

Risk-Creating Industries' Obligation to the Right to Health

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1 Introduction

The burden of non-communicable diseases (“NCDs”), represented by cardiovascular disease, diabetes, cancer, and chronic respiratory disease, has gained attention in the public health field. According to the World Health Organization (“WHO”), non-communicable diseases are responsible for 74% of all deaths globally, and represent high costs for health systems.¹ NCDs are considered one of the main current challenges concerning development, and directly impact each element of the “triple bottom line”: social, economic, and environmental.² Due to its relevance, they are included in the Sustainable Development Goals (“SDGs”). Specifically, target 3.4 is to reduce one-third of premature mortality from non-communicable diseases through prevention and treatment by 2030.³

The key risk factors for NCDs are tobacco; harmful use of alcohol; an unhealthy diet with foods high in saturated and trans fats, salt, and sugar (especially in sweetened drinks); and physical inactivity. The WHO classified these as “modifiable behavioral risk factors,” since they are related to human behavior and lifestyle.⁴ However, human behavior and lifestyle are influenced

1 “Noncommunicable diseases,” World Health Organization, accessed April 20, 2023, <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>.

2 The social impacts of NCDs are harsher on low economic status people, generating inequalities. In addition, NCDs affect employment opportunities and are related to poor quality of life, poor health, and lower life expectancy. Economically, they represent a vast burden for healthcare systems worldwide and because of lower productivity and employment, they negatively impact labor markets. Finally, in the environmental line, recent studies have shown the interdependency between environmental risk factors and NCDs. Amandine Garde, “Global health law and non-communicable diseases prevention: maximizing opportunities by understanding constraints,” in *Research Handbook on Global Health Law*, eds. Gian Luca Burci and Brigit Toebe (Edward Elgar, 2018), 395.

3 “Transforming our world: the 2030 Agenda for Sustainable Development,” United Nations General Assembly, October 21, 2015, <https://sdgs.un.org/2030agenda>.

4 World Health Organization, “Noncommunicable Diseases,” *supra* note 1.

by corporate practices such as the commercial determinants of health. Commercial determinants of health (“CDoH”) are defined as the approaches used by the private sector to promote products and choices that are damaging to health.⁵ There is no universal definition of CDoH, and this article does not intend to explore this discussion in further detail. However, a recent series published by the *Lancet* on the issue has demonstrated that just four industry sectors (tobacco, ultra-processed food, fossil fuel, and alcohol) account for at least a third of global deaths, indicating the scale and huge economic cost of the problem.⁶

Ultra-processed food (“UPF”) manufacturing corporations have played a significant role in transforming food systems to increase the consumption and production of UPFs compared with unprocessed or less processed food products.⁷ The global UPF industry is responsible for making unhealthy products available and affordable, conducting aggressive marketing (especially targeting children), and lobbying against legislation to tax their products.⁸ The definition of unhealthy food is not straightforward; nevertheless, it has been described that there is a consensus on its main characteristics: nutrients poor and high in fat, salt, and sugar.⁹ Moreover, according to the NOVA Classification, examples of ultra-processed products are soft drinks, confectionery, many snack foods, a range of breakfast cereals, and industrially made sauces.¹⁰ Thus, food and sweetened beverage industries, through their practices, have an unequivocal contribution to the non-communicable diseases “silent pandemic,” and, as a

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- 5 Ilona Kickbusch, Luke Allen, and Christian Franz, “The commercial determinants of health,” *The Lancet Global Health* 4, no. 12 (December 2016): 895–96, [https://doi.org/10.1016/S2214-109X\(16\)30217-0](https://doi.org/10.1016/S2214-109X(16)30217-0).
 - 6 Anna B. Gilmore et al., “Defining and conceptualising the commercial determinants of health,” *The Lancet* 401, no. 10383 (March 2023): 1194–1213, [https://doi.org/10.1016/S0140-6736\(23\)00013-2](https://doi.org/10.1016/S0140-6736(23)00013-2).
 - 7 Benjamin Wood et al., “Behind the ‘creative destruction’ of human diets: an analysis of the structure and market dynamics of the ultra-processed food manufacturing industry and implications for public health,” *Journal of Agrarian Change* 23, no. 4 (April 2023): 811–43, <https://doi.org/10.1111/joac.12545>.
 - 8 Rob Moodie et al., “Profits and pandemics: prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries,” *The Lancet* 381, no. 9867 (February 2013): 670–79, [https://doi.org/10.1016/S0140-6736\(12\)62089-3](https://doi.org/10.1016/S0140-6736(12)62089-3).
 - 9 Katharina Eva Ó Cathaoir, “Children’s Right to Freedom From Obesity: Responsibilities of the Food Industry,” *Nordic Journal of Human Rights* 36, no. 2 (April 2018): 109–31, <https://doi.org/10.1080/18918131.2018.1505090>.
 - 10 Carlos Augusto Monteiro et al., “Ultra-processed foods, diet quality, and health using the NOVA classification system,” *Food and Agriculture Organization of the United Nations*, May 21, 2019, 8, <https://openknowledge.fao.org/server/api/core/bitstreams/5277b379-0acb-4d97-a6a3-602774104629/content>.

consequence, negatively affect the right to health and the right to adequate food.¹¹

States, as primary duty bearers under international human rights law, have the responsibility to protect, fulfill and respect the right to health. On the other hand, the responsibility of corporations to respect human rights has been controversial due to the horizontal effect of human rights.¹² Considering the gap in the literature on the intersection of business and human rights and public health, this article aims to analyze, from a business and human rights perspective, the responsibility of multinational food corporations' adverse impacts on two internationally recognized human rights: the right to health and the right to adequate food. It does so, through a critical normative analysis of the language used in the existing guidelines, calling for a stricter recognition of the food and sweetened beverage industries' duty to comply with the above-mentioned human rights.

First, it will present the two internationally recognized human rights by the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), being the right to health and the right to adequate food, as a legal ground to place the duty on private actors to respect human rights. The next part will focus on the field of business and human rights, initially describing the conceptual problem of the horizontal effect of human rights as a challenge to impose private parties' duties towards human rights. Subsequently, it aims to examine

11 For clarification purposes, the term "risk-creating industries" used in the article comprehends multinational food corporations (including the ultra-processed food and sweetened beverage industry). The term "corporation," "companies," "industries," and "business enterprises" will be employed as synonyms. A precise definition of corporations or multinational enterprises is not required for the purposes of this article. The Organization for Economic Co-operation and Development ("OECD") guidelines establish that "multinational enterprises operate in all sectors of the economy." "OECD Guidelines for Multinational Enterprises: 1. Concepts and Principles," OECD, May 25, 2011, Article 4, <https://mneguidelines.oecd.org/2011Concepts&Principles.pdf>.

12 It is essential to highlight that companies can be held accountable in tort or criminal law. For instance, tobacco litigation in the USA has resulted in holding the tobacco industry accountable for health damages inflicted on individuals or through class actions. Richard A Daynard, Clive Bates, and Neil Francey, "Tobacco litigation worldwide," *BMJ: British Medical Journal* 320, no. 7227 (January 2000): 111–13. However, tort and criminal law have limitations as has been shown in the Bhopal case. Surya Deva, "Bhopal: the saga continues 31 years on," in *Business and Human Rights: From Principles to Practice*, eds. Dorothée Baumann-Pauly and Justine Nolan (London: Routledge, 2016), 22–24. Moreover, the accountability of multinational food corporations is still an unexplored area. Thus, bringing a human rights-based approach to the context of NDCs prevention to acknowledge the adverse impacts caused by these corporations on human rights can assist in filling the current failures to achieve the right to health and adequate food.

the existing business and human rights guidelines. In particular, it will explore the UN Guiding Principles, focusing on a critical analysis of the second pillar of the Ruggie Framework: “corporate responsibility to human rights.” Then, it will emphasize the few specific provisions related to the responsibilities of the food and sweetened beverage industries.

The third part will present the innovative normative movement toward the recognition of the direct accountability of corporations upon human rights. First, through an analogous example from environmental law, the *Milieudefensie et al. v. Royal Dutch Shell plc* case in which the Hague District Court, based on the unwritten standard of care, recognized the oil company’s direct obligation to a “healthy environment.” Subsequently, it will examine the negotiations for a legally binding treaty at the international level. Finally, it concludes with the urge to acknowledge a human rights approach upon corporations in the context of NCD prevention, in particular towards multinational food corporations’ obligation to the right to health and adequate food.

2 Internationally Recognized Human Rights

2.1 *The Right to Health*

The right to health is recognized as a fundamental right by Article 25 of the Universal Declaration of Human Rights (“UDHR”).¹³ In addition, Article 12 of the ICESCR sets out the core formulation of the right to health, which is considered the most comprehensive article on the right to health in international human rights law.¹⁴ Moreover, few international human rights treaties recognize the right to the “highest attainable standard of health” for specific groups, such as the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5(e)(iv);¹⁵ the Convention on the Rights of the Child;¹⁶

13 “Universal Declaration of Human Rights,” United Nations General Assembly, December 10, 1948, Article 25, available online at <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

14 “International Covenant on Economic, Social and Cultural Rights,” United Nations General Assembly, December 16, 1966, Article 12, available online at <https://www.ohchr.org/sites/default/files/cescr.pdf>.

15 “International Convention on the Elimination of All Forms of Racial Discrimination,” United Nations General Assembly, December 21, 1965, Article 5(e)(iv), available online at https://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf.

16 “Convention on the Rights of the Child,” United Nations General Assembly, November 20, 1989, Article 24, available online at <https://www.ohchr.org/sites/default/files/crc.pdf>.

the Convention on the Elimination of All Forms of Discrimination against Women;¹⁷ and the Convention on the Rights of Persons with Disabilities.¹⁸

Finally, regarding soft law, General Comment No. 14 adopted by the Committee on Economic, Social and Cultural Rights (“CESCR”) presents an interpretation of the core features of the right to health, including the assertion that all members of society, including the private business sector, have responsibilities regarding the realization of the right to health.¹⁹ Moreover, the document describes an expansive list of the minimum core obligations for the right to health, which includes access to the minimum, nutritionally adequate, and safe food.²⁰

2.2 *The Right to Adequate Food*

Human rights are interdependent and related. The right to adequate food is an underlying determinant of health.²¹ In addition, the right to adequate food is also a fundamental right recognized in Article 25 of the Universal Declaration of Human Rights²² and Article 11 of ICESCR.²³

Furthermore, food must be available, accessible, and adequate.²⁴ There is a lot of discussion about the definition of what constitutes nutritionally adequate food, however, this debate falls outside the scope of this article. Hence, it will be using the definition of adequacy established by the Committee on Economic, Social, and Cultural Rights, in that adequacy means that the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation, sex, etc.²⁵ Moreover, General Comment 12

17 “Convention on the Elimination of All Forms of Discrimination Against Women,” December 18, 1979, Articles 11(1)(f), 12, and 14(2)(b), available online at <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>.

18 “Convention on the Rights of Persons with Disabilities,” United Nations General Assembly, December 12, 2006, Article 25, available online at https://www.ohchr.org/sites/default/files/Ch_IV_15.pdf.

19 “General comment no. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights),” United Nations Committee on Economic, Social and Cultural Rights (“CESCR”), August 11, 2000, para. 42, available online at <https://digitallibrary.un.org/record/425041?v=pdf>.

20 *Id.* at para. 43.

21 *Id.* at para 4.

22 United Nations General Assembly, “Universal Declaration of Human Rights,” *supra* note 13.

23 United Nations General Assembly, “International Covenant on Economic, Social and Cultural Rights,” *supra* note 14, at Article 11(1).

24 “The right to adequate food (art.11): general comment 12 (20th session, 1999),” CESCR, May 12, 1999, paras. 7, 12, and 13, available online at <https://digitallibrary.un.org/record/1491194?ln=en&v=pdf>.

25 *Id.* at para. 7.

emphasizes that the “right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins, and other specific nutrients.”²⁶ In this context, the Office of the United Nations High Commissioner for Human Rights observed that food that is energy-dense and low-nutrient and can contribute to obesity and other illnesses is an example of inadequate food.²⁷

3 Business and Human Rights Challenges and Normative Framework

As matters of clarification, it is crucial to explain the difference between the terms “obligation” and “responsibility.” Obligation is understood here as the binding obligations imposed by international human rights treaties, whereas responsibility has been described as “the legal, social or moral obligations imposed on companies.”²⁸ Thus, “responsibility” is defined by social expectations, as will be explored further in detail, and does not legally bind corporations.²⁹

26 *Id.* at para. 6.

27 “Fact Sheet No. 34: The Right to Adequate Food,” United Nations Office of the High Commissioner for Human Rights (“OHCHR”), April 1, 2010, available online at <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-34-right-adequate-food>.

28 “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*: Business and human rights: mapping international standards of responsibility and accountability for corporate acts,” United Nations General Assembly, February 19, 2007, para. 6, available online at <https://www.ohchr.org/en/special-procedures/wg-business/special-representative-secretary-general-human-rights-and-transnational-corporations-and-other>.

29 The term “responsibility” can be interpreted under international law as an international responsibility meaning “the new legal relations which arise under international law by reason of the internationally wrongful act of a State.” Ludovica Chiussi Curzi, *General Principles for Business and Human Rights in International Law* (Leiden: Brill Nijhoff, 2020), 17–18. However, this is not the case in this article. This article will use the term “responsibility”, as described above, through the perspective of corporate responsibility from the “Protect, Respect and Remedy Framework.” For more information on the “Protect, Respect and Remedy Framework,” see “Protect, Respect and Remedy: a Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie,” United Nations General Assembly, April 7, 2008, available online at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/8/5.

3.1 *Horizontal Effect of Human Rights*

The State-centric framework of international human rights law highlights that States are the primary duty bearers to protect human rights and does not impose any direct legal duties upon private parties. However, due to the growing role of private actors in the international system, it has been widely discussed in the literature that private parties, beyond having rights, are also bound to responsibilities.

In the classic approach of international law, the obligations emerging from international human rights are owned by the State in relation to the individual, constituting a vertical relation.³⁰ The so-called “vertical effect of human rights law” is based on the concept that only States, as original subjects of international law, can become parties to human rights treaties and be legally bound by their obligations.³¹ On the other hand, the application of international human rights law between non-State actors is defined as the “horizontal effect” of human rights and it can occur on a direct and indirect effect.

The direct horizontal effect would place non-State actors under direct and explicit obligations to respect, protect, and/or fulfill human rights, meaning that individuals would be able to claim violations of their rights directly to non-State actors.³² This approach would empower individuals to claim their right to health directly to another non-State actor (here understood as private corporations). Under this scenario, individuals could claim their human rights when there is State inaction, for example, the absence of the adoption of measures to protect and fulfill the right to health and the right to adequate food.

Whereas in the indirect horizontal effect, the victim brings a claim of interference with their human rights (done by a non-State actor) to the State. Thus, the State remains directly responsible, and the non-State actor has indirect obligations.³³ Still, to realize the indirect horizontal effect of human rights, States have the duty to adopt measures in order to prevent and address human rights violations by third parties. In the framework of global health law, General Comment 14 affirms that “States must take measures to prevent third parties from interfering with the right to health.”³⁴ Examples include taxation

30 Lottie Lane, “The Horizontal Effect of International Human Rights Law in Practice: A Comparative Analysis of the General Comments and Jurisprudence of Selected United Nations Human Rights Treaty Monitoring Bodies,” *European Journal of Comparative Law and Governance* 5, no. 1 (March 2018): 5–88, <https://doi.org/10.1163/22134514-00501001>.

31 *Id.*

32 *Id.*

33 *Id.*

34 CESCR, “General comment no. 14 (2000),” *supra* note 19, at para. 33.

and fiscal measures relating to tobacco and unhealthy foods; imposing marketing restrictions on tobacco, alcohol, foods, and sweetened beverages; and adoption of front-of-package warning labeling. Moreover, it has been acknowledged that the State's obligation to protect the right to health of individuals from violations of non-State actors includes the activities from private food corporations.³⁵

The current international human rights law framework still relies on a state-centric approach to human rights. Furthermore, according to the positivist view of international law, only states are the subjects of international law, and non-State actors, such as corporations, are classified as objects thus lacking international legal personality.³⁶ International legal personality is considered a prerequisite for bearing international rights and duties. The ICJ defines legal personality as "being capable of possessing international human rights and duties, and that has the capacity to maintain its rights by bringing international claim," and emphasizes that "subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights."³⁷

As Jaegers explains, corporations are international legal persons, since they fulfill the elements of the ICJ definition, and therefore are capable of possessing international human rights obligations.³⁸ In addition, the author emphasizes that acknowledging that corporations have legal personality does not mean that States are not the primary bearers of duties in international human rights law.³⁹ Thereby, the corporation's obligation exists in addition to the obligations of States. Finally, she refers to the fact that the nature of human rights and the general provision in the International Bill of Rights, such as the preamble of UDHR, supports the idea that human rights can be applied in horizontal relations.⁴⁰

35 "Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover," United Nations General Assembly, April 1, 2014, para. 15, available online at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/31.

36 Chiussi Curzi, *General Principles*, *supra* note 29, at 287.

37 International Court of Justice, "Reparation for Injuries Suffered in the Service of the United Nations: Advisory Opinion of April 11th, 1949," *ICJ Reports* 1949, 174, 178, available online at <https://www.icj-cij.org/sites/default/files/case-related/4/004-19490411-ADV-01-00-EN.pdf>.

38 J Nicola M. C. P. Jägers, *Corporate Human Rights Obligations: In Search of Accountability* (Antwerpen: Intersentia, 2002), 34–35.

39 *Id.*

40 *Id.* at 45.

Moreover, Nowrot argues that currently, corporations have economic and political power representing an influential role in the international system, and thus they can contribute and negatively affect the promotion and protection of public goods.⁴¹ Thus, it can be acknowledged that, in fact, corporations have legal capacity and as such should carry international human rights obligations.

Even with enough arguments to support the recognition of private parties' obligations in international human rights law, the existing normative framework still undermines it and only refers to the responsibilities of corporations.

3.2 *Existing Business and Human Rights Normative Framework*

It has been recognized by voluntary initiatives, the Human Rights Council, and international soft-law instruments that corporations themselves have a responsibility to respect human rights. The UN Global Compact, a cooperation between the UN and major corporations established in 2000, includes 10 principles to be voluntarily incorporated by corporations related to human rights commitments.⁴²

In 2011, through resolution 17/4, the Human Rights Council endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" ("UNGPs"), which are considered the global authoritative standard on the business responsibility to respect human rights currently. The UNGPs emphasize that they are not to "be read as creating new international law obligations" but that their objective is to "enhance standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities and thereby also contribute to socially sustainable globalization."⁴³

The UN Guiding Principles are based on the three-pillar structure of the "Protect, Respect, and Remedy" elaborated by John Ruggie. This framework highlights that there is a need to distinguish between the responsibilities of the state and of business in relation to human rights.⁴⁴ The Special Representative

41 Karsten Nowrot, "Reconceptualising International Legal Personality of Influential Non-State Actors: Towards a Rebuttable Presumption of Normative Responsibilities," in *International Legal Personality* (Routledge, 2010), 563–564.

42 "The Ten Principles of the UN Global Compact," United Nations Global Compact, accessed April 21, 2023, <https://unglobalcompact.org/what-is-gc/mission/principles>.

43 "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," OHCHR, March 21, 2011, 1, available online at https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

44 United Nations General Assembly, "Protect, Respect and Remedy" *supra* note 29, at para. 53.

of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (“SRSG”) has asserted that “corporations may be considered “organs of society,” but that they are specialized economic organs and not democratic public interest institutions. Thus, their responsibilities cannot, and should not, simply mirror the duties of States.”⁴⁵

In particular, Principle 11 states that “business enterprises should respect human rights,” meaning “avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”⁴⁶ The human rights referred to in the UNGPs are the “internationally recognized human rights” which comprise the rights of the Universal Declaration of Human Rights and the main instruments through which it has been codified, including the International Covenant on Economic, Social and Cultural Rights.⁴⁷ Thus, here is included the right to health and the right to adequate food.

Moreover, Principle 13 specifies that the responsibility to respect requires business enterprises to “[a]void causing or contributing to adverse human rights impact through their own activities, and address such impacts when they occur.”⁴⁸ Here, it is imperative to highlight that one of the examples of enterprises contributing to adverse human rights included in the Interpretive Guide published in 2012 is “targeting high-sugar foods and drinks at children, with an impact on child obesity.”⁴⁹ Although it is focused on childhood obesity, this example could be extended to the corporate practices of food industries towards the population as a whole.

Another important instrument in the business and human rights framework is the OECD Guidelines, first adopted in 1976. In 2011, the OECD Guidelines were updated, and included a human rights chapter along the lines of the UN Guiding Principles. The chapter affirms that States have the duty to protect human rights, and enterprises should respect human rights.⁵⁰ Furthermore, chapter VIII is dedicated to consumer interests. The OECD Guidelines emphasizes that enterprises should act in accordance with fair marketing and

45 *Id.*

46 OHCHR, “Guiding Principles,” *supra* note 43, at 13.

47 *Id.* at 13–14.

48 *Id.* at 14–15.

49 “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide,” OHCHR, June 1, 2012, 17, available online at <https://www.ohchr.org/en/publications/special-issue-publications/corporate-responsibility-respect-human-rights-interpretive>.

50 “OECD Guidelines for Multinational Enterprises 2011 Edition,” OECD, May 25, 2011, Chapter IV. Human Rights, available online at <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

advertising practices.⁵¹ Special attention must be given to paragraph 7, which states that “enterprises should cooperate with the public authorities to diminish or prevent a serious threat to public health (...) deriving from the consumption of their goods and services.”⁵² An interpretation can be made here that the unhealthy commodities produced by food corporations contribute to a “serious threat to public health,” which would be the globally high mortality rates and the economic burden caused by NCDs.

In addition, the Committee on Economic, Social, and Cultural Rights, in General Comment 24, acknowledges that corporate activities have negatively affected economic, social, and cultural rights.⁵³ Even though the document is focused on the obligations of State parties under the Covenant, it recognizes that “business entities are expected to respect Covenant rights.”⁵⁴ General Comment 12, already presented above, also emphasizes that the private business sector has responsibilities in the realization of the right to adequate food.⁵⁵

However, all these existing guidelines are non-binding and stress that the obligation and primary role to protect and promote human rights lies with the State, and only emphasize that transnational and other business enterprises have a responsibility to respect human rights. Thereby, they fall under the traditional international human rights law approach that considers private parties to be deprived of international legal personality and therefore do not bear obligations under international law.

Special attention has been given to the UNGPs since they are considered the most influential instrument in the field. First, it is imperative to mention that the UNGPs had an influential role in the adoption of domestic legislative measures to protect, respect, and fulfill human rights in the business scenario. For instance, in the context of child labor, the adoption of the Modern Slavery Act 2015 in England,⁵⁶ and in the supply chain context, the adoption of the

51 *Id.* at Chapter VIII. Consumer Interests.

52 *Id.* at Chapter VIII. Consumer Interests, para 7.

53 “General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities,” CESCR, August 10, 2017, para. 1, available online at <https://digitallibrary.un.org/record/1304491?ln=en&v=pdf>.

54 *Id.* at para. 5.

55 CESCR, “The right to adequate food (art.11),” *supra* note 24, at. para. 20.

56 “UK government partners implementing the UN Guiding Principles on Business and Human Rights across government departments,” United Kingdom Foreign,

Loi de Vigilance (Duty of Vigilance law) in France.⁵⁷ Currently, it is growing the attention on the intersection of human rights abuses and environmental impacts. For instance, following the principle of due diligence established by the UNGPs, it was recently adopted in the European Region the Corporate Sustainability Due Diligence Directive (“CSDDD”).⁵⁸ However, the adverse human rights impact of the corporate strategies by the food and sweetened beverage industries on the right to health and the right to adequate food is still a blind spot in the current business and human rights agenda.

Moreover, besides the positive outcomes achieved by the UNGPs, the “Protect, Respect, and Remedy” framework has been criticized because the responsibility to respect is defined by social expectations.⁵⁹ Bilchitz understands that corporations are bound by key international human rights instruments, and that human rights entail duties upon those who have the capacity to violate them or assist in their realization.⁶⁰ Therefore, it is incoherent to root the responsibilities of corporations in social expectations.⁶¹ Moreover, he raises the question of how to determine these social expectations and how they can differ depending on the context.⁶² Following the examples he gives, it can be argued that in the globalized world where multinational food corporations have large amounts of wealth and power, the “status quo” is to socially accept all the practices they have been doing for years to promote unhealthy products and undermining the right to access to nutritious food and the right to health.

Commonwealth & Development Office, May 27, 2020, <https://www.gov.uk/government/publications/implementing-the-un-guiding-principles-on-business-and-human-rights-may-2020-update/uk-government-partners-implementing-the-un-guiding-principles-on-business-and-human-rights-across-government-departments>.

57 “LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1),” République Française, accessed June 5, 2023, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>.

58 Directive (EU) 2024/1760 of the European Parliament and the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

59 David Bilchitz and Surya Deva, “The human rights obligations of business: a critical framework for the future,” in *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?*, eds. Surya Deva and David Bilchitz (Cambridge: Cambridge University Press, 2013), 1–26.

60 David Bilchitz, “A chasm between ‘is’ an ‘ought’? a critique of the normative foundations of the SRSG’s Framework and the Guiding Principles,” in *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?*, eds. Surya Deva and David Bilchitz (Cambridge: Cambridge University Press, 2013), 107–37.

61 *Id.*

62 *Id.* at 120–22.

In addition, “doing no harm” is considered a negative responsibility rather than a positive responsibility to achieve the realization of human rights.⁶³ The argument that imposing some positive obligations on corporations would undermine the State’s obligation should not thrive. Conversely, doing so can potentially assist States in realizing their own obligations and even corroborate with the basis of the framework, which is founded upon the idea of “differentiated but complementary responsibilities.”⁶⁴ Finally, as Bichlitz emphasizes, “having an obligation to contribute towards the realization of rights is not equivalent to placing the whole responsibility upon one agent.”⁶⁵ Thus, in the context of NCD prevention, it is unequivocal that States still have the tripartite obligation towards the right to health and the right to adequate food. At the same time, recognizing food corporations’ duties would assist in achieving the fundamental rights described here.

3.3 *The Responsibilities of the Food and Sweetened-Beverage Industry*

As has been clearly demonstrated above, there is increasing recognition that corporations have a responsibility to respect human rights. However, the responsibilities of the food and sweetened beverage corporations regarding the right to health and the right to adequate food are overlooked. Nevertheless, slowly, few recent instruments in the international framework are including the business and human rights perspective to call for responsibilities of the multinational food corporations towards the right to health and the right to adequate food.

The former Special Rapporteur on the right to food has affirmed that agri-food companies have a responsibility to respect the right to adequate food, and that they must avoid infringing upon this right and seek to prevent any adverse impact their activities might have on the enjoyment of this right, making reference to the UN Guiding Principles.⁶⁶ In addition, this report makes direct recommendations for the private sector regarding the responsibility of the right to adequate food, *inter alia*, moving away from food high in salt, fat, and sugar (“HFSS”) and towards healthier foods.⁶⁷

63 David Bilchitz, “The Ruggie Framework: An Adequate Rubric for Corporate Human Rights Obligations?,” *SSRN*, April 24, 2009, <http://dx.doi.org/10.2139/ssrn.1394367>.

64 Bilchitz and Deva, “The human rights obligations of business,” *supra* note 59.

65 *Id.*

66 “Report submitted by the Special Rapporteur on the right to food, Olivier De Schutter,” United Nations General Assembly, December 26, 2011, para. 1, available online at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59_en.pdf.

67 *Id.* at para. 51(a)–(d).

In 2014, the Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health included a chapter on the responsibilities of the food and beverage industry.⁶⁸ It acknowledges that the private sector has responsibilities regarding the realization of the right to health and these responsibilities are independent of the State's obligations.⁶⁹ It goes further and explains that the responsibility to respect the right to health requires the food industry to refrain from engaging in activities that negatively impact the right of people to the highest attainable standard of health, and that they should take measures to prevent, mitigate and remedy adverse impacts of their action (making a clear allusion to the principle of due diligence established by the UN Guiding Principles).⁷⁰ In addition, it points out that the promotion of false or misleading health claims about its products goes against the food industry's responsibility to respect the right to health.⁷¹ Finally, presents a list of recommendations for the food industries, including the adoption of adequate nutritional labeling and compliance with national guidelines; avoiding marketing, promoting, and advertising of unhealthy foods (especially to children); improving the nutritional content of foods; increasing transparency on nutritional information; avoid misleading claims; and abstaining from undermining public health efforts.⁷²

Moreover, in 2016, the Interim report of the Special Rapporteur on the right to food, endorsing the UN Guiding Principles on Business and Human Rights, acknowledged that, logically, the responsibility of enterprises to avoid infringing on the human rights of others includes the adverse impacts of the food industry with respect to the right to adequate food, and that the responsibility of companies to respect human rights exists independently of the abilities and/or willingness of States to fulfill human rights obligations.⁷³ Finally, it recommends the implementation of the UN Guiding Principles to ensure corporate responsibility of the food industry, and it welcomes the establishment of

68 United Nations General Assembly, "Report of the Special Rapporteur," *supra* note 35, at Chapter v. Responsibilities of the food and beverage industry.

69 *Id.* at para. 28.

70 *Id.* at para. 29.

71 *Id.*

72 *Id.* at para. 66.

73 "Right to food: Note by the Secretary-General," United Nations General Assembly, August 3, 2016, paras. 68 and 71, available online at <https://digitallibrary.un.org/record/840487?ln=en&v=pdf>.

a future legally binding instrument to regulate the activities of transnational corporations.⁷⁴

Additionally, the UN Global Compact also contains principles targeted at the food and agriculture business, including that “businesses should support food and agriculture systems that optimize production and minimize waste, to provide nutrition and promote health for all people.”⁷⁵ Still, these are considered voluntary steps to be adopted by the corporations.

It is imperative to mention here the Shift framework, an interpretive guide developed to assist companies to achieve the UNGPs’ Reporting Framework. The Shift framework explains the concept of salient human rights, which are characterized by being “human rights at risk of the most severe negative impact through the company’s activities and business relationships.”⁷⁶ In this concept, the indicators for assessing the severity of an impact are the scale (the severity of the impact), the scope (the number of people that are affected), and remediability. In the context of NCDs, the food and beverage industry’s severe impact on the right to health and adequate food is salient due to the scope and scale that NCDs affect all populations, especially in low- and middle-income countries, and represent 74% of all deaths globally. However, under the Shift framework, corporations can focus on selected human rights.⁷⁷ Thus multinational food corporations do not consider their impact on nutrition rights but rather focus mostly on labor-related rights.⁷⁸

Finally, a few scholars also called attention to the gap in recognizing the responsibility of multinational food corporations towards the right to health and the right to adequate food. However, these are focused on the contribution of these corporations’ activities to childhood obesity.⁷⁹ Hence, the business and human rights perspective to acknowledge food corporations’ adverse

74 *Id.* at para. 99(c)–(d).

75 “Food and Agriculture Business Principles,” United Nations Global Compact, accessed April 25, 2023, <https://unglobalcompact.org/take-action/action/food>.

76 “Download the Reporting Framework,” Shift/Mazars, accessed May 18, 2024, <https://www.ungpreporting.org/framework-guidance/download-the-reporting-framework/>.

77 Ó Cathaoir, “Children’s Right to Freedom From Obesity,” *supra* note 9.

78 *Id.*

79 *Id.*; see also Diana Guarnizo-Peralta, “Marketing Ultra-Processed Food and Beverages to Children in Latin America: Business Responsibilities and State Duties,” *Business and Human Rights Journal* 7, no. 3 (October 2022): 418–38, doi:10.1017/bhj.2022.10 and Oliver Bartlett, “Multinational food corporations and the right to health: achieving accountability through mandatory human rights due diligence?,” in *Ending Childhood Obesity*, eds. Amandine Garde, Joshua Curtis, and Olivier De Schutter (Edward Elgar Publishing, 2020), 282–308, <https://doi.org/10.4337/9781788114028.00018>.

impact on the right to health and adequate food in the framework of non-communicable diseases is still underdeveloped.

4 An Innovative Normative Movement towards Business and Human Rights: A Call for Direct Accountability upon Corporations

As discussed above, the existing guidelines place a “responsibility” on corporations to respect human rights. Many criticisms have been raised about the soft treatment towards corporations, since they have significant impacts on the enjoyment of human rights. Below, there will be two examples presented to support the direct horizontal effect of the human rights approach.

4.1 *Milieudefensie et al. v. Royal Dutch Shell PLC*

Recently, in the case *Milieudefensie et al. v. Royal Dutch Shell plc*, the District Court of the Hague ruled that Shell had the obligation to reduce its CO₂ emissions by net 45% at the end 2030.⁸⁰ The oil company's behavior was considered unlawful even though the company had not breached any specific legal provision of either international or domestic (Dutch) law, but because the reduction obligation arose from the unwritten standard of care.⁸¹ This landmark judgment shows how domestic litigation can contribute to hardening international soft law in relation to standards of corporate conduct. Although the case of *Milieudefensie et al. v. Royal Dutch Shell plc* is intrinsically different from the food corporations' contribution to the non-communicable diseases silent pandemic case described in this article, it is possible to establish some similarities between the two scenarios.

First, the Court recognized the impossibility of “effective climate change policy without significant private action.” It has been recognized that the food

80 It is imperative to highlight that this decision is at the domestic level and is dated May 26, 2021. Moreover, the court made its decision provisionally enforceable, meaning Shell would be required to meet its reduction obligations even if the case was appealed. Shell filed a Statement of Appeal with the Dutch Court of Appeal in The Hague on March 22, 2022, and the case is still pending. “Frequently asked questions (faq) on Dutch District Court legal case,” Shell, March 22, 2022, https://www.shell.com/news-and-insights/newsroom/news-and-media-releases/2021/shell-confirms-decision-to-appeal-court-ruling-in-netherlands-climate-case/_jcr_content/root/main/section/simple/text_1377231351_copy.multi.stream/1657006823005/460167304a697f411be1b9f80c6e05be0ac057fb/dutch-district-legal-case-faq.pdf.

81 *Milieudefensie et al. v Royal Dutch Shell PLC*, District Court of The Hague, May 26, 2021, C/09/571932/HA ZA 19-379, para. 4.1 (“*Milieudefensie v RDS*”).

industry plays a key role in the global food environment, and thus is an essential part of an effective change in the global food systems and, consequently, to achieve NCD prevention.⁸² Thereby, if the understanding is extended to the example of food and sweetened beverage corporations, it can be asserted that recognizing the direct contribution of these corporations to the increase of NCD rates across the world would assist to realize fundamental rights.

Moreover, the Court considered sources of “soft law,” in particular the UN Guiding Principles “due to their universally endorsed content,” emphasizing that it is irrelevant whether the corporation in the case has committed itself to the UNGPs.⁸³ Thus, it is arguable to replicate this interpretation in the case of food industries, since many of the big multinational food corporations explicitly recognized that they endorsed the UNGPs.⁸⁴ Nevertheless, even though the commitment to UNGPs is not considered a requirement to apply the corporate responsibility to respect human rights, it reinforces the food industry’s commitment to human rights.

Through an analysis of the UNGPs, the Court emphasizes that business enterprises should respect human rights independently of states’ abilities and/or willingness to fulfill their own human rights obligations.⁸⁵ It goes further and affirms that it is not an “optional responsibility for companies,” but rather that it applies everywhere, regardless of the local legal context, and is not passive.⁸⁶ Hence, here the Court follows the line that recognizing corporations’ duties towards human rights won’t undermine States’ obligations, and that the oil company itself has direct responsibility to fulfill human rights.

The court argued that there was enough scientific evidence to justify a serious threat to damage to the environment, human health, and safety base. In the scenario of NCDs, the link between corporations’ practices to the increase in obesity, diabetes, and related NCDs has already been established.⁸⁷ Moreover,

82 Lane, “The Horizontal Effect of International Human Rights Law in Practice,” *supra* note 30.

83 *Milieudefensie et al. v Royal Dutch Shell PLC*, District Court of The Hague *supra* note 81, at para. 4.4.11.

84 See, for example, the Creating Shared Value and Sustainability Report at “Creating Shared Value,” Nestlé, accessed May 18, 2024, <https://www.nestle.com/investors/annual-report/creating-shared-value>.

85 *Milieudefensie et al. v Royal Dutch Shell PLC*, District Court of The Hague, *supra* note 81, at para 4.4.15.

86 *Id.*

87 Rob Moodie et al., “Ultra-Processed Profits: The Political Economy of Countering the Global Spread of Ultra-Processed Foods – A Synthesis Review on the Market and Political Practices of Transnational Food Corporations and Strategic Public Health Responses,”

different from the impacts of climate change, which will mostly occur in the future (some consequences as the temperature rises and natural disasters are already taking place), the adverse impacts of corporations' activities on public health are already happening (for example, the increase in the number of obesity in low-income countries, high mortality rate, and socioeconomic impacts of NCDs), which unequivocally have a negative effect on fundamental rights.

The Court highlights that much may be expected of RDS since it is a major player in the worldwide market of fossil fuels.⁸⁸ As briefly mentioned, tobacco, ultra-processed food, fossil fuel, and alcohol industries have vast social and economic impacts in the current globalized world. Also known as Big Food or Big Soda, only a few companies control over half of all food sales worldwide, representing a concentrated market power.⁸⁹ Thereby, the "expectation" mentioned here toward "Big Fuel" could be extended to these major food multinational corporations, since their activities have a severe impact on the enjoyment of the right to health and adequate food.

Furthermore, the Court, following the UNGPs due diligence principle, contends that "companies may be expected to identify and assess any actual or potential adverse human rights impacts with which they may be involved through their own activities" and should take "appropriate action" on the basis of their findings and assessments.⁹⁰ Moreover, the Court affirms that RDS has known for a "long time of the dangerous consequences of CO₂ emissions and the risks of climate change."⁹¹ Here, the same reasoning could be applied in order to require multinational food companies to take "appropriate action," since it is well known by these corporations that their unhealthy products, which are high in sugar, sodium, and fat, have direct consequences on public health due to the rise of obesity and NCDs. Moreover, the "appropriate action" goes further in the scope of multinational food corporations' activity. Besides being aware of the dangerous consequences of their products, which is different from the fossil fuel industry, Big Food and Big Soda are actively promoting their products through aggressive marketing strategies (and other practices

International Journal of Health Policy and Management 10 (December 2021): 968–82, <https://doi.org/10.34172/ijhpm.2021.45>.

88 *Milieudefensie et al. v Royal Dutch Shell PLC*, District Court of The Hague, *supra* note 81, at para. 4.4.16.

89 Moodie et al., "Profits and pandemics," *supra* note 8.

90 *Milieudefensie et al. v Royal Dutch Shell PLC*, District Court of The Hague, *supra* note 81, at para. 4.4.20.

91 *Id.*

such as lobbying and the known commercial determinants of health) in order to sell more unhealthy products and raise their profits.

Finally, from a normative perspective, one point that was not debated in the decision but deserves attention, is that these companies are making profits from their human rights violations. In the context of Big Fuel, it is clear that the company is making profit from its activities that has been recognized to pose a threat to the human rights of the Dutch residents and the inhabitants of the Wadden region.⁹² Analogously, Big Food and Big Soda also make profits by selling and promoting their unhealthy products worldwide. The Court could have explored further the issue of capitalizing on human rights violations, such as is understood in the framework of the labor rights violation.

The Court interpreted that RDS' reduction obligation emerges from the unwritten standard of care from Book 6 Section 162 Dutch Civil Code, which means that acting in conflict with what is generally accepted according to unwritten law is unlawful.⁹³ Thereby, in its conclusion on the topic of RDS' reduction obligation, the Court acknowledges that RDS is "obliged to reduce the CO₂ emissions of the Shell group's activities by net 45% at end 2030, relative to 2019, through the Shell group's corporate policy" and that "reduction obligation is an obligation of result for the activities of the Shell group."⁹⁴ Therefore, here there is a direct obligation upon corporations. This judgment is considered a reference in climate change litigation, and hence this innovative legal reasoning from the domestic court can and should be extended to the area of public health law in order to recognize multinational food corporations' direct obligation to respect the right to health and adequate food.

4.2 *A Legally Binding Treaty*

There have been significant strides towards direct horizontal effects for business enterprises at the UN level as well. In 2003, a subcommission of the UN Commission on Human Rights proposed the draft Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to Human Rights.⁹⁵ In its preamble, the "Draft UN Norms" recognized that "transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights" and that "business enterprises, are

92 *Id.* at para. 4.4.10.

93 *Id.* at para. 4.4.1.

94 *Id.* at para. 4.4.55.

95 Chiussi Curzi, *General Principles*, *supra* note 29, at 85.

also obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments.”⁹⁶

The first paragraph, in the general obligations, recognizes that although the “States have the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights,” the transnational corporations and other businesses enterprises, within their respective spheres of activity and influence, also “have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law.”⁹⁷ Thus, while not undermining States duties to human rights, it aimed to acknowledge that corporations are also important actors in the realization of human rights.

Moreover, paragraph 13 of the Draft UN Norms addressed the obligations of businesses regarding consumer protection, emphasizing that “[t]ransnational corporations and other business enterprises shall act in accordance with fair business, marketing, and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services.”⁹⁸ This important positioning could be applied to food corporations considering the known aggressive marketing and advertising of their unhealthy products.

However, the Draft UN Norms received strong opposition from the private sector and were not accepted by the UN Commission on Human Rights.⁹⁹ As presented above, it adopted a “softer approach” to the corporation’s responsibilities upon human rights: the UN Guiding Principles. Nevertheless, the idea of a binding instrument was not completely abandoned.

In July 2014, the UN Human Rights Council adopted Resolution 26/9, through which it established an open-ended, intergovernmental working group with the mandate “to elaborate an internationally legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”¹⁰⁰ In 2017, the working

96 “Economic, Social and Cultural Rights: Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*,” United Nations Economic and Social Council, August 26, 2003, available online at https://ap.ohchr.org/docs/E/E-CN_4-Sub_2-2003-12-Rev_2.pdf.

97 *Id.*

98 *Id.*

99 Alex Newton, *The Business of Human Rights: Best Practice and the UN Guiding Principles* (Routledge, 2019), 42–43.

100 “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights,” United Nations General Assembly, July 14, 2014, available online at https://ap.ohchr.org/documents/dpag_e_e.aspx?si=A/HRC/RES/26/9.

group presented the elements for a zero draft of the legally binding instrument.¹⁰¹ The draft elements propose that states retain the primary obligations to respect, protect and fulfill rights, while businesses have a duty to respect all human rights.¹⁰² Thereby, in contrast to the UNGPs, the binding treaty would establish legal liability for companies. In addition, the draft, recognizing the challenges imposed by the inherent contradiction between trade law and international human rights, seeks to “reaffirm the primacy of human rights law over trade and investment agreements.”¹⁰³ This provision is extremely relevant in the context of risk-creating industries’ adverse impacts on the right to health and the right to adequate food, since trade agreements facilitated the fast growth and expansion of transnational companies worldwide, changing food systems and making unhealthy products more accessible contributing to the NDCs rise.

The zero draft of the legally binding instrument is already in a third revised version. Textual proposals submitted by States call for more precise language underlying that business enterprises “have the obligation to respect internationally recognized human rights, including by avoiding causing or contributing to human rights abuses through their own activities.”¹⁰⁴

It has been acknowledged that a treaty will not solve all existent issues in the field of business and human rights. Nevertheless, it can provide legal solutions to the persisting lacunas and inflexible perspectives within the current framework of international law, in which corporate activities have relevant adverse impacts upon the rights of individuals.¹⁰⁵

101 “Elements For the Draft Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights,” United Nations Human Rights Council, September 29, 2017, available online at https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/LegallyBindingInstrumenttncs_OBES.pdf.

102 *Id.*

103 *Id.* at 1.2.

104 “Text of the third revised draft legally binding instrument with textual proposals submitted by States during the seventh and the eighth sessions of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*,” United Nations General Assembly, January 23, 2023, available online at <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session52/list-reports>.

105 David Bilchitz, “The Necessity for a Business and Human Rights Treaty,” *Business and Human Rights Journal* 1, no. 2 (July 2016): 203–27, <https://doi.org/10.1017/bhj.2016.13>.

5 Conclusion

It is unequivocal that the actions of transnational companies have significant impacts on society. Multinational food corporations promote legal but unhealthy products, or, as it has been described in the literature, “lethal but legal products.”¹⁰⁶ Ultra-processed food, fast food, and sweetened beverages are legal products that result from a legitimate economic activity. Nevertheless, those products are dangerous to human health, and the corporation's actions to promote these products negatively impact the right to health and the right to adequate food globally.

In addition, one must recognize that corporations enjoy extensive rights under international investment and trade law. There is an inherent conflict between two orders of rights: the human rights of individuals, and the economic/commercial rights of corporations. In the current system, the commercial rights of corporations have been granted with primary significance over the human rights of individuals; in this case, the right to health and the right to adequate food. Thus, the combination of great power without great accountability has gained attention in the field of business and human rights. Nevertheless, the food and sweetened beverage industries, even though they represent a huge part of the economic power in the current international system, are overlooked in this discussion.

Therefore, through a normative analysis of international human rights law, this article explored the gap in the literature to acknowledge the clear contribution of food corporations to adverse impacts on the right to health and the right to adequate food. Following the recent example of climate change litigation, this article argued that the legal interpretation for the recognition of direct accountability of private sector duties upon human rights exists, and it can, and should, be transplanted to multinational food corporations in the context of NCDs in order to achieve the enjoyment of the right to health and the right to adequate food.

One argument to support the recognition of the obligation of private parties towards human rights is that “human rights are not uni-relational,” meaning that “all individuals have these inherent rights based on the idea of human dignity.”¹⁰⁷ However, international law has adopted a state-centric approach.

106 Nicholas, Freudenberg, *Lethal But Legal: Corporations, Consumption and Protecting Public Health* (Oxford: Oxford University Press, 2014), 68.

107 Surya Deva, “Business and Human Rights: Time to Move Beyond the ‘Present’?,” in *Business and Human Rights: Beyond the End of the Beginning*, ed. César Rodríguez-Garavito (Cambridge University Press, 2017), 46–61.

Still, every entity that could violate human rights ought to have corresponding obligations.¹⁰⁸ The problem of enforcement in the context described here is an existing issue in the international human rights law framework. However, as Andrew Clapham has highlighted, the lack of applicable enforcement procedures does not mean corporate obligations do not exist.¹⁰⁹ Therefore, the role of domestic courts in developing new legal interpretations, such as the Dutch case described above, can be the answer to the question of enforceability.

As Bilchitz and Deva argue, there is a significant lacuna at the international level in recognizing the potential role of businesses in contributing to address important challenges such as global poverty and environmental sustainability.¹¹⁰ This is extended to the prevention of non-communicable diseases scenario and the role of ultra-processed food corporations in changing the food systems to improve global health, and, consequently, for sustainable development. Thereby, acknowledging that multinational food corporations have more than a mere responsibility to respect human rights, but rather an extensive obligation towards the right to health and the right to adequate food, will help to advance meeting one of the most forgotten global challenges of modern times: the “silent pandemic of non-communicable disease.”

108 *Id.*

109 Andrew Clapham, “The Question of Jurisdiction Under International Criminal Law Over Legal Persons: Lessons from the Rome Conference on an International Criminal Court,” in *Liability of Multinational Corporations under International Law*, eds. Menno T. Kamminga and Saman Zia-Zarifi (Brill Nijhoff, 2001), 139–95.

110 Bilchitz and Deva, “The human rights obligations of business,” *supra* note 59.