



MARKETING OF FOODS AND NON-ALCOHOLIC BEVERAGES TO CHILDREN IN KENYA

POLICY BRIEF

February 2021

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The image shows two hands holding different types of food. The left hand holds a slice of pepperoni pizza and some bread. The right hand holds a basket of fresh vegetables, including a green apple, purple grapes, and broccoli. The background is a solid orange color.

EXECUTIVE SUMMARY

In Kenya, non-communicable diseases (NCDs) represent an increasingly significant burden of ill health and death¹. NCDs account for more than 50% of total hospital admissions and over 55% of hospital deaths. Approximately 7% of Kenyans die from cancer; and 37,000 new cases are diagnosed every year; 22.6% of adults aged 18-69 years have raised blood pressure or are currently on medication for raised blood pressure; while 2.3% have elevated levels of fasting blood glucose.² Unhealthy diet is one of the major risk factors for a range of chronic diseases, including cardiovascular diseases, cancer, diabetes and other conditions linked to obesity.

The World Health Organization (WHO) notes that governments have a central role in creating a healthy food environment that enables people to adopt and maintain healthy dietary practices. Some of the proposed actions to policy-makers to create a healthy food environment include the following: (i) creating coherence in national policies and investment plans – including trade, food and agricultural policies – to promote a healthy diet and protect public health (through, for instance, exploring regulatory and voluntary instruments (e.g. marketing regulations and nutrition labelling policies), and economic incentives or disincentives (e.g. taxation and subsidies) to promote a healthy diet); (ii) encouraging consumer demand for healthy foods and meals (through, for instance, supporting point-of-sale information, including through nutrition labelling that ensures accurate, standardized and comprehensible information on nutrient contents in foods; and (iii) promoting appropriate infant and young child feeding practices.³

It is against this background that WHO, International Development Law Organization (IDLO) and International Development Research Centre (IDRC), with support from the Swiss Development Cooperation (SDC) are implementing a three-year project RECAP: Global Regulatory & Fiscal Capacity Building program which aims to build national capacity for the development and implementation of regulatory and fiscal measures for healthy diets and physical activity and create supportive regulatory environments in the following areas: (i) restrictions on marketing of foods and non-alcoholic beverages to children; (ii) fiscal policies for diet, in particular effective SSB taxation; (iii) nutrition labelling, in particular front of pack labelling; (iv) reformulation of products to contain less salt, sugar and fats; and (v) physical activity promotion.

The Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), sub-granted by the International Development Law Organization (IDLO), has therefore developed this policy to inform country stakeholders (government, civil society, academia, and others) on the legal basis for adoption of nutrition labelling as a policy tool to promote healthy diets and prevent NCSs in Kenya.

KELIN is grateful to all partners, including WHO, IDLO, for their invaluable input in development of this policy brief.

¹ Kenya Health Policy 2012 – 2030 available at <http://www.nutritionhealth.or.ke/wp-content/uploads/Downloads/FinalKenyaHealthPolicyBook.pdf> (accessed 8 Aug 2020).

² Kenya National Strategy for The Prevention and Control of Non-Communicable Diseases 2015 – 2020.

³ WHO (2020) "Healthy diet Fact Sheet," available at <https://www.who.int/news-room/fact-sheets/detail/healthy-diet> (accessed Feb 1, 2020)



A: JUSTIFICATION FOR RESTRICTION ON MARKETING OF FOODS AND NON-ALCOHOLIC BEVERAGES TO CHILDREN AS A POLICY MEASURE TO PREVENT NCDs

According to the Joint Child Malnutrition estimates by United Nations International Children's Emergency Fund (UNICEF), WHO and the World Bank, there are nearly 41 million overweight children globally, an increase of 11 million since 2000. UNICEF warns that if the current trends continue, the number of overweight or obese infants and young children globally will increase to 70 million by 2025.⁴ As per 2020 estimates, the global prevalence of overweight among children under 5 years of age has not improved, increasing slightly from 5.3 percent in 2012 to 5.6 percent, or 38.3 million children, in 2019. As such, urgent efforts are needed to reverse this trend in order to halt the rise in childhood overweight by 2025 and achieve the target of no more than 3 percent by 2030.⁵ Overweight and obesity are major risk factors for a broad range of non-communicable

diseases (NCDs), including cardiovascular diseases, diabetes, musculoskeletal disorders and cancer.⁶

As per WHO, unhealthy diet is a risk factor for non-communicable diseases (NCDs) and that the risks presented by unhealthy diets start in childhood and build up throughout life. WHO indicates for a diet to be healthy that daily energy needs, vitamins and minerals should be met, energy intake should not exceed needs; consumption of fruits and vegetables should be 400 grams per day; total fat intake should be less than 30% of total energy intake; intake of saturated fats is less than 10% of total energy intake; intake of trans fats is less than 1% of total energy intake; intake of free sugars is less than 10% (preferably less than 5%) of total energy intake; intake of salt is less than 5 grams per day.⁷

⁴UNICEF (2018) A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers

⁵FAO, IFAD, UNICEF, WFP and WHO. 2020. The State of Food Security and Nutrition in the World 2020. Transforming food systems for affordable healthy diets. Rome, FAO. <https://doi.org/10.4060/ca9692en>

⁶UNICEF (2018) A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers

⁷WHO (2010) "Healthy diets: Fact sheet," at www.who.int/news-room/fact-sheets/detail/healthy-diet

According to FAO and WHO's sustainable healthy diets guiding principles, a healthy diet is one which promotes growth and development, and prevents malnutrition. And that the term "malnutrition" no longer refers only to undernutrition, such as wasting, stunting, underweight or deficiencies in vitamins or minerals. Malnutrition – in all its forms – is now understood to include obesity as well as dietary factors that increase the risk of non-communicable diseases (NCDs) such as heart disease, stroke, diabetes and certain cancer.⁸

The marketing of unhealthy diets has been clearly associated with increased NCDs among children. Children, as per the Convention on the Rights of the Child (CRC), refers to human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

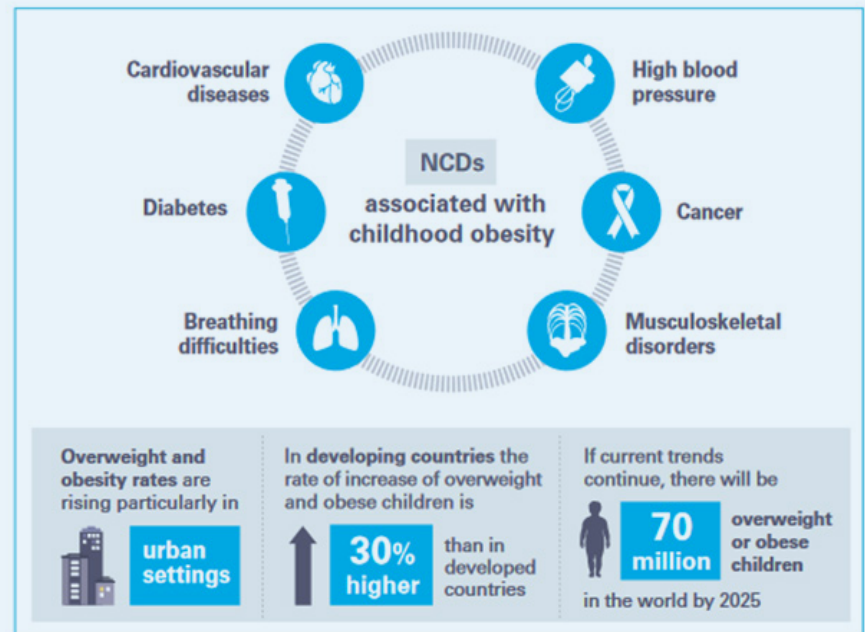
The marketing of nutritiously poor food high in saturated fats, trans-fatty acids, free sugars or salt (unhealthy food) influences children's preferences, purchase requests and consumption patterns. Children are influenced by marketing beyond their understanding of its persuasive intent. Since children may not yet have the maturity for responsible decision making, they remain vulnerable and continue to need protection in many domains.⁹ This is cognizant of the fact that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."¹⁰

The foregoing reasons prompted the WHO Member States, including Kenya, to make a political commitment in 2010 and endorse a Set of Recommendations which calls on Member States to adopt policies on marketing of foods and non-alcoholic beverages to children.

The WHO in its Set of Recommendations define "Marketing" as any form of commercial communication

Overweight and obesity can affect a child's health, education attainment and quality of life.

FIG. 1: Effects of obesity on children's health



Source: UNICEF, *A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers*

or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service.¹¹

Examples of marketing techniques include advertising, sponsorship, product placement, sales promotion, cross-promotions using celebrities, brand mascots or characters popular with children, web sites, packaging, labelling and point-of-purchase displays, e-mails and text messages, philanthropic activities tied to branding opportunities, and communication through "viral marketing" and by word-of-mouth.¹²

Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and the power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.

⁸FAO and WHO. 2019. Sustainable healthy diets – Guiding principles. Rome

⁹UNICEF (2018) *A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers*

¹⁰Preamble, Convention on the Rights of the Child (CRC)

¹¹WHO, 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=884D0C8BB12F3F0E5746084DE5B294EB?sequence=1

¹²WHO, 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=884D0C8BB12F3F0E5746084DE5B294EB?sequence=1

Policies should also be targeted towards those involved in marketing food and non-alcoholic beverages to children (for instance, food manufacturers and food retailers, marketing firms, broadcasters, publishers, schools, public authorities, newsagents, and Internet search engines etc.)

The guiding principles of the policy ought to be the best interests of the child. This principle of best interests applies to all actions concerning children and requires active measures to protect their rights and promote their survival, growth, and well-being, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights.¹³

Marketing unhealthy diets to children impacts the core rights to health; food; survival and development; education; information; rest, leisure, recreation and cultural activities; privacy; and non-discrimination.¹⁴



Overview of children's rights impacted by food marketing. Source: UNICEF, A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers

Examples of techniques used to market food and non-alcoholic beverages to children

Advertising

Broadcast: including TV and radio.
Print media: including newspapers, magazines and comic books.
Online: including on-search engines, social networking sites, news sites and blogs, as well as television programmes, films and media clips watched online.
Outdoors: including billboards, posters and moving vehicles. Cinemas.

Product placement and branding

Product placement, e.g. in TV, radio, films, computer games.
 Publicity.
 Branded books, e.g. counting books for pre-schoolers.
 Branded toys e.g. fast food store as a playhouse.
 Branded computer games.
 Interactive web sites, e.g. with puzzles and games.

Sponsorship

TV and radio programmes.
Events: including community and school events and contests.
 Educational materials and equipment.
Programmes: including public health campaigns and school breakfast or lunch programmes.
 Venues.
 Sport teams.

Direct marketing

Promotional emails.
 Promotional sales by telephone.
 Text messaging to mobile phones.
 Home catalogues, leafleting and canvassing (also known as "doorstep selling").
 Contests or sweepstakes.
 "Money off" vouchers.
 Promotion and sampling schemes in schools, e.g. chocolate drives.

Product design and packaging

Product design: colours and shapes, e.g. dinosaur-shaped products.
 Packaging design: imagery, colours, playshapes.
 Product portions: e.g. king size, duo packs.
 In-pack and on-pack promotions: e.g. gifts, puzzles, vouchers.

Point-of-sale

On-shelf displays.
 Displays at check-outs, pay-points, end-of-aisles in supermarkets.
 Special offers and pricing incentives.
 Vending machines in schools and youth clubs.
 Loyalty schemes.
 Free samples and tastings.

Source: WHO, A Framework for Implementing the Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children

¹³See General Comment No. 7 (2005) Implementing child rights in early childhood

¹⁴UNICEF (2018) A Child Rights-Based Approach to Food Marketing: A Guide for Policy Makers

B. SUMMARY OF LAWS AND POLICIES IMPACTING ON MARKETING OF FOODS AND NON-ALCOHOLIC BEVERAGES TO CHILDREN IN KENYA

Convention on the Rights of the Child (CRC)

(Kenya ratified the CRC on 30th July 1990. This Convention forms part of the law of Kenya by virtue of Article 2(6) of the Constitution)

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

	Law / Policy	Select provision	Relevance
1.	Constitution of Kenya	Article 2 (5) The general rules of international law shall form part of the law of Kenya. (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution	This provides an opportunity to seek guidance from treaties or conventions ratified by Kenya to justify adoption of measures on marketing of foods and non-alcoholic beverages to children.
		Article 53 (1): Every child has the right—(c) to basic nutrition, shelter and health care. (2) A child’s best interests are of paramount importance in every matter concerning the child.	The provision provides the basis for putting in place policy measures to protect the basic nutrition and health care of children. The guiding principle being the best interest of the child.
		Article 46 (1) Consumers have the right— (c) to the protection of their health, safety, and economic interests;	This provides an obligation to protect the health and safety of children as consumers.
		Article 43(1) Every person has the right—(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;	Every person, children included, have the right to health. The State’s obligation in relation to this right includes taking measures to protect and promote realization of the right (including adoption of preventative measures).
2.	Children Act	Section 9: Every child shall have a right to health and medical care the provision of which shall be the responsibility of the parents and the Government	The provision of the Act guarantees children the right to health with the obligation to ensure this on parents and the government. This provisions thus calls for adoption of measures to protect the health of children.
		Section 4 (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.	The best interest of the child principle is important in formulating policy actions aimed at protecting the health and welfare of children.
3.	Health Act	Section 3: The objects of this Act are to— (c) protect, respect, promote and fulfill the rights of children to basic nutrition and health care services contemplated in Articles 43(1) (c) and 53(1) (c) of the Constitution;	The provision allows adoption of measures to protect the rights of children (including measures to prevent NCDs among children).

4.	Breast Milk Substitutes (Regulation and Control) Act, 2012.	<p>6. (1) A person shall not advertise or promote to the general public or cause to be advertised or promoted a designated or complementary food product.</p> <p>“complementary food product” means any food suitable or presented as a suitable complement to breast milk, for infants from the age of six months up to the age of twenty-four months;</p>	This Act provides a good learning point on how to introduce the restrictions prohibiting advertising and marketing of certain foods to a subset of children.
5.	Consumer Protection Act	<p>An Act of Parliament to provide for the protection of the consumer prevent unfair trade practices in consumer transactions and to provide for matters connected with and incidental thereto</p> <p>Section 89 (1) There is established a committee to be known as the Kenya Consumers Protection Advisory Committee.</p> <p>Section 90 The functions of the Committee shall be—</p> <p>(a) advising the Cabinet Secretary and ensuring relevant action on all aspects relating to consumer protection;</p> <p>(b) formulation of policy relating to this Act and legislative proposals in the interest of consumers and the modification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to this Act;</p>	<p>Under Section 93 the Cabinet Secretary has powers to make regulations for the better carrying out of the purposes of this Act. This presents an opportunity for regulations restriction marketing of foods and non-alcoholic beverages for children as a measure to protect children as consumers.</p> <p>This Committee is a useful entry point for advocacy given its mandate on formulation of policies on consumer protection.</p>
6.	Food, Drugs and Chemical Substances Act	<p>Section 4. prohibits deception</p> <p>“Any person who labels, packages, treats, processes, sells or advertises any food in contravention of any regulations made under this Act, or in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, shall be guilty of an offence.”</p>	This provisions can be applied to justify measures restricting marketing of foods and non-alcoholic beverages to children.

7.	Kenya Information and Communications Act, 1998	<p>The Communications Authority of Kenya under section 46H. (1) has the power to set standards for the time and manner of programmes to be broadcast by licensees under this Act.</p> <p>“(2) Without prejudice to the generality of subsection (1), the Commission shall— (a) prescribe a programming code; (b) review the programming code at least once every two years; (c) prescribe a watershed period programming when large numbers of children are likely to be watching or listening to programmes; and (d) ensure compliance with the programming code prescribed under this section:</p>	The Cabinet Secretary in charge of information and communications under the Act, in consultation with the Commission, has the power to make regulations generally with respect to all broadcasting services.
8.	Kenya Information and Communications (Broadcasting) Regulations, 2009.	<p>20. A licensee shall—(a)ensure that due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence;</p> <p>33. Advertisements</p> <p>(1) A licensee shall ensure that it only broadcasts advertisements that are lawful, honest, decent and conform with the principles of fair competition.</p> <p>(2) A licensee shall ensure that advertisements broadcast by its station do not—</p> <p>(a) contain any descriptions, claims or other material which may, directly or by implication, mislead members of the public in relation to the product or service advertised, or about its suitability for the purpose recommended; and</p> <p>(b) Unfairly attack or discredit, directly or by implication, any other advertisers, products or advertisements.</p> <p>(3) A licensee shall, before broadcasting an advertisement, ensure that any descriptions or claims in the advertisement have been adequately substantiated by the advertiser.</p> <p>(5) A licensee shall exercise responsible judgment when scheduling advertisements that may be unsuitable for children during periods when large numbers of children are expected to be watching or listening to programmes.</p>	<p>(An amendment to this regulation may also include food and non-alcoholic beverages as specified)</p> <p>(an amendment to this regulation may also provide restrictions in advertising a class of foods and non-alcoholic beverages to children, as specified)</p>

9.	The Kenya Information And Communications (Consumer Protection) Regulations, 2010	<p>9. Protection of children.</p> <p>(1) A licensee shall establish mechanisms that enable parents and legal guardians to block access of children to harmful content.</p> <p>(2) A licensee who owns promotes, glamorizes or markets alcohol and tobacco products or other harmful substances that are directed at children commits an offence.</p>	An amendment to this section could also include issues on marketing of foods to children.
10.	Public Health Act	<p>131. Sale of unwholesome food prohibited</p> <p>(1) No person shall sell or expose for sale or import or bring into any market or have in his possession without reasonable excuse any food for man in a tainted, adulterated, diseased or unwholesome state, or which is unfit for use, or any food for any animal which is in an unwholesome state or unfit for their use, and any medical officer of health, veterinary officer, sanitary inspector, meat inspector or police officer of or above the rank of Inspector may seize any such food, and any magistrate on the recommendation of the medical officer of health, a sanitary inspector or a veterinary officer may order it to be destroyed, or to be so disposed of as to prevent it from being used as food for man or animal as the case may be.</p> <p>133. Penalty respecting unwholesome food</p> <p>Any person in whose possession there is found any food liable to seizure under section 131 or section 132 shall further be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.</p>	<p>Provides a justification for the prohibition of unwholesome foods in the market. The Act does not define the phrase “unwholesome food.”</p> <p>An amendment to this section could include unhealthy diets in the definition of unwholesome and provide restrictions in terms of marketing such diets to children.</p>
Policy Framework			
11.	National Maternal, Infant and Young Child Nutrition Policy Guidelines, 2013	<p>3.2.2 Promotion and Marketing of Unhealthy Foods and Drinks to Children</p> <p>In view of the vulnerability of infants and young children and the risks involved in inappropriate feeding practices including unnecessary and improper use of market based solutions to malnutrition, and realizing the susceptibility of households to succumb to the influence of promotional and advertising by food and beverage industries, the marketing of complementary foods require special treatment which makes usual marketing practices unsuitable for these products. At global level, it has been realized that conflict of interest can undermine policy development and</p>	

		<p>implementation and that advertising of foods and drinks unhealthy for young children's growth require guidance. It calls for the development of a Code of Conduct and Ethical Framework to help protect the integrity of, and to ensure transparency in, public policy decision-making, by identifying, safeguarding against and managing potential conflicts of interest. This would ensure that appropriate safeguards are put in place when and if the private sector needs to be consulted.</p> <p>In order to address this, the government will:</p> <ol style="list-style-type: none"> i. Establish mechanisms to distinguish business-interest not-for-profit organizations (BINGOs) and public interest non-governmental organizations (PINGOs) that are both currently under the 'Civil Society' umbrella without distinction. ii. Develop a 'code of conduct' that sets out a clear framework for interacting with the private sector and managing conflicts of interest, and which differentiates between policy development and appropriate involvement in implementation. iii. Establish a strong and clear policy guidance on conflicts of interest as guided by Kenya Public Officers' Ethics Act and the international community to provide the country with guidance to identify conflicts, eliminate those that are not permissible and manage those considered acceptable, based on thorough risk/benefit analysis. iv. Encourage and support Civil Society (Public Interest NGOs) in monitoring and challenging public and private sector action and inaction to ensure the public interest is upheld. 	
	<p>National School Meals And Nutrition Strategy 2017-2022</p>	<p>The policy recognizes the fact that "school meals should not only strive to alleviate short-term hunger but should also meet the nutritional needs of children."</p>	<p>The policy does not address the issue of marketing of any foods to children while in school.</p> <p>This policy should be reviewed to provide guidance on marketing of foods to children.</p>



C. RECOMMENDATIONS

Recommendations to the Government

- i. The National Government should implement the Set of recommendations on the marketing of foods and non-alcoholic beverages to children endorsed by the World Health Assembly in Resolution WHA 63.14. The recommendations are as follows:
 - The policy aim should be to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
 - Given that the effectiveness of marketing is a function of exposure and power, the overall policy objective should be to reduce both the exposure of children to, and the power of, marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
 - To achieve the policy aim and objective, Member States should consider different approaches, that is, stepwise or comprehensive, to reduce marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt to children.
 - Governments should set clear definitions for the key components of the policy, thereby allowing for a standard implementation process. The setting of clear definitions would facilitate uniform implementation, irrespective of the implementing body. When setting the key definitions Member States need to identify and address any specific national challenges so as to derive the maximal impact of the policy.
 - Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Such settings include, but are not limited to, nurseries, schools, school grounds and pre-school centres, playgrounds, family and child clinics and paediatric services and during any sporting and cultural activities that are held on these premises.
 - Governments should be the key stakeholders in the development of policy and provide leadership, through a multi-stakeholder platform, for implementation, monitoring and evaluation. In setting the national policy framework, governments may choose to allocate defined roles to other stakeholders, while protecting the public interest and avoiding conflict of interest.
 - Considering resources, benefits and burdens of all stakeholders involved, Member States should consider the most effective approach to reduce marketing to children of foods high in saturated fats, trans-fatty acids, free sugars, or salt. Any approach selected should be set within a framework developed to achieve the policy objective. Member States should cooperate to put in place the means necessary to reduce the impact of cross-border marketing (in-flowing and out-flowing) of foods high in saturated fats, trans-fatty acids, free sugars, or salt to children in order to achieve the highest possible impact of any national policy.
 - The policy framework should specify enforcement mechanisms and establish systems for their implementation. In this respect, the framework should include clear definitions of sanctions and could include a system for reporting complaints.

- All policy frameworks should include a monitoring system to ensure compliance with the objectives set out in the national policy, using clearly defined indicators.
 - The policy frameworks should also include a system to evaluate the impact and effectiveness of the policy on the overall aim, using clearly defined indicators.
 - Member States are encouraged to identify existing information on the extent, nature and effects of food marketing to children in their country. They are also encouraged to support further research in this area, especially research focused on implementation and evaluation of policies to reduce the impact on children of marketing of foods high in saturated fats, trans-fatty acids, free sugars, or salt.
- ii. The National Government should exercise its mandate under the Constitution and existing laws to pass measures restricting marketing of foods and non-alcoholic beverages to children, in line with the above Set of Recommendations. This means the government should implement Articles 43(1) (a) and 53(1)(c) of the Constitution to ensure that the rights to health and health care of children are respected, protected and fulfilled. Similarly, provisions of the Children Act 2001 and Health Act 2017 guaranteeing the right to health of children should be implemented.
 - iii. The Kenya National Strategy for the Prevention and Control of Non-Communicable Diseases should be revised to incorporate policy strategies for prevention of NCDs among children (that include strategies to restrict marketing of unhealthy foods and non-alcoholic beverages to children. In order to objectively establish categories of foods to which restrictions may be applied under any legal instrument implementing restrictions, the Ministry of Health should update the national food list and adopt a Nutrient Profile Model.
 - iv. The Ministry of Health should in collaboration with the Ministry of Information, Communications and Technology spearhead the process of amending the Kenya Information and Communications (Broadcasting) Regulations, 2009 and the Kenya Information and Communications (Consumer Protection) Regulations, 2010 to include restrictions on marketing of foods and non-alcoholic beverages to children.
 - v. The Ministry of Health in collaboration with the Ministry of Education should lead the process to amend the Basic Education Act, the National Schools Meals and Nutrition Strategy 2017 – 2022, and other relevant education laws and policies to restrict the marketing of foods and non-alcoholic beverages in schools.

Recommendations to Civil Society Organizations, Research institutions and Academia

- i. Civil Society Organizations should step-up advocacy for introduction of restrictions on marketing to children of foods as a policy measure to prevent NCDs among children and hence protect the right to health of children.
- ii. Research institutions and academia should conduct research on the impact that marketing of foods and non-alcoholic beverages in Kenya has on children.
- iii. Civil society and research institutions should collaborate with the government and policy makers to make scientific evidence promptly available and easy to understand to guide political decisions.

