

HIGH-LEVEL MEETING ON THE USE OF LAW TO TACKLE NONCOMMUNICABLE DISEASES:

A critical step to accelerate progress in the Caribbean

Port of Spain, Trinidad and Tobago, 10 March, 2018

Meeting Report



With the support and collaboration of



Food and Agriculture Organization
of the United Nations

High-Level Meeting on the Use of Law to tackle Noncommunicable Diseases: A critical step to accelerate progress in the Caribbean. Meeting Report. (Port of Spain, 10 March, 2018)

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High-Level Meeting on the Use of Law to Tackle Noncommunicable Diseases: A critical step to accelerate progress in the Caribbean

Port of Spain, Trinidad and Tobago, 10 March 2018

Meeting report

Background

The Pan American Health Organization (PAHO), the Caribbean Court of Justice Academy of Law and Court Administration (CALCA), and the Food and Agriculture Organization (FAO), held the *High-Level Meeting on the Use of Law to Tackle Noncommunicable Diseases*, in Port of Spain, Trinidad and Tobago, on 10 March 2018, aimed at strategizing actions to promote policy coherence and strengthen the use of law to address noncommunicable diseases (NCDs) and their risk factors (RFs) in the Caribbean, with a focus on tobacco control and obesity prevention and control laws and regulations.

The high-level meeting was attended by nearly 50 participants, including ministers of health and industry and other government officials from selected Caribbean Community (CARICOM) Member States, as well as representatives of relevant CARICOM Directorates, Organs and Institutions, academia, civil society, and international organizations. The meeting comprised presentations and panel discussions, and was organized around five main themes: (1) the use of domestic law in addressing NCDs, including selected country experiences; (2) the role of community law in addressing NCDs; (3) mobilizing political will to advance the use of law and policy coherence; (4) research, capacity-building, and sensitization efforts; and (5) opportunities to accelerate progress towards the 2018 Third UN High-Level Meeting (UNHLM) and beyond. The high-level meeting concept note, agenda, participants list, and presentations are available at: <https://bit.ly/2E2A3HW>.

Panels and agreed priority actions

A brief overview of the panel discussions and agreed priority actions to accelerate progress is provided below:

1. The role of domestic law in addressing NCDs

The objectives of the panel, chaired by Dr Douglas Slater, Assistant Secretary-General, CARICOM Directorate for Human and Social Development, were to share country experiences and lessons learned on the use of domestic law and to discuss the scope for using domestic legislation to address NCDs in the Caribbean, including obstacles at country level, strategies to address them, and research needs to analyse existing legal and regulatory frameworks. Panelists included The Hon. Minister Mrs Volda Lawrence, Minister of Public Health of Guyana, The Hon. Minister Ing. Patrick Pengel, Minister of Health of Suriname and Chair of the Council for Human and Social Development (COHSOD), and the Hon. Minister Terrence Deyalsingh, Minister of Health of Trinidad and Tobago, who presented their country experiences as it relates to tobacco control and banning the sale of sugar-sweetened beverages (SSBs) in schools. Key messages from the panel include:

- Political will at the highest level and inter-ministerial collaboration are key factors for the successful implementation of domestic laws and regulations to address NCDs;
- South–South cooperation with experienced CARICOM Member States and support from international organizations has been critical to ensuring progress at country level;
- Industry interference remains a major challenge for enacting and enforcing effective laws and regulations.

AGREED PRIORITY ACTIONS:

- 1.1.** Conduct a situation analysis of the broader legal frameworks in CARICOM Member States;
- 1.2.** Undertake comparative analyses of existing domestic legislation in CARICOM Member States; including:
 - potential entry points to advance the WHO Best Buys and the 6-Point Policy Package;
 - comparative analysis with other countries in the Americas with best practices on regulatory measures for NCDs, as appropriate;
- 1.3.** Conduct legal analyses of regulatory capacity on health-related issues linked to NCD risk factors in CARICOM Member States;
- 1.4.** Analyze NCD-related litigation in CARICOM Member States; and
- 1.5.** Develop a mechanism to establish and maintain a repository of NCD risk factor legislation in CARICOM Member States.

2. The role of community law in addressing NCDs

The panel was chaired by the Rt. Hon. Sir Dennis Bryon, President, Caribbean Court of Justice, with the following objectives: to discuss the scope for using community law as an instrument to accelerate actions to address NCDs in the Caribbean, and to deliberate how CARICOM Organs, Bodies and Institutions can be leveraged for a more cohesive and strategic approach to NCD-related legislation and regulations. Panelists included Dr Corlita Babb-Schaefer, CARICOM General Counsel, Mr Joseph Cox, Assistant Secretary-General, CARICOM Directorate for Trade and Economic Integration, and Mr Deryck Omar, Chief Executive Officer, CARICOM Regional Organisation for Standards and Quality (CROSQ). Key discussion points resulting from the panel include:

- Relevant statistical information, and evidence on the effectiveness and impacts of proposed measures should be made available to inform decision-making at CARICOM level on issues related to NCD prevention and control;
- Multifaceted and multisectoral approaches to NCDs should be promoted;
- The COHSOD could spearhead the development of model legislation on NCD prevention and control for review by CARICOM’s Legal Affairs Committee (LAC) and submission to the Community Council for consideration before being submitted to the Conference of Heads of Government for approval, as an approach to accelerate progress;
- Relevant provisions in the Revised Treaty of Chaguaramas, as it relates to health issues, include the following articles: Article 6 (enhanced functional cooperation in health); Article 12 (function

and powers of the Conference through which guidance may be provided as in the Port of Spain Declaration on NCDs); Article 17 (functions of COHSOD); Article 15 (functions of COTED); Article 65 (charges the Community with the responsibility to take measures to protect the life and health of human); Article 75 (gives the Caribbean Community responsibility to develop the social infrastructure that includes the establishment and development of health institutions and facilities); Article 184 (addresses the promotion of consumer interests in the Caribbean Community); and Article 226 (general exceptions to the treaty);

- The *Shanique Myrie case* was referenced to emphasize the scope available for ordinary/private citizens to have their rights under the CARICOM treaty addressed through the CCJ, although the Revised Treaty continues to be underutilized in this regard;
- In reviewing the processes, challenges and lessons learned from the development and implementation of the CARICOM tobacco health warning standards, lack of policy coherence across different departments of government, in particular ministries of health and trade, and industry interference, were cited as major obstacles;
- In conclusion, it was the view of the panel that community law supersedes national law, community law is enforceable, and decisions of the Caribbean Court of Justice are binding.

AGREED PRIORITY ACTIONS:

2.1. Develop a research agenda within CALCA to explore options to advance NCD prevention and control through community law, with a potential focus on smoke-free environments and front-of-package labeling as study cases. Potential research questions include:

- Are the decisions taken and commitments made by the Organs and Bodies of the Caribbean Community in the area of functional cooperation, including health, justiciable under the CCJ in like manner to decisions related to matters pertaining to the CSME?
- In cases where those decisions and commitments aim to confer a benefit, including a health-related benefit on CARICOM nationals in general, or to specific groups or persons within the Community, such as women and children, can individuals rely on the provision of Article 222 to claim those rights or benefits, in equal measure to the instances where infringement of those benefits pertain to a matter under the single market framework?
- Does the provision in Article 226 (General Exceptions) provide flexibility for CARICOM Member States to take actions that are inconsistent with treaty obligations to address NCD concerns such as those related to use of tobacco and sugar-sweetened beverages manufactured in the Community and what are the limits on any such flexibility?
- The meeting also agreed that Article 9 of the Revised Treaty establishing CARICOM should be included among the articles that should be considered by CALCA in its analysis of the scope available under the Treaty for implementing measures to help mitigate NCDs.

2.2. Improve access to official reports emerging from meetings of CARICOM Organs.

3. Mobilizing political will to advance the use of law and policy coherence:

The panel was chaired by Dr James Hopedales, Executive Director, Caribbean Public Health Agency (CARPHA), and was aimed at discussing strategic approaches to mobilize political will and support policy coherence to address NCDs, within CARICOM Organs and as part of the foreign affairs agenda of CARICOM Member States, including the role of civil society. The session was comprised of Senator The Hon. Minister Paula Gopee-Scoon, Minister of Trade and Industry of Trinidad and Tobago and Chair of the Council of Trade and Economic Development (COTED); The Hon. Minister Ing Patrick Pengel, Minister of Health of Suriname and Chair of the COHSOD; Amb. E. Courtenay Rattray, Ambassador Permanent Mission of Jamaica to the United Nations; and Professor Sir Trevor Hassell, President, Healthy Caribbean Coalition. Highlights from deliberations include:

- The relevance of the COHSOD and the COTED was noted, including the need for a greater focus on NCDs to facilitate policy coherence;
- The significant role played by Caribbean countries in advancing NCD issues in the UN agenda was highlighted. Concerns were expressed, however, that the initial high level of engagement of the Region seemed to have abated. The meeting urged Caribbean governments to maintain high levels of engagement in the UN processes related to the control and prevention of NCDs. This engagement includes active participations in high-level meetings and continual communication with the country delegations at the UN to provide relevant information and obtain feedback on NCD-related initiatives;

- The Jamaican approach to the 2014 High-level meeting of the UN General Assembly to undertake the comprehensive review and assessment of the 2011 Political Declaration on NCDs, was referred as an example of interministerial collaboration involving the Ministry of Foreign Affairs and the Ministry of Health, among others. This approach, which direction coming from Cabinet level, was crucial to improving policy coherence;
- The role of civil society was emphasized, as a fundamental part of the democratic process and an enabler of governments in determining policy and good governance. The Healthy Caribbean Coalition shared plans for an e-petition aimed at CARICOM Heads to support front-of-package labeling, with a goal of achieving 1 million signatures.

AGREED PRIORITY ACTIONS:

- 3.1.** Encourage Ministries of Foreign Affairs to instruct their missions/embassies on the importance of the NCDs issue, its character as a development problem and the need to pursue this agenda aggressively across all international fora;
- 3.2.** Joint COHSOD/COTED meeting to discuss a strategic and cohesive approach to tackle NCDs in the Caribbean;
- 3.3.** Promote the best way to use the law in the Caribbean to create coherence in the regulatory approach of the countries within CARICOM to fulfill the WHO Best Buys;
- 3.4.** Support civil society e-petition advocacy effort in preparation for the Third UN High-Level meeting in September 2018.

4. Research, capacity-building, and sensitization efforts

The objectives of the panel were to map public health and NCD-related contents in existing undergraduate and post-graduate law curriculums, research programs, and continued education efforts, and to identify opportunities to integrate public health and NCD-related contents into ongoing research and capacity-building initiatives. The session was chaired by Prof Alafia Samuels, Director, George Alleyne Chronic Disease Research Centre, and comprised interventions by Dr David Berry, Dean of the Faculty of Law, The University of the West Indies at Cave Hill (Barbados); Dr Leighton Jackson, Dean of the Faculty of Law, The University of the West Indies at Mona (Jamaica); and Mr Ruggles Ferguson, Immediate Past President of the OECS Bar Association. Key discussion points included:

- Possible approaches to integrating NCDs into legal education at the UWI include: (i) Offering special courses or a series of courses or degree program; and (ii) Integrating NCDs into existing courses such as International Trade Law, International Human Rights, Constitutional Law, Caribbean Integration law, Independent Research Paper and the undergraduate and graduate Legislative Drafting course. The latter would represent a more feasible approach for implementation in the short term;
- Other potential contributions of Law Faculties to capacity-building efforts include: (i) producing course materials or reader guides; (ii) assisting with the revision of WHO materials to incorporate Caribbean materials; (iii) building a continuously updated repository of online

legislation in the Caribbean; (iv) offering continuing legal education activities such as regional conferences and workshops on NCDs;

- The provision of internships to UWI students in this area would be very beneficial, on an ad hoc basis or based on memorandums of understanding. Internships could be offered to both undergraduate and graduate students, although there would need to be supervision by a lawyer if they are not yet called to the bar;
- Research is another area in which the UWI Law Faculties could make a contribution, either individual-driven or as part of a broader regional project, which would offer the possibility of cross-faculty collaboration and research (e.g. between the Medical and Law faculties);
- From the perspective of legal practice, litigation could contribute to generating new legal norms or the re-interpretation of existing legal norms in support of the NCDs cause (e.g. the right to life could arguably include the right to health). Test cases could be brought on a pro bono basis or funded by NGOs with interests in the area.

AGREED PRIORITY ACTIONS:

- 4.1.** Identify capacity-building and sensitization opportunities within on-going initiatives both at Law Faculties/Schools, and within other forums (e.g. CALCA, Bar associations, etc.), including:
 - Establishing a focal point to conduct a gap analysis across the three faculties of Law at the University of the West Indies (UWI), in order to promote an institutional approach;
 - Incorporating NCDs into continuing education for the legal fraternity, and consider inviting a member of the Bar Association to sit on the National NCD Commissions;
- 4.2.** Promote legal comparative research outside and within the countries in the Caribbean, including Latin American countries, to analyse the background and support for legislative and regulatory topics to be developed;
- 4.3.** Promote internship opportunities with key stakeholders related to NCDs for law students;
- 4.4.** Establish a mentorship program for legal officers working on NCD risk factor legislation/regulation in the Caribbean;
- 4.5.** Establish a Caribbean Network of legal officers, to be initially hosted by PAHO, to share information and facilitate the mentorship program;
- 4.6.** Explore establishing a Memorandum of Understanding between PAHO's Office of the Legal Counsel, and Faculties of Law in the Caribbean.

Conclusion and meeting statement

In conclusion, the High-Level meeting was successful in bringing together key sectors and Caribbean partners for a meaningful discussion on how to streamline the use of law to address NCDs and promote policy coherence. In this regard, agreed priority actions will provide a roadmap for implementation and follow-up in the short- and medium- term, while contributing to strengthening this newly established intersectoral collaboration. The High-Level meeting was viewed by participants as a landmark event, particularly as the region prepares for the Third UNHLM on NCDs, to be held in 2018. In closing, participants endorsed a Meeting Statement (see *Annex 1*), which will serve as an input to the Third UNHLM, and a crucial advocacy tool to advance the NCD agenda in the Caribbean.

Annex 1

“High-Level Meeting on the Use of Law to tackle Noncommunicable Diseases: A critical step to accelerate progress in the Caribbean”

Port of Spain, Trinidad and Tobago

10 March 2018

MEETING STATEMENT

The participants from Caribbean Community (CARICOM) Member States and institutions, civil society and academia convened in Port of Spain on 10 March 2018 for a High-Level Meeting on the Use of Law to Tackle Noncommunicable Diseases: A critical step to accelerate progress in the Caribbean.

Noting the modest legislative achievement in the prevention and control of NCDs since the proclamation of the 2007 Port of Spain declaration and the 2011 UN Political Declaration on NCDs.

Recognizing that the control of NCD risk factors – tobacco use, harmful use of alcohol, unhealthy diet, and physical inactivity – remain leading causes of death, morbidity, disability, and human suffering in the Caribbean, resulting in lost household income, productivity and reduced gross domestic product, and thus require in addition to other interventions, legal interventions to accelerate and enhance the reduction of their effects.

Acknowledging that the Revised Treaty of Chaguaramas contains sufficient provisions to support the adoption of community law regulatory NCD risk factors.

Also acknowledging that this economic burden is particularly challenging for Small Island Developing States (SIDS), where NCDs will reverse developmental and economic gains;

Recognizing the crucial leadership role that the Caribbean played globally with the first NCD summit convened by Heads of Government of the Caribbean Community in 2007, and the resulting landmark *Port of Spain Declaration (POSD): Uniting to Stop the Epidemic of NCDs*;

Recalling global and regional commitments to address NCDs and their risk factors, in particular the *Political Declaration of the 2011 High-Level Meeting of the UN General Assembly on the prevention and control of NCDs*, the *2014 outcome document of the high-level meeting of the UN General Assembly on the comprehensive review and assessment of the progress achieved in the prevention and control of non-communicable diseases*, the *World Health Organization Framework Convention on Tobacco Control (WHO FCTC)*, relevant resolutions adopted by the World Health Assembly and the Pan American Health Organization (PAHO) Directing Council, including the *WHO Global Action Plan for the Prevention and Control of NCDs 2013-2020*, and the *PAHO Regional Plan of Action for the Prevention and Control of NCDs 2013-2019*, and the recently approved *Sustainable Development Goals (SDGs)*;

Affirming the strategies and lines of action set out in these mandates and commitments, in particular the WHO “Best Buys” – a set of 19 very cost-effective and feasible interventions to address NCDs and

their risk factors – and the SDG target of reducing premature mortality from NCDs by one-third by 2030 through prevention and treatment;

Recognizing the crucial role of law and regulations in addressing NCD risk factors, as required by 10 of the 19 WHO *Best Buys* and for the effective implementation of the WHO FCTC, as well as the need for policy coherence through a whole-of-government and whole-of-society approach;

Recalling the decisions of the Thirty-Seventh Regular Meeting of the Conference of Heads of Government of the Caribbean Community in July 2016, which, inter alia:

Urged Member States to adopt the goal of one hundred per cent (100%) smoke free public spaces¹ by September 2017 throughout CARICOM and to implement the COTED ratified standard for tobacco labelling²;

Also urged Member States to implement a regulatory regime for the compulsory food labelling of all commercially manufactured foods;

Requested Member States to consider and implement regimes to curb the advertising of harmful foods and beverages especially to children and **advocated** for the inclusion of nutrition education in school curricula;

Also Requested all Member States to support policies which promote harm reduction such as taxation of tobacco, alcohol, salty and sugary foods and trans-fat containing foods as a fiscal measure to support the health and other social sectors;

Agreed to convene a Regional Multi-sector Taskforce jointly managed by the Chairs of the COHSOD and COTED to promote and monitor the progress of implementation of the above priorities adopted by the Conference with an obligation to provide annual updates to the Annual Meeting of the Conference.

Recalling further the commitment of the OECS through the Fort de France Declaration on Health of 2017 to prioritise prevention and primary care for NCDs and the agreement to a harmonised approach to tobacco regulation;

Noting with profound concern the slow implementation of the WHO *Best Buys*, in particular those that require laws and regulations, and the urgent need to scale up best practices in the Caribbean, including taxing sugar-sweetened beverages (SSBs), imposing bans on their sale in schools, as well as furthering progress with tobacco control legislation in several countries;

¹ The meeting noted that WHO FCTC provisions define totally smoke-free environments as all indoor public places and workplaces and public transport.

² The meeting noted CARICOM Regional Standard for Labelling of Tobacco Products (CRS 26:2013).

1. **Recognise** the urgent need for Member States to implement global and regional mandates and commitments through legislation as appropriate to address NCDs and their risk factors in the Caribbean to benefit people, business and government;
2. **Recommend** that the Conference of Heads of Government give consideration in their deliberations to legislative measures to address NCDs.
3. **Support** the following lines of joint action to advance the effective use of domestic and community law to address NCDs in the Caribbean Community, through:
 - a. The development of legal tools to support Member States advance the WHO *Best Buys* and the 6-Point Policy Package;
 - b. Collaboration between Organs of CARICOM and partners, including civil society, academia and the Caribbean Court of Justice Academy of Law and Court Administration and international organizations to explore options to advance NCD prevention and control through community law and corresponding national legislation;
 - c. Expansion of the public health and NCD-related content in the undergraduate and post-graduate curricula at the Law Schools and Faculties and leverage ongoing capacity-building and sensitization activities to integrate NCD topics into legal training and education.
4. **Encourage** the Council for Human and Social Development (COHSOD) and the Council for Trade and Economic Development (COTED) and the OECS Council of Ministers to establish a cohesive and strategic program of work to monitor NCD control, including a joint COHSOD/COTED meeting in preparation for the Third UN High-Level Meeting on NCDs in 2018;
5. **Urge** CARICOM Heads of Government and other high level officials to participate in the Third UN High-Level Meeting to be held in 2018, and to ensure that their participation leads to appropriate commitments and actions to urgently address the NCD epidemic and realize the goals of the 2007 Port of Spain Declaration.

