




RESEARCH ARTICLE

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# Preventing diet-related non-communicable diseases: A rights-based approach to improving health outcomes through food and nutrition security

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## ABSTRACT

In South Africa, while the state has acknowledged the link between the food environment and poor health outcomes, it has done little to regulate and address the underlying determinants, and food and nutrition insecurity remains rife. Moreover, effectively preventing diet-related non-communicable diseases requires states to actively reduce the availability of unhealthy foods and enforce measures to improve access to healthy foods. This calls for several integrated legal, policy and regulatory interventions and investment across the health, food and agricultural systems alike. Therefore, a multisectoral approach is needed to ensure coordinated implementation and monitoring. For these reasons, this article provides an overview of the normative framework guiding state interventions on food and nutrition. It uses a rights-based approach, specifically the rights to health and food, to analyse the food and nutrition policy framework, looking at current priorities, policy coherence and implementation. It explores challenges and opportunities within these frameworks to strengthen diet-related non-communicable disease prevention efforts, aimed at improving health outcomes through food and nutrition security in South Africa.

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Health; food; human rights; South Africa; socio-economic rights

## 1. Introduction

Ensuring equitable access to healthy, nutritious and sustainable food for all is one of the greatest challenges of the 21st century, as there is no single cause or solution to addressing a crisis of this scale.<sup>1</sup> Globally, there are roughly 828 million people who are affected by hunger, 2.3 billion people who are moderately or severely food insecure, and almost 3.1 billion people who cannot afford a healthy diet.<sup>2</sup> As of 2022, there were roughly 2.5

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<sup>1</sup>L Pereira & S Drimie 'Governance arrangements for the future food system: Addressing complexity in South Africa' (2016) 58 *Environment: Science and Policy for Sustainable Development* 18.

<sup>2</sup>Food and Agriculture Organization (FAO), International Fund for Agricultural Development (IFAD), UNICEF, World Food Programme (WFP) and World Health Organization (WHO) 'The state of food security and nutrition in the world 2022: Repurposing food and agricultural policies to make healthy diets more affordable' (2022).

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billion adults globally and 37 million children (under five) who were overweight or obese and at risk of various non-communicable diseases (NCDs).<sup>3</sup> NCDs, often referred to as chronic diseases, are typically any condition or disease that is non-infectious and progresses over long periods of time.<sup>4</sup> According to the World Health Organisation (WHO), 'NCDs are the result of a combination of genetic, physiological, environmental and behavioural factors.'<sup>5</sup> The four most common NCDs are cardiovascular diseases, cancer, chronic respiratory diseases and diabetes.<sup>6</sup>

Currently, NCDs kill more than 41 million people each year, equivalent to 74 per cent of deaths globally, and this is projected to increase by 17 per cent globally, and by 27 per cent in Africa, over the next 10 years.<sup>7</sup> In South Africa, NCDs are already responsible for the largest percentage of all deaths.<sup>8</sup> In addition, NCDs are also responsible for 10,103,396 disability-adjusted life-years (DALY), or 38 per cent of the country's total DALYs.<sup>9</sup> This growing burden has devastating consequences, with the potential to completely overburden health systems and hinder socio-economic development.<sup>10</sup> The four main risk factors that contribute to NCDs include physical inactivity, exposure to tobacco, harmful use of alcohol and unhealthy diets. Research indicates that increased body weight is associated with a higher risk of death from all causes, especially NCDs, so this article focuses on the relationship between unhealthy diets, NCDs, and how this has an impact on health outcomes in South Africa.<sup>11</sup>

Diet-related NCDs are often associated with the 'nutrition transition' involving a shift from traditional and localised diets towards the 'Western diet' including foods that are energy-dense, often high in sugar, salt and saturated fat, with limited nutritional value.<sup>12</sup> This is in part due to an increased consumption of fast foods<sup>13</sup> and ultra-processed foods (UPFs).<sup>14</sup> Diets mostly made up of these foods are considered unhealthy because they

<sup>3</sup>WHO 'Obesity and overweight' (2024).

<sup>4</sup>WHO 'Noncommunicable diseases fact sheet' (2023).

<sup>5</sup>WHO (ibid).

<sup>6</sup>WHO (ibid).

<sup>7</sup>WHO (ibid).

<sup>8</sup>H Grange 'Diabetes the top non-communicable disease killer in South Africa' *Mail&Guardian*, 7 August 2024.

<sup>9</sup>Global Burden of Disease Collaborative Network 'Global burden of disease study 2019 results' (2020) Institute for Health Metrics and Evaluation (IHME).

<sup>10</sup>T Muka, D Imo, L Jaspers, V Colpani, L Chaker, SJ van der Lee, S Mendis, R Chowdhury, WM Bramer, A Falla & R Pazoki 'The global impact of non-communicable diseases on healthcare spending and national income: a systematic review' (2015) 30 *European Journal of Epidemiology* 251.

<sup>11</sup>DM Freedman, E Ron, R Ballard-Barbash, MM Doody & MS Linet 'Body mass index and all-cause mortality in a nationwide US cohort' (2006) 30 *International Journal of Obesity* 822.

<sup>12</sup>A Drewnowski & BM Popkin 'The nutrition transition: New trends in the global diet' (1997) 55 *Nutrition Reviews* 31; BM Popkin 'Nutrition transition and the global diabetes epidemic' (2015) 15 *Current Diabetes Report* 64; M Spires, P Delobelle, D Sanders, T Puoane, P Hoelzel & R Swart 'Diet-related non-communicable diseases in South Africa: Determinants and policy responses' (2016) 1 *South African Health Review* 35.

<sup>13</sup>Fast food is defined as food that can be produced and served quickly and often inexpensively. While fast food does not necessarily mean unhealthy, typical fast foods are often loaded with calories, salt and fats, and popular for their large portions, taste and convenience. A Mohammadbeigi, A Asgarian, E Moshir, H Heidari, S Afrashteh, S Khazaei & H Ansari 'Fast food consumption and overweight/obesity prevalence in students and its association with general and abdominal obesity' (2018) 59 *Journal of Preventative Medicine and Hygiene* 236.

<sup>14</sup>Ultra-processed foods are made through multiple processes and contain many added ingredients – such as hydrogenated fats, starches, added sugars, emulsifiers, artificial colourings, flavour enhancers, thickening agents, preservatives and so on – that are highly manipulated to make them more palatable and prolong their shelf life. Examples include soft drinks, ice cream, instant noodle and soups, crisps and chips and sweets. Research has shown a positive correlation between regular consumption of ultra-processed foods and obesity and other chronic illnesses. Intake of these foods is often higher based on their high sugar and fat and low fibre and protein content. C Monteiro, G Cannon, RB Levy, JC Moubarac, ML Louzada, F Rauber, N Khandpur, G Cediel, D Neri,

usually have excessive calories and are unbalanced from a nutritional standpoint,<sup>15</sup> increasing the chances of overweight, obesity and diet-related NCDs.<sup>16</sup>

Various marketing, advertising and business tactics have driven the availability and accessibility of these unhealthy foods and created a huge demand for these foods.<sup>17</sup> The ‘food and beverage industry’ is used here to refer to large national or transnational commercial entities who dominate the food and beverage environment as manufacturers, retailers or food outlets that have an identity with consumers as opposed to agribusinesses and local and small-scale producers or primary processors.<sup>18</sup> This article considers their role in health, food and nutrition outcomes, including the rising burden of NCDs, to necessitate the creation and implementation of laws and policies aimed at promoting healthier food environments. The food environment can be defined as the collective, physical, economic, political and socio-cultural surroundings, opportunities and conditions in which people engage the food system to make decisions about acquiring, preparing and consuming food and beverages.<sup>19</sup> Food environments exploit biological, psychological, social and economic vulnerabilities, making unhealthy foods more accessible.<sup>20</sup> These broader factors impacting food and nutrition environments and outcomes are commonly referred to under the umbrella of social and commercial determinants of health.<sup>21</sup>

The 2013 *National Policy on Food and Nutrition Security for South Africa* defines food security as ‘access to and control over the physical, social and economic means to ensure sufficient, safe and nutritious food at all times, for all South Africans, in order to meet the dietary requirements for a healthy life’.<sup>22</sup> This definition incorporates the understanding of food insecurity as shaped by the interactions of availability, access, utilisation and stability.<sup>23</sup> These dimensions of food security relate to the availability of nutritious food and access to adequate resources to obtain nutritious food.<sup>24</sup> The non-food aspects include access to clean water, sanitation and healthcare as well

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E Martinez-Steele, LG Baraldi & PC Jaime ‘Ultra-processed foods: What they are and how to identify them’ (2019) 22 *Public Health Nutrition* 936.

<sup>15</sup>J Crush, B Frayne & M McLachlan ‘Rapid urbanisation and the nutrition transition in Southern Africa’ (2011) Urban Food Security Series No 7, Queen’s University and AFSUN, Kingston and Cape Town 22.

<sup>16</sup>C Iacobini, M Vitale, J Haxhi, C Pesce, G Pugliese & S Menini ‘Food-related carbonyl stress in cardiometabolic and cancer risk linked to unhealthy modern diet’ (2022) 14 *Nutrients* 1061; MM Murphy ‘Evaluating policy responses to noncommunicable diseases in seven Caribbean countries: challenges to addressing unhealthy diets and physical inactivity’ (2019) 42 *Revista Panamericana de Salud Pública* 174.

<sup>17</sup>BA Swinburn, G Sacks, KD Hall, K McPherson, DT Finegood, ML Moodie & SL Gortmaker ‘The global obesity pandemic: Shaped by global drivers and local environments’ (2011) 378 *Lancet* 804; Office of the United Nations High Commissioner for Human Rights ‘Statement by the UN Special Rapporteur on the Right to Health on the adoption of front-of-package warning labelling to tackle NCDs’ (2020).

<sup>18</sup>EU Igumbor, D Sanders, TR Puoane, L Tsolekile, C Schwarz, C Purdy & C Hawkes ‘“Big food,” the consumer food environment, health, and the policy response in South Africa’ (2012) 9 *PLoS Medicine*.

<sup>19</sup>High Level Panel of Experts on Food Security and Nutrition ‘Nutrition and food systems’ (2017) 12.

<sup>20</sup>CA Roberto, B Swinburn, C Hawkes, TT Huang, SA Costa, M Ashe, L Zwicker, JH Cawley & KD Brownell ‘Patchy progress on obesity prevention: Emerging examples, entrenched barriers, and new thinking’ (2015) 385 *The Lancet* 2400.

<sup>21</sup>M Mialon, E Crosbie & G Sacks ‘Mapping of food industry strategies to influence public health policy, research and practice in South Africa’ (2020) 65 *International Journal of Public Health* 1027.

<sup>22</sup>Department of Agriculture, Forestry and Fisheries *National Policy on Food and Nutrition Security for South Africa* (2013) 8.

<sup>23</sup>J Hunter-Adams, J Battersby & T Oni ‘Food insecurity in relation to obesity in peri-urban Cape Town, South Africa: Implications for diet-related non-communicable disease’ (2019) 37 *Appetite* 244.

<sup>24</sup>FAO ‘Hunger and food insecurity’.

as the stability of supply and access.<sup>25</sup> The distinction between availability and accessibility is important, as food policies in South Africa typically refer to food insecurity in relation to food production and lack of availability, where this article is concerned with food insecurity in relation to access – specifically the cost of living – and the affordability of healthy and nutritious food.

Food insecurity can be experienced at different levels of severity, with the most severe being lack of food or prolonged hunger for days while in some cases it is on a moderate scale where the quantity or quality is insufficient or regular access is uncertain, and people may have to forego other necessities in order to eat.<sup>26</sup> In such cases, what they consume might be what is available or affordable, rather than what is nutritious.<sup>27</sup> This often prompts compensatory dietary behaviours including lower intake of fruit and vegetables and overconsumption of UPFs high in sugar, salt and fat, with poor nutritional value.<sup>28</sup> As a result, there is a clear link between food insecurity, unhealthy foods and various metabolic risk factors such as dyslipidaemia, hypertension, overweight and obesity.<sup>29</sup> The government has also acknowledged the link between food insecurity, nutrition and health outcomes, thus highlighting the need to address food insecurity as an integral component of diet-related NCDs prevention.<sup>30</sup>

Addressing the diet-related NCDs burden requires integrated legal and policy interventions implemented through a multisectoral approach to ensure coordinated action across agricultural, food and health sectors alike. This must include a strategy to improve access to nutritious foods, as part of the broader strategy to promote healthier food environments.<sup>31</sup> This article provides an overview of the current normative framework guiding state interventions on food and nutrition, in relation to improving the food environment in South Africa. It uses a rights-based approach – specifically the rights to healthcare and sufficient food<sup>32</sup> – to analyse the current food and nutrition policy framework, insofar as the prevention of diet-related NCDs is prioritised. It further highlights challenges and opportunities that should be addressed to respond to all forms of malnutrition and prevent diet-related NCDs in South Africa.

## 2. The double burden of malnutrition

In South Africa, food system challenges are complex. The legacy of apartheid remains apparent, particularly in the socio-economic context, where the inequality gap continues to widen, due to increasing poverty, unemployment and the cost of living.<sup>33</sup>

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<sup>25</sup>FAO 'Food Security' Policy Brief Issue 2 (2006).

<sup>26</sup>Ibid.

<sup>27</sup>Ibid.

<sup>28</sup>D Decker & M Flynn 'Food insecurity and chronic disease: Addressing food access as a healthcare issue' (2018) 101 *Rhode Island Medical Journal* 28; Hunter-Adams et al (note 23 above).

<sup>29</sup>SJ Nkambule, I Moodley I, D Kuupiel & TP Mashamba-Thompson 'Association between food insecurity and key metabolic risk factors for diet-sensitive non-communicable diseases in sub-Saharan Africa: A systematic review and meta-analysis' (2021) 11 *Scientific Reports* 5178.

<sup>30</sup>Government of the Republic of South Africa *National Food and Nutrition Security Plan for South Africa 2018-2023* (7 November 2017) 4.

<sup>31</sup>High Level Panel of Experts on Food Security and Nutrition (note 19 above).

<sup>32</sup>Section 27 and s 28 of the Constitution of the Republic of South Africa, 1996.

<sup>33</sup>V Gumede 'Revisiting poverty, human development and inequality in democratic South Africa' (2021) 15 *Indian Journal of Human Development* 183.

compounded by poor service delivery, infrastructure, sanitation and inadequate access to water.<sup>34</sup> South Africa is struggling to achieve food and nutrition security for much of the population. In addition, high unemployment rates, an ongoing energy crisis and the rising cost of living continue to negatively impact food and nutrition outcomes.<sup>35</sup> While South Africa is considered food secure at a national level, because it produces enough to feed the population, it is considered food insecure at a household level. This is because millions of people are unable to access adequate nutritious food, showing that the food crisis is ultimately an issue of equity.<sup>36</sup> Since 1994, one in four people have suffered from food insecurity.<sup>37</sup>

Reports show that in 2021, over 2 million households, including those with young children, experienced hunger.<sup>38</sup> The South African Child Gauge 2020 also highlights that children are particularly vulnerable.<sup>39</sup> Stunting (when children have a low height for their age), which is indicative of chronic undernutrition, remains exceptionally high at 27 per cent.<sup>40</sup> At the same time, child and adolescent obesity is rapidly increasing. The 2016 'South African demographic and health survey' estimates that 13 per cent of children under-five were overweight or obese.<sup>41</sup> Overall, while there has been some progress in reducing wasting (children dangerously thin for their height) and overweight among children under five years of age, South Africa has shown no progress in limiting stunting in children under five, low birth weight, adult obesity rates, and diabetes among others.<sup>42</sup> At the same time, there has been a steady increase in national obesity prevalence. An estimated 42.9 per cent of adult (aged eighteen years and older) women and 18.2 per cent of adult men now live with obesity, which is significantly higher than the regional average of 20.7 per cent for women and 9.2 per cent for men.<sup>43</sup> Furthermore, diabetes prevalence has increased to 11.3 per cent among adult men and 14.3 per cent among adult women; it is responsible for the highest rate of premature (before the age of 70) mortality among adult women in South Africa.<sup>44</sup>

This emerging double burden of malnutrition (DBM) – which is when undernutrition (including micronutrient deficiencies) and overnutrition (linked to obesity and diet-related NCDs)<sup>45</sup> co-exist within individuals, households and populations – poses

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<sup>34</sup>T Masiya, YD Davids & MS Mangai 'Assessing service delivery: Public perception of municipal service delivery in South Africa' (2019) 14 *Theoretical and Empirical Researches in Urban Management* 20; AL Abrams, K Carden, C Teta & K Wågseth 'Water, sanitation, and hygiene vulnerability among rural areas and small towns in South Africa: Exploring the role of climate change, marginalisation, and inequality' (2021) 13 *Water* 2810.

<sup>35</sup>StatsSA 'Focus on food inadequacy and hunger in South Africa in 2021' (2023).

<sup>36</sup>StatsSA 'Towards measuring the extent of food security in South Africa: An examination of hunger and food adequacy' (2019).

<sup>37</sup>Oxfam 'Hidden hunger in South Africa: The faces of hunger and malnutrition in a food-secure nation' (2014) 2.

<sup>38</sup>StatsSA 'Assessing food inadequacy and hunger in South Africa in 2021 using the General Household Survey (GHS)' (2023) 7.

<sup>39</sup>W Sambu 'Child nutrition' in J May, C Witten and L Lake (eds) *South African Child Gauge 2020: Food and Nutrition Security* (2020) 170.

<sup>40</sup>National Department of Health (NDoH), StatsSA, South African Medical Research Council (SAMRC) & ICF 'South Africa demographic and health survey 2016 key findings' (2016) 11.

<sup>41</sup>Ibid.

<sup>42</sup>Global Nutrition Report 'South Africa' (2022); C Hawkes, A Demaio & F Branca 'Double-duty actions for ending malnutrition within a decade' (2017) 5 *The Lancet Global Health* e745.

<sup>43</sup>Global Nutrition Report (ibid).

<sup>44</sup>Sambu (note 39 above).

<sup>45</sup>E Samodien, Y Abrahams, C Muller, J Louw & N Chellan 'Non-communicable diseases-a catastrophe for South

a significant public health threat.<sup>46</sup> As various forms of malnutrition can be linked to some of the same underlying determinants, efforts to address these cross-cutting factors are more effective in reducing the burden of NCDs.<sup>47</sup> Here malnutrition can be understood as an 'outcome of dysfunctional interactions between different systems, the agri-food system, the environmental system, the health system and crucially, the system of individual and household decision making'.<sup>48</sup> Therefore, it is important to actively create food environments that enable people and households to have access to affordable, healthy foods. For these reasons, the WHO has provided guidance on addressing the DBM through the double-duty actions, including interventions, programmes and policies addressing all forms of malnutrition.<sup>49</sup> Nonetheless, giving effect to these double-duty actions is complex, as there are several intersecting rules, institutions and actors influencing the food environment.

## 2.1 The food and beverage industry influence on food environments

South Africa has a booming food and beverage industry compared to the rest of sub-Saharan Africa. It has a relatively high number of supermarkets and fast-food chains, even in communities of low socio-economic status.<sup>50</sup> For instance, in 2016, Gauteng province had 1,559 fast food outlets, compared to 709 healthy food outlets.<sup>51</sup> This has caused a major change to dietary patterns,<sup>52</sup> with an overall increase in the availability and accessibility of unhealthy foods, including UPFs high in sugar, salt and fat, sugar-sweetened beverages (SSBs) and foods made from animal by-products.<sup>53</sup>

The promotion of these unhealthy foods is understood as a commercial determinant of health, given that they negatively impact health outcomes.<sup>54</sup> Commercial determinants are defined as 'strategies and approaches used by the private sector to promote products and choices that are detrimental to health'.<sup>55</sup> Here, it is framed in the context of how the food and beverage industry influences several aspects of the food environment. The food and beverage industry holds power and resources that heavily impact food choices. As a major player in the free trade market, the proliferation of agri-food transnational corporations has allowed the food and beverage industry to create unhealthy food environments. In addition, many food and beverage

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Africa' (2021) 117 *South African Journal of Science* 1.

<sup>46</sup>WHO 'The double burden of malnutrition: Policy brief 2017' (2017).

<sup>47</sup>M Batal, L Steinhouse & H Delisle 'The nutrition transition and the double burden of malnutrition' (2018) 28 *Médecine et Santé Tropicales* 345.

<sup>48</sup>Global Panel on Agriculture and Food Systems for Nutrition 'Improving diets in an era of food market transformation: Challenges and opportunities for engagement between the public and private sectors' (2018) Policy Brief No 11.

<sup>49</sup>WHO (note 46 above).

<sup>50</sup>Spires et al (note 12 above).

<sup>51</sup>N Ndlovu, C Day, C Sartorius, J Aagaard-Hansen & K Hofman 'Assessment of food environments in obesity reduction: A tool for public health action' in L Rispel (ed) *South African Health Review* (2018) 115.

<sup>52</sup>Swinburn et al (note 17 above).

<sup>53</sup>NDoH et al (note 40 above); O Shisana, D Labadarios, T Rehle et al *South African National Health and Nutrition Examination Survey (SAHANES-1)* (2013); CE Draper, SA Tomaz, SH Bassett, J Harbron, HS Kruger, M Micklesfield, A Monyeki & EV Lambert 'Results from the Healthy Active Kids South Africa 2018 Report Card' (2019) 13 *South African Journal of Child Health* 130.

<sup>54</sup>WHO 'Commercial determinants of health' (2021).

<sup>55</sup>M Mialon 'An overview of the commercial determinants of health' (2020) 16 *Globalization and Health*.

industry actors continue to actively oppose public health policies that aim to promote nutrition specific outcomes, by funding health research,<sup>56</sup> discrediting research findings, circulating misinformation, and lobbying public officials to oppose public health regulations, employing tactics to delay the implementation of regulations or watering down their impact, among others.<sup>57</sup>

While the South African government has taken various legal, policy and regulatory and fiscal measures aimed at creating a healthier food environment, many gaps persist. A major hindrance to effective regulation is because the food and beverage industry is seen as an integral part of the solution to reducing unemployment in South Africa.<sup>58</sup> By contributing towards economic empowerment and job creation, the industry has positioned itself as a key player in promoting access to food.<sup>59</sup> This is because, historically, and even within the current food and nutrition policies, there is a focus on increasing food production in order to address food insecurity and hunger. However, this has done little to realise the right to sufficient and nutritious food, create a healthier food environment or prevent diet-related NCDs.<sup>60</sup>

### 3. A rights-based approach to preventing diet-related non-communicable diseases

As South Africa strives towards the 2030 Sustainable Development Goals (SDGs), some targets are resembling an ever-distant dream, specifically those relating to the goal to end hunger and improve nutrition.<sup>61</sup> However, the law can be a critical tool that forms part of the country's response to diet-related NCDs. Global human rights institutions have guided states to take urgent action to address the risk factors associated with NCDs, as well as the underlying systemic, social, political and commercial determinants of health.<sup>62</sup> Through various binding international and regional and national human rights norms and standards, states have an obligation to address diet-related NCDs through the adoption of laws, policies and regulatory measures. Thus, preventing diet-related NCDs and all forms of malnutrition is not only a moral duty but also a legally binding human rights obligation.<sup>63</sup> The rights to health and food as will be shown in this section, provide a standard upon which to assess the policies and actions of the state in preventing diet-related NCDs.

The right to food, recognised in art 11 of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), which South Africa has ratified, guarantees the right of everyone to an adequate standard of living, including adequate food. The articulation of the normative content and the obligations under the right by the Committee on Economic, Social and Cultural Rights (the Committee), has been

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<sup>56</sup>S Goldstein, M Tomlinson, R Wynberg & T Doherty 'Big companies, like Nestlé, are funding health research in South Africa: Why this is wrong' *The Conversation Europe* (3 March 2024).

<sup>57</sup>Mialon et al (note 21 above). See also N Claasen, M van der Hoeven & N Covic 'Food environments, health and nutrition in South Africa' (2016) PLAAS, UWC and Centre of Excellence on Food Security Working Paper 34.

<sup>58</sup>Government of the Republic of South Africa (note 30 above).

<sup>59</sup>Ibid.

<sup>60</sup>Ibid; Global Nutrition Report (note 42 above).

<sup>61</sup>United Nations 'The sustainable development goals report' (2022).

<sup>62</sup>WHO 'Global action plan for the prevention and control of noncommunicable diseases 2013-2020' contained in the annex to the WHA66.10 (27 May 2013).

<sup>63</sup>OHCHR 'The right to adequate food' Fact Sheet No 34 (2010).

instructive in understanding the government's obligations in terms of the right to access food in the South African constitution. Clarifying the normative content of this right, the Committee, in its General Comment No 12,<sup>64</sup> noted that the right shall not be interpreted in a narrow sense as a 'minimum package of calories, proteins and other specific nutrients' but rather that food should meet diverse dietary needs and be balanced from a nutrition standpoint to meet human physiological needs throughout the life cycle.<sup>65</sup> This means that governments' policies and actions to ensure people have access to adequate food must take into consideration the nutritional needs of various population groups such as infants, children, pregnant women, lactating mothers, and the elderly. Also, food should be accessible, sustainable and not interfere with the enjoyment of other human rights such as the right to health.<sup>66</sup> States' obligations in this regard include measures to 'maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.'<sup>67</sup> In essence, the right to food requires that it be available, accessible (economically and physically) and nutritionally adequate for everyone, especially the most vulnerable, without discrimination.<sup>68</sup> The right to food provides a standard upon which to assess policies or actions that facilitate or hinder access to nutritious food. Drawing from this broad interpretation, references made to the 'right to food' and 'food and nutrition security' in this article encompass both the right to access and the availability of food that is affordable, nutritious, and adequate for a healthy life.

As duty bearers of this right, states have an obligation to respect, protect and fulfil the right to food. The duty to respect requires states to refrain from any measures that could prevent access to food. The obligation to protect means that states must ensure that third parties such as enterprises do not deprive people of their access to adequate and nutritious food. To fulfil, according to the Committee, includes both an obligation to facilitate and provide access.<sup>69</sup> To facilitate requires states to proactively engage in activities aimed at strengthening access to and utilisation of resources and means to ensure food security,<sup>70</sup> for instance, addressing unemployment, inequality, high food prices, food procurement processes and spatial constraints to accessing food, especially for vulnerable groups. Moreover, the failure of a state to address discriminatory access to food or means for its procurement is a violation of this right.<sup>71</sup> Furthermore, the obligation to provide is required when an individual or group is unable to access food for reasons beyond their control, such as victims of humanitarian emergencies.<sup>72</sup> According to the Committee, the state is obliged to ensure that

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<sup>64</sup>Committee on Economic, Social and Cultural Rights (CESCR) General Comment No 12: The Right to Adequate Food (art 11) (12 May 1999) E/C.12/1999/5.

<sup>65</sup>CESCR (ibid) paras 6, 8–9.

<sup>66</sup>Ibid para 8.

<sup>67</sup>Ibid para 8.

<sup>68</sup>Ibid para 13.

<sup>69</sup>Ibid para 15.

<sup>70</sup>Ibid para 15.

<sup>71</sup>Ibid para 18.

<sup>72</sup>Ibid para 15.

everyone has access to the minimum essential food that is sufficient, safe and nutritionally adequate to ensure freedom from hunger.<sup>73</sup>

In line with international standards, s 7(2) of the Constitution of the Republic of South Africa, 1996 also obliges the state to respect, protect, promote and fulfil every right therein. The Constitution explicitly guarantees access to food for everyone in s 27(1)(b); s 28(1)(c) provides that every child has the right to basic nutrition; and s 35(2)(e) provides for the 'adequate nutrition' needs of inmates in correctional services. Section 27(2) stipulates the obligation of the state in respect of this right, which is to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

In South Africa, there has been limited attention from the courts on the right to access to food, and this has been related to the fact that the right has not frequently been explicitly relied on given that it is dependent on the realisation of other constitutional rights such as social security, property and education.<sup>74</sup> In *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd*,<sup>75</sup> the Constitutional Court considered the content of the right to access food in s 27(1)(b) in the context of agricultural land. The Court, in line with international law, reaffirmed the twin elements of availability and accessibility noting that this right entails the availability of sufficient food to meet the nutritional needs of the general population, whereas accessibility requires ensuring people can access the available food including means to produce their own food. Although s 27(1)(b) is framed as an access right, this interpretation gives the right content that extends to the quality of the food that must meet nutritional needs.

In *Equal Education v Minister of Basic Education*,<sup>76</sup> the importance of adequate nutrition was upheld in line with the child's right to basic nutrition in s 28(1)(c). This case challenged the decision of the state to halt the National School Nutrition Programme (NSNP) during the nationwide lockdown in response to the Covid-19 pandemic, which is aimed at combating malnutrition, reducing hunger, and improving school attendance by providing one meal to more than 9 million school children every day. The decision to halt the programme negatively impacted the children's food security, many of whom relied on the programme as their only source of food. Furthermore, beyond meeting immediate hunger needs, the Court emphasised the importance of adequate nutrition, and the link to education, citing that it also directly improves school attendance and performance.<sup>77</sup> While the NSNP has been criticised for not adequately prioritising the nutritional quality of the meals provided,<sup>78</sup> the Court held that it plays an integral role in addressing part of the problem. The Court also detailed the state of child hunger even during the normal operation of the NSNP, and that without it, the health of millions of learners would diminish.<sup>79</sup>

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<sup>73</sup>Ibid para 14.

<sup>74</sup>D Brand 'Between availability and entitlement: The Constitution, *Grootboom* and the right to food' (2003) 7 *Law, Democracy & Development* 1.

<sup>75</sup>*Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd* 2009 (1) SA 337 (CC).

<sup>76</sup>*Equal Education v Minister of Basic Education* (22588/2020) [2020] ZAGPPHC 306; [2020] 4 All SA 102 (GP); 2021 (1) SA 198 (GP).

<sup>77</sup>Ibid paras 17–18 and 38–39.

<sup>78</sup>NDoH, Department of Planning, Monitoring and Development & DSD 'Diagnostic/implementation evaluation of nutrition interventions for children from conception to age 5' (31 March 2014).

<sup>79</sup>*Equal Education* (note 76 above) para 30.

Both the *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd* and *Equal Education v Minister of Basic Education* cases demonstrate the importance of adequate nutrition as a critical component of realising the right to access food, beyond addressing hunger. Therefore, the right to food offers a robust framework that extends to the prevention of diet-related NCDs.<sup>80</sup> The obligation to respect, protect and fulfil is critical, and extends to facilitating access through relevant laws and policies to improve the availability and accessibility of healthy foods, and to addressing systemic challenges that impede access to food, especially for vulnerable groups. Food security strategies must not merely be directed at ensuring access to food but must also ensure access to food that is safe and nutritious that together make up a healthy diet.<sup>81</sup> Moreover, the Committee highlights that states are required to adopt a national strategy to ensure food and nutrition security for all, along with a legal framework, the formulation of policies, corresponding benchmarks, monitoring mechanisms and remedies.<sup>82</sup> States should further identify resources to reasonably and progressively meet the objectives, despite resource constraints and without discrimination.<sup>83</sup>

The right to food and the right to health are strongly interlinked as adequate nutrition is an important component of both rights. The Committee in its General Comment No 14 interprets the right to health recognised in art 12 of the ICESCR as an inclusive right extending not only to timely and appropriate healthcare but also to the underlying determinants of health, such as an adequate supply of safe and nutritious food.<sup>84</sup> In addition, this is further clarified to be a minimum core obligation towards realising the right to health.<sup>85</sup> At the regional level, the right to health and food can be found in art 16 of the African Charter (health), art 14 and 15 of the African Women's Protocol (health and food respectively). In art 14 of the African Children's Charter, states are further required to ensure that children receive adequate nutrition and are obligated to combat disease and malnutrition through their primary healthcare framework. Although the right to food is not listed in the African Charter, the African Commission has noted that the right is implicitly guaranteed in art 4 (right to life), art 16 (health) and art 22 (social and cultural development) and inseparably linked to the right to human dignity, education and work.<sup>86</sup> Importantly, s 39 (1)(b) of the Constitution recognises international law when interpreting the Bill of Rights, further strengthening these obligations above.<sup>87</sup>

In South Africa, s 27(1)(a) states that 'everyone has the right to have access to health care services'.<sup>88</sup> While the Constitution does not explicitly entrench the right to health like art 12 of the ICESCR, by signing and ratifying the ICESCR, South Africa is obligated to

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<sup>80</sup>ICESCR (note 64 above) para 15; B Nkrumah 'Opening Pandora's box: A legal analysis of the right to food in South Africa' (2019) 52 *De Jure Law Journal* 47.

<sup>81</sup>WHO & FAO 'Diet nutrition and prevention of chronic diseases' (2003) WHO Technical Report Series 916.

<sup>82</sup>OHCHR (note 63 above).

<sup>83</sup>ICESCR (note 64 above) para 21.

<sup>84</sup>ICESCR General Comment No 14: The Right to the Highest Attainable Standard of Health (art 12) (11 August 2000) E/C.12/2000/4 para 11.

<sup>85</sup>*Ibid* para 43(b).

<sup>86</sup>*Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* Communication 155/96 27 October 2001 paras 64-66.

<sup>87</sup>SA Karim, P Kruger & K Hofman 'Some legal issues around the adoption of simplified nutrition labelling in South Africa: An analysis of Draft Regulation R429' (2022) 23 *Economic and Social Rights Review* 21.

<sup>88</sup>Section 27 (1)(a) of the Constitution.

progressively realise this right in line with the provisions of the ICESCR.<sup>89</sup> South Africa later ratified the Covenant in 2015. The courts have been instrumental in interpreting and qualifying this right in some landmark cases. In the case of *Soobramoney v Minister of Health, KwaZulu-Natal*,<sup>90</sup> the Constitutional Court had to decide on the issue of access to emergency medical treatment in an under-resourced healthcare system. Sachs J, in an obiter, highlighted the interdependence between a healthy life and other factors including the quality of air, water, sanitation and healthcare.<sup>91</sup> This interpretation, along with the wording in the Constitution, recognises that the right to health should not be interpreted in a narrow sense, such as access to medicines or medical services, but rather as inextricably linked to principles of equality, dignity and non-discrimination, as well as a number of other human rights including life, a healthy environment, sufficient food, water and social security, including social assistance. Moreso, it has been suggested that other constitutional guarantees – such as the right to access food, water and social security – when put together may provide an entitlement to health.<sup>92</sup> Drawing from both international and domestic obligations above, the state is obliged to take measures towards creating and promoting a healthier food environment, including that states should not ‘engage in any conduct that is likely to result in preventable morbidity or mortality, including incentivising the consumption of unhealthy foods and beverages.’<sup>93</sup>

In *Government of the Republic of South Africa v Grootboom*,<sup>94</sup> the Constitutional Court further defined what taking ‘reasonable measures’ means with regards to ‘available resources,’ in addition, stating that measures that do not include meeting the needs of the vulnerable groups in society are considered unreasonable. This is important here because it makes the connection between vulnerable and marginalised populations, who require state intervention in order to have their rights realised. This was also upheld in the case of the *Minister of Health v Treatment Action Campaign*.<sup>95</sup> From these judgments, the courts have broadly interpreted the right to health to go beyond access to healthcare. Furthermore, drawing on these frameworks on the rights to health and food, the prevention of diet-related NCDs is a human rights imperative and should be a legal and policy priority.

Several international guidelines have also been developed to assist countries in responding to specific issues of food, nutrition, and health in relation to the increasing rate of overweight, obesity and NCDs. South Africa draws from several resolutions on the prevention and control of NCDs,<sup>96</sup> as well as several international and regional commitments targeting the major NCDs risk factors, NCD prevention, policy making and implementation.<sup>97</sup> The WHO has also issued guidance on priority

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<sup>89</sup>R Phillips ‘South Africa’s right to health care: International and constitutional duties in relation to HIV/AIDS epidemic’ (2004) 11 *Human Rights Brief* 9.

<sup>90</sup>*Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) 1998 (1) SA 765 (CC).

<sup>91</sup>*Ibid* para 54.

<sup>92</sup>Karim et al (note 87 above).

<sup>93</sup>Office of the United Nations High Commissioner for Human Rights (note 17 above).

<sup>94</sup>*Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC).

<sup>95</sup>*Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC).

<sup>96</sup>World Health Assembly (2000) Resolution 53.17 on the Prevention and Control of Non-Communicable Diseases; World Health Assembly (2002) Resolution 55.23 on Diet, Physical Activity, and Health; World Health Assembly (2008) Resolution 61.14 on Prevention and Control of Non-Communicable Diseases: Implementation of the Global Strategy.

<sup>97</sup>WHO (note 62 above); Political Declaration of the High-Level Meeting of the General Assembly on the Prevention

interventions for low- and middle-income countries on NCD prevention and control in the form of ‘best buys’ through fiscal, legal and policy measures. The interventions include reducing salt intake and sugar consumption, eliminating industrial trans-fats, and implementing nutrition labelling to reduce total energy intake, and mass media campaigns to promote healthy food choices and the intake of fruits and vegetables.<sup>98</sup>

Following this guiding framework, South Africa has taken several legislative, regulatory and policy measures to prevent diet-related NCDs. While it does not yet have a national legislative framework on the right to food, it has developed a plethora of food and nutrition-related policy and regulatory frameworks. Therefore, the following section uses a rights-based approach to assess various national policies, plans and programmes relating to food and nutrition security, which are anchored on the rights to health and food and the corresponding obligations established in international law. Using this lens to determine the extent to which these human rights principles and obligations are being realised across the food and nutrition policy and regulatory space provides an opportunity to highlight how improving health outcomes through food and nutrition security can strengthen the prevention of diet-related NCDs.

## 4. An examination of NCDs, food and nutrition-related laws, regulations, policies and plans in South Africa

### 4.1 Food security policies and plans

This section examines the food security policies and plans<sup>99</sup> and the extent to which they prioritise access to adequate nutrition for the prevention of diet-related NCDs in South Africa. It assesses the extent to which policy priorities are anchored on the normative content of the right to access sufficient food and health, including the fulfilment of state obligations in this regard. National strategies improving food and nutrition security inform the response to food insecurity in South Africa.

#### 4.1.1 The national development plan

Adopted in 2012, the South African *National Development Plan 2030 (NDP)*<sup>100</sup> is a long-term one that aims to eradicate poverty, reduce unemployment and eliminate inequality by 2030. The *NDP* acknowledges that health outcomes lie within and beyond the health system and addresses social determinants of health – including diet, nutrition and healthy behaviours – prioritising these through intersectoral

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and Control of Non-Communicable Diseases (September 2011); Political Declaration of the Third High-Level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases (2018); The Brazzaville Declaration on Noncommunicable Diseases Prevention and Control in the WHO African Region (2011).

<sup>98</sup>WHO ‘Tackling NCDs: “Best buys” and other recommended interventions for the prevention and control of noncommunicable diseases’ (2017);

<sup>99</sup>While a policy outlines a set of goals or objectives to be accomplished, a plan sets out detailed steps to achieve the goals or objectives including the persons or institutions that are involved.

<sup>100</sup>National Planning Commission *National Development Plan 2030: Our Future – Make it Work* (2012).

collaboration.<sup>101</sup> Among the health-related objectives in the *NDP* is to significantly reduce the prevalence of NCDs. Actions in this regard include promoting healthy diets and ensuring household food and nutrition security.

The *NDP* is South Africa's blueprint. Among other things, it establishes a basis for deciding the use of state resources. In the long run, it is in line with the obligation to fulfil the right of access to food in s 27(1)(b) of the Constitution, through facilitating access to resources and food security. The Committee notes in General Comment No 12 that states' strategies to realise the right to food should be based on a systematic identification of policy measures and activities relevant to the situation and context, as derived from the normative content of the right to adequate food as well as states' obligations.<sup>102</sup> However, the plan has a limited approach to addressing food and nutrition insecurity in South Africa. It prioritises efforts to address under-nutrition and does not consider the impact of overnutrition or the NCD burden on development outcomes. It considers inadequate nutrition as a result of less nutritious crops being produced and a lack of nutrition education.<sup>103</sup> As such, little attention is given to the link between the unhealthy food environment, unhealthy diets and NCDs.

The Committee also emphasised in its General Comment No 12 that states' strategies should address all aspects of the food system from production, processing, distribution, marketing and consumption of safe food.<sup>104</sup> The lack of consideration of the link between food insecurity, the food environment and rising burden of NCDs shows a failure to capture the full extent of the nutrition crisis in South Africa. This demonstrates a disconnect between the national strategy on food security and the normative content of the right and corresponding obligations to ensure that everyone has access to adequate nutrition. The framing of food and nutrition insecurity challenges as well as the solutions in the *NDP* flows through in other food and nutrition security policies such as the 2013 *National Policy on Food and Nutrition Security (NPFNS)*.<sup>105</sup>

#### 4.1.2 *The National Policy on Food and Nutrition Security for South Africa*

The Department of Social Development (DSD) and the Department of Agriculture, Forestry and Fisheries developed the 2013 *NPFNS*. Like the *NDP*, this policy fails to capture the full extent of the nutrition problem in South Africa, especially the influences of the increasing consumption of unhealthy foods. The *NPFNS* 2013 recognises that South Africa falls short in nutrient diversity and micro-nutrient intakes among various population groups, as well as overweight, obesity and NCDs due to poor diet that are indicative of food insecurity.<sup>106</sup> However, it conceptualises food insecurity as a result of food production challenges such as climate change, limited opportunities for smallholder farmers, including inadequate nutrition knowledge and financial means to make healthy food choices. It fails to recognise other factors like an unhealthy food environment, the cost of healthy versus unhealthy foods, and broader social and commercial determinants of health. While nutrition education is

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<sup>101</sup>Ibid 41.

<sup>102</sup>CESCR (note 64 above) para 22.

<sup>103</sup>National Planning Commission (note 100 above) 231.

<sup>104</sup>CESCR (note 64 above) para 25.

<sup>105</sup>Department of Agriculture, Forestry and Fisheries (note 22 above) 6.

<sup>106</sup>Ibid 10.

important, it must be recognised that contextual influences such as the settings where people obtain food, marketing strategies including packaging, advertisements and health claims among others shape people's food choices and consumption in ways they may not explicitly recognise or resist.<sup>107</sup>

The first of the policy's five pillars to addressing food and nutrition insecurity is improving nutrition safety nets to meet immediate food needs such as feeding programmes. The second is strengthening nutrition education, and the third is investment in agriculture, especially in rural areas. The fourth is improving market participation of the emerging agricultural sector, while the fifth is food and nutrition security risk management. The policy objectives mostly relate to making food available in sufficient quantity and less to improving the nutritional quality of the food that is available and accessible. This is because the policy focus is tilted mostly to strengthening agriculture or primary production of food and improving the welfare of farmers (especially smallholders). There is less focus on the outcome of agricultural production and how it translates to improved nutrition for everyone. This is at variance with the states' obligations, as noted earlier, in realising the right to food to address issues in all aspects of the food system from production, through to consumption.<sup>108</sup> Little attention is given to the nutritional quality of food and the broader food environment influences increasing consumption of unhealthy foods. This shows that there is a need for a holistic approach to addressing food insecurity that takes into consideration the underlying factors that affect access to nutritious food. For instance, bridging the gap between farmers and consumers to make whole food cheaper and improving the quality of meals offered through feeding programmes and nutrition intervention for various groups are among vital strategies to improve access to adequate nutrition.<sup>109</sup> However, this must be accompanied by measures to control the availability, accessibility and affordability of unhealthy foods.

#### 4.1.3 *The National Food and Nutrition Security Plan for South Africa*

The Department of Planning, Monitoring and Evaluation in collaboration with other government departments including Agriculture, Health, Social Development, Basic Education, Water and Sanitation, Women and the Treasury developed the first iteration of the *National Food and Nutrition Security Plan (2018–2023)*. The Plan was designed to address food and nutrition insecurity in South Africa by ensuring availability and access to nutritious food to meet the dietary needs of the population. The plan sets out targets addressing South Africa's triple burden of malnutrition: undernutrition, micronutrient deficiencies, and overweight and obesity. Seven strategic objectives guided its implementation: to align policies and programmes on food and nutrition security; to improve access to food through establishing inclusive local food value chains to increase local access to nutritious food; to expand social protection measures; to scale up nutrition intervention for women, children and infants; to

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<sup>107</sup>DA Cohen & SH Babey 'Contextual influences on eating behaviours: Heuristic processing and dietary choices' (2012) 13 *Obesity Reviews* 766; Igumbor et al (note 18 above).

<sup>108</sup>CESCR (note 64 above) para 25.

<sup>109</sup>AM Thow, S Greenberg, M Hara, S Friel, A du Toit & D Sanders 'Improving policy coherence for food security and nutrition in South Africa: A qualitative policy analysis' (2018) 10 *Food Security* 1127; MT Ruel & H Alderman 'Nutrition-sensitive interventions and programmes: How can they help to accelerate progress in improving maternal and child nutrition?' (2013) 382 *The Lancet* 536.

influence people across the life cycle to make informed food and nutrition decisions; to ensure adequate monitoring and evaluation and data-informed decision making on food and nutrition security; and to build entrepreneurship and entrepreneurial skills for South Africans to achieve self-sustainability.

An evaluation of the Plan's implementation in 2023 showed poor performance across all objectives at national and provincial levels.<sup>110</sup> A major challenge identified was the poor coordination of necessary structures for implementation as well as resource constraints. At the national level, it was shown that a major hindrance was a fragmented approach with different departments working in silos. Another problem was the absence of the National Council on Food and Nutrition Security and related sub-committees that were meant to coordinate actions and ensure policy coherence among sectors and stakeholders.<sup>111</sup> There has also been no monitoring and evaluation system put in place to ensure data collection and informed implementation of plans and limited engagement with the private sector and civil society organisations.<sup>112</sup> The plan has had no real impact on enabling vulnerable and marginalised groups to make healthier food choices. For instance, social protection efforts to improve food and nutrition security through social grants are insufficient; the child support grant for instance does not suffice to cover nutritious meals for a child in a month.<sup>113</sup>

While nutrition education is important, actions to create healthier food environments in which people can access nutritious food is critical.<sup>114</sup> However, this policy places much emphasis on nutrition education, including behavioural change communication to improve the food environment. It identifies the need to create an enabling environment for nutrition improvement, and strategic objective five seeks to influence people across the life cycle to make informed food and nutrition decisions through an integrated communications strategy. This objective is about achieving behavioural change by creating an awareness platform on the tail end of the food value chain. The *National Food and Nutrition Security Communication Strategy for South Africa* was developed to achieve this objective. The purpose of the communication strategy is to influence people across the life cycle to make informed food and nutrition decisions.<sup>115</sup> This includes advocating for high impact nutrition interventions, better coordination and implementation of policies and regulations relating to food and nutrition security by policy makers and leaders. In relation to the food and beverage industry, the communication strategy aims to improve knowledge as well as ensure adherence of the industry players to government laws, regulations and policies on processing, packaging, labelling, distribution and marketing of safe and nutritious food and drinks.<sup>116</sup> According to the policy this is important because, the 'food industry often has inaccurate knowledge of laws, regulations and policies on processing, packaging, distribution and marketing of safe and nutritious food and beverages; and where they

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<sup>110</sup>Government of the Republic of South Africa (note 30 above) Summary Report.

<sup>111</sup>Ibid 17.

<sup>112</sup>Ibid 18.

<sup>113</sup>W Zembe-Mkabile, R Surender, D Sanders, D Jackson & T Doherty 'The experience of cash transfers in alleviating childhood poverty in South Africa: Mothers' experiences of the Child Support Grant' (2015) 10 *Global Public Health* 834.

<sup>114</sup>G Rose, KT Khaw & M Marmot *Rose's Strategy of Preventive Medicine* (2008).

<sup>115</sup>Government of the Republic of South Africa (note 30 above) 15.

<sup>116</sup>Ibid 63.

know, they perceive the regulations as onerous.<sup>117</sup> This is not a true reflection of the situation as the food and beverage industry is a strong opposer of public health policies aimed at mitigating negative trends in dietary patterns;<sup>118</sup> sponsoring research aimed at skewing evidence towards solutions that favour industry interests;<sup>119</sup> and lobbying of public officials to oppose public regulations, among others.<sup>120</sup>

## 4.2 Nutrition-related frameworks

This section highlights the discrepancies between food and nutrition security policies on the one hand and nutrition-related health policies on the other. Compared to the food and nutrition security policies – which conceptualise food insecurity as a food production problem, limited income and a lack of nutrition education – nutrition-related health regulations are premised on the view of food as a nutrition and health issue with efforts to address the commercial determinants of health focusing on the content and marketing of unhealthy foods.<sup>121</sup> The National Department of Health (NDoH) is currently responsible for pushing the nutrition and health agenda as a national regulatory priority. Civil society organisations such as Healthy Living Alliance (HEALA) have been instrumental in the development of the regulations. These regulatory frameworks as well as the actors in this space prioritise food supply regulation to create healthier food environments towards good nutrition for population health.<sup>122</sup>

### 4.2.1 National Strategic Plan for the Prevention and Control of Non-Communicable Diseases (2022–2027)

The *National Strategic Plan for the Prevention and Control of Non-Communicable Diseases* (2022–2027) (NSP) was developed in line with the vision of SDG 3.4, to reduce, by one-third, premature mortality from NCDs through prevention and treatment and to promote mental health and well-being by 2030.<sup>123</sup> It also recognises the underlying determinants of health, risk factors and the complexities of addressing the entire NCD burden in one strategy. Although it takes a clinical ‘up-stream’ health system strengthening approach,<sup>124</sup> it presents a five-by-five strategy to address the five major groups of NCDs (cardiovascular diseases, cancer, chronic respiratory diseases, diabetes and mental health), alongside five shared behavioural risk factors (tobacco use, unhealthy diet, physical inactivity, harmful use of alcohol and air pollution). It places priority on early detection and control of diabetes and hypertension with a 90-60-50 cascade plan towards detection, intervention and control.<sup>125</sup> However, while the NCD ‘management’ focus of the NSP serves as an integral part of the broader framework, the plan is expected to have little impact on addressing unhealthy diets as a

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<sup>117</sup>Ibid 63.

<sup>118</sup>Thow et al (note 109 above).

<sup>119</sup>A Fabbri, TJ Holland & LA Bero ‘Food industry sponsorship of academic research: Investigating commercial bias in the research agenda’ (2018) 21 *Public Health Nutrition* 3422.

<sup>120</sup>Claasen et al (note 57 above).

<sup>121</sup>Thow et al (note 109 above).

<sup>122</sup>Thow et al (ibid).

<sup>123</sup>NDoH *National Strategic Plan for the Prevention and Control of Non-Communicable Diseases 2022–2027*.

<sup>124</sup>Ibid 21.

<sup>125</sup>Ibid 8.

risk factor or improving the environment to enable people to make healthier food choices. We have previously argued that this is because of the policy's failure to set clear targets for addressing unhealthy diets, especially in relation to the food environment.<sup>126</sup>

#### 4.2.2 Strategy for the Prevention and Management of Obesity in South Africa (2023–2028)

The updated *Obesity Strategy* (2023–2028) was developed with the overall goal to reduce the prevalence of obesity and diet-related non communicable disease in the South African population, which is compounded by poor socio-economic conditions, commercial determinants driving obesity and restricted choices to adopt a healthy lifestyle. This can be achieved through enabling equitable access to healthy food, physical activity opportunities and strengthening the healthcare system capacity to support the prevention and management of obesity.<sup>127</sup> It also emphasises the need for a multisectoral approach to promoting public health, and an enabling legislative and policy environment to ensure accountability for implementation. It recognises a rights-based approach to NCDs by acknowledging the link between factors influencing the food environment and health outcomes and how they measure up against South Africa's international and regional commitments.<sup>128</sup>

There are several gaps and opportunities for expansion within the framework of this strategy. Strategic Objective 1 is focused on creating an enabling environment where healthy food is available and accessible in government workplaces and schools.<sup>129</sup> However, the same strategy could be implemented in other public settings such as healthcare facilities and correctional service facilities that also provide food to many marginalised and vulnerable groups. Similarly, while it aims to capacitate learners to make healthier food choices, it does not address any of the economic barriers impacting their access to healthy food.<sup>130</sup> Strategic Objective 3, which focuses on education and communication on evidence-based interventions to prevent and manage obesity among individuals and policymakers, is also likely to have limited impact on improving the broader food environment.<sup>131</sup> In addition, while Strategic objectives 5 and 6 recognise the importance of 'effective monitoring evaluation' and 'policy and legislation [to] support a healthy food environment',<sup>132</sup> the lack of national legislation on the right to food, which would inform the implementation of the *Obesity Strategy*, limits its application and impact.<sup>133</sup>

An emphasis in the food security policies on changing dietary patterns through nutrition education not only appears to fault the individual but downplays the extent to which social context can inform an individual's choices and consumption.<sup>134</sup> Rather, it is more effective and far reaching to change circumstances that shape individual

<sup>126</sup>P Knipe, A Omoruyi & E Durojaye 'The National Strategic Plan for the Prevention and Control of NCDs 2022–2027: Assessing policy priorities to address unhealthy diets' (2022) 23 *Economic and Social Rights Review* 33.

<sup>127</sup>NDoH *Strategy for the Prevention and Management of Obesity in South Africa* (2023–2028) 13.

<sup>128</sup>Ibid 21.

<sup>129</sup>Ibid 35.

<sup>130</sup>Ibid 36.

<sup>131</sup>Ibid 40.

<sup>132</sup>Ibid 43–45.

<sup>133</sup>Ibid 33.

<sup>134</sup>Cohen & Babey (note 107 above).

behaviour.<sup>135</sup> It has been noted that interventions to change the environmental context in order to create healthier defaults have a wider social health impact, as individuals will have to exert significant effort not to benefit from them.<sup>136</sup> Specifically, eliminating trans fats and reducing sodium and sugar in processed foods through regulations or fiscal measures are among such interventions. Health education has been noted as the least effective type of public health intervention despite being a recurring feature of health policies and being often available.<sup>137</sup> The emphasis on behaviour change is seen as an indication of failure to create environments or contexts that encourage healthy choices by default.<sup>138</sup> However, trying to get the food and beverage industry to adhere to food regulations through communication, must form part of a broader strategy to improve the food environment. Further, expecting self-regulation from the food and beverage industry for instance in respect of marketing unhealthy food to children is unrealistic as business interests often supersedes other considerations including people's health. Aiming to get the food industry to adhere to nutrition regulations through communication also appears to assume that the problem is only a lack of compliance, while the level of regulation itself is far from what is needed to control the negative health impact of the food industry. Also, the problem is not majorly around non-compliance but around the impact of the food and beverage industry pushbacks to prevent, delay or whittle down the content of regulations that affect their business and profits.<sup>139</sup>

### 4.3 Nutrition-related regulations

There are regulations made under the Foodstuffs, Cosmetics and Disinfectant Act 54 of 1972 to control salt and trans-fat content in processed foods, and the food industry's labelling and advertising. The Regulations relating to trans-fat in foodstuffs<sup>140</sup> prohibit the sale, manufacturing, and importation of any processed foods in the retail trade, catering businesses, restaurants, institutions, bakeries and so forth that exceed 2g per 100g of partially hydrogenated fats and oils. South Africa set a global example by being the first country to impose a maximum sodium limit on certain foodstuffs<sup>141</sup> through the Regulations Relating to the Reduction of Sodium in Certain Foodstuffs and Related Matters.<sup>142</sup> With a target to reduce salt intake to less than 5g a day, it has been hailed as having the capacity to reduce the detrimental effect of high salt

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<sup>135</sup>Rose et al (note 114 above).

<sup>136</sup>TR Frieden 'A framework for public health action: the health impact pyramid' (2010) 100 *American Journal of Public Health* 590.

<sup>137</sup>EP Whitlock, CT Orleans, N Pender & J Allan 'Evaluating primary care behavioral counseling interventions' (2002) 22 *American Journal of Preventive Medicine* 267.

<sup>138</sup>Frieden (note 136 above).

<sup>139</sup>R Moodie, D Stuckler, C Monteiro, N Sheron, B Neal, T Thamarangsi & S Casswell 'Profits and pandemics: Prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries' (2013) 381 *The Lancet* 670.

<sup>140</sup>Government Gazette No 34029 (17 February 2011) in terms of the Foodstuffs, Cosmetics and Disinfectant Act 45 of 1972 (R 127 of 2011).

<sup>141</sup>J Webster, C Crickmore, K Charlton, K Steyn, E Wentzel-Viljoen & P Naidoo 'South Africa's salt reduction strategy: Are we on track, and what lies ahead?' (2017) 107 *South African Medical Journal* 20.

<sup>142</sup>Government Gazette No 36274 (20 March 2013) in terms of the Foodstuffs, Cosmetics and Disinfectant Act 54 of 1972 (R 214 of 2013).

intake.<sup>143</sup> The compliance with the salt content regulations has been quite impressive. For instance, the bread industry, which is considered as one of the greatest contributors to salt intake in South Africa, has been able to achieve the target.<sup>144</sup> A study has shown that sodium levels in two-thirds of foods the South African sodium legislation covers were at or below the permitted upper levels at the mandatory implementation date of the legislation, and many more were close to the limit.<sup>145</sup> The sodium content limit set by the regulations does not, however, extend to restaurants and fast-food businesses that are also contributors to high sodium intake; this is an opportunity to improve the impact of the regulations.<sup>146</sup>

The Regulations Relating to the Labelling and Advertising of Foodstuffs<sup>147</sup> require that no pre-packaged foodstuff shall be sold unless labelled in accordance with the regulations. It prescribes the nutrition labelling formats found on the back of food packages that have proved overtime to be ineffective for consumer education due to their complexity.<sup>148</sup> Consumer preference, as well as the benefit of less complex labelling in making healthier food purchases, has informed moves for simpler front-of-pack labelling (FOPL) for foods,<sup>149</sup> including in South Africa.<sup>150</sup> Several studies have shown that many South Africans have trouble reading traditional nutritional labels.<sup>151</sup> Besides being more visible for consumers, FOPLs can be used to highlight nutrients that are linked to NCDs including salt, fat and sugar.<sup>152</sup> It is also considered useful in encouraging manufacturers to reformulate their food products towards offerings of higher nutritional quality.<sup>153</sup> Also, food advertising is an important issue that needs to be addressed as several adverts featuring mostly UPFs high in sugar, salt and fat, with low nutritional value, which has been shown to influence dietary patterns in adults and especially children.<sup>154</sup> They encourage excessive consumption

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<sup>143</sup>DA Watkins, ZD Olson, S Verguet, RA Nugent & DT Jamison 'Cardiovascular disease and impoverishment averted due to a salt reduction policy in South Africa: An extended cost-effectiveness analysis' (2016) 31 *Health Policy Plan* 75.

<sup>144</sup>J Seagar 'Salt reduction in South Africa: A report on the second high level salt reduction consultation meeting, South Africa' (5 October 2018).

<sup>145</sup>SAE Peters 'The sodium content of processed foods in South Africa during the introduction of mandatory sodium limits' (2017) 9 *Nutrients* 404.

<sup>146</sup>Seagar (note 144 above); E Dunford, J Webster, M Woodward, S Czernichow, WL Yuan, K Jenner, C Ni Mhurchu, M Jacobson, N Campbell & B Neal 'The variability of reported salt levels in fast foods across six countries: Opportunities for salt reduction' (2012) 184 *Canadian Medical Association Journal* 1023.

<sup>147</sup>Government Gazette No 32975 (1 March 2010) in terms of the Foodstuffs, Cosmetics and Disinfectant Act 54 of 1972 (R 146 of 2010).

<sup>148</sup>V Chavasit, W Kriengsinyos, M Ditmetharaj, M Phaichamanan, K Singsoong, P Sirichakwal & A Rojjanawanicharkorn 'Nutrition labelling: Educational tool for reducing risks of obesity-related non-communicable diseases' in JO Gordeladze (ed) *Adiposity: Epidemiology and Treatment Modalities* (2017).

<sup>149</sup>T Hutton & A Gresse 'South African consumer perception of five front-of-pack label formats' (2020) 5 *Journal of Consumer Sciences* 126; ME Labonté, TE Emrich, P Scarborough, M Rayner & MR L'Abbé 'Traffic light labelling could prevent mortality from noncommunicable diseases in Canada: A scenario modelling study' (2019) 14 *PLoS ONE* 1.

<sup>150</sup>V Chavasit & W Kriengsinyos 'Front-of-pack labelling: Tool for noncommunicable diseases prevention' (2019) 74 *Annals of Nutrition and Metabolism* 9; Healthy Living Alliance (HEALA) 'What is front-of-package labelling and why does South Africa need it?' (2021).

<sup>151</sup>HEALA (ibid).

<sup>152</sup>Chavasit & Kriengsinyos (note 150 above).

<sup>153</sup>E Wartella, AH Lichtenstein & CS Boon *Examination of Front-of-Package Nutrition Rating Systems and Symbols: Phase I Report* (2010).

<sup>154</sup>DA Yamoah, J De Man, SO Onagbiye & ZJ Mchiza 'Exposure of children to unhealthy food and beverage advertisements in South Africa' (2021) 18 *International Journal of Environmental Research Public Health* 3856; MZ Mchiza, NJ Temple, NP Steyn, Z Abrahams & M Clayford 'Content analysis of television food advertisements aimed at adults and children in South Africa' (2013) 16 *Public Health Nutrition* 2213.

of unhealthy food, increase meal frequency, and lower intake of vegetables and fruits.<sup>155</sup> The South African Marketing to Children Pledge, which requires industry self-regulation of child-targeted marketing, has hardly been adhered to.<sup>156</sup>

In 2014, Draft Regulation 429<sup>157</sup> was proposed as an amendment to the labelling and advertising regulations but was never passed. It included, among others, regulations restricting the marketing of food and non-alcoholic beverages to children. However, on 21 April 2023, following campaigns by HEALA and other civil society organisations, nutritionists, public health experts and academics, the NDoH published the long-awaited Draft Regulation R3337 for public comments.<sup>158</sup> This proposed regulation among others makes provisions for pre-packaged foods to carry a FOPL if they contain sugar, saturated fat or sodium beyond the limits set in the nutrient profile model. There are also restrictions on marketing of products with FOPL to children. A lot remains to be seen from the public comments, which will greatly impact what the final regulation will look like, as well as implementation processes.

There is also the Health Promotion Levy (HPL) introduced through the Rates and Monetary Amounts and Amendment of Revenue Laws Act No 14 of 2017.<sup>159</sup> The HPL came into effect in April 2018, taxing SSBs at 2.1 cents for every gram of sugar over 4g/100ml payable by manufacturers. It is one of the first SSB taxes to be based on each gram of sugar (beyond 4g/100ml).<sup>160</sup> The HPL aims to reduce harm from excessive sugar consumption through price increases and incentivise producers to reduce the sugar content of their taxable products.<sup>161</sup> However, protracted consultations with beverage manufacturers and the sugar industry culminated in a lower tax of approximately 11 per cent, coming into effect in April 2018. Following the HPL, studies have shown increases in prices of sugar-sweetened carbonated drinks as well as sugar content reformulation.<sup>162</sup> Following the increase, the purchase and consumption of SSBs have fallen especially among lower socio-economic groups and in subpopulations with ordinarily high SSBs consumption.<sup>163</sup>

These studies suggest that the HPL has had some impact, but this can be strengthened by raising the current levy of 11 per cent to 20 per cent, which was initially proposed.<sup>164</sup> While the WHO supports countries to conduct a situational assessment of the context for developing and implementing sugar tax, it has noted that for the intended price increases to be effective in changing consumption patterns beyond raising revenue, the price change needs to be significant enough to make an impact.<sup>165</sup>

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<sup>155</sup>NP Steyn, Z Mchiza, Z Abrahams & N Temple 'Television advertising to children: Ethical considerations with regard to advertising of unhealthy foods and drinks' (2014) Human Sciences Research Council Policy Brief.

<sup>156</sup>Yamoah et al (note 154 above).

<sup>157</sup>NDoH 'Regulation relating to the labelling and advertising of foods: Amendment' No R 429 (2014).

<sup>158</sup>NDoH 'Regulation relating to the labelling and advertising of foodstuffs' No R 3337 (2023).

<sup>159</sup>Schedule 1, Part 7, s A.

<sup>160</sup>M Essman, LS Taillie, T Frank, SW Ng, BM Popkin & EC Swart 'Taxed and untaxed beverage intake by South African young adults after a national sugar-sweetened beverage tax: A before-and-after study' (2021) 18 *PLoS Med* 1.

<sup>161</sup>Ibid.

<sup>162</sup>N Stacey, C Mudara, SW Ng, C van Walbeek, K Hofman & I Edoka 'Sugar-based beverage taxes and beverage prices: Evidence from South Africa's Health Promotion Levy' (2019) 238 *Social Science and Medicine* 112.

<sup>163</sup>Essman et al (note 160 above); N Stacey, I Edoka, K Hofman, EC Swart, B Popkin & SW Ng 'Changes in beverage purchases following the announcement and implementation of South Africa's Health Promotion Levy: An observational study' (2021) 5 *Lancet Planet Health* 200.

<sup>164</sup>HEALA 'The evidence is clear: Sugary beverages are harmful: SA's Health Promotion Levy is helpful' (2021).

<sup>165</sup>WHO 'Using price policies to promote healthier diets' (2015).

In addition, public health specialists have recommended dropping the cut off level to 2g/100ml.<sup>166</sup> Based on current evidence, the HPL in the long term along with other diet-related interventions has the potential of reducing excessive weight gain, the risk of diabetes, hypertension and many other NCDs that can translate into reduced healthcare costs for preventable NCDs. According to a 2016 study, an HPL of 20 per cent will prevent 550,000 stroke-related DALYS and over R5 billion in healthcare costs over twenty years.<sup>167</sup>

The nutrition regulations give effect to the obligation of states to protect and fulfil the right to food by regulating the food environment to enhance availability and access to nutritious food.<sup>168</sup> However, the obligations are not met where existing regulatory or fiscal measures do not fully achieve the intended purpose or have loopholes for the food and beverage industry to thrive. While these measures are in line with broader obligation to realise the right to health and food, there is a need to improve the existing regulatory and fiscal measures, such as expanding the scope of the salt regulation to restaurants and fast foods, introducing mandatory FOPL, increasing the HPL tax to 20 per cent, and regulating marketing and advertising of unhealthy food to children.

## 5. Concluding recommendations

By analysing the food and nutrition policy framework in South Africa, this article uses a rights-based approach to unpack the extent to which the prevention of diet-related NCDs is prioritised. Through the guarantee of the right of access to sufficient food and health as entrenched in international and regional human rights instruments and the Constitution, and broadly defined in this article, this creates a foundation upon which to assess the government's actions and accountability in relation to preventing diet-related NCDs. In line with human rights standards, as well as the corresponding obligation of the government to realise both rights, approaches to address food and nutrition insecurity must include both the availability and accessibility to nutritious food, which is key to preventing diet-related NCDs. Access to sufficient food in the context of food and nutrition security means access to adequate nutritious food to meet dietary needs across the life cycle. This means that strategies to address food and nutrition insecurity must address issues in all aspects of the food system from production, distribution, and through to consumption. In the same vein, consideration should be given to addressing the underlying determinants of health, including systemic challenges such as poverty and inequality to create healthier, equitable food environments and to reduce the consumption of unhealthy foods. As such, there is a need to strengthen the legal and policy measures aimed at regulating activities of the food and beverage industry that promote unhealthy diets. In particular, there is an opportunity to strengthen regulatory measures on the marketing of unhealthy foods especially to children; the adoption of FOPL warning labels and to

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<sup>166</sup>HEALA (note 164 above).

<sup>167</sup>M Manyema, LJ Veerman, I Chola, A Tugendhaft, B Sartorius, D Labadarios & KJ Hofman 'Modelling the potential impact of a sugar-sweetened beverage tax on stroke mortality, costs and health-adjusted life years in South Africa' (2016) 16 *BMC Public Health* 405.

<sup>168</sup>CESCR (note 64 above) para 27.

increase the HPL to 20 per cent, which are proven measures that could contribute to creating healthier food environments. Moreover, actions aimed at improving the broader food environment through marketing restrictions, taxation, subsidies, and other regulatory measures are more effective than those that focus on influencing individual choice.

For these reasons, while this article acknowledges the progress made, it demonstrates that the current food and nutrition security policies fail to meet acceptable human rights standards and effectively respond to the food and nutrition crisis in South Africa, especially the influence of the food and beverage industry on the increasing consumption of unhealthy foods, and the impact on the proliferation of diet-related NCDs. This also indicates the disconnection between national strategies on food security and nutrition, the normative content of the right to food and corresponding obligations to ensure that everyone has access to adequate nutrition.

The article also highlights the complex nature of priority setting within food and nutrition policies. This is a result of the various rules, institutions and actors influencing the broader food system. In order to effectively realise the right to food, multisectoral action is required to ensure that policy priorities and actions across various sectors do not conflict with but rather complement each other. The current food and nutrition policies, along with regulatory and fiscal measures, have not translated into improved access to nutritious food, due to a lack of a coherent strategy. The analysis indicates the incoherence between food security policies on the one hand and nutrition-related regulatory and fiscal measures on the other. The food security policies define food insecurity through hunger, poverty and a lack of access to food, with a focus on the importance of food availability, production and social assistance, with limited emphasis on the nutritional quality of the food. Conversely, poor nutrition is seen as a product of hunger and poor lifestyle choices, hence the policies emphasise behavioural change and nutrition education among main objectives. The nutrition-related health regulations, on the other hand, frame the problem of diet-related NCDs as the rising consumption of unhealthy foods. Hence, the emphasis is placed on addressing the nutrition problem through regulatory and fiscal measures to promote the availability of affordable nutritious foods, and discourage consumption of unhealthy foods. However, the current regulatory and fiscal measures are insufficient in responding to the negative health impact of the food and beverage industry and have not efficiently been able to create a healthy food environment for all South Africans.

To conclude, the article argues that incoherence remains a major challenge within the food and nutrition policy framework that urgently requires national legislation to effectively coordinate efforts aimed at improving both food and nutrition security. This is critical in stemming the tide of rising diet-related NCDs. However, the absence of national legislation indicates a more deep-rooted problem negating the realisation of the right to food. It remains the only socio-economic right in the Constitution without a national legislation or dedicated department to oversee its implementation. While several food and nutrition frameworks emphasise the importance of multisectoral action in addressing unhealthy diet as a risk factor for NCDs, putting policy into practice is challenging when various departments are responsible for different components of the food, nutrition and the health agenda at a national level. Hence, the importance of national legislation that gives effect to the constitutional right to

access food and a dedicated government department to oversee food and nutrition security-related issues, cannot be overemphasised. This is especially important in creating a coordinated national strategy to guide the implementation of food and nutrition security policies, programmes and plans. The new stand-alone Department of Agriculture within the Government of National Unity, as announced by re-elected President Ramaphosa on 30 June 2024, might rein in the much-anticipated national legislative framework on the right to food, with the aim of improving the availability of and access to healthy, nutritious food for all.

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## Disclosure statement

No potential conflict of interest was reported by the author(s).

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