

FINAL TECHNICAL REPORT _INTERNATIONAL DEVELOPMENT LAW ORGANIZATION

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INITIATIVE*

EVIDENCE BRIEF: KENYA

The use of Human-Rights Based Approaches (HRBAs) for the promotion of healthier food environments and prevention of Non Communicable Diseases in Kenya

BACKGROUND

Non-communicable diseases (NCDs) are one of the leading causes of mortality in Sub-Saharan Africa. In Kenya, a study by the Ministry of Health posits that the NCDs account for 39% of deaths annually¹. Evidence shows that physical inactivity, the increase in consumption of processed, sugary, fatty foods and alcoholic beverages have highly contributed to the prevalence of diet related illnesses.

The Kenyan government has shown interest in addressing NCDs through the National Health Policy (2014-2030). There are regulatory and fiscal measures that have been undertaken by the government to reduce the risks associated with NCDs such as taxation on beverages that are high in added sugar, nutrition labeling, and restrictions on the marketing of unhealthy foods to children. However, there are glaring gaps in the implementation of these policy measures as the process is marred by minimal consideration of Human Rights Based Approaches (HRBA) and critical understanding of what is to be factored to achieve healthy diets environments. It is against this backdrop that this study seeks to generate knowledge of the facilitators, barriers, capacity gaps, and lessons and recommendations on the use of human rights-based approaches in policy and decision making for the promotion of healthy food environments in Kenya.



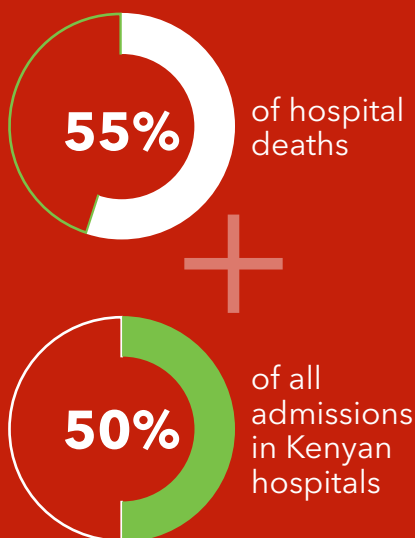
METHODOLOGY

This study was a component of a broader study in the East Africa Region focusing on three target countries; Kenya, Tanzania and Uganda. This research built on findings of a scoping review of the regional and international literature of an HRBA to healthy diets. The findings from the scoping review were used to inform the development of an interview questionnaire to elicit qualitative and quantitative data regarding participants' understanding of HRBA, the use and potential utility of HRBA in the country-specific context and issues related to unhealthy diet more broadly.

We conducted semi-structured Key Informant Interviews (KIs) with 15 stakeholders representative of Civil Society Organizations (CSOs); Academia and researchers involved in research on NCDs, Law, and/or Human Rights; Policy and decision makers in the areas of food, nutrition, and health. A regional dialogue was later held in Nairobi on 27-28th July 2022 with the purpose of presenting, discussing and validating the preliminary findings from the KIs, and to gain country- and sector-specific feedback on the findings.

¹Ministry of Health Kenya, 2021. *The Kenya National NCD Strategic Plan (NSP) 2021/22-2025/26*. Retrieved from <https://tinyurl.com/3c7my2uj>

A STEPS survey conducted by the Kenyan Government in 2015 showed



are associated with NCDs

KEY FINDINGS

» 01 Knowledge of the HRBA definition

According to the participants, HRBA refers to an approach that aims to put the individual at the center of any initiative by State or private sector actors that impact on the individual. HRBA was also understood as a tool for advocacy of and protection of consumer rights.

» 02 Knowledge of regulatory and fiscal interventions that promote healthy diets for prevention of NCDs

Of the responses recorded, five participants reported having excellent knowledge of the regulatory and fiscal interventions that promote healthy diets for prevention of NCDs, while six reported having good knowledge of the regulatory and fiscal interventions. One participant reported having fair knowledge of the regulatory and fiscal interventions.

At the National level, the Kenya Bureau of Standard (KEBS) was explained to ensure that all food products that are manufactured in the country undergo quality assurance tests before they are released to the consumers. KEBS also ensures that all manufacturers disclose the content of their products, including the level of cholesterol in fat and oil products, for consumers to make informed choices when they want to purchase such products.

As a strategy to reduce cases of NCDs resulting from alcoholic and non-alcoholic beverages, the participants reported attempts by the Kenyan Government through the Kenya Revenue Authority (KRA) to increase taxes on unhealthy foods through a proposal that was presented in parliament. According to some of the participants, this strategy of increasing taxes on alcoholic or non-alcoholic beverages is a step towards discouraging the consumption of unhealthy food. For instance, the Government increased taxes on the sugar-sweetened beverages (SSBs) in the country by 15% in the 2022-2023 Financial Year. The KRA has introduced the track and trace system on these beverages to eliminate cases of illicit trade in such products.

HOW HRBA ADVANCES THE PROMOTION OF HEALTHY DIETS AT NATIONAL AND REGIONAL LEVEL

» 01 International

Participants recognized several international human rights treaties and instruments that support legal and policy interventions promoting healthy diets. Among those listed were: Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention of the Rights of the Child, and the Codex Standards. Additionally, participants pointed out guidelines set by International Agencies such as the World Food Programme (WFP) and UNICEF as critical in guiding the Country's approaches to championing healthier food environments.

» 02 Regional

At the regional level, participants mentioned regional frameworks such as the African Charter on

Human and Peoples' Rights (Banjul Charter), Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods' (2014), Abuja Declaration on the Critical Role of Agriculture and Food Policies for Nutrition Outcomes in Africa' (2020) and the Africa Agenda 2063. These key human rights law instruments can support legal and policy interventions to promote healthy diets.

» 03 National

In Kenya, the Bill of Rights in the Constitution was mentioned as a key human rights law instrument that can support the development policy instruments to promote healthy diets.

OBSTACLES AND BARRIERS THAT RESEARCHERS, CIVIL SOCIETY ORGANIZATIONS, AND POLICY ACTORS FACE TO EFFECTIVELY USE HRBAS TO PROMOTE HEALTHY DIETS

1. The bargaining power of industry players is a barrier to integrating HRBAs in the policies. This bargaining power emanates from the contribution of industry actors to the economy as some of the biggest tax payers in the country, making significant portions of the country's fiscus reliant on this.
2. Low consumer awareness on avenues for seeking legal redress in case of violations of their rights and the high costs to pursue these avenues are barriers.
3. Poor understanding of what is meant by healthy diets which is a barrier in integrating HRBAs in policies.
4. The lack of political will and policy coherence between different relevant ministries or departments are barriers to the adoption and implementation of policies.
5. A poor judicial environment where judges lack appreciation of key issues outlined in policies and the law in their jurisdiction. Lack of trust between government and CSOs who are often perceived as foreign-funded organizations driving ulterior agendas.
6. Low investment by the government in academia has resulted in the demotivation of academics to publish/disseminate findings, and to attend conferences at their own expense.
7. There are limited capacities of academia to incorporate HRBAs due to a lack of mainstreaming of HRBA in the public health and other non-legal research agenda and low student interest in research.
8. Limited government collaboration with responsible agencies such as KEBS hinders the effective implementation of the policies in place.



THE MAIN KNOWLEDGE GAPS FOR RESEARCHERS, CIVIL SOCIETY ORGANIZATIONS, AND POLICY ACTORS TO EFFECTIVELY USE HRBAS TO PROMOTE HEALTHY DIETS?

1. Inadequate knowledge by the public on healthy diets, their rights and how to seek legal redress especially with regards to the three policy areas of nutrition labeling, restrictions on marketing of food and non-alcoholic beverages to children and fiscal measures.
2. Though the judiciary and other government institutions know the law, they don't fully understand public health concepts and this could hinder the achievement of the use of HRBA to improve diets. There is also little awareness by the public on the harmful effects of unhealthy foods.

OPPORTUNITIES FOR APPLYING HRBAS IN POLICY AND ADVOCACY ACTIVITIES FOR THE PROMOTION OF HEALTHY DIETS?

1. Strengthening multi-sectoral coordination, legislation, consultative processes with industry actors. The creation of legal mechanisms for example, central-authority that would coordinate the Ministries of Health, Trade and Agriculture as well as academia, CSOs and private sector on matters food and nutrition
2. Generation of evidence from academia on promoting healthy diets through a HRBA.
3. Academia engages policy makers and other stakeholders in designing and publishing research relevant to the promotion of healthy diets.
4. The use of non-judicial mechanisms to hold the government accountable using the reporting frameworks of International Conventions such as ACHPR shadow reporting; some of which are open access.
5. Developing policies in a language that everyone can understand.
6. Sensitizing industry actors and communities on human rights and healthy diets.

RECOMMENDATIONS

1

Design and implement legal empowerment initiatives for policy and decision makers on the interplay between human rights and healthy diets.

2

Improve public awareness on human rights and healthy diets and how to claim them for improved advocacy and accountability of government.

3

Increase generation of evidence on the effects of unhealthy diets on population health in Kenya from a human rights perspective.

CONCLUSION

There are opportunities to use HRBA to improve food environments and prevent NCDs in Kenya. In order to halt and reverse the rising burden of NCDs in Kenya, the country needs to develop and implement policies aimed at promoting healthier food environments. Although Kenya has taken strides towards this, efforts which have been largely driven by the interests of international/development organizations have been slow and uneven. There is a need for improved translation of global policy actions to contextually relevant policies which mitigate socio-structural barriers and inequalities at national and local levels through a Human Rights Based Approach.



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HRHD INITIATIVE

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rights-based approaches to promote healthy diets with a view to identifying priority areas in research and policy where additional support is needed.

The views expressed in this Publication are the views of the author(s) and do not necessarily reflect the views or policies of IDLO or its Member Parties.

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