the presentations.

Human rights are evaluative measures for on-going processes: attitude changes and institutional reforms inside companies, and by engagement of business associations. They also require learning processes of people in companies through information, awareness-raising, argumentation and persuasion. New values have to be internalised in the respective institutions – not just as showcases and lip-service.

Concerning the Norwegian Pension fund and state ownership in international, institutional investment: There may certainly be a potentially big clash between “should I stay or should I go?” – an investor role of lobbying and engagement, opposed to “principled purism” by leaving a company (disinvestment) when human rights problems are observed. There is no clear-cut answers to this and popular opportunism can be the enemy of real (internal) impact for change in invested companies. In fact, we need more analysis and knowledge about the effects of “active ownership” by the state, and in the Norwegian case, by the biggest institutional investor in the world, the Norwegian Pension fund.

Lastly, when national and international recommendations of regulation are adopted by states, including National Plans of Action on Human Rights and Business, the crux of the matter is institutional capacity and political will to implement the recommendations and policies adopted. In the public sector this requires appropriate coordination (among ministries, directorates, and other policy-implementing agencies). It also requires adequate legal and general training in human rights; competence-building and strengthening of capacities among those responsible for implementation of the policies (the *duty-bearers* in a human rights jargon).

Discussion

Moderators: Anne Lene Løvhaug, Department of Nursing and Health Promotion, *Oslo Metropolitan University* (OsloMet) and *Peris S. Jones*, Norwegian Centre for Human Rights

The following questions had been set to guide the discussion:

- What can we learn from the particular BMS-focused strategy towards the Pension Fund for other “unhealthy investments”?
- To what extent will or should the Norwegian Cancer Society’s initiative be followed up with the Norwegian Government and made an example for others?

- How do we foresee the forthcoming WHO/UNICEF toolkit can aid in strategizing for the rights to adequate food and diet-related health of children at all ages?

Maria Lundberg, Norwegian Centre for Human Rights, University of Oslo

The strong scientific evidence that the dangers of lack of breastfeeding are very serious, even deadly for small children worldwide, should make governments, companies and investors listen to what leading authoritative UN agencies including UNICEF say about the need to change approach towards the sale and marketing of breastmilk substitutes. And while the Commentator stated that businesses should have been part of the solution and not just a problem, we know that marketing and problems with BMS do persist. This is in spite of the agreement, already in 1981, by member states of the World Health Organization on the WHO International Code of Marketing of Breastmilk Substitutes, which aims at restricting marketing of BMS and protecting breastfeeding.

The UN Guiding Principles on Business and Human Rights could help in promoting solutions, based on the idea of voluntary change in practice by companies. But while the standards and principles implied may have a persuasive force for some companies, it seems difficult to persuade most BMS companies to voluntarily put the rights of the child and the “best interests of the child” before the shareholders’ economic interests.

At the same time, states like Norway, who has made the best interests of the child a constitutional principle, have obligations as a State Party to the Convention of the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, not only to respect but also to protect the rights to health and food of the child. This requires states including Norway to adapt domestic law and implement and enforce these internationally agreed human rights. In other words, States must become an even stronger part of the solution than it may be today. Thus the step taken by the Norwegian Cancer Society to challenge the Norwegian health authorities that their present practice is not fully in tune with Norwegian obligations under the Convention of the Rights of the Child, is extremely important.

Sabrina Ionata Granheim, Universitetet i Innlandet/Inland Norway University of Applied Sciences

The idea that the food industry is part of the problem and part of the solution must be challenged. While the proposition in itself may be true, and the participation of business in building society as we know it is recognized, it is necessary to qualify *how* the food industry is part of the solution. What are the concrete actions that the food industry can take as part of the solution?

There is good evidence that regulation works, however the same cannot be said about self-regulation schemes. So either a third model needs to be developed, or there needs to be more assessment of initiatives where there was engagement with the private sector to see what are the lessons that can be learned and what actions derived from such engagement have actually led to improved health and nutrition status, to reduced/ eliminated marketing of unhealthy foods, or other success indicators. It is also important to document cases in which the food industry has effectively been part of the solution, if there are any. As of today, we lack such examples.

Liv Elin Torheim, *Department of Nursing and Health Promotion, Oslo Metropolitan University (OsloMet)*

Bernadette said in her presentation that they use the UNGP for Business and Human Rights in their toolkit “Practical guidance on restricting marketing of foods and non-alcoholic beverages to children: A child-rights based approach”. In FoHRC, we have looked into how the UNGP can be applied to make businesses take responsibility for how e.g. unhealthy food and beverages products and marketing thereof, may violate children’s human rights. However, businesses mainly focus on issues like child labour etc., and do not seem willing to acknowledge that their *end products* may violate children’s rights. Thus it seems that the industry doesn’t want to take into account the consumer side since they are afraid it will kill their businesses, so this is problematic.

Kaja Lund-Iversen, *Forbrukerrådet/Norwegian Consumer Council*

We have a lot of evidence based knowledge about what actions are needed to promote good nutrition and a healthy diet which are crucial to prevent overweight/obesity and related illnesses. These actions often imply some form of regulation. Whether it concerns food labelling, taxation or de-taxation of certain food groups, restriction on marketing, accessibility of foods in different arenas, food and meals in schools or kindergartens; the most effective will be to apply and implement legislative measures. Self-regulation, guidelines and partnerships may also have an effect, but are seldom as effective as regulation by the authorities. However, legislative measures, and especially those affecting commercial interests, meet a lot of resistance.

In our advocacy and lobbying efforts, we often argue for stronger regulation. In this work we can reinforce our stance with stronger legal arguments. Human rights instruments, including the Convention on the Rights of the Child, may provide a strong rationale when arguing for measures that aim to protect children. In this respect, we need support from lawyers; to conduct legal analysis and know-how to formulate legally sound arguments. We also need legal assistance to meet counter-arguments that regulatory initiatives would be too interfering in the market, that they are not proportional etc., as often used by corporations that will be negatively affected by stronger regulations.

In Norway, we experience to an increasing extent that the challenges of unhealthy diet are sought to be met through dialogue and partnership with corporations involved in the production and sales of highly processed foods high in sugar, salt and fat, with obvious commercial interests. This is done in areas such as the protection of children against marketing of unhealthy foods and the protection of children and youth against the harms of highly caffeinated soft drinks (energy drinks). The government's main measure to improve public health through healthy diet is through the partnership agreement with the food industry.

It is therefore especially important that we as civil society actors can improve our knowledge in how to hold governments accountable for putting the public's interests first. According to WHO, member states should perform a stakeholder mapping, due diligence and risk assessment for their engagement with non-state actors. In order to safeguard public health interests, states need to have clarity on the identity of the non-state actors, and identify potential, real and perceived COI and the purpose and outcomes of the engagement. How to follow up on this, could be very useful for a workshop in the future.

Pia Rudolfsson Goyer, Independent Expert, Ahead for Business and Human Rights

There is good reason for taking a closer look at Redd Barna's approach in mobilizing the engagement of investors against unethical marketing of breast milk substitutes, and possibly even copy it for other purposes. The reason behind this campaign being so strong was that the campaigners' had made the effort of collecting knowledge about what investors need in their work. In this case, Redd Barna approached the Government Pension Fund Global, and possibly also other investors, and established contact through providing a thorough report with lots of evidence verifying the unethical practice and combined that with a meeting. Parallel to this, Save the Children released a film which showed how consumers were being manipulated by the industry – a film well worth seeing as it persuasively documents the actual marketing methods. Redd Barna also provided proofs of the effects of this unscrupulous marketing, through referring to research articles in *The Lancet*. They also presented the relative market shares of the different companies to show level of responsibility, and the promises these companies had made earlier about their plans to change their marketing methods. Redd Barna then compared the actual practice against the WHO Code of Conduct on Marketing of Breastmilk Substitutes and other international instruments.

Redd Barna's work in this case, is an example of how civil society organizations more and more frequently chose to work to influence those who are in a position to change strongly unethical practices. Many public actors lack knowledge about human rights and need guidance in order to better understand how a certain practice can constitute a violation of international human rights instruments. The issue of human rights is also a challenge for

investors – many find it easier to work with environmental issues and corporate governance - which are the two other issues enshrined in the “ESG” framework that responsible investors work under, where the “S” stands for social (human rights).

This case shows that, the crucial elements in campaigning are to demonstrate how marketing is currently practiced, why the practice must be considered serious as it implies breaches of international human rights instruments, and to carry proofs (even if complex) of the negative impact these practices have.

Oumy Erica Wie Dia, MSc in Public Health Nutrition/Oslo Metropolitan University (OsloMet)

My recent thesis for the Master’s degree at OsloMet can serve as an example of the kind of local research that are done in some countries but needs to be done everywhere. In Uganda where I did my field work, the prevalence of overweight and obesity among children have nearly tripled in the last two decades. This is in line with other low- and middle income countries where overweight and obesity in children are rising particularly rapidly, and with the marketing of unhealthy food products as one contributing factor which affects children’s dietary preferences, purchasing requests, and consumption patterns. Monitoring children’s exposure to food marketing is therefore essential to generate evidence to understand the extent of the problem and to determine meaningful policy responses. My study was actually the first study to explore this food marketing dimension in Uganda, with a second purpose to explore whether government officials perceive food marketing as a human rights issue.

I carried out my field work in the autumn of 2018 and mapped branded outdoor advertisements surrounding 25 randomly sampled schools in urban and peri-urban areas of the capital, Kampala, using established methodologies. I found that of the more than thousand identified advertisements, eighty-six percent featured unhealthy food products. Almost fifty percent of the advertisements featured sugar-sweetened beverages, followed by alcoholic beverages at about twenty-three percent. So, to protect children from such unhealthy food advertising near schools, policies to limit the extent of such marketing, and introducing a favourable environment are clearly essential. I interviewed seven relevant government officials in the qualitative part of this study, which clarified that unhealthy food marketing has *not* been on the health and nutrition policy agenda in the country, as hunger and food safety issues are seen as more critical challenges; nevertheless the informants did see the importance of addressing food marketing in their policies, regulations, and laws.

There is also increasing recognition by organizations and academics at the international level, of unhealthy diets and malnutrition as a human rights concern, but insights had been lacking of how the issue is viewed by state actors. More specifically, while *unhealthy food marketing* appears to emerge as a human rights concern on the international policy agenda,

it is not necessarily reflected as an issue at national policy levels in Uganda. The informants did however recognize how unhealthy food marketing could pose a threat to children's human rights, particularly in socioeconomically advantaged areas. Uganda should no doubt benefit from the forthcoming new toolkit and other strategies discussed here!

Karoline Steen Nylander, PRESS

Press - Save the Children Youth Norway - has over 1000 members aged 13-25 years old. Most of the members are in one of our 20 local chapters and are aged 13-18. For 15 years we have worked with marketing and commercialization towards children and youth, with focus on unhealthy beauty/body ideals, gender norms and sexualisation. We give a lot of lectures for school children on this topic and strive towards educating as many children and youth as we can in the mechanisms behind advertisement and marketing both in public space and online. One of our campaigns experience enormous growth each year. The "golden barbie" (www.gullbarbie.no) addresses the private sector's responsibility for children and adolescent's mental health. The campaign announce the winner of the prize "best at making young people feel the worst".

Parallel to educating children and youth in coping strategies, we also work with policy development and advocacy. Last year we had major political breakthrough on this area. (<https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=71755>)

Regarding marketing of unhealthy food and beverages, we are very new to this field. The administration and our elected representatives are currently developing policy to be proposed at our next General Assembly, and we hope to actively engage in advocating for regulations as part of a child rights approach to marketing. We see a lot of similarities between our work with Gullbarbie and marketing of unhealthy food and beverages, and believe we can benefit from working close together with academics and other experts.

We also want to stress the importance of involving children and youth in a meaningful and sustainable way when working with these matters. We have a lot of expertise on child participation, and welcome everyone to get in touch if you would like to discuss this further.

Asbjørn Eide, Norwegian Centre for Human Rights

The impact of growing urbanization and commercialization is such that food corporations and their chains of distribution to an ever increasing degree determine the food environment in which people live. This has led to a growing concern with the impact this marketing has on the diets and health of people, in particular the impact on children at a stage when they cannot make an informed and educated choice. While there has been greater attention in recent years to the human rights framework that should guide the activities of food corporations and their chain of distributors, insufficient attention is given

to harmful impact on health of the corporate-driven food environment facing consumers. It is therefore greatly to be appreciated that this potentially harmful effect of commercialization is given close scrutiny by this workshop.

Particularly serious is the aggressive marketing of Breast Milk Substitutes (BMS), which in the 1980s led to the Nestlé boycott and the adoption of the international code of conduct on the marketing of breast-milk substitutes by the WHO Health Assembly, ably described by Kjersti Koffeld on behalf of Save the Children Norway. This was a trigger that ultimately led, through a long chain of events, to the adoption by the UN Human Rights Council of the guiding principles on business and human rights in 2011, and the subsequent proposal in 2014 to develop a legally binding convention on business and human rights. Whether that will succeed is anybody's guess, although a first draft is now available. In any case, states already have obligations to protect against harmful marketing, and this has been addressed as we have heard, both by the UN Committee on the Rights of the Child and by the Committee on Economic, Social and Cultural Rights.

The problem is not easy, however. A leading neoliberal author, Milton Friedman, has been quoted to say that "the only social responsibility of a corporation is towards its shareholders". While this may now be considered to be an extremist view in light of the subsequent adoption of the UN guiding principles in 2011, it points to a practical difficulty: it is not enough to hold the corporation responsible, it is necessary to influence the major shareholders. Shareholders are numerous and widely dispersed, but there are some major funds that engage in purchase of great numbers of shares in major corporations. This is what Save the Children Norway exploited by addressing the Government Pension Fund Global, which holds a great number of shares in corporations engaging in the marketing of breastmilk substitutes, including Nestlé.

This example by Save the Children Norway could be multiplied elsewhere. But using the UN Guiding Principles to address corporate responsibility stumbles on a practical difficulty: the guiding principles focus on corporate attention to the principle that corporations in their efforts to avoid harm shall exercise due diligence regarding impact on human rights. In practice, this means that corporations would identify the most salient issues where their activities can be harmful. This is an important step, but in reality corporations are likely to disrespect such issues when they, through their neglect, can make much money. The related problem is that while some companies have accepted that, say, child labour or unsatisfactory workers' conditions are salient human rights issues, they tend not to include harmful effects on customers of their products as being salient enough for their attention; this has been further elaborated in the master thesis of one of our moderators in this workshop, Anne Lene Løvhaug at Oslo Met⁴.

⁴ <https://oda.hioa.no/en/item/exploring-food-marketing-to-children-in-the-context-of-the-un-guiding-principles-reporting-framework-a-salient-human-rights-issue>

Hopefully, this seminar can lead to more detailed case studies and targeted efforts concerning the interaction between the marketed food environment and consumer choices from a human rights perspective, with focus on the impact of an adequate and healthy food environment.

Ove Kenneth Nodland, EAT

I have two questions: the first regards whether choosing a rights-based approach to engaging financial institutions over a sustainability-based approach, ultimately leads to different outcomes? For example, will a rights-based approach ultimately emphasize questions of good governance (ESG-matters) over questions of diverting investments to companies that promise greater impact on sustainability?

My second question relates to actual standing in the context of harmful marketing to children: When does a child have standing to sue a company for harmful marketing? And could one design a solution that would make it easier for children to bring individual (or class) action against harmful marketing?

Wenche Barth Eide, Department of Nutrition, UiO; Coordinator, FoHRC

This whole debate is highly relevant also to the current process to develop an international set of *Voluntary Guidelines on Food Systems and Nutrition* under the UN Committee on World Food Security - CFS, which is based in Rome. The new guidelines are different from the Voluntary Guidelines on the Right to Adequate Food from 2004 which many will know - in two ways: on the one hand, and which is positive, they explicitly bring in nutrition as a varying health outcome of different food systems and food environments, in a much wider sense than did the former ones; on the other hand, which is negative, the new guidelines do not take human rights as a point of departure as was the whole idea with the former. At best the new ones in the making so far seem to make reference to the right to food more superficially in the present Version Zero, but do not follow up with actual guidelines on how to utilize corresponding state obligations in practice.

This is a point of concern for Norway which was a very active player in developing the right to food guidelines during the years 2003-2004, and still has tried to keep up a human rights focus but against heavy odds. We still do not know how it will further develop after a series of regional consultations currently taking place on the way to the next debate, which is in spring 2020, for finalization at the end of that year.

Some of us have also played into the open consultations laid out on the net and among other things pointed to the need to consider explicitly business activities within food systems

and food environments that can negatively affect livelihood and diet-related health. In this connection we have referred not only to the right to health which should be included, but also the UN Guiding Principles of Business and Human Rights which encourage businesses to respect human rights by carrying out human rights due diligence or impact assessment, and governments to exert their obligations to protect their populations from harmful business practices by regulations.

Perhaps FoHRC may arrange another expert workshop when the debate re-opens in the spring based on a new Version 1, and try to influence, if needed, the wording for the final version of the Guidelines on Food Systems and Nutrition?

A final note

Many of the issues raised would have warranted a continued debate. However, time was already short, thus some of the questions posed remained unanswered at this occasion. All in all, however, the organizers are pleased to have been able to *table* some of the most burning issues coming up in trying to respond to the title set for the workshop. This was possible given the eminent presentations and the constructive comments and questions raised to these, but also the eagerness among the audience to bring up new points. FoHRC hopes to bring some of these further in new arrangements; possible themes emerging from the workshop that deserve further discussion are listed in Annex 3.

FoHRC looks forward to continued contact and collaboration with those who attended this workshop or had to decline at the last moment, and others interested.

Annex 1 PARTICIPANTS

Jens	Aas	UNICEF Norway
Carina	Alm	Kreftforeningen/Norwegian Cancer Society
Bård Anders	Andreassen	Norwegian Center for Human Rights, UiO
Ellen Cecilie	Andresen	Independent expert
Øystein	Bakke	FORUT and Global Alcohol Policy Alliance (<i>regrets</i>)
Anne	Bærug	Nasjonal kompetansetjeneste for amming
Wenche Barth	Eide	Avd.for ernæringsvitenskap/Dep. of Nutrition,UiO
Asbjørn	Eide	Norwegian Centre for Human Rights, UiO
Marthe	Engedahl	UNICEF Norway
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Marcela	Priego	Universitat Pompeu Fabra (UPF), Barcelona
Arnhild Haga	Rimestad	Helse- og omsorgsdep./Min. for Health & Care (<i>regrets</i>)
Astrid	Riseth Andersen	Student klinisk ernæring UiO (<i>regrets</i>)
Pia	Rudolfsson Goyer	Independent expert, Ahead for Business and Human Rights
Karoline	Steen Nylander	Press - Save the Children Youth Norway
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Helena	Wilson	Norwegian Ministry of Health (<i>regrets</i>)
Bente	Øvrebø	Folkehelseinstituttet/Norwegian Institute of Public Health

Annex 2

SPEAKERS (S), COMMENTATOR (C) AND MODERATORS (M)

KJERSTI KOFFELD (S)



Kjersti Koffeld has worked for Save the Children Norway since 2014 as a senior advocacy advisor on health and nutrition. She was previously the chair of the global organization's advocacy and policy strategy group on health and nutrition.

Kjersti's professional background includes more than 14 years' experience from various Norwegian CSOs and youth-led organizations, where she among other things was instrumental in setting up the Norwegian youth network on HIV and AIDS. She was a member of the national council on HIV and AIDS, for three years, representing the Norwegian Youth Council. Kjersti represented Save the Children at the World Bank Group's Civil Society Consultative Group on Health, Nutrition and Population until the group was phased out. She holds a master's degree in comparative politics, bachelor's degree in Spanish and comparative politics, and has undertaken additional studies in human rights observation.

MARIANNE HAMMER (S)



Mrs. Marianne Hammer is Head of the Legal Section at the Norwegian Cancer Society (NCS). The Legal Section consists of six lawyers working with all sides of cancer control. Mrs. Marianne Hammer has broad experience in using international and domestic law in NCS' advocacy work.

BERNADETTE GUTMANN (S)



As a Child Rights and Business Specialist for UNICEF, Bernadette Gutmann works to advance the implementation of the United Nations Guiding Principles on Business and Human Rights. Within this scope, Bernadette focuses on how children's rights are affected by food systems. In support of UNICEF's food systems framework, she manages research, collaborations, and advocacy on elements of the food environment. This includes developing guidelines for policies specific to food, digital, and in-store marketing with the aim of sustainably improving children's health and nutrition.

Bernadette has master's degrees in Business, Economics and Public Management from the University of Bamberg, Indian Institute of Management in Bangalore, and SDA Bocconi School of Management.

BÅRD ANDERS ANDREASSEN (C)



Bård Anders Andreassen (Dr. Polit.) is Professor and Director of Research at the Norwegian Center for Human rights, Law Faculty, University of Oslo. He holds a Diploma of International and Comparative Law of Human Rights, International Institute of Human Rights, Strasbourg. He is Visiting Professor, National University of Vietnam. He has for many years contributed to special training courses in Nutrition and Human Rights for public health nutrition master students at the University of Oslo and OsloMet and also supervised or reviewed several of their dissertations. His most recent books are *Human Rights, Power and Civic Action*. *Comparative Analyses of Struggle for Rights in Developing Societies* (Routledge, 2013), *Duties Across Borders. Advancing Human Rights in Transnational Business*, Intersentia 2016 (ed with Vo Khan Vinh) and *Research Methods in Human Rights* (Ed Elgar, 2017) (ed with Hans-Otto Sano and Siobhan MacInerney-Lankford).

ANNE LENE LØVHAUG (M)



Anne Lene Løvhaug holds an MSc in public health nutrition and graduated from OsloMet in 2017. She wrote her Master's thesis on food marketing as a human rights issue, focussing on corporate human rights responsibilities under the United Nations Guiding Principles on Business and Human Rights. After graduating Anne Lene has worked in the Norwegian Consumer Council where she contributed to their advocacy work on food marketing to children. She now works as a research assistant at OsloMet in a nutrition policy evaluation project. Anne Lene has been involved in FoHRC since 2016.

PERIS S. JONES (M)



Peris Jones is Professor in Human Rights and Director of the Masters Programme **on Human Rights in Theory and Practice** at the Norwegian Centre for Human Rights at the University of Oslo. He has a background in development studies and a PhD in human geography. He has taught, researched and worked on human rights for over fifteen years in the University, applied research institute sector and within NGOs, including as an advisor to Redd Barna. He is interested in both the transformative potential and also local effects of human rights, not least in Southern and Eastern Africa, and Nepal and Western Europe. Recent work seeks to conjoin these interests therefore as geographies of human rights, and the interplay between rights and space, particularly in cities across the global North and South. Recent publications include articles and chapters e.g in *Urban Studies* (2019), the *Handbook of Kenyan Politics* (Oxford University Press, 2019) and the forthcoming book publication *Human Rights and Development* (2021, with Malcolm Langford, in Routledge's *Development* series.

Annex 3

TENTATIVE TOPICS FOR FURTHER DISCUSSION

Some tentative themes emerging from the workshop for further discussion, for possible follow-up arrangements organized by FoHRC in cooperation with other organizations:

1. What evidence exists that self-regulation schemes by the food businesses to improve marketing practices have had real positive effect and lead to reduced marketing pressure and power. Thus, what evidence exists showing that the food businesses have been true parts of the (sustainable) solution of diverse specific nutrition problems, as measured by long-term healthy food intakes and satisfactory growth and development of identified groups of children and youth?
2. Does a *rights-based approach* to engaging financial institutions in their endeavours to invest in better nutrition, differ from a *sustainability-based approach*?
3. What opportunities are there for concerned children and youth to sue a company for harmful marketing of foodstuffs as identified by them?
4. How can civil society organizations (CSOs) work to help states fulfill their obligations in preventing and managing conflicts of interest (COIs) in nutrition policy development? Searching for available tools and experiences in other countries could be useful as input to a possible strategy.
5. To what extent are food companies recognizing harmful marketing (of BMS as well as of unhealthy foods and beverages to children and youths) as being human rights concerns? What arenas and which actors can be used to establish meaningful dialogue with the private sector to discuss this issue so that we avoid COIs on the one side and lip service on the other)?
6. (For a forthcoming identified time period in spring 2020:) A gathering of different experts to discuss and play into the formal open e-consultations for the last version (V1) of the new Voluntary Guidelines on Food Systems and Nutrition (VGFSN), that are being worked out under the UN Committee on Food Security and Nutrition for finalization at the end of 2020.