

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

CHALLENGES IN THE PREVENTION AND REDUCTION OF TOBACCO USE AND OBESITY IN ARGENTINA

REPORT FILED BY:



Fundación Interamericana del Corazón Argentina (FIC Argentina - InterAmerican Heart Foundation-Argentina), whose mission is to promote public policies and social changes that the protection of the right to health, through the reduction of chronic non-communicable diseases (NCDs). FIC Argentina is an affiliate of the

InterAmerican Heart Foundation, an organization with a trajectory of over 20 years. Within the field of the prevention of NCDs, FIC Argentina takes different action lines to promote the design and implementation of tobacco control, alcohol abuse control, nutrition and prevention of obesity and physical activity policies with a human rights perspective. Furthermore, it also develops a variety of activities and projects to raise awareness of the importance of these measures with the final objective of protecting the right to health. <http://www.ficargentina.org>



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COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

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PARALLEL REPORT TO THE 64st SESSION OF THE COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

FOR CONSIDERATION IN THE REVIEW OF ARGENTINA

Table of Contents

- I. Introduction
- II. Obesity in Argentina
 - A. Marketing Regulations
 - B. Food Labeling
 - C. Soda's Taxes
 - D. School Environment
- III. Tobacco Consumption in Argentina
 - A. Argentina's ratification of the Framework Convention on Tobacco Control (FCTC)
 - B. Tobacco products advertising, promotion and sponsorship
 - C. Tobacco Taxes
- IV. Argentina's Obligation to protect citizens from Non-Communicable Diseases
- V. Recommendations

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

I. Introduction

This report will focus on obesity and tobacco control, both major risk factors for Non-communicable Diseases (NCDs). The World Health Organization (WHO) has identified these diseases as the main threat to human health. They include cardiovascular disease, cancer, chronic respiratory disease and diabetes¹.

According to the WHO, obesity and overweightness have become one of the most serious problems of public health worldwide. There are 41 million children under the age of 5 living with overweight or obesity, over 340 million children and adolescents aged 5-19 are overweight or obese² and nearly 2 billion adults – almost 1 in 3 – in the world are overweight or obese.³ In the same way, tobacco is one of the most preventable causes of death globally. Tobacco consumption causes **7.2 million deaths worldwide each year**⁴, and nearly 80% of the world's smokers live in low-and-middle income countries⁵. Indeed, in the region of Latin America alone, more than 370,000 people die every year from diseases caused by tobacco consumption⁶.

Governments have a core obligation to ensure the health and welfare of their citizens and residents. How governments elect to fulfill their obligations – through direct regulation and oversight, norm setting through strategies and promotion – is the prerogative of their politics yet ultimately the State is the responsible party for the nation's health.

Where harmful influences on public health exist, the State bears the burden of preventing harm when possible. While doing so, State shall respect the rights and autonomy of individuals to enjoy their health and make fully informed choices, fulfilling its core obligations by creating conditions conducive for health.⁷

II. Obesity in Argentina

Argentina has a very high prevalence of NCDs risk factors due in part to high rates of overweight, obesity, smoking and tobacco use. These have been steadily increasing in the last several decades. Obesity and obesity-related NCDs are rampant in Argentina. A recent survey of Argentina's population revealed that **57.9% of Argentinians carried excess weight.**⁸ **37.1% of the population**

¹ Noncommunicable Diseases, WHO. Available at: <http://www.who.int/mediacentre/factsheets/fs355/en/>.

² WHO; Obesity and overweight. Available at: <http://www.who.int/news-room/fact-sheets/detail/obesity-and-overweight>

³ WHO; Obesity and Overweight Fact Sheet (2016). Available at: <http://www.who.int/mediacentre/factsheets/fs311/en>.

⁴ WHO; Non-communicable diseases. Available at: <http://www.who.int/news-room/factsheets/detail/noncommunicable-diseases>

⁵ WHO global report: mortality attributable to tobacco 2012.

⁶ Institute of Clinical Effectiveness and Health (IECS); Tobacco: Situation in Latin-American (2014), available at: <http://www.umaza.edu.ar/archivos/file/iecs%202014.pdf>.

⁷ R. Magnusson & D. Patterson, *The Role of Law and Governance in the Global Response to Non-Communicable Diseases, Globalization and Health* (2014). See also WHO, *Global Action Plan for the Prevention and Control of NCDs 2013-2020; WHO Global Strategy on Diet, Physical Activity and Health, WHA57.17*.

⁸ Third National Survey of Risk Factors for Non-communicable Diseases. National Ministry of Health. Chapter VII "Body Weight". Available (in Spanish) at: <http://www.msal.gov.ar/images/stories/bes/graficos/000000544cnt->

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

carrying excessive weight are classified as “overweight” (with a body mass index –BMI- greater than or equal to 25kg/m²) and 20.8% are obese (with a BMI over 30kg/m²).⁹ 50.1% of the population carrying excess weight is composed of women.¹⁰

Besides, in the last five years, overweight adolescents from 13 to 15 years of age increased from 24.5% to 28.6%. Obesity rates in this age group increased from 4.4% to 5.9%.¹¹ According to 2010 data from the WHO Global Database on Child Growth and Malnutrition, Argentina has the highest percentage of childhood obesity in children under five in Argentina with a prevalence of 9,9% (Latin America has 7,2%).

A local study that analyzed the Global School-based Student Health Survey (GSHS) in Argentina showed that adolescents whose parents had low educational level, overweight and obesity were 29.6% and 6.7%, respectively, while in adolescents with parents with high educational level, overweight and obesity were 25.3% and 4.3% respectively. The difference between the two sectors was statistically significant ($p < 0.05$). Adolescents whose parents had the lowest educational level had a 31% (OR: 1.31) higher probability of being overweight as compared to those with parents with the highest level of education. The same analysis also showed that male adolescent boys were 97% (OR 1.97) more likely to be overweight as compared to adolescent females. On the other hand, adolescents of 13 years of age or younger were 51% (OR 1.51) more likely to be overweight versus those of 14-years-of-age or older¹². The same survey noted that only 16.7% of the students participated in physical activity, for at least 60 minutes per day, in the past 7 days. Thus, economically vulnerable populations are more affected by these diseases. Over a short period, the levels of physical inactivity, rates of diabetes, and obesity have increased tremendously in Argentina.¹³

Obesity and its related risk factors are especially burdensome to those urban-dwelling Argentines, who fall into a lower socioeconomic status.¹⁴ Rising rates of obesity also contribute to elevate healthcare spending, both privately and governmentally,¹⁵ which generates enormous costs for the healthcare system. In a country like Argentina, where the State lacks enough resources to fully comply with obligations associated with the right to health, overspending in preventable diseases becomes a matter of urgency.

2015_09_04_encuesta_nacional_factores_riesgo.pdf

⁹ *Id.*

¹⁰ *Id.*

¹¹ National Second World School Health Survey, (in Argentina. Ministry of Health. (2012). Available at (in Spanish): http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/2014-09_informe-EMSE-2012.pdf (Consultation August 30 2018)

¹² Social Gaps in the Obesity's Epidemic in Argentinean Children and Adolescents: Situational Diagnosis; FIC Argentina. (2016)

¹³ Veronica Schoj, *NCDs in Argentina: Civil Society Actions to Address Them*, FIC ARGENTINA. Available at <http://www.cegh-csih.ca/assets/Schoj.pdf>.

¹⁴ *Id.*

¹⁵ *Obesity Epidemic, supra* note 6.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

In this context, Argentina needs to adopt effective measures to prevent obesity and malnutrition in order to protect the right to health and to fulfill ICESCR obligations.

A. Marketing Regulations

Advertising and marketing for unhealthy food and beverage products is one of the most important areas for public health agencies to exercise oversight and regulation. Exposure to advertising and marketing of unhealthy foods and beverages increases actual or likely consumption, particularly for children and adolescents, and can lead to overweightness and obesity and other corresponding negative health impacts.¹⁶ Unhealthy foods and beverages are often appealing, inexpensive, and ubiquitous even before advertisers and manufacturers employ additional techniques to incentivize consumptions like celebrity endorsements, sponsorships for events or sport teams, or gimmicks like toys.

Exposure of Argentinean population, especially children, to advertising of unhealthy food products is very high and disproportionate to that of healthy and natural foods¹⁷. The increases in prevalence for obesity and overweight suggest that unhealthy consumer habits remain in Argentina and the current framework is inadequate to both meet public health goals as well as Argentina's duties under the Covenant.

Argentina is particularly derelict in ensuring an environment that fosters health and healthy eating. Children under 12 are exposed to over 60 advertisements for products with low nutritional value, even when primarily viewing programs or channels directed towards them. A 2017 study, recording over 400 hours of children's programming, identified 1 in 5 advertisements related to food and beverages and, of those only a third of those products were nutritionally healthy.¹⁸ Half of the advertised foods were high in sugar and 1 in 4 was high in saturated fat. Dairy products (which may include ice cream and similar sweetened items), candies and sweets, fast-food meals, and beverages were the most commonly advertised items.¹⁹

Currently, Argentina counts on a legal framework that establishes rules, principles and authorities that could lead to a protective regulatory framework for children and adolescents in terms of advertising. However, it was not passed with the perspective of protecting children and consumers from advertising campaigns of unhealthy food and beverages. For instance, Law on Audiovisual Communication Services No. 26.522, Article 81 includes a provision prohibiting direct marketing to children in the following terms: "*advertising aimed at children should not incite the purchase of products exploiting their inexperience*

¹⁶ See WHO, Obesity and Overweight: Fact Sheet (June 2016), <http://www.who.int/mediacentre/factsheets/fs311/en>.

¹⁷ Allemandi L, Castronuovo L, Tiscornia MV, Ponce M, Schoj V. Food advertising on Argentinean television: are ultra-processed foods in the lead?. *Public Health Nutrition*. 2017 Jul:1-9.

¹⁸ A. Roviroso et. Al. *Food and Beverage Advertising on Children's TV Channels in Argentina: Frequency, Duration, and Nutritional Quality*, *Arch. Arg. Pediatr.* (2017).

¹⁹ *Id.*

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

and credulity" and "advertisements (...) will not induce behavior detrimental to the Environment or physical and moral health of children and adolescents". Furthermore, the Consumer Defense Law No. 24.240/12 establishes the obligation to provide accurate information and the Commercial Loyalty Law No. 22802/13 regulates misleading advertising. In addition, ANMAT provision 4980/0514 highlights that when advertising, "*The interests of public health should not be violated*". Lastly, the self-regulation body "Consejo de Autorregulación Publicitaria" establishes a voluntary standard that likewise discourages marketing to children.

A national policy to reduce exposure to advertising of unhealthy foods must include all marketing and communication channels and clear nutritional standards based on a nutrient profile model that determines which products are unhealthy and therefore must not be promoted among children and adolescents. The types of products (food and non-alcoholic beverages) to be regulated and the audiences to be included in the regulation should be clearly determined. In addition, there must be effective mechanism of penalties to ensure compliance. It is important to take into account that partial measures have been ineffective. The industry finds mechanisms to avoid restrictions and has the resources to reach the same consumers addressed in the regulation through alternative channels. Finally, industry self-regulation does not work because they usually include weak restriction guidelines, their participation is voluntary, and there are no monitoring mechanisms and penalties or oversight.

By not adopting a national law that effectively restricts advertising, promotion and sponsorship of unhealthy food and beverages, Argentina is failing short in protecting the right to health, according to the Covenant.

B. Food Labeling

The nutritional label shown in food packages must provide the necessary information to the consumer, allowing him/her to know the amount of critical nutrients, such as added sugar, that he/she is consuming when consuming.

In Argentina, the estimated added sugar consumption is about triple of the recommended amount (close to 35 teaspoons per day). Our country is among the five countries with the highest consumption of added sugar in the world²⁰. These indicators are alarming and are reflected in the increase in the levels of overweight and obesity in children (34.5%)²¹ and adults (57.9%) in Argentina²². Despite these figures, the declaration of sugars in the nutritional label according to the Argentine Food Code²³ is not obligatory, with the consequent

²⁰ Sugar consumption at a crossroad. Research Institute, Credit Suisse. (2013). Available at: <https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=780BF4A8-B3D1-13A0-D2514E21EFFB0479> (Consultation August 29 2018)

²¹ Second World School Health Survey, Argentina. National Ministry of Health. (2012).

²² Third National Survey of Risk Factors for Non-communicable Diseases. National Ministry of Health (2013).

²³ Chapter V, "Rules for Food's Labeling and Advertising", CAA, ANMAT. Available at (in Spanish):

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

misinformation of the consumers about the origin and the quantity of sugars contained in foods and drinks.

Furthermore, Argentina currently has a poor regulation over food and beverage labeling. There are three food-packaging messages: mandatory labeling, health and nutritional claims and marketing messages.

With respect to mandatory labeling, the regulation requires food manufacturers to show information regarding the ingredients, origin, expiration dates, and the nutritional panel (including required nutrients such as sodium, proteins, carbohydrates, fats). Consequently, the information that food manufacturers provide to consumers cannot be easily understood and it fails to assist buyers in making healthy choices.²⁴

With respect to health and nutritional claims, the regulation in Argentina is also weak, and the food industry takes advantage of it. A recent investigation carried out by FIC Argentina, FUNDEPS and Universidad Católica de Santa Fe found that four out of ten packaging of cereals, desserts and cookies of low nutritional quality use this type of messages.

Argentina has no specific and effective legislation to restrict the advertising in packaging of unhealthy food and beverage products. In this respect, the same study found that three out ten of the products high in sodium, fats or sugar; use cartoon characters and celebrities in the packaging to promote their products.

Other countries have embraced better policies in order to protect consumers from deceptive information in food labeling. In Chile, for example, Act 20,606²⁵ requires food manufacturers to incorporate a warning sign in foods with high contents of salt, fats, and sugar. The warning consists of a black “stop” sign stating “high content ...” for the excess nutrient. The new Peruvian Law, Act 30,021²⁶, establishes similar regulations, while the Brazilian Health Regulatory Agency is currently conducting a public consultation, in order to promote this kind of measures²⁷.

The Argentinean labeling deficiencies result in a violation of human rights, such as the right to health, and the right to a healthy diet. Better regulations would also respect consumer's' right to accurate and easy-to-understand nutritional information.

http://www.anmat.gov.ar/alimentos/codigoa/Capitulo_V.pdf (Consultation August 29 2018)

²⁴ FIC Argentina, FUNDEPS, Universidad Católica de Santa Fe. “Food’s labeling and advertising strategies directed to children, Argentina processed food packaging”. Available at (in Spanish): http://ficargentina.org/images/stories/Documentos/1708_informe_envases_completo.pdf

²⁵ Law No. 20,606 on the nutritional composition of food and its advertising, decree 13/2015, Chile. (2015)

²⁶ Law No. 30.021, Perú (2018)

²⁷ Health Regulatory Agency; Taken public subside for the regulation of nutritional labeling of food. Available at: (in Portuguese): <https://pesquisa.anvisa.gov.br/index.php/981335>

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

C. Soda's Taxes

The consumption of certain foods and food products has been repeatedly implicated as a contributing factor to the recent rise in metabolic disorders worldwide. Research has consistently identified the excess consumption of sugar as one of the major causative agents in the on-going epidemics of obesity, hypertension, diabetes, and other metabolic disorders.²⁸ One of the main sources of added sugar consumption is the consumption of sugary drinks²⁹, and Argentina is the world's largest consumer of soft drinks, with 137 liters per capita per year, according to Euromonitor 2014³⁰.

Taxes and pricing policy can alter consumption of a targeted product. Taxes are typically “passed on” to consumers by the manufacturers, elevating the retail price of the food. Studies indicate that taxes may substantially change dietary habits, with people eating less of the higher priced food or beverage. For example, one report notes that Mexico’s beverage tax resulted in an average 12% increase in retail price with a concomitant decline in soda purchases of 10%.³¹ In addition, modeling studies evaluating the available scientific data on non-communicable diseases suggest, “taxes on carbonated drinks and saturated fat and subsidies on fruits and vegetables would be associated with beneficial dietary change, with the potential for improved health.”³²

Education, labeling, and advertisement controls work in concert with taxes and pricing schemes and are essential components of any comprehensive governmental policy focused on NCD rate modification.^{33 34} When policymakers choose to employ taxes to improve nutrition and health, the sugar content of drinks is the optimal place to start. It is the taxing of content, and not volume or sales that holds the most promise for achieving the stated health goals.³⁵ All taxes should be designed to encourage businesses to develop healthier products and avoid switching consumers to alternative, equally unhealthy, substitutes. Finally, careful consideration must be given to how subsequent revenues from any taxes are utilized.

Current regulation on soda taxes in Argentina is given by the internal taxes law. It establishes that all concentrates for soda preparation, syrup juices and the sodas, have an internal tax of 8%. However, this percentage is reduced by 50% if the

²⁸ D. Marron et. al., *Should We Tax Unhealthy Foods and Drinks?*, Tax Policy Center Urban Institute and Brookings Institute (Dec. 2015).

²⁹ Hu FB. Resolved: there is sufficient scientific evidence that decreasing sugar-sweetened beverage consumption will reduce the prevalence of obesity and obesity-related diseases. *Obes Rev.* 2013 Aug; 14(8):606-19. Available at: <http://www.ncbi.nlm.nih.gov/pubmed/23763695> (Consultation August 30 2018)

³⁰ Carbonates in Argentina. Euromonitor 2018. Available at: <https://www.euromonitor.com/carbonates-in-argentina/report> (Consultation August 30 2018)

³¹ J. Grogger, *Soda Taxes and the Prices of Sodas and Other Drinks: Evidence from Mexico* (2015).

³² H. Eyles, et. al., *Food Pricing Strategies, Population Diets, and Non-Communicable Disease: A Systematic Review of Simulation Studies*, *PLoS Med* (2012), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001353> .

³³ M. Galante et. al., *Epidemiological situation of obesity in Argentina: Epidemiological Condition of Obesity in Argentina*, *84 Rev. Argent. Cardiol.* 132 (2016),

³⁴ D. Marron et. al., *Should We Tax Unhealthy Foods and Drinks?*, Tax Policy Center Urban Institute and Brookings Institute (Dec. 2015).

³⁵ *Id.*

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

beverages or the concentrates for its preparation have any percentage of fruit juice.³⁶ The WHO recommends an increase of 20% in taxes for sugar-sweetened beverages in order to reduce their intake.³⁷ In reality, many beverages – like fruit juice – contain large quantities of “added sugar” and are not necessarily healthier than other sugar-sweetened beverages. Undeniably, narrowly defining sugar-sweetened beverages and/or excluding added sugars and fruit juice undermines the purpose of the tax.

During the tax reform debate in December 2017, the Argentinean State reported³⁸ to the Committee that it was developing a tax regulatory proposal for sugar-sweetened beverages. However, taxes to sugar-sweetened beverages did not suffer any modification, despite the Civil Society efforts to raise them, remaining in the 8% as it is said above.

Therefore, the current regulations do not affect positively the obesity and overweight issues in Argentina and are insufficient to provide any deterrent to consumption of the product and, consequently, do not aid in improving general health. In this context, the Argentinean soda taxes deficiencies result in a violation of human rights, such as the right to health, and the right to a healthy diet, according to the Covenant.

D. School Environment

According to the WHO, childhood overweight and obesity are one of the major public health problems of the 21st century. It is estimated that childhood obesity has almost tripled in the last 30 years.

Argentina has shown increases in overweight and obesity rates among children, adolescents, and adults. Obesity went from 4.4% to 5.9%, according to data obtained by the World School Health Survey (WSHS) 2012, conducted to adolescents 13 to 15 years. This situation is related to the high consumption of products of low nutritional value and high sugar, fat and sodium content and habitual intake of sugary drinks, as well as insufficient physical activity.

In our country, 60% of children and adolescents between 5 and 17 years of age do not perform enough physical activity, while 59.5% of students participate in one or no gymnastics class per week. In addition, while different scientific entities advise 150 minutes per week for primary school students and 225 for secondary schools, the official curriculum proposes 90 and 120 respectively³⁹.

The Eating Disorders Act no. 26.396 obligates all kiosks and selling-food shops to

³⁶ Law No. 24.674, Internal Taxes Law,

³⁷ WHO, Fiscal Policies for Diet and Prevention of Noncommunicable Diseases, p. 24. (2015)

³⁸ Argentina Report; “Annex to Question 25”; 2018.

³⁹ Children in a situation of multidimensional poverty: comparative analysis of different methodologies for calculating poverty Argentina’s childhoods during the Bicentennial (2010-2016); Universidad Católica Argentina. Available at (in Spanish): <http://bibliotecadigital.uca.edu.ar/greenstone/collect/investigacion/tmp/infancias-situacion-pobreza-multidimensional-2017.html>

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

sell products that integrate a healthy and diverse diet. These products must be properly exhibited, so that children and adolescents can buy them⁴⁰. However, according to the WSHS 2012, 80.2% of schools have at least one kiosk and 91.4% of these kiosks offer products of low nutritional value such as sugary drinks, sweets, ice cream, sandwiches with high fat sausages, Snacks, sweet cookies, hot dogs and burgers, etc. As for product advertisements at school kiosks, the survey showed that in more than half of the kiosks (58.6%) there were soft drink advertisements. In addition, only 5.6% of schools included drinking water in courtyards or free drinking water dispensers. Regarding the number of weekly physical education classes at the school during the last school year, only 25.9% of adolescents had five or more times per week.

In the province of Córdoba, evaluations of the young population showed that in 2012, between 25% and 30% of all school children attending pre-scholar and primary school weighted more than they actually should. Overall, there were fewer occurrences of overweight and obesity in pre-scholar than in primary school classes. Results indicated that the former reached between 10% and 15%, while the latter exceeded 30%. In addition, the primary schools' final evaluation also indicated an evidence of frequent obesity, i.e. being between 10% and 15%.⁴¹

Policies to promote healthier school environments must be comprehensive^{42 43 44} and must include measures to improve the food supply provided in schools, eliminate the provision or sale of sugary drinks and foods with low nutritional quality, among others. In addition, the access to drinking water in schools must be assured and sports establishments, to include nutrition education and healthy habits in schools' curricula. It is also necessary to increase hours of physical education in the school's curriculum and ensure the incorporation of qualified staff and building structures that allow their implementation, among others.

Regarding measures that include the supply of food in schools, it is important to note that there are studies that showed that when healthy foods are available but unhealthy options are not eliminated, measures do not have a significant impact on the diet of the students.⁴⁵⁴⁶⁴⁷ The selection of foods to be offered should be based on the nutritional quality of the products and not on the quantity of

⁴⁰ Law No. 26.396, Act. 9. Available at: <http://test.e-legis-ar.msal.gov.ar/leisref/public/showAct.php?id=11533>

⁴¹ Global survey about scholar health. Available at: www.msal.gob.ar/ent/images/stories/vigilancia/.../2014-09_informe-EMSE-2012.pdf

⁴² Alaimo K, Oleksyk SC, Drzal NB, et al. Effects of changes in lunch---time competitive foods, nutrition practices, and nutrition policies on low---income middle---school children's diets. *Child Obes* 2013; 9: 509-23

⁴³ Adamson A, Spence S, Reed L, et al. School food standards in the UK: implementation and evaluation. *Public Health Nutr* 2013; 16: 968-81.

⁴⁴ Spence S, Delves J, Stamp E, Matthews JN, White M, Adamson AJ. The impact of food and nutrient---based standards on primary school children's lunch and total dietary intake: a natural experiment

⁴⁵ Sallis J, McKenzie T, Conway T. Environmental interventions for eating and physical activity: a randomized controlled trial in middle schools. *Am J Prev Med*. 2003;24 (3):209-17.

⁴⁶ Lytle L, Murray D, Perry C, Story M, Birnbaum A, Kubik M, et al. Schoolbased approaches to affect adolescents' diets: results from the TEENS study. *Health Educ Behav*. 2004;31(2):270-87

⁴⁷ French S, Story M, Fulkerson J, Hannan P. An environmental intervention to promote lower---fat food choices in secondary schools: outcomes Of the TACOS study. *Am J Public Health*. 2004;94:1507-12.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

calories as outlined in the WHO-PAHO policy recommendations. It is also crucial that kiosks increase the supply of healthy products. In addition, the Committee on Children's right recommended Argentina to "(...) (r)egularly monitor and assess the effectiveness of policies and programs on child food security and nutrition, including school meal programs and programs addressing infants and young children"⁴⁸.

Furthermore, it is necessary to impose a federal policy for nutrition in schools so that it sets basic standards, which could be adapted by provincial policies. School environments must be regulated on a provincial and municipal level taking into consideration the particular reality of the different provinces. The Argentinean regulatory framework establishes there must be healthy food at schools. However, it does not provide a list of products and it does not prohibit the sale and advertising of unhealthy food. Likewise, the quantity and quality of students' exercise hours is poor. In this way, Argentina does not guarantee children and adolescents' right to an adequate diet, violating their internationally recognized human rights.

III. Tobacco consumption in Argentina

According to the National Risk Factor Survey of the Health Ministry, **25% of the Argentinean population smokes**⁴⁹. The smoking prevalence in Argentina is about 22.1% in adult population and 24.1% in young people. Additionally, 46.8% of the population said that they were exposed to tobacco smoke⁵⁰. According to studies⁵¹, in Argentina, tobacco causes the loss of 998,881 years of life annually and accounts for 13.2% of all deaths occurring in the country. This represents 44.851 deaths per year that could be avoided⁵². However, if tobacco control policies were strengthened, these deaths per year could be prevented.

In line with what is happening around the world, tobacco epidemic in Argentina is shifting from men to women and from rich to poor people⁵³. In this context, according to the Risk Factors' National Survey⁵⁴, although consumption diminished among women (22.4% in 2009 and 20.9% in 2013) and men (32.4% in 2009 and 29.9% in 2013), the gap between them was reduced. Moreover,

⁴⁸ Committee on the Rights of the Child; Concluding observations on the combined fifth and sixth periodic reports of Argentina; 2018.

⁴⁹ National Ministry of Health, National Institute of Statistics and Census; "Third National Risk Factor Survey 2013": Main results presentation (2014),

⁵⁰ National Ministry of Health; INDEC, OMS/OPC, CDC; Global Adult Tobacco Survey (GATS) 2012; Ciudad de Buenos Aires, 2013. Available at (in Spanish): http://www.msal.gob.ar/ent/images/stories/vigilancia/pdf/2013-09_encuesta-tabaquismo-adultos-25-junio.pdf (Consultation August 30 2018)

⁵¹ Institute of Clinical Effectiveness and Health (IECS); Deaths, illness and tobacco taxation in Argentina. May 2016. Available at (in Spanish): http://www.iecs.org.ar/wp-content/uploads/FINAL-OK-MAYO-2016-Flyer_Argentina1.pdf (Consultation August 30 2018)

⁵² *Id.*

⁵³ Lopez AD, Collishaw NE, Pihl T. A descriptive model of the cigarette epidemic in developed countries. *Tobacco Control*. 1994;3(3):242.

⁵⁴ *Id.* At 43

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

tobacco consumption causes the death of 11,348 women every year.⁵⁵ According to the estimated data, lung cancer has doubled among women in the last 38 years.⁵⁶ Studies also assessed this problem with reference to specific women groups. For instance, 11% of Argentinian pregnant women continue smoking during pregnancy.⁵⁷ In addition, young women smoke more than young men (27% against 21%) do, according to the data.⁵⁸

As with the case of obesity and overweight, tobacco related diseases, more heavily affect vulnerable groups. Unless the State develops specific policies to address these impacts, the current situation is likely to increase inequalities concerning the right to health in Argentina.

A. Argentina's ratification of the Framework Convention on Tobacco Control (FCTC)

The FCTC is the legal framework that places obligations upon States to adopt tobacco control policies. It facilitates the implementation of laws that are necessary to protect the global population from the toxic effects of tobacco consumption and exposure to secondhand smoke. By August 2018, 181 countries had ratified the FCTC⁵⁹, and Argentina is the only country in South America that is still not a member of this Convention; the first public global health treaty.

The FCTC establishes a set of measures that are proven to be effective to protect human right to health from the consequences of tobacco consumption and exposure to secondhand smoke. Among others, the treaty requests governments to implement 100% smoke-free environments, complete bans of tobacco advertising, promotion and sponsorship, warning labels on the package, measures to raise tobacco prices, mechanisms to control illicit trade and to promote transparency and accountability in the relationship between tobacco industry and decision makers.

Scientific evidence demonstrates that, worldwide, the tobacco industry has undermined country's efforts to implement effective tobacco control policies that endanger industry profitability⁶⁰. In order to properly protect the right to health

⁵⁵ R. Mejia & E.J. Perez-Stable, *Tobacco epidemic in Argentina: The cutting edge of Latin America*, 2 PREVENTION AND CONTROL 49-55 (2006).

⁵⁶ National Ministry of Health; Tobacco consumption in Argentina report (2016) Available at (in Spanish): <http://www.observatorio.gov.ar/media/k2/attachments/InformeZEpidemiologicoZsobreZelZConsumoZdeZTabacoZenZArgentina.ZAbrilZ2016.pdf> (Consultation August 30 2018)

⁵⁷ F. Althabe et. al, *Smoking during pregnancy in Argentina and Uruguay*, 68 MEDICINA 48-54 (2008).

⁵⁸ Schargrodsky, et. al, *CARMELA: assessment of cardiovascular risk in seven Latin American cities*, 121 AM. J MED. 58-66 (2008).

⁵⁹ United Nations Treaty Collection, Who Framework Convention on Tobacco Control Status. Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=ix-4&chapter=9&clang=_en (Consultation August 30 2018)

⁶⁰ Panamerican Health Organization. Profits over people (2002). Available at: http://www1.paho.org/English/DD/PUB/profits_over_people.pdf (Consultation August 30 2018)

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

of its population from the tobacco industry strategies, it is not enough to approve tobacco control legislation. There is a clear need of ratifying the FCTC⁶¹.

In this framework, the ESC Committee review (2011) and the UPR (2017 and 2012) recommended Argentina to ratify the FCTC. The ratification was recommended to guarantee the right to health, contained in all international human rights treaties. The Committee for the Elimination of Discrimination against Women (CEDAW) of the United Nations (in 2016 and 2010) expressed its concern about Argentinean women's situation in relation to the smoking epidemic. The Committee also recommended the country to ratify the Convention with the objective of reducing high tobacco consumption, especially among teenage girls, who currently have a higher consumption rate than teenage boys.

Concerning the United Nations, the lack of ratification of the FCTC by the Argentinean State has negative repercussions. The Sustainable Development Objective (SDG) No. 3, "Ensure healthy lives and promote well-being for all at all ages", proposes to strengthen the ratification of the Convention, a goal that is impossible for Argentina to fulfill now.

Ratifying the FCTC will give Argentina greater legal tools to advance tobacco control policies according to the international standards and it will allow the government to participate in decision-making process together with FCTC member States. Therefore, Argentina's ratification of the FCTC will provide the optimal framework for the implementation of more effective means for reducing demand of tobacco. It also offers a true pathway for the maximal protection of public health. Likewise, if the FCTC remains unratified, Argentina would demonstrate not only its lack of concern for its citizens' right to health, but also its unwillingness to commit to the International Human Rights Treaties and the bodies that are responsible for reviewing its application.

B. Tobacco products advertising, promotion and sponsorship

Tobacco marketing, which includes advertising, promotion, sponsorship and product display, has been shown to increase youth initiation of smoking⁶². The continuing tobacco epidemic is directly linked to the effectiveness of industry's advertising and promotional schemes, which are targeted at the recruitment of new smokers who are primarily children and adolescents. Advertisement as well as promotion and sponsorship have not only been shown to increase tobacco consumption, but also frequently achieve this end by presenting information designed to mislead or confuse younger audiences⁶³.

⁶¹ FIC Argentina, Reasons why Argentina needs to ratify the Framework Convention on Tobacco Control (FCTC), 2016. Available at (in Spanish): https://www.ficargentina.org/wp-content/uploads/2017/11/1805_cmct_argentina.pdf (Consultation August 30 2018)

⁶² DiFranza JR, Wellman RJ, Sargent JD Weitzman M, Hipple BJ, Winickoff JP. Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality. *Pediatrics* (2006); 117: p. e1237-e1248.

⁶³ R.L. Andrews & G.R. Franke. The determinants of cigarette consumption: A meta-analysis, 10 *J. Pub, Policy and Marketing* 81-100 (1991); K.E.Warner. *Selling Smoking: Cigarette Advertising and Public Health*. Washington, DC: American Public Health Association; 1986.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

In 2011, National Government passed law 26.687, which met the standards of FCTC, such as the implementation of smoke-free environments, health-warning labels, prohibition on the sale of tobacco products to minors, and the regulation of the content of cigarettes and educational programs. However, the adopted restrictions on tobacco advertising, promotion and sponsorship are insufficient to protect the right to health and show the necessity to move towards stronger regulations.

Law 26.687 places bans on tobacco advertising, including TV, radio, newspapers and internet, and restricts certain promotion and sponsorship activities. Article 5 specifically states, “Advertising, promotion, and sponsorship of tobacco products through any medium of diffusion or communication, whether direct or indirect, are prohibited”⁶⁴. However, Article 6 of Law 26.687 enumerates exceptions to Article 5’s prohibition on advertising and promotion of tobacco products, and, as a result, permits “point of sell advertising,” allows tobacco promotion in “tobacco growing-related publications,” and “direct communications toward individuals of 18 years and older” with verification of age and consent.

These exceptions essentially undermine the efficacy of Article 5 and allow the industry to directly advertise on potentially more effective modalities, including social media. For instance, according to a 2014 FIC Argentina study, 73.7% of the products at different points of sale did not follow the law in terms of product display.⁶⁵ ⁶⁶ In Córdoba, a study carried out by FUNDEPS at different points of sale, also showed that that tobacco companies were heavily relying on point of sales to continue to market their products, especially in areas near schools⁶⁷. In Tierra del Fuego, Antarctica and in the South Atlantic Islands a provincial norm respects the complete prohibition standards of all forms of tobacco advertising (including the exhibition of products). This means that this norm exists only in one of the twenty- four Argentinean jurisdictions⁶⁸.

Indeed, taking advantage of the loopholes in law 26.687, the tobacco industry has been using an unconventional marketing tool called "Bellow the Line" (BTL). FIC Argentina has been closely monitoring the industry’s activities regarding this type of aggressive marketing and has concluded that tobacco product marketing is present in all types of mass means of communication, from e-mail newsletters to advertisement for cultural events⁶⁹. Furthermore, it is relevant to mention that the tobacco industry has developed aggressive campaigns to promote flavored

⁶⁴ Law No. 26.687, Jun. 13, 2011, [CXIX] B.O. 1 (Arg.), Article 5

⁶⁵ FIC Argentina. The advertising strategies Massalin Particulares and Nobleza Piccardo violating the law (2015). Available at (in Spanish): http://www.ficargentina.org/wp-content/uploads/2017/11/150522_tabacaleras_en_la_mira_final.pdf

⁶⁶ FIC Argentina. Tobacco products advertising, promotion and sponsorship in points of sales in Argentina: Characteristics and compliance within the existing national legislation and the innovative industry’s strategies. 2015. Available at (in Spanish): http://www.ficargentina.org/wp-content/uploads/2017/11/triptico_publicidad_punto_de_venta.pdf

⁶⁷ FUNDEPS, The advertising strategies Tobacco Industry in points of sales in Córdoba City. Available at (in Spanish): http://www.fundeps.org/sites/default/files/estrategias_de_marketing_de_la_industria_tabacalera_en_puntos_de_venta_de_la_ciudad_de_cordoba.pdf

⁶⁸ Provincial Act No. 1.203.

⁶⁹ FIC Argentina. The advertising strategies Massalin Particulares and Nobleza Piccardo violating the law. 2015.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

cigarettes in Argentina. National tobacco control law 26.687 does not regulate cigarettes content, which gives the industry the opportunity to sell tobacco tasting like sweets or alcoholic drinks⁷⁰. It has been proved that flavored cigarettes are more appealing to young people and the tobacco industry has been promoting these products in order to catch new smokers⁷².

The WHO noted that in order to have effective controls in this area, the ban must be directed at “all individuals and entities” responsible for the “production, placement, and/or dissemination of tobacco advertising, promotion and sponsorship.”⁷³ Partial bans encourage manipulation and enable avoidance.

Argentinean current regulation on tobacco control still allows advertising at points of sale and direct marketing. The content of cigarettes is not regulated correctly; it violates people’s right to health, children and adolescents in particular. Only through regulations that assure an absolute and comprehensive ban on all forms of direct and indirect tobacco advertising, Argentina will achieve the goal of tobacco consumption reduction, and in this way, comply with what is imposed by the Pact.

C. Tobacco Taxes

Studies have consistently demonstrated that a significant increase in cigarette prices markedly reduces tobacco consumption, especially diminishing the use by young people and by those in lower socio-economic sectors.⁷⁴ This price sensitivity represents a powerful deterrent to tobacco demand and evidence indicates that for every 10% increase in the price of cigarettes consumption is reduced by 4% and 8%, in adults and young people respectively.⁷⁵

Article 6 of the FCTC, in conjunction with the guiding principles and recommendations agreed in 2012 at the Fifth Conference of the Parties (COP5), that Parties must implement taxation measures aimed at reducing tobacco consumption. Price and tax measures are an effective means of reducing tobacco consumption among various sectors of the population, particularly young people and low-income sectors.

⁷⁰ FIC Argentina, Mojito Fest Analysis, (2015). Available at (in Spanish): http://www.ficargentina.org/wp-content/uploads/2018/08/1808_Mojito_Fest.pdf (Consultation August 30 2018)

⁷¹ Sabor que Mata: Estrategias de la Industria Tabacalera para atraer nuevos consumidores en América Latina a través de los cigarrillos saborizados. Available at (in Spanish): http://www.ficargentina.org/wp-content/uploads/2017/11/170623_saborquemata.pdf (Consultation August 30 2018)

⁷² Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: tobacco marketing strategies. *Health Affairs (Millwood)*. (2005) Nov-Dec;24(6):1601-10.

⁷³ Guidelines for the application of Article 13 (Tobacco Advertising, Promotion and Sponsorship) of the WHO Framework Convention on Tobacco Control, 2008.

⁷⁴ WHO Report on the Global Tobacco Epidemic, 2008: The MPOWER package. Geneva: World Health Organization, (2008). ISBN: 978 92 4; WHO Technical Manual on Tobacco Tax Administration, World Health Organization 2010; F.J. Chaloupka et al., Effectiveness of tax and price policies in tobacco control. *Tob Control*, 2011;20(3):235-8. Epub 2010 Nov 29; H. Ross & F.J. Chaloupka, Economic policies for tobacco control in developing countries. *Salud Publica Mex.*2006;48 Suppl 1:S113-20.

⁷⁵ CDC: MMWR, *Achievements in Public Health, 1900-1999: Tobacco Use -- United States, 1900-1999* (1999), 986-93; F. J. Chaloupka, *Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products*, *Nicotine and Tobacco Research* 1(Suppl 1):S105-9, 1999.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

In 2016, the Government implemented a decree that increased tobacco taxes slightly reducing the affordability of cigarettes. Then in 2017, the Executive extended the policy by passing Decree 15/2017 which contains the same measure⁷⁶. However, in December 2017, the Congress approved an internal taxes law's reform. The Tax Reform Law No. 27.430⁷⁷ establishes that cigarettes will be taxed on the sale price to the consumer, including taxes, except the "value added tax", a tax of seventy percent (70%). The corresponding tax may not be less than twenty-eight pesos (\$ 28)⁷⁸ for each twenty (20)-unit package. In addition, the National Executive Branch may increase up to twenty-five percent (25%) or decrease up to ten percent (10%) transitorily the aforementioned minimum amount⁷⁹. However, it cannot exceed a rate of seventy-five percent (75%) on the respective tax base⁸⁰.

The new tax reform law establishes a minimum amount of taxation for cigarette packages, even though the percentage to be paid is lower than that established by Presidential Decrees of 2016 and 2017. The Executive Branch may increase the amount and it can also decrease it, without the measure passing through the National Congress.

According to studies on the new internal taxes law, the current taxation system on tobacco is merely a collection system. It violates people's right to health. Today, with an average salary it is possible to buy 600 packages a year (annual affordability), while the Decree 626/2016 had dropped it to 500 packages. Therefore, the current Argentinean tax regulation is not only deficient in complying with international standards and the protection of human rights, but it also stands against the principle of progressive rights.

We believe that a fiscal measure must be designed with a public health objective, to discourage tobacco consumption. The Argentinean State must legislate so that the increase in taxes can be transferred to an increase in prices, as it is established by international standards. Otherwise, it would be a purely collection system policy and not a health policy, violating the Convention.

⁷⁶ Decree 15/2017. Available at (in Spanish): <https://www.boletinoficial.gob.ar/web2/utills/pdfView?file=%2Fpdf%2Fnorma%2F157320%2Fnull%2FPrimera%2FQTisEtpLtoRBhUt6tERQKy1bLS1JV1bLXLiuFJNJvPCeePitJRI5A%3D%2F1> (Consultation August 30 2018)

⁷⁷ Law No. 27,430; Art. 98. Modification of Art. 1 of Law No. 24,674.

⁷⁸ The amount of twenty-eight pesos (\$ 28) will be updated quarterly, by calendar quarter, based on changes in the Consumer Price Index (CPI), provided by the National Institute of Statistics and Census, considering the cumulative variations of said index from the month of January 2018, inclusive.

⁷⁹ *Idem*; Art. 103. Modification of Art. 15 of Law No. 24,674.

⁸⁰ *Idem*; Art. 102. Modification of the article without added number following Article 14 of Law No. 24,674.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

IV. Argentina's Obligation to protect citizens from Non-Communicable Diseases.

Argentina's obligation to protect citizen's health is contained in both the National Constitution and in the international human rights treaties that enjoy a constitutional hierarchy due to their incorporation in the domestic system.

The right to health is contained in different provisions of Argentina's National Constitution. For example, Article 41 of the constitution guarantees a right of all inhabitants "*to a **healthy**, balanced environment, apt for human development and for productive activities which meet their present needs without compromising those of future generations (...)*". This article addresses the individual aspects of the right to health, in addition to its collective or communal features, which are both affected by the activities of the tobacco and food industries. Furthermore, the link between the right to health and the right to a safe environment contained in Article 41 informs why the State is urgently required to strengthen its policies addressing non-communicable diseases.

Additionally, Article 42 explicitly protects the right to health when referring to consumer's rights in the following terms: "*Consumers and users of goods and services have the right, in the consumer relationship, to **the protection of their health**, safety and economic interests, to adequate and truthful information, to freedom of choice, and to conditions of equitable and dignified treatment (...)*." The connection between consumer rights and the right to health, as expressed in the Constitution, reaffirms Argentina's obligation to protect its citizens from the deceptive marketing tactics that the tobacco and food industries are specifically directing towards them.

In the international law context, Argentina's obligations regarding right to health can be found in two types of sources: International treaties and the interpretative guidelines of those same instruments produced by authoritative sources.

Article 75 of the Constitution, subsection 22, grants special hierarchy to a list of international human rights treaties and affords them a higher status in the domestic system than that conferred upon national laws. In that sense, international instruments⁸¹, which guarantee the right to health, are considered as binding as any other constitutional provision,

Regarding the ICESCR, Argentina has an obligation under Article 11 of the Covenant to ensure that its people have adequate food, meaning not just calorically sufficient but also matching their dietary. General Comment 12 is particularly indicative as to Argentina's obligation to fulfill this right: "*[T]he State must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food*

⁸¹ Such as the Convention on the Elimination of All Forms of Discrimination against Women, the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights (CESCR Convention) and the American Convention on Human Rights.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

*security.*⁸² Argentina must show that it is proactively working to ensure that its people are accessing healthy foods and, where necessary, are protected from influences that hinder consumption of healthy foods. Food consumption is a significant contributor and driver to human health, especially where particular trends indicate adverse health impacts. In addition, the CESCR⁸³ recommended that the states formulate "a comprehensive national strategy for the protection and promotion of the right to adequate food⁸⁴".

Article 12 further embellishes on Argentina's duty to ensure the right to health for its people. Tobacco epidemic has been proven as major cause of preventable death globally, and in Argentina causes more than 44 thousand deaths per year. In this context, the Committee on Economic Social and Cultural (CESCR) rights stated that it was "*concerned about the high level of tobacco consumption in the State party, especially among women and youth.*" CESCR recommended that Argentina "*ratify and implement*" the FCTC and "*develop effective public awareness and tax and pricing policies to reduce tobacco consumption, in particular targeting women and youth.*"⁸⁵

Argentina is obligated under ICECSR to shield citizens from the harms of Non-Communicable Diseases. General Comment 14 of the CESCR recognizes three types of obligations on Party States: Respect (refrain from interfering); protect (take measures to prevent future violations) and fulfill (adopt positive measures to promote the rights).⁸⁶ According to the CESCR, the right to health can only be attained if the services or initiatives created to guarantee the right meet the elements of availability, accessibility, acceptability, and quality.⁸⁷ These elements gain a special importance in the case of upholding the right to health of citizens.

The obesity, overweight and tobacco epidemic in Argentina among youth, adolescents, and adults necessitates Argentina to honor its Article 11 and 12 obligations and take measures to prevent NCDs risks factors. According to previous CESCR recommendations, these obligations address the Argentine state at its different levels. Argentina must ban marketing campaigns of unhealthy products, to raise taxes of tobacco and sugary drinks and to adopt further measures according to the international standards. Failing to prevent NCDs is a violation to State Party obligation to promote the highest standard of health to Argentinean population.

⁸² CESCR General Comment No. 12: The Right to Adequate Food (Art. 11), ¶15, U.N. Doc. E/C.12/1999/5. Available at: <http://www.refworld.org/pdfid/4538838c11.pdf>. (Consultation August 30 2018)

⁸³ Committee on Economic, Social and Cultural Rights; 62nd Period of Sessions; Concluding observations on the sixth periodic report of Colombia; 2017. Available online: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1149&Lang=en (Consultation August 30 2018)

⁸⁴ *Idem*; Points 56 and 57.

⁸⁵ E/C.12/ARG/CO/3, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Argentina (2011).

⁸⁶ ESCR Committee, General Comment No. 14, The Right to the Highest Attainable Standard of Health, P. 33, U.N. Doc. E/C.12/2000/4 (Nov. 8, 2000). Available at: <http://www.refworld.org/pdfid/4538838do.pdf> (Consultation August 30 2018)

⁸⁷ *Id.* at parr. 12.

COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
64th Session (24 Sep.-12 Oct. 2018)

V. Recomendations

Taking into consideration the information described in this report, we suggest to the Committee the following recommendations to be included in the Concluding Observations to the Argentinean State:

1. The Government of Argentina must regulate and restrict marketing strategies of unhealthy food and beverages.
2. The Government of Argentina must adopt a food labeling policy according to the international best practices.
3. The Government of Argentina must implement tax measures to discourage the consumption of soda.
4. The Government of Argentina must ratify the Framework Convention on Tobacco Control.
5. The Government of Argentina must ban all forms of tobacco products marketing campaigns.
6. The Government of Argentina must sanction a National Tobacco Tax Law or adapt the “*internal taxes*” law to the international best practices.