

# INTRODUCTION

## The ESR special Edition on NCDs

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*Noncommunicable diseases (NCDs), including cardiovascular diseases, diabetes, chronic lung disease, and cancers, kill 41 million people annually, with this growing burden disproportionately impacting on low- and middle-income countries (WHO 2022a). Critically, NCDs are predicted to become the biggest public health crisis in South Africa by 2030 (Hofman 2014). Within this context, we are pleased to introduce this special issue of the ESR Review, which aims to provide insight into how legal interventions play a pivotal role in tackling NCDs in South Africa and beyond.*

Health is the product of a complex interaction between biological factors and a host of social, commercial, and legal determinants (WHO 2022b; Gostin et al. 2019; WHO 2021a). As NCDs are largely attributable to the risk factors of tobacco use, harmful use of alcohol, and unhealthy diets (WHO 2022), the framework of the commercial determinants of health has been particularly relevant for understanding the power that corporations wield in creating unhealthy environments, and, in turn, considering how to address this growing public health crisis.

In a nutshell, this framework explores the private sector activities that influence public health and enable political economic systems and norms (Kickbusch et al. 2016; Mialon 2020). In particular, the tobacco, alcohol, and food and beverage industries have used business, marketing, and political practices to increase people's exposures to unhealthy products while securing political environments that place profit over public health (Kickbusch et al. 2016).

The role of corporations in spurring the NCD-related public health crisis across the world should also be examined in the light of important human rights considerations. In particular, the right to health is enshrined in the International Covenant on Economic,

Social and Cultural Rights (article 12), as well as regionally in the African Charter of Human and Peoples' Rights (article 16), both of which have been interpreted to include access not only to health care but also to underlying determinants of health such as adequate and nutritious food (CESCR 2000; ACHPR 2014).

Correspondingly, states have obligations to respect the right to health by not interfering directly or indirectly with its realisation, to protect this right by taking measures to prevent third parties such as corporations from interfering with its enjoyment, and to fulfil this right by adopting appropriate measures which include, for example, legislative, administrative, and budgetary measures (CESCR 2000, para 33).



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Understanding the normative content of health and health-related rights, as well as the obligations that the human rights framework imposes on states, is critical in the context of NCD prevention.

To counter industry's negative impact on health outcomes and ensure the realisation of human rights, legal and regulatory interventions are increasingly recognised as effective tools to these ends (Gostin et al. 2019). For example, tobacco control measures, such as smoke-free spaces, plain packaging, and restrictions on tobacco advertising and sponsorship, have gained both prominence and success around the globe, particularly since the ratification of the Framework Convention on Tobacco Control in 2005 (Chung-Hall et al., 2–19).

While this landscape continues to evolve, and as the framework of the commercial determinants of health is strengthened, there have been successes in using legal and regulatory measures to tackle other risk factors to prevent NCDs. With regard to unhealthy diets, these have included regulating nutrition labeling, adopting taxation of sugar-sweetened beverages, and restricting marketing and advertising (WHO-Western Pacific 2022). Against this backdrop, the Global Center for Legal Innovation on Food Environments (Global Center) – housed at the O'Neill Institute for National and Global Health Law at Georgetown University Law Center – was launched in February 2020 to tackle diet-related NCDs through the legal and policy scholarship, capacity-building, and technical assistance (O'Neill Institute for National and Global Health Law).

Working closely with partners around the globe, the Global Center serves as a transnational venue for collaborative research, cross-education, and applied work in the area of food law and policy, with the ultimate goal of strengthening the bridge between academia and practice within this field.

In pursuit of these goals, the Global Center entered into a partnership with the Dullah Omar Institute at the University of Western Cape to bridge both organisations' expertise in food law and policy, grounded on a human rights-based approach. The Dullah Omar Institute has been a critical partner, as demonstrated by this special issue, in strengthening the generation and dissemination of knowledge in the area of food law and policy within South Africa and generally around the world.



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As South Africa continues to be burdened with high rates of NCDs, and as childhood obesity rates continue to skyrocket (WHO 2021b), there is a need to create and strengthen more spaces where academics and policy-makers can develop and disseminate knowledge, including in the legal field, and create a community that addresses unhealthy food environments in an equitable manner. This special issue of the ESR Review, and the work conducted by the Dullah Omar Institute and other groups across South Africa, is a vital step towards achieving these goals.

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