



NUTRITION LABELLING AS A POLICY TOOL TO PROMOTE HEALTHY DIETS AND PREVENT NCDs IN KENYA

POLICY BRIEF

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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 NCDs 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: INTRODUCTION: JUSTIFICATION FOR NUTRITION LABELING AS A POLICY TOOL

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.⁴

In Kenya, non-communicable diseases (NCDs) represent an increasingly significant burden of ill health and death.⁵ 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.⁶

World leaders at the 2018 United Nations High-Level Meeting (UN HLM) on NCDs⁷ expressed grave concern that the huge human and economic cost of non-communicable diseases contributes to poverty and inequities and threatens the health of people and the development of countries and called on member states to inter alia:

“Promote and implement policy, legislative and regulatory measures, including fiscal measures as appropriate, aiming at minimizing the impact of the main risk factors for non-communicable diseases, and promote healthy diets and lifestyles.”

It is appreciated that food information, such as nutrients and ingredients, are more important than ever before in helping consumers make informed choices when buying and consuming food.⁸ As such, there has been increasing global interest in nutrition labelling as a policy tool through which governments can guide consumers to make informed food purchases and healthier eating choices.⁹ Relatedly, questions have been raised on the responsibility that manufacturers ought to have in providing this information.

The Codex Alimentarius Commission (Codex)¹⁰ identifies three types of nutrition labelling:

- a. nutrient declarations (standardized listings of the nutrient content of a food or beverage, usually positioned on the back or side of the package);
- b. nutrition and health claims; and

- c. supplementary nutrition information, which includes front-of-pack labelling (FOPL). FOPL refers to nutrition labelling systems that: are presented on the front of food packages (in the principal field of vision) and can be applied across the packaged retail food supply; comprise an underpinning nutrient profile model that considers the overall nutrition quality of the product or the nutrients of concern for NCDs (or both); and present simple, often graphic information on the nutrient content or nutritional quality of products, to complement the more detailed nutrient declarations usually provided on the back of food packages.¹¹

⁴World Health Organization (WHO): Non-communicable diseases, at <http://www.emro.who.int/noncommunicable-diseases/causes/unhealthy-diets.html> (accessed 27 July 2020).⁵Kenya National Strategy for The Prevention and Control of Non-Communicable Diseases 2015 – 2020:

⁶WHO Kenya Health Policy 2012 – 2030 available at <http://www.nutritionhealth.or.ke/wp-content/uploads/Downloads/FinalKenyaHealthPolicyBook.pdf> (accessed 8 Aug 2020).

⁷Kenya National Strategy for The Prevention and Control of Non-Communicable Diseases 2015 – 2020:

⁸UN General Assembly, Political declaration of the third high-level meeting of the General Assembly on the prevention and control of non-communicable diseases available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/2 (accessed 8 Aug 2020).

⁹Codex Alimentarius: Nutrition and Labelling at <http://www.fao.org/fao-who-codexalimentarius/thematic-areas/nutrition-labelling/en/> (accessed 10 Aug 2020).

¹⁰WHO, Guiding principles and framework manual for front-of-pack labelling for promoting healthy diet, available at <https://www.who.int/nutrition/publications/policies/guidingprinciples-labelling-promoting-healthydiet.pdf?ua=1> (accessed 10 Aug 2020).

¹¹WHO, The Codex Alimentarius, or “Food Code” is a collection of standards, guidelines and codes of practice adopted by the Codex Alimentarius Commission. The Commission, also known as CAC, is the central part of the Joint FAO/WHO Food Standards Programme and was established by FAO and WHO to protect consumer health and promote fair practices in food trade. See <http://www.fao.org/fao-who-codexalimentarius/en/> (accessed 25 Jan 2021).

¹²WHO, Guiding principles and framework manual for front-of-pack labelling for promoting healthy diet,

The Global Strategy on Diet, Physical Activity and Health, adopted at the 57th Assembly of the WHO 2004, argues that the provision of adequate and understandable information about nutritional content, which does not mislead the consumer, can promote health and reduce the risk of food and nutrition-related diseases. Labelling of food should be used as a nutrition education tool for the population, to guide consumers regarding the quality and quantity of the nutritional constituents of products and to promote appropriate food choices.¹²

It is important to note that nutrition labelling by itself cannot solve nutrition problems. It should be seen as one of the elements of nutrition policy and should be envisaged in the larger perspective of consumer education, which in its turn is part of an overall development policy.¹³ Additionally, WHO has noted that improving dietary habits is a societal, not just an individual problem and demands a population-based, multi-sectoral, multi-disciplinary, and culturally relevant approach.

Nutrition is a social determinant of health

The UN Special Rapporteur on the right to health¹⁴ in underscoring the Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14: The Right to the Highest Attainable standard of Health (Art 12)¹⁵ noted that the right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as an adequate supply of safe food and nutrition. States' obligations therefore include ensuring equal access for all to nutritiously safe food as an underlying determinant of health. Further, that in order to combat the growing burden of NCDs effectively in line with the right to health, states should address preventable risk factors that lead to premature morbidity and mortality so as to enable all people to achieve the highest attainable standard of physical and mental health.

The Rapporteur thus recommended that States adopt front-of-package warning labelling regulations as a key component of a comprehensive strategy to promote healthier lives, in line with the right to health framework. The Rapporteur further noted that the adoption of front-of-package warning labelling can be an effective steppingstone for states to pursue a set of additional measures that promote and protect the right to health, such as taxation, regulating school environments, and imposing marketing restrictions.”

Why Nutrition Labeling, including Front-of-package (FOPL) labelling to protect public health?

- a. According to the WHO Guiding Principles on FOPL, the principal aim of FOPL is to provide convenient, relevant and readily understood nutrition information or guidance on food packs, to assist all consumers to make informed food purchases and healthier eating choices.¹⁶
- b. Further, the UN special Rapporteur recommends FOPL as an important measure to educate people about food's nutritional content, increase awareness of reasonable portion sizes and motivate consumers to make healthier choices.¹⁷
- c. Front-of-package warning labelling allows consumers to identify more clearly and effectively products with a nutritional profile detrimental to health.
- d. Front-of-package warning labelling system is effective to protect the rights to health and to adequate food, and also balances the starting point for all consumers by providing equality in access to information relevant to health.
- e. Warning labels increase the accessibility to information and allow people to make informed decisions on whether they want to consume certain products, according to their preferences and needs, as well as an accurate understanding about whether such product can risk their health.

¹²Souza, S.M.F.d.C., Lima, K.C. & Alves, M.d.S.C.F. Promoting public health through nutrition labeling - a study in Brazil. Arch Public Health 74, 48 (2016). <https://doi.org/10.1186/s13690-016-0160-x>

¹³Van den Wijngaart AW. Nutrition labelling: purpose, scientific issues and challenges. Asia Pac J Clin Nutr. 2002;11(2):S68-71. doi: 10.1046/j.1440-6047.2002.00001.x. PMID: 12074189.

¹⁴Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26130&LangID=E> (accessed 25 Aug 2020). :

¹⁵CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Adopted at the Twenty – second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000.

¹⁶WHO, Guiding principles and framework manual for front-of-pack labelling for promoting healthy diet

¹⁷Roberto, C., Khandpur, N. Improving the design of nutrition labels to promote healthier food choices and reasonable portion sizes. Int J Obes 38, S25–S33 (2014). <https://doi.org/10.1038/ijo.2014.86>

B. SUMMARY OF LAWS AND POLICIES IMPACTING NUTRITION LABELLING IN KENYA

LAW/POLICY	PROVISION	WHAT THE PROVISION SAYS	RELEVANCE TO NUTRITION LABELLING
CONSTITUTION OF KENYA			
	Article 26 (1)	Every person has the right to life.	Noting that unhealthy diet is a risk factor for NCDs and that NCDs are a leading cause of death and disability globally, this provision can be used to justify adoption of nutrition labelling policy measures as a matter of necessity to protect the right to life.
	Article 35 (1)	Every citizen has the right of access to— (a) information held by the State; and (b) Information held by another person and required for the exercise or protection of any right or fundamental freedom.	Right to access to information is guaranteed under Article 35 of the Constitution and justifies the need for nutritional labelling including front of pack labelling measures that ensures people have access to such nutritional information as a means to protect their other rights, specifically the right to health and in extension the right to life.
	Article 43 (1) (a)	Every person has the right—to the highest	Food information, such as nutrients and ingredients, are important in helping people make informed choices when buying and consuming food – and help in preventing NCDs thus protecting their right to health.
	Article 43(1)(c)	Article 43 (1) (c) Every person has the right—to be free from hunger, and to have adequate food of acceptable quality;	The right to have adequate food of acceptable quality also underscores the need for nutritional labels on food.
	Article 46(1)	Consumers have the right— (a) to goods and services of reasonable quality; (b) to the information necessary for them to gain full benefit from goods and services; (c) to the protection of their health, safety, and economic interests.	Nutrition labeling is also justified under Article 46 of the Constitution that protects the rights of consumers to access quality goods, information necessary for them to make informed choices on the food they purchase and consume, and a , protection of their health.
	Article 53(1)(c)	Article 53 (1) (c) Every child has the right—to basic nutrition, shelter and health care;	Article 53 of the Constitution protect the rights of children to nutrition and health care. Nutrition labelling is one means of protecting this right of children.

HEALTH ACT 2017			
	Section 4	<p>It is a fundamental duty of the State to observe, respect, protect, promote and fulfill the right to the highest attainable standard of health including reproductive health care and emergency medical treatment by inter alia—</p> <p>(a) developing policies, laws and other measures necessary to protect, promote, improve and maintain the health and well-being of every person;</p> <p>(c) ensuring the realization of the health-related rights and interests of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or cultural communities.</p>	<p>This provision mandates the government to develop policies, laws and other measures to protect, promote, improve and maintain health.</p> <p>In the context of healthy diets, UN Special Rapporteur on the Right to health¹⁸ advised that:</p> <p><i>“In the context of unhealthy diets, the obligation to protect the right to health, inter alia, requires the regulation of the activities of non-State actors, such as the food and beverage industries, to ensure they convey accurate, easily understandable, transparent and comprehensible information on their products the obligation to fulfil compels States to adopt appropriate measures towards the full realization of the right to health. This requires that States disseminate appropriate information relating to healthy life and nutrition patterns, encouraging and supporting people in making informed choices about their health. Considering epidemiological evidence of diet related NCDs, States should also formulate comprehensive policies that improve the availability and accessibility of healthy foods. Front-of-package warning labelling is an essential component of such set of policies, as it prevents unhealthy food products from displacing healthy foods from diets and food systems.”</i></p>
	Section 68 (1)	<p>The National health system shall devise and implement measures to promote health and to counter influences having an adverse effect on the health of the people including—</p> <p>a) interventions to reduce the burden imposed by communicable and non-communicable diseases and neglected diseases, especially</p>	<p>This section also gives the government the mandate to devise and implement measures to promote health including on nutritional knowledge and would justify adoption of nutritional labelling policies.</p>

¹⁸Statement by the UN Special Rapporteur on the right to health on the adoption of front-of-package warning labelling to tackle NCDs

		<p>among marginalized and indigent population;</p> <p>b) interventions to promote healthy lifestyle including physical activity, counter the excessive use of alcoholic products and the adulteration of such products, reduce the use of tobacco and other addictive substances and to counter exposure of children and others to tobacco smoke;</p> <p>c) the promotion of supply of safe foodstuffs of sufficient quality in adequate quantities and the promotion of nutritional knowledge at all population levels;</p> <p>d) general health education of the public.</p>	
CONSUMER PROTECTION ACT			
	Section 4:	<p>The purposes of this Act are to promote and advance the social and economic welfare of consumers in Kenya by—</p> <p>(d) protecting consumers from all forms and means of unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices including deceptive, misleading, unfair or fraudulent conduct;</p> <p>(e) improving consumer awareness and information and encouraging responsible and informed consumer choice and behavior;</p>	<p>The Consumer Protection Act 2012 protects consumers from all forms and means of “unfair, unreasonable, unjust or otherwise improper trade practices”, and makes it an obligation to ensure consumers have access to information and are fully equipped to make informed decisions about their choices. This justifies adoption of nutritional labelling measures in the interest of consumers.</p>

FOOD, DRUGS AND CHEMICAL SUBSTANCES ACT			
	Section 4:	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.	This section makes it an offence to provide deceptive nutritional information.
	Section 5:	Where a standard has been prescribed for any food, any person who labels, packages, sells or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, shall be guilty of an offence.	This creates an obligation for adherence to standards prescribed including on nutritional labelling.
	Section 28:	(1) The Minister, after consultation with the Board, may make regulations— (b) respecting— (i) the labelling and packing and the offering, exposing and advertising for sale of food, drugs, chemical substances, cosmetics and devices;	This section of the law provides power to the Cabinet Secretary to make necessary regulations including on nutrition labelling, including FOPL.
FOOD, DRUGS AND CHEMICAL SUBSTANCES (FOOD LABELLING, ADDITIVES AND STANDARDS) REGULATIONS, 1978			
	Clause 4	The label applied to a food shall carry— (a) on the main panel— (i) the brand or trade name of that food (if any); (ii) the common name of the food; (iii) in close proximity to the common name, a correct declaration of the net contents in terms of weight, volume or number in	The regulations provide specifications of the contents of a label to be applied to food. This is an existing framework that can be updated to include comprehensive nutritional labelling measures proposed to promote healthy diets and prevent NCDs.

		<p>accordance with the usual practice in describing the food;</p> <p>(b) grouped together on any panel—</p> <p>(i) a declaration by name of any preservatives used in the food;</p> <p>(ii) a declaration of permitted food colour added to the food;</p> <p>(iii) a declaration of any artificial or imitation flavouring preparation added to the food;</p> <p>(iv) in the case of a food consisting of more than one ingredient, a complete list of their acceptable common names in descending order of their proportions, unless the quantity of each ingredient is stated in terms of percentages or proportionate compositions; and</p> <p>(v) any other statement required under the provisions of these Regulations to be declared on the label.</p> <p>(c) on any panel, the name and address of the manufacturer, packer or distributor of the food.</p>	
	<p>PART XII – NON-NUTRITIVE SWEETENERS</p> <p>Clause 175</p> <p>Clause 178</p>	<p>For the purposes of this Part—</p> <p>“non-nutritive sweetener” means any substance that does not have nutritive properties and that, when added to food, is capable of imparting sweetness to that food;</p>	<p>Part XII of the regulations makes provisions for labelling for non-nutritive sweeteners. This is also an existing provision that can be expanded to cover wider labelling requirements for unhealthy diets.</p>

	Clause 179	<p>178. Labelling of food containing non-nutritive sweeteners</p> <p>Every food containing a non-nutritive sweetener shall be labelled in type size not smaller than 2 mm, lettering with the words “CONTAINS NON-NUTRITIVE SWEETENER” or “CONTAINS (state the non-nutritive sweetener)”.</p> <p>179. Labelling of packages containing non-nutritive sweeteners</p> <p>Every package containing a non-nutritive sweetener sold or intended for sweetening food shall be labelled with the words “NON-NUTRITIVE SWEETENER” or “ARTIFICIAL SWEETENER” in addition to the name of the sweetener.</p>	
POLICIES			
	Kenya Health Policy 2012 - 2030	Policy Objective 2 commits to halt and reverse the rising burden of non-communicable conditions through strategies that include ensuring universal access to interventions addressing recognized non communicable conditions in the country and putting in place programs for non-communicable diseases prevention and control	
	Kenya National Strategy for The Prevention and Control of Non-Communicable Diseases	Strategic objective 3 commits to promote healthy lifestyles and implement interventions to reduce the modifiable risk factors for non-communicable diseases: unhealthy diets, physical inactivity, tobacco use and harmful use of alcohol.	
	National Guidelines for Healthy Diets and Physical Activity 2017	The guidelines give the Division of Non-communicable diseases department (Ministry of Health) the mandate to support the development and implementation of national policies, standards and guidelines that promote production and consumption of healthy diets .	

	National School Meals and Nutrition Strategy2017–2022	Strategic Objective 1 of the Strategy is to increase awareness and intake of adequate, locally available and nutritious foods among school children and their communities	
	National Food and Nutrition Security Policy Implementation Framework 2017-2022	Recognizes that there is an urgent need to determine the magnitude and effect of NCDs and to address their prevention, control and management modalities through strategic interventions that include enhancing public sensitization on healthy diets and lifestyles to reduce diet related diseases conditions	
STANDARDS			
	KS EAS 803:2014 Nutrition labelling – Requirements	Specifies requirements for the nutrition labelling of foods. The standard applies to the nutrition labelling of all foods except for foods for special dietary uses.	
	KS EAS 805:2014 Use of nutrition and health claims Requirements	Standard specifies requirements for the use of nutrition and health claims in food labelling and in advertising.	
RELEVANT CASE LAW:			
	Mark Ndumia Ndung’u v Nairobi Bottlers Ltd & another (2018) eKLR	<p>Summary of facts: In this case, the Petitioner sued Nairobi Bottlers for omitting to indicate nutritional information on the glass bottles of Coca Cola.</p> <p>The petitioner argued that the omission violates the rights of consumers under Article 46 of the Constitution and that the information is essential to a consumer’s diet and in enabling consumers to know the benefits derivable from consumption of the beverages.</p>	<p>Determination by the court: The court declared that “omission of nutritional information and storage directions on Coca Cola, Fanta, Krest, Stoney and Sprite brands glass bottles constitutes a violation of consumer rights under Article 46(1)(a), (b) and (c) of the Constitution.”</p> <p>A mandatory injunction was issued directing the Respondents to provide nutritional information, storage directions and customer care mobile number and email address on all of their Coca Cola, Fanta, Krest, Stoney and Sprite brands glass bottles within six (6) months of the date of delivery of this judgment.</p>



C. RECOMMENDATIONS

- i. The government should utilize its mandate under existing laws to pass measures strengthening nutrition labelling requirements. Some of these laws include:
 - The Constitution of Kenya which guarantees the following rights: information, to highest attainable standard of health, consumer rights and rights of children;
 - The Health Act: that makes provisions to operationalize the right to health
 - The Consumer Protection Act: that creates framework to protect consumers including the health of consumers.
 - The Food, Drugs and Chemical Substances Act and Regulations that makes provisions on quality of foods, and labeling requirements.
- ii. The Ministry of Health should, as provided under the Food, Drugs and Chemical Substances Act, develop regulations implementing food labelling measures, including FOPL.
- iii. The Ministry of Health should collaborate with key stakeholders to develop a policy guideline and roadmap for FOPL and to adopt a Nutrient Profile Model to provide an objective basis for categorization of food groups for application of labels.
- iv. The government should collaboratively with stakeholders review existing standards to strengthen nutritional labelling requirements.
- v. The Ministry of Health should lead a collaborative engagement for consumer education and information of the adopted FOP labelling design and what it means to the health of consumers.

