THE USE OF LAW TO ADDRESS NONCOMMUNICABLE DISEASES IN THE CARIBBEAN

Subregional Workshop Report

Miami, 3–5 March 2020

PAHO Pan American Health Organization
World Health Organization Americas
Campaign for Tobacco-Free Kids

The Use of Law to Address Noncommunicable Diseases in the Caribbean. Subregional Workshop Report. Miami, 3–5 March 2020

PAHO/NMH/CRB/21-0003

Suggested citation. The Use of Law to Address Noncommunicable Diseases in the Caribbean. Subregional Workshop Report. Miami, 3–5 March 2020. Washington, D.C.: Pan American Health Organization; 2021. License: CC BY-NC-SA 3.0 IGO.

Cataloguing-in-Publication (CIP) data. CIP data are available at **http://iris.paho.org**.

Sales, rights, and licensing. To purchase PAHO publications, write to **sales@paho.org**. To submit requests for commercial use and queries on rights and licensing, visit **http://www.paho.org/permissions**.

TABLE OF CONTENTS

ACRONYMS v

EXECUTIVE SUMMARY vi

I. INTRODUCTION 1

Background 1
Purpose 4
Objectives 4
Expected Outcomes 4
Participants 5
Preparatory Work 5

II. TECHNICAL PRESENTATIONS, ROUND TABLE DISCUSSIONS AND WORKING GROUPS 6

Session 1: Setting the Scene 6
1.1 Introductory Presentation: Looking at the Caribbean Realities, Priorities and Actions in Progress 6
1.2 Introductory Quiz: Overview of NCDs and the Global, Regional and Subregional Governance 8

Session 2: Harmful Use of Alcohol and the Law 8
2.1 Technical Presentation: Reducing Harmful Use of Alcohol through Health-related Laws 8
2.2 Round Table: Experiences in Reducing the Harmful Use of Alcohol in the Caribbean 10

Session 3: Tobacco Control and the Law 10
3.1 Technical Presentation: The WHO Framework Convention on Tobacco Control 10
3.2 Technical Presentation: Status of Implementation of the WHO *FCTC* and Related Regional Commitments in the Caribbean 11
3.3 Round Table: Experiences and Lessons Learned in Advancing Implementation of the WHO *FCTC* in the Caribbean 12

Session 4: Nutrition and the Law 17
4.1 Technical Presentation: Policy Options in Regional and Global Instruments: Evidence, Public Health Rationale and Status of Implementation 17
4.2 Round Table: Experiences and Lessons Learned in Nutrition 19

Session 5: Common Approaches to NCD Risk Factors: Labelling Measures 21
5.1 Interactive Discussion: Labelling Measures across NCD Risk Factors 21
5.2 Technical Presentation: Warning Labels and Plain Packaging in the Tobacco Control Context 22
5.3 Technical Presentation: Tobacco Industry Interference in the Caribbean 22
5.4 Technical Presentation: Front-of-package and Other Labelling Regulations 24
5.5 Technical Presentation: Industry Opposition to Labelling in the Nutrition Context 24

Session 6: Common Approaches to NCDs: Marketing Restrictions 26
6.1 Interactive Discussion: Marketing Restrictions across NCD Risk Factors 26
6.2 Technical Presentation: Bans on Tobacco Advertising, Promotion and Sponsorship 26
6.3 Technical Presentation: Reducing Exposure to Alcohol Marketing 28
6.4 Technical Presentation: Restricting Marketing of Foods to Children 28
6.5 Technical Presentation: Marketing of Unhealthy Foods and Non-alcoholic Beverages to Children in the Caribbean 29

Session 7: The Role of Human Rights in Shaping Countries' Actions to Tackle NCDs **30**
7.1 Technical Presentation: The Role of Human Rights in Shaping Countries' Actions to Tackle NCDs 30

Session 8: Comparative Litigation **31**
8.1 Technical Presentation: Comparative Litigation 31

Session 9: Pursuing Policy Coherence: Trade, Investment and NCDs **33**
9.1 Technical Presentation: Pursuing Policy Coherence: Trade, Investment and NCDs 33

Session 10: Opportunities to Advance the Use of Law: the Way Forward **34**
10.1 Technical Presentation: Opportunities to Advance the Use of Law: the Way Forward 34

III. OUTCOMES AND PRIORITY ACTIONS **37**
Working Group on Tobacco Control 37
Working Group on Alcohol Control 38
Working Group on Nutrition 39
Working Group on Public Health Law 40
Discussion about a Caribbean Network of Legal Officers Working on Health 41
Presentation by Campaign for Tobacco-Free Kids (CTFK) Network 41
Summary of the Discussion on the Establishment of a Caribbean Network on the Use of Law to Advance Public Health 41

IV. CONCLUSION **43**

List of Tables

Table 1: Status of the Implementation of the WHO Best Buys in the Caribbean: Progress Monitor 2020 7
Table 2: Status of Implementation of Alcohol Policies and Interventions in the Caribbean 9
Table 3: Key Components for Effective Implementation of the WHO *FCTC* 11
Table 4: Status of WHO MPOWER Measures Which Correspond to Interventions Contained in the WHO *FCTC* 13
Table 5: Key Global and Regional Nutrition and Diet-related Targets, Mandates and Recommendations 18
Table 6: Industry's Opposing Arguments to FOPL and Counterarguments 25
Table 7: Tobacco Industry Arguments and Counterarguments 27
Table 8: Alcohol Marketing Evidence 28
Table 9: General Comments of the Committee on the Rights of the Child Which Are Relevant to the Right to Health 31
Table 10: Summary of the 'Typical' Industry Claims in Constitutional or International Litigation to Challenge Tobacco Control Measures 33

ACRONYMS

APC	Alcohol per Capita Consumption
CAFL	CCJ Academy for Law
CARICOM	Caribbean Community
CCJ	Caribbean Court of Justice
CFTK	Campaign for Tobacco-Free Kids
CMO	Chief Medical Officer
COHG	Conference of Heads of Government
COHSOD	Council for Human and Social Development
COTED	Council for Trade and Economic Development
CRC	Convention on the Rights of the Child
FOPL	Front-of-Pack Labelling
GDP	Gross Domestic Product
HCC	Healthy Caribbean Coalition
HW	Health Warning
ILC	International Legal Consortium
NCD	Noncommunicable Disease
NGO	Non-governmental Organization
NMC	National Mirror Committee
OECS	Organisation of Eastern Caribbean States
PAHO	Pan American Health Organization
PAHO NPM	PAHO Nutrient Profile Model
POSD	Port-of-Spain Declaration
Q&A	Question and Answer
RTC	Revised Treaty of Chaguaramas
SDG	Sustainable Development Goal
SIDS	Small Island Developing States
SSB	Sugar Sweetened Beverage
TAPS	Tobacco Advertising, Promotion and Sponsorship
TOR	Terms of Reference
UNGA	United Nations General Assembly
UNHLM	United Nations High-level Meeting on NCDs
WHO	World Health Organization
WHO FCTC	WHO Framework Convention on Tobacco Control

EXECUTIVE SUMMARY

Photo: The participants of the Subregional Workshop on the Use of Law to Address Noncommunicable Diseases in the Caribbean.

The Pan American Health Organization (PAHO) and the International Legal Consortium (ILC) from the Campaign for Tobacco-Free Kids (CTFK) with support from the European Union convened a three-day **Subregional Workshop on the Use of Law to address Noncommunicable Diseases in the Caribbean** from 3–5 March, 2020 in Miami, Florida, United States of America. This Subregional Workshop sought to build capacity to advance the use of law and regulations to address noncommunicable diseases (NCDs) and their risk factors in the Caribbean, with special emphasis on tobacco control, reduction of the harmful use of alcohol and obesity prevention.

The Subregional Workshop was attended by 44 participants with varied professional profiles from 10 Caribbean countries as well as key subregional and international partners.

The agenda of the Subregional Workshop included several technical presentations with question and answer (Q&A) segments, round table discussions, plenary discussions and working groups. The first day highlighted the situation in the Caribbean in relation to NCDs and their risk factors and focused on the use of law to address NCDs and their risk factors, namely, tobacco control, the harmful use of alcohol and unhealthy diets. The sessions over the course of the day helped to familiarise participants

with the global and regional mandates for NCDs and their risk factors and also encouraged participants to share country experiences in the use of law to address NCDs and the risk factors.

The second day of the Subregional Workshop addressed the specific ways in which law has been used to tackle NCDs, particularly human rights law, trade law and investment law. Specific legal interventions to prevent and control NCDs and their risk factors, such as labelling measures and marketing restrictions, were also explored from both technical and practical in-country perspectives. These sessions helped to identify the international best practices on the regulation of NCD risk factors and their interaction with trade and investment policies.

The Subregional Workshop concluded on the third day by considering the opportunities to advance the use of law to prevent and control NCDs and their risk factors in the Caribbean subregion. The working groups on tobacco control, reduction of the harmful use of alcohol and nutrition encouraged the exchange of experiences, lessons learned and challenges in tackling NCD risk factors. In addition, the working group on health law research helped to identify the means by which intersectoral coordination between health and legal sectors can occur to promote the prevention and control of NCDs and their risk factors.

Participants of the Subregional Workshop generated several key messages and priority actions for the prevention and control of NCDs and their risk factors.

Tobacco Control

In relation to tobacco control, the key messages include:

Tobacco control efforts in the Caribbean subregion continue to lag;
The full implementation of the evidence-based measures of the World Health Organization's Framework Convention on Tobacco Control (WHO *FCTC*) continue to be crucial for addressing the tobacco epidemic;
There are concrete global, regional and subregional mandates which provide an opportunity to accelerate the implementation of the WHO *FCTC*, including a mandate for a 100% smoke-free Caribbean by 2022;
100% smoke-free environments are cost-effective measures with short-term health benefits that increase over time and which do not have a negative impact on businesses or the economy.

Complete list of key tobacco control messages available **here**.

Alcohol Consumption

In the context of reducing harmful alcohol consumption, the key messages include:

Alcohol is a key risk for public health beyond NCDs, including violence, injuries, maternal and child health, adolescent health and mental health;
The WHO SAFER is a core set of proven alcohol policies that can effectively reduce the harmful use of alcohol nationally and serve as common language for regional cooperation;
The three key strategies: implement, monitor, protect, facilitate the planning of activities and the elaboration of national plans, supported by civil society and leaders, with a clear view on the need to balance commercial and public health interests to win the battle of sustainable development with better health.

Complete list of key alcohol consumption messages available **here**.

Nutrition

As it relates to nutrition, the key messages include:

Demand and supply reduction policies to reduce processed and ultra-processed food and drink products, including breastmilk substitutes, are necessary to curb the obesity and NCD epidemics;
Policies and standards at the global or regional level must be given effect through national legislation and must be seen through to approval and implementation.

Complete list of key nutrition messages available **here**.

Workshop participants agreed on the establishment of a Caribbean Public Health Law Forum to facilitate continued communication, collaboration and engagement on public health law matters.

The Workshop helped to highlight the similarities between alcohol, tobacco, sugar sweetened beverages (SSBs) and ultra-processed foods in terms of the policies needed to reduce their consumption as well as the role of related industries in interfering with their development or implementation. As a result, priority actions across risk factors emphasised the need to address industry interference.

In addition, meeting participants also agreed to several other priority actions for the prevention and control of NCDs and their risk factors. In relation to **tobacco** control, it was agreed that there was a need to engage customs officials on duty free laws and special privileges, create opportunities for the orientation of legal practitioners on public health law and for greater information on new tobacco products, among **other priorities**.

In the context of reducing harmful **alcohol** consumption, meeting participants agreed that the harmonisation of legislation on drunk driving and minimum drinking/purchasing age in the Caribbean was a good entry point to establish a broader agenda to address this risk factor within the subregion, among **other priorities**.

Then, as it relates to **nutrition**, it was agreed that the current food and nutrition policies and/or legislation should be mapped, along with the development of a comprehensive nutrition policy based on international obligations, among **other priorities**.

Workshop participants also agreed on the establishment of a **Caribbean Public Health Law Forum** to facilitate continued communication, collaboration and engagement on public health law matters, primarily those regarding NCDs and their risk factors. Workshop participants also agreed on the key defining elements for the Forum and that the subsequently developed Terms of Reference (TORs) of the Forum should be reviewed by a subgroup of workshop participants.

Overall, the Subregional Workshop provided a forum for participants to gain technical knowledge and to share their country's practical experiences, challenges and strategies in the prevention and control of NCDs and their risk factors. It also permitted participants from a wide variety of professional backgrounds to connect and generated interest in future networking opportunities.

Materials from the Subregional Workshop, including the Summary Report, are available **here.**

I. INTRODUCTION

Background

The Burden of NCDs in the Caribbean: An Economic and Development Challenge

In the Caribbean, NCDs, mainly cardiovascular diseases, diabetes, cancer, and chronic respiratory diseases and their four shared risk factors of tobacco use, harmful use of alcohol, unhealthy diet and physical inactivity, remain leading causes of mortality, morbidity and disability.

In 2016, NCDs were responsible for 76.8% of all deaths in the Caribbean. Moreover, 38.1% of all NCD deaths occurred in persons under 70 years of age, and people in the Caribbean had the highest probability of dying prematurely, that is, between the ages of 30 and 70 years, from any of the four major NCDs, compared to other subregions of the Americas.

This burden results in losses in household income, productivity and reduced gross domestic product (GDP). As an example, PAHO in collaboration with Harvard University has estimated that NCDs and mental health conditions will lead to a US$ 17 billion loss in Jamaica, equivalent to an annual reduction of 3.9% of GDP, over the 15-year period from 2015 to 2030.[1] This economic impact is particularly challenging for Small Island Developing States (SIDS), where NCDs have the potential to reverse developmental and economic gains, while the rising costs of health services associated with NCDs threaten the achievement of Universal Health.

Global, Regional and Subregional Commitments to Address NCDs

In response to this situation, there has been a growing number of global, regional and subregional mandates to tackle NCDs and their risk factors. The Heads of State and Government of the Caribbean Community (CARICOM) convened the first NCD summit in the world in September 2007 and signed the *Port-of-Spain Declaration: Uniting to Stop the Epidemic of Chronic NCDs* (**POSD**) establishing a series of recommendations and commitments to achieve its goals.

Following the 2007 *POSD* and the landmark *Political Declaration* of the *2011 UN High Level Meeting* on NCDs (**UNHLM**), countries endorsed the World Health Organization (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.*** Both action plans call for a 25% relative reduction of premature mortality from NCDs by 2025, putting forth a set of very cost-effective and feasible interventions, the so-called WHO '**Best Buys**', which were updated and adopted by the World Health Assembly in May 2017.

In 2015, NCDs became part of the *Sustainable Development Goals* (**SDGs**). SDG goal 3.4 includes a target related to reducing premature mortality from NCDs by one third by 2030 and explicitly requests strengthening the implementation of the *WHO Framework Convention on Tobacco Control* (***WHO FCTC***).

1 How can Latin America change the course of its 'NCD tsunami'? Available from: **https://www.weforum.org/agenda/2016/06/is-latin-america-experiencing-a-ncd-tsunami**

The growing epidemic of childhood obesity has been recognised as a priority by both the CARICOM Council for Trade and Economic Development (COTED) and the Council of Human and Social Development (COHSOD).

Furthermore, countries have adopted a set of 18 indicators to report progress to the UN Assembly on the realization of their commitments,[2] including at the *Third UN High-level Meeting on NCDs* (**UNHLM3**) held in September 2018, which resulted in 13 new steps to tackle NCDs and an expanded agenda to include mental health disorders and air pollution.

The WHO *Best Buys* and other effective policy options are also part of a series of specific mandates adopted by Member States to address NCD risk factors, including, but not limited to: the ***Plan of Action for the Prevention of Obesity in Children and Adolescents (2014-2019)***, the ***Strategy and Plan of Action to Strengthen Tobacco Control in the Region of the Americas (2018-2022)***, the ***Plan of Action to Reduce the Harmful Use of Alcohol (2010-2021)***, and the ***Plan of Action for the Elimination of Industrially Produced Trans-Fatty Acids (2020-2025)***, among others.

These global and regional mandates and recommendations have been repeatedly reflected and reinforced by CARICOM. Notably, at the XXXVII Meeting of the Conference of Heads of Government (COHG) a renewed mandate to combat NCDs was issued, promoting specific actions against tobacco, sugar, salt and trans-fat reduction, public education in schools, namely, *to adopt 100% smoke-free public spaces, implement the COTED ratified standard for tobacco labelling, and implement a regulatory regime for compulsory food labelling of all commercially manufactured goods. They also requested Member States to reduce the marketing of harmful foods and beverages to children; support harm reduction by taxation of tobacco, alcohol, salty, sugary and trans-fats containing foods and consider the inclusion of nutrition education in school curricula, emphasize the importance of public education and physical exercise, and re-examine the promotion of regional sufficiency in indigenous foods.*[3]

Additionally, the growing epidemic of childhood obesity has been recognised as a priority by both the CARICOM Council for Trade and Economic Development (COTED) and the Council of Human and Social Development (COHSOD). For example, in November 2015, COTED considered a 6-point policy package to address childhood obesity. More recently, the COHSOD and COTED held a joint meeting in November 2019 aimed at enhancing policy coherence with a focus on the harmful use of alcohol and unhealthy diets.[4]

The Role of Law in Curbing the NCD Epidemic

In this context, the use of law has an undeniable central role to play: 10 of the 16 WHO '**Best Buys**' require the effective use of law or regulations. Moreover, the tobacco control *Best Buys* are also part of the ***WHO FCTC***, a legally binding international public health treaty that sets out obligations on Parties to implement proven, cost-effective tobacco control measures. It is important to note that all Caribbean PAHO/WHO Member States are Parties to the WHO *FCTC*, except for Haiti.

Furthermore, the role of law in advancing health topics was unanimously recognized by PAHO Member States, including Caribbean countries, through the adoption of a ***Strategy for Health-Related Law*** in September 2015. The strategy urges Member

2 WHO. Preparation for the third High-level Meeting of the General Assembly on the Prevention and Control of NCDs, to be held in 2018. Geneva: WHO; 2016. Executive Board 140th Session (Document EB 140/27) Available from: **http://bit.ly/2jyrxqU**

3 Communiqué issued at the conclusion of The Thirty-Seventh Regular Meeting of the Conference of Heads of Government of the Caribbean Community, 4-6 July 2016, Georgetown, Guyana. Available from: **https://bit.ly/3nKS9FI**

4 CARICOM Today, COTED, COHSOD Focus on Reducing NCDs, October 31, 2019. Available from: **https://today.caricom.org/2019/10/30/coted-cohsod-focus-on-reducing-ncds/**

Caribbean PAHO/WHO Member States have an obligation to adopt legislative measures to protect the right to the highest attainable level of health and the right to information.

States to promote the formulation, implementation or review of their legal and regulatory frameworks, policies and other legal provisions, as appropriate, taking a multisectoral approach to address health determinants, health promotion throughout the life course, the reduction of risk factors and disease prevention, as well as the primary health care approach through participatory processes with the communities.

It is important to recall that Caribbean PAHO/WHO Member States have an obligation to adopt legislative measures to protect the right to the highest attainable level of health and the right to information; rights which are recognised in the main international human rights treaties which these states have largely ratified.

Status of Implementation in the Caribbean and Opportunities to Accelerate Progress

Recent evaluations of both the POSD[5] and the WHO progress indicators[6] show that Caribbean Wellness Day, public awareness campaigns for diet and/or physical activity, and NCD risk factor surveillance are the areas of highest implementation. NCD and risk factor policies that require regulatory actions from governments tend to lag behind.[7]

Although progress remains insufficient, there are examples of best practices in the Caribbean that can be shared and scaled-up, including taxation of SSBs in Barbados, restrictions on the sale of SSBs in schools in the Bahamas, Grenada, Jamaica, and Trinidad and Tobago as well as progress with tobacco control legislation in several countries such as Antigua and Barbuda, Barbados, Guyana, Jamaica, Suriname and Trinidad and Tobago. Additionally, there are numerous technical packages and tools available to support Member States' efforts and commitments. Some examples include **MPOWER** (tobacco control), **REPLACE** (elimination of industrially produced trans fats), **SHAKE** (salt reduction) or **SAFER** (reduction of the harmful use of alcohol), among others.

There are ongoing efforts to foster intersectoral collaboration between Health and Legal Affairs and increase awareness and capacity building among legal officers on NCD-related topics. In October 2017, PAHO convened a "***Subregional Workshop on Law and NCDs for Caribbean countries***" in Kingston, Jamaica, bringing together for the first time Ministries of Health, Ministries of Legal Affairs, Attorney General's Offices (AGOs), Chief Parliamentary Counsels, the Caribbean Court of Justice Academy for Law (CAFL) and others, to discuss the use of law to address NCDs, including tobacco control. As a result of that workshop, participants requested PAHO to facilitate a mechanism for continued interaction and communication on the topic. In addition, the workshop led to a "***High-Level Meeting on the Use of Law to tackle NCDs***" co-hosted by PAHO, the Food and Agriculture Organization (FAO) and CAFL, on 10 March, 2018 in Port-of-Spain, Trinidad and Tobago. That High-Level meeting convened judges of the Caribbean Court of Justice (CCJ), relevant CARICOM bodies and institutions, key policy makers, including the chairs of the COHSOD and the COTED, subregional partners, and international organizations. It resulted in a meeting statement and a set of agreed priority actions, including a proposal to establish a Caribbean Network of legal officers.

5 Evaluation of the 2007 CARICOM Heads of Government Port of Spain NCD Summit Declaration. Available from: **http://bit.ly/2svA8lW**

6 WHO. NCD Progress Monitor 2017. Available from: **http://bit.ly/2xiqchc**

7 PAHO. Progress monitoring in the region of the Americas. Available from: **https://bit.ly/3iglvsZ**

The purpose of this Subregional Workshop was to build capacity to advance the use of laws and regulations to address NCD risk factors in the Caribbean.

Against this background, this Subregional Workshop brought together officials from the Ministries of Health and Legal Affairs of Caribbean PAHO/WHO Member States, the CAFL and other relevant CARICOM bodies and institutions, civil society, academia and international organizations to build capacity for the use of law as a powerful tool to address NCDs and their risk factors in the Caribbean, with a focus on tobacco control, harmful use of alcohol and obesity prevention laws and regulations. The workshop was informed by and built upon the priorities identified during the 2017 *"Subregional Workshop on Law and NCDs for Caribbean Countries"* and the 2018 *"High-Level Meeting on the Use of Law to tackle NCDs."*

Purpose

The purpose of this Subregional Workshop was to build capacity to advance the use of laws and regulations to address NCD risk factors in the Caribbean, with special emphasis on tobacco control, reduction of the harmful use of alcohol and obesity prevention.

Objectives

The specific objectives of the Subregional Workshop were:

1. To familiarise participants with the key mandates in global and regional governance of NCDs and their risk factors, the public health rationale behind them, and the use of law as a powerful tool in the prevention and control of NCDs;
2. To map the legal environment for NCDs and NCD risk factors policies in the Caribbean and analyse their design, implementation and enforcement;
3. To share international best practices on the regulation of risk factors and their interaction with trade and investment policies;
4. To facilitate intersectoral coordination between the health and legal sectors, aimed at fostering the effective regulation for the prevention and control of NCDs and their risk factors;
5. To contribute to building capacity at the subregional level on the use of law for NCDs and NCD risk factors prevention and control and establish a mechanism for continued interaction and communication on the topic; and
6. To discuss and agree on strategic actions to advance the enactment, implementation and enforcement of NCDs and NCD risk factors related laws and regulations in the Caribbean.

Expected Outcomes

1. Participants will be familiarized with the public health background for laws and regulations related to NCDs and their risk factors;
2. Participants will have a clear mapping of the situation in the Caribbean in relation to NCDs and their risk factors;
3. Participants will be familiarized with best practices in the use of law to regulate and control NCDs and their risk factors;
4. Intersectoral coordination will be facilitated;
5. A set of strategic actions to advance the enactment, implementation and enforcement of NCD risk factor laws and regulations in the Caribbean; and
6. A Network of Caribbean Lawyers will be established to facilitate continued interaction and communication on NCD-related matters.

Participants were asked to review their ongoing or upcoming NCD risk factor legislative processes and to identify technical assistance required, evidence needs and any opportunities to advance the enactment and enforcement of legislation in their countries.

Participants

The Subregional Workshop was attended by 44 participants from 10 Caribbean countries and territories as well as key subregional and international partners including, but not limited to, the following profiles:

- Representatives of the Ministries of Health with responsibility for tobacco control, harmful use of alcohol and/or nutrition;
- Chief Parliamentary Counsels and Legal Drafters of the Ministries of Legal Affairs;
- Representatives from the CARICOM Secretariat and relevant CARICOM institutions (CARICOM Directorate for Human and Social Development, CARICOM Directorate for Trade and Economic Integration, CARICOM Office of the General Counsel, CARICOM Office of Trade Negotiations, CARICOM Single Market and Economy (CSME) Unit, CAFL, Caribbean Public Health Agency (CARPHA), Caribbean Agricultural Research and Development Institute (CARDI), Caribbean Examinations Council (CXC) and the CARICOM Regional Organization for Standards and Quality (CROSQ));
- Representatives from the Organization of Eastern Caribbean States (OECS);
- Academia;
- Civil society;
- Experts from the International Legal Consortium (ILC) at the Campaign for Tobacco-Free Kids (CTFK) and The Union;
- WHO advisors in International Trade and Tobacco Control; and
- PAHO/WHO advisors, including NCD advisors from the Risk Factor Unit of the Noncommunicable Diseases and Mental Health (NMH/RF) Department, the Legal Counsel (LEG) Office, and the Caribbean Subregional Coordination (CSC) Office.

The complete list of participants is available **online**.

Preparatory Work

In preparation for this Subregional Workshop participants were asked to review their ongoing or upcoming NCD risk factor legislative processes and to identify technical assistance required, evidence needs and any opportunities to advance the enactment and enforcement of legislation in their countries. In addition, participants were provided with brief guiding questions to facilitate the discussions during the workshop.

II. TECHNICAL PRESENTATIONS, ROUND TABLE DISCUSSIONS AND WORKING GROUPS

Session 1: Setting the Scene

1.1 Introductory Presentation: Looking at the Caribbean Realities, Priorities and Actions in Progress

***Dr. Elisa Prieto Lara**, Advisor, NCD and Mental Health, PAHO/WHO*

Dr. Prieto Lara's presentation provided an overview of the realities of the NCD epidemic in the Caribbean as well as the priorities and actions in progress. She commenced by highlighting that NCDs are economic and development challenges which have contributed to a loss of 75% of global GDP in 2010.[8] She also noted that within the Caribbean subregion, approximately 40% of deaths are premature and occur during the most productive years of life. The reality of the situation, as Dr. Prieto Lara emphasised, is that NCDs also have implications for other emerging diseases, such as COVID-19, because of the greater susceptibility to poorer health outcomes for persons living with NCDs.

NCDs also have implications for other emerging diseases, such as COVID-19, because of the greater susceptibility to poorer health outcomes for persons living with NCDs.

Dr. Prieto Lara acknowledged the importance of the role of law and multisectoral action by highlighting that 10 out of 16 ***WHO Best Buys*** require legal or regulatory interventions from sectors beyond health. She however described the slow status of implementation of the WHO *Best Buys* in the Caribbean subregion **(Table 1).** Finally, she reiterated that the implementation of the WHO *Best Buys* should be a priority action given the corollary potential of achieving certain ***SDGs***.

8 World Economic Forum. The Global Economic Burden of NCDs, 2011. Available from: http://bit.ly/1iDEfzz

TABLE 1: STATUS OF THE IMPLEMENTATION OF THE WHO BEST BUYS IN THE CARIBBEAN: PROGRESS MONITOR 2020[9]

	TOBACCO					ALCOHOL			HEALTHY DIET				PA
	5a	5b	5c	5d	5e	6a	6b	6c	7a	7b	7c	7d	8
Countries	Taxes	SFE	Health warnings	TAPS bans	Media campaign	Availability	Advertising restrictions	Taxes	Salt policies	Trans-fat policies	Children marketing	Breastmilk substitute	Public education
Antigua and Barbuda													
Bahamas	NR												
Barbados													
Belize													
Dominica													
Grenada													
Guyana													
Haiti	NR					NR	NR	NR					
Jamaica					NR								
Saint Kitts and Nevis													
Saint Lucia													
Saint Vincent and the Grenadines													
Suriname													
Trinidad and Tobago													

Fully achieved
Partially achieved
Not achieved

NR No Response
SFE Smoke-Free Environments
PA Physical Activity

9 Noncommunicable diseases progress monitor 2020. Geneva: World Health Organization; 2020. Available from: **https://www.who.int/publications-detail/ncd-progress-monitor-2020**

WHO *SAFER* is a technical package of five high-impact strategic interventions to reduce the harms caused by alcohol.

1.2 Introductory Quiz: Overview of NCDs and the Global, Regional and Subregional Governance

The team of workshop facilitators engaged participants in an introductory quiz on the burden of NCDs and governance in the Caribbean subregion. This quiz and the review of responses highlighted the following key points:

Quiz Results
Addressing NCDs is a complex matter with no single solution;
Consideration must be given to the burden of NCDs on persons and on governments;
Consideration must also be given to properly managing the tension between the economic gains or livelihoods and the public health;
Consideration must be given to the rights of persons and the responsibilities of governments so that sustainability for present and future generations can be ensured; and
Law is a powerful tool in the prevention and control of NCDs.

Session 2: Harmful Use of Alcohol and the Law

2.1 Technical Presentation: Reducing Harmful Use of Alcohol through Health-related Laws

***Dr. Maristela Monteiro**, Senior Advisor on Alcohol and Substance Abuse, PAHO/WHO*

Dr. Monteiro's presentation commenced by highlighting the broad range of health impacts of the harmful use of alcohol including those going beyond NCDs. She noted, for example, that the harmful use of alcohol causes 100% of alcohol use disorders, fetal alcohol spectrum disorders, 22% of suicides, 22% of interpersonal violence and 15% of traffic injuries, among other injury conditions. The WHO ***Global Status Report on Alcohol and Health (2018)*** reported total alcohol per capita consumption (APC) of persons 15+ years in the Americas to be approximately 8.0 litres/day in 2016, which is in excess of the global total of 6.4 litres/day for the same period.

Dr. Monteiro also provided a chronology of key global and regional alcohol-related mandates ranging from the ***2010 WHO Global Strategy to reduce the harmful use of alcohol***, the ***2011 PAHO Regional Plan of Action on harmful use of alcohol***, the ***WHO Global Action Plan on NCDs (2013-2020)***, the ***PAHO Regional Plan on Action on NCDs (2013–2019)***, the ***PAHO Strategic Plan (2014–2019)*** as well as the ***WHO Best Buys, SDGs*** and various political declarations and/or outcome statements of the relevant UNHLMs on NCDs in 2011, 2014 and 2018.

Importantly, she emphasised the importance of the WHO ***SAFER***, a technical package of five high-impact strategic interventions to reduce the harms caused by alcohol:

SAFER Interventions
Strengthen restrictions on alcohol availability;
Advance and enforce drunk driving countermeasures;
Facilitate access to screening, interventions and treatment;
Enforce bans or comprehensive restrictions on alcohol advertisements, sponsorships and promotion;
Raise prices on alcohol through excise taxes and pricing policies.

TABLE 2: STATUS OF IMPLEMENTATION OF ALCOHOL POLICIES AND INTERVENTIONS IN THE CARIBBEAN[10]

POLICIES OR INTERVENTIONS / COUNTRIES	Written National Policy / Strategy / Action Plan on Alcohol	Alcohol Taxation (beer/wine / spirits)	National Legal Minimum Age for Sales of Alcoholic Beverages (beer / wine / spirits)		Restrictions for On-/Off-Premise Sales of Alcoholic Beverages			Legally Binding Regulations on Alcohol Advertising / Product Placement (any) and Alcohol Sponsorship / Sales Promotion (any)		National Maximum Blood Alcohol Concentration (BAC) When Driving a Vehicle among the General Population and Youth	
			Off-Premise Sales (beer / wine / spirits)	On-Premise Sales (beer / wine / spirits)	Hours	Days	Locations	Alcohol Advertising / Product Placement (any)	Alcohol Sponsorship / Sales Promotion (any)	General Population (WHO recommends 0.05)	Youth Population (WHO recommends 0.02)
Antigua and Barbuda	No	No/No/No	No/No/No	16/16/16	Yes	Yes	Yes	No / No	No / No	No	No
Bahamas	Yes (Adopted in 1992; Revised in 2006)	Yes/Yes/Yes	18/18/18	18/18/18	Yes	Yes	Yes	Yes / Yes	No / Yes	0.08	0.08
Barbados	No	Yes/Yes/Yes	No/No/No	16/16/16	No	No	No	No / No	No / No	No	No
Belize	No	Yes/Yes/Yes	18/18/18	18/18/18	Yes	Yes	Yes	No / No	No / No	0.08	0.08
Dominica	No	Yes/Yes/Yes	16/16/16	16/16/16	Yes	No	Yes	No / No	No / No	0.08	0.08
Grenada	No	Yes/Yes/Yes	No/No/No	16/16/16	Yes	Yes	No	No / No	No / No	No	No
Guyana	No	Yes/Yes/Yes	18/18/18	16/16/18	Yes	No	No	No / No	No / No	0.08	0.08
Haiti	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR
Jamaica	No	Yes/Yes/Yes	18/18/18	18/18/18	Yes	No	Yes	Yes/No	No / No	0.08	0.08
Saint Kitts and Nevis	No	Yes/Yes/Yes	18/18/18	18/18/18	Yes	Yes	Yes	No / No	No / No	0.08	0.08
Saint Lucia	No	Yes/Yes/Yes	16/16/16	16/16/16	Yes	Yes	Yes	No / No	No / No	0.08	0.08
Saint Vincent and the Grenadines	No	Yes/Yes/Yes	18/18/18	18/18/18	Yes	No	No	No / No	No / No	No	No
Suriname	Subnational	Yes/Yes/Yes	16/16/16	16/16/16	No	No	No	No / No	No / No	0.05	0.05
Trinidad and Tobago	No	Yes/Yes/Yes	18/18/18	18/18/18	No	No	Yes	No / No	No / No	0.08	0.08

WHO compliant Policy/Intervention adopted

Policy/Intervention not WHO compliant

No Policy/Intervention adopted

NR No Record

10 World Health Organization. (2018). Global status report on alcohol and health 2018. World Health Organization. https://apps.who.int/iris/handle/10665/274603. License: CC BY-NC-SA 3.0 IGO, Available from: https://www.who.int/publications/i/item/9789241565639.

However, she noted that despite the various mandates and policy options, implementation in the Caribbean subregion has been slow **(Table 2)**, particularly because of alcohol industry interference. In closing, Dr. Monteiro shared PAHO **online resources** and alcohol-related courses offered by **PAHO's Virtual Campus for Public Health**.

2.2 Round Table: Experiences in Reducing the Harmful Use of Alcohol in the Caribbean

***Ms. Maisha Hutton**, Executive Director, Healthy Caribbean Coalition (HCC)* chaired the first round table session, whilst also sharing civil society's perspective on the challenges with reducing the harmful use of alcohol in the Caribbean. The other round table participants were ***Dr. Marissa Carty**, Noncommunicable Disease Program Coordinator, Health Promotion and Advocacy Unit, Ministry of Health, Saint Kitts and Nevis* and ***Dr. Chesta Sewthal**, Head of the Noncommunicable Disease Unit, Ministry of Health, Suriname.*

The main challenges experienced in reducing the harmful use of alcohol in the Caribbean were identified as follows:

- **Trade and tourism sector push back**: a significant challenge has been the push back from the trade and tourism sectors against alcohol control measures, such as the imposition of taxes and restrictions on alcohol marketing.
- **Public perception that alcohol consumption is not a problem meriting policy priority:** due to a perception that alcohol consumption is not a problem meriting policy priority, it seems easier to convince persons of the harmful effect of tobacco smoking than of the harmful effects of alcohol consumption. Consequently, legislative measures required for alcohol control are not being properly considered by decision-makers who remain unconvinced of the harm.
- **Industry interference:** Industry's goals are inimical to public health objectives and as such, alcohol industry interference is a challenge given the alcohol-producer status of several countries in the Caribbean subregion.
- **Evidence:** the limited local data to identify the attributable burden is a challenge since such evidence is important for the policy process. It is therefore critical to obtain the data without delaying the development of the policy needed to drive legislation. PAHO has developed a tool to help countries calculate alcohol per capita consumption (APC) instead of relying on data currently provided by the alcohol industry.

In concluding the round table and plenary discussions, Ms. Hutton reiterated that the harmful use of alcohol should be regulated because alcohol is a toxic substance which causes harm to others and has public health implications beyond NCDs, including violence, road safety, injuries and adolescent health. Further, she highlighted the importance of political will and noted the need to solidify efforts on and around the annual Caribbean Alcohol Reduction Day (**CARD**).

Session 3: Tobacco Control and the Law

3.1 Technical Presentation: The WHO Framework Convention on Tobacco Control

***Ms. Rose Nathan**, Associate Legal Director, International Legal Consortium (ILC) CTFK*

Ms. Nathan's presentation provided participants with an introduction to the **WHO Framework Convention on Tobacco Control (*WHO FCTC*)** and its **Guidelines** for implementation. The *WHO FCTC*, the world's first global public health treaty, was developed to address the devastating consequences of tobacco consumption and exposure to tobacco smoke. The evidence is clear – nicotine in tobacco products is perniciously addictive whilst tobacco's harm to the entire body has resulted in a total of 8 million tobacco-related deaths worldwide per year.[11] She highlighted that the WHO *FCTC*'s significance is its strong evidence base, wide political acceptance and recognition as a source of international law and obligation to incorporate domestically.

11 PAHO/WHO, Tobacco kills one person every 34 seconds in the Americas (30 May 2019) Washington, D.C. Available from: **https://bit.ly/36tqraJ**.

In discussing some of the key WHO *FCTC* obligations, Ms. Nathan highlighted **Article 5.3** as a cross-cutting provision, which together with the related implementation guidelines, require States Parties *to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law*. She went on to cite other WHO *FCTC* obligations, such as **Article 6** (Price and tax measures to reduce the demand for tobacco), **Article 8** (Protection from exposure to tobacco smoke), **Article 9** (Regulation of the contents of tobacco products), **Article 10** (Regulation of tobacco product disclosures), **Article 11** (Packaging and labelling of tobacco products) and **Article 13** (Tobacco advertising, promotion and sponsorship), among other requirements. Importantly, she noted that laws need to capture new tobacco products, such as e-cigarettes, Heated Tobacco Products and nicotine pouches.

The key message throughout Ms. Nathan's presentation was the need for effective implementation of the WHO *FCTC*. In closing, she therefore highlighted several key components for effective implementation **(Table 3)**.

TABLE 3: KEY COMPONENTS FOR EFFECTIVE IMPLEMENTATION OF THE *WHO FCTC*

Key Components for effective implementation of the WHO FCTC
1. Definitions of key terms based on the *WHO FCTC* and Guidelines which are adapted to cover novel/future products
2. Comprehensive application of the measures to conventional and novel/future products
3. Duties on all relevant parties, primarily the tobacco/nicotine product industries
4. Range of deterrent and proportionate penalties
5. Broad regulatory authority, including for regulating novel/future products
6. Monitoring and evaluation of effectiveness

3.2 Technical Presentation: Status of Implementation of the WHO FCTC and Related Regional Commitments in the Caribbean

***Dr. Francisco Armada**, Regional Advisor, Tobacco Control, PAHO/WHO*

Dr. Armada's presentation provided an overview of the status of implementation of the ***WHO FCTC*** in the Caribbean subregion. He noted that all independent CARICOM Member States are signatories to the *WHO FCTC* and that all of those Member States, with the exception of Haiti, have also ratified and are therefore bound by that treaty. Dr. Armada explained that the implementation of **Articles 6, 8, 11-14 and 20** of the WHO *FCTC* corresponds to the six ***WHO MPOWER*** tobacco reduction cost-effective measures, namely:

MPOWER Measures
Monitoring tobacco use and prevention policies (Article 20 - Research, surveillance and exchange of information);
Protecting people from tobacco smoke (Article 8 - Protection from exposure to tobacco smoke);
Offering help to quit tobacco use (Article 14 – Demand reduction measures concerning tobacco dependence and cessation);
Warning about the dangers of tobacco (Article 11 - Packaging and labelling of tobacco products and Article 12 - Education, communication, training and public awareness);
Enforcing bans on advertising, promotion and sponsorship (Article 13 - Tobacco advertising, promotion and sponsorship); and
Raising taxes on tobacco (Article 6 - Price and tax measures to reduce the demand for tobacco).

He noted that there has been an overall improvement in the number of countries globally which have implemented at least one of the *WHO MPOWER* measures at the highest level of achievement during

Articles 6, 8, 11-14 and 20 of the *WHO FCTC* correspond to the six *WHO MPOWER* tobacco reduction cost-effective measures.

the period 2007-2018. However, implementation of the various *WHO MPOWER* measures has been inconsistent. For example, the implementation of tobacco pack warnings has seen wider implementation than the measure to raise tobacco taxes. In the Caribbean subregion, Dr. Armada highlighted that only 6 CARICOM Member States out of a possible 14 have implemented measures to protect from tobacco smoke while 7 CARICOM Member States have implemented laws for warning about the dangers of tobacco **(Table 4).** He noted that despite some progress, the majority of CARICOM States continue to lag behind the implementation timelines established in the *WHO FCTC*.

In concluding, Dr. Armada asserted that the Caribbean already possesses the tools for success in tobacco control, namely, the readily available scientific evidence in support, successful campaigning strategies and the commitment expressed in various mandates, such as the ***WHO FCTC***, the ***PAHO Strategy and Plan of Action to strengthen tobacco control in the Region of the Americas 2018–2022*** and the ***WHO Global Action Plan for the Prevention and Control of Noncommunicable Diseases 2013–2020***.

3.3 Round Table: Experiences and Lessons Learned in Advancing Implementation of the WHO FCTC in the Caribbean

This round table focused on the experiences and lessons learned in advancing the implementation of the ***WHO FCTC*** in the Caribbean and was chaired by ***Ms. Patricia Lambert***, *Director, ILC CTFK*. It was comprised of the following persons: ***Dr. Grace Whyte***, *Ministry of Health of Guyana;* ***Ms. Samantha Moitt***, *Chief Nutrition Officer and Tobacco Focal Point, Ministry of Health, Wellness and the Environment, Antigua and Barbuda;* ***Ms. Joanna Joseph***, *Deputy Coordinator, Substance Abuse Advisory Council Secretariat, Ministry of Health and Wellness, Saint Lucia;* ***Ms. Patsy Wyllie***, *Chief Health Promotion Officer, Ministry of Health, Wellness and the Environment, Saint Vincent and the Grenadines;* and ***Mr. Jorge Cárdenas***, *Technical Advisor to Latin America, The Union.*

TABLE 4: STATUS OF WHO MPOWER MEASURES WHICH CORRESPOND TO INTERVENTIONS CONTAINED IN THE WHO FCTC[12]

CARICOM COUNTRIES	FCTC Art. 20	FCTC Art. 8	FCTC Art. 14	FCTC Art. 11	FCTC Art. 13	FCTC Art. 6
		Best Buy		Best Buy	Best Buy	Best Buy
	M	P	O	W	E	R
	Monitor tobacco use and prevention policies	Protect people from tobacco smoke	Offer help to quit tobacco use	Warn about the dangers of tobacco	Enforce bans on tobacco advertising, promotion and sponsorship	Raise taxes on tobacco
Antigua and Barbuda	▲	▲ 2018		▲ 2018*/**	▲ 2018	13.36%
Bahamas	▲ 2018					NR
Barbados	▼	2010		2017		47.11%
Belize	▼					43.61%
Dominica						23.57%
Grenada	▼		▼			44.00%
Guyana		2017		2018*	2017	27.54%
Haiti	▲					NR
Jamaica	▲	2013	2016	2013		43.62%
Saint Kitts and Nevis						19.76%
Saint Lucia	▼	▲ 2020		2017		51.20%
Saint Vincent and the Grenadines	▼					16.90%
Suriname	▲ 2018	2013		▲ 2016	2013	47.60%
Trinidad and Tobago	▼	2009		2013*		25.71%

Fully Achieved - policy/measure consistent with the *FCTC*

Medium Achievement

Partially Achieved - policy/measure still not consistent with the *FCTC*

Minimum Achievement - no policy/measure in place

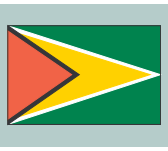
NR No Reported Data

* Policy/measure adopted but not implemented

** Regulations pending

▲ ▼ Indicates a change in the rating from GTCR-6 to GTCR-7 or post GTCR-7

12 For updated information visit the PAHO website: https://www.paho.org/en/topics/tobacco-prevention-and-control



Guyana's experience: What were the main success factors and lessons learned from the process of introducing the Tobacco Control Act No. 17 of 2017?

On July 27, 2017, Guyana enacted the ***Tobacco Control Act 2017*** (TCA) which has been described as one of the most comprehensive tobacco control laws in the Region of the Americas. ***Dr. Grace Whyte*** from the *Ministry of Health of Guyana* cited the following factors as contributing to Guyana's success in this endeavour:

- **Wide and inclusive consultations.** The consultative process included persons from Guyana's capital, Georgetown, as well as several other regions in Guyana including several rural areas. These wide consultations garnered a sense of support for the Bill and even included calls for the Bill to provide for more stringent measures and harsher penalties.
- **The review processes.** The Bill was submitted to Cabinet and presented by the Minister of Public Health (MOPH). Following Cabinet's deliberation, the Bill was then submitted to the Attorney General's chamber and then to Parliament. This part of the process ensured that the Bill obtained the necessary amendments and policy approvals at each stage.
- **Exclusion of tobacco companies and parties with special interest in the tobacco industry.** In accordance with **Article 5.3** of the *WHO FCTC*, the MOPH did not engage tobacco companies in the policy or legislative processes.
- **The impetus provided from related CARICOM policies and obligations.** Guyana's signature (and ratification) of international declarations, such as the ***Nassau Declaration of Health 2001: The Health of the Region is the Wealth of the Region*** and the ***POSD***, provided the impetus to move ahead with the Bill.
- **Engagements with other CARICOM countries.** Based on shared information from Jamaican public health officers, Guyana expanded the use of the term "authorized officers" to include not only law enforcement officers, but other agencies, such as the Environmental Protection Agency and the National Bureau of Standards.
- **Content of the bill itself.** Guyana placed much emphasis on developing a unique Bill, suitable to the needs of its population. For example, the TCA includes:
  - i. **100% smoke-free environments** in all indoor public spaces, indoor work spaces, public transportation and stipulated outdoor spaces to protect persons from tobacco smoke exposure (TCA, Part V);
  - ii. **prescribed rotating pictorial and text health warnings** featured on a minimum of 60% of the top display portion of tobacco product packaging (TCA, Part VII);
  - iii. a **ban on all forms of advertising, promotion and sponsorship** of tobacco products (TCA, PART VI); and
  - iv. a **ban on the sale of tobacco products to and by minors**, a ban on the manufacture and sales of toys and candies and any other good in the form of tobacco products, along with a prohibition on vending machine sales (TCA, Part VIII).

Lessons Learned

Overall, there is a need for:

- A **proactive public relations policy** which allows public health to be a step ahead of the tobacco industry in terms of the messaging and informing the public.
- **Support from Parliament**. Persons involved in crafting Bills should get the information and evidence out early to Parliament.
- A **multisectoral approach**. In Guyana, various groups have been working on the ground and empowering the communities.
- Continued **support from the international agencies,** such as PAHO/WHO.
- Timely **enforcement** of the regulations.

Antigua and Barbuda's experience: What strategies did you use to counter attacks or the pressure on the tobacco control law?

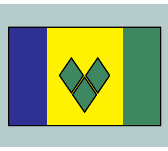
Ms. Samantha Moitt, *Chief Nutrition Officer and Tobacco Focal Point, Ministry of Health, Wellness and the Environment, Antigua and Barbuda* highlighted the main strategies as:

- **Having a strong Tobacco Control Focal Point.** The leadership of the Tobacco Control Focal Point helped to push the tobacco control agenda right to the ministerial level.
- **Collaboration with international agencies, such as PAHO/WHO** to develop a draft tobacco legislation.
- **Good public relations** were important to counter industry's messages. It was also important to ensure that persons outside of health and legal affairs understood the Bill.
- **Garnering political support at the highest level.** The Bill was taken off the agenda at one point but one of the parliamentarians, who was an ex-smoker, became a champion of the Bill. The Bill was placed on hold again because of e-cigarettes so that it could be included within the Bill. The Bill was then passed in September 2018 with some changes, such as regulations for e-cigarettes, being removed.

Saint Lucia's experience: What is the context for the process in which you developed health warnings?

***Ms. Joanna Joseph**, Deputy Coordinator, Substance Abuse Advisory Council Secretariat, Ministry of Health and Wellness, Saint Lucia* explained that Saint Lucia was able to make progress on health warnings by taking advantage of CARICOM Standards. The context which caused this development included:

- The **NCD statistics in the 2016 CMO Report** were startling and **led the Ministry of Health (MOH) to put structures in place for better NCD control**.
- The Saint Lucia Bureau of Standards, which has useful links to CROSQ, was a key institution in getting the warnings enacted. **In 2017, the compulsory warning specifications were passed with a 50% requirement for package warnings**.
- At the same time, the CMOs office realised that there was readily-available evidence and also an opportunity to do something further. **In July 2019, the Public Health Law was amended to include smoke-free places**.
- Despite the lack of tobacco producers in Saint Lucia, the Bureau of Standards **experienced much industry resistance**, including threats to its staff. This highlights the fact that the tobacco industry is well coordinated and resourced.
- **Persistence and close relationship or linkages with the Minister and the policymaker is key**. For example, policymakers were sensitized and provided with brochures and calendars. As a result, there was an expectation on them to take appropriate action.
- The Bureau of Standards has indicated that **there has been 100% compliance with the specifications**. There was one instance of a brand attempting to smuggle in cigarettes. These were however confiscated and emphasise the importance of enforcement.



Saint Vincent and the Grenadines' experience: What do you see as the challenges and opportunities to adopt comprehensive legislation?

***Ms. Patsy Wyllie**, Chief Health Promotion Officer, Ministry of Health, Wellness and the Environment, Saint Vincent and the Grenadines* highlighted the following challenges and opportunities:

- **Lack of a national legal framework:** Besides the current draft Bill, there was nothing in relation to tobacco control on the law books.
- **Lack of political will and different political priorities:** Medical marijuana is currently on the political agenda. In addition, with elections due in 2020 certain legislation may be delayed. For example, the current status of the Bill is uncertain.
- **Conflict of interest:** Saint Vincent and the Grenadines is small and persons are interconnected; as a result there may be influence in the policy space.
- **Perception that tobacco smoking is not an issue:** this perception may however be challenged by the fact that cigarettes and other tobacco products continue to be imported into the jurisdiction.
- **Ministries operating in silos:** Matters pertaining to health are often viewed by the other ministries as the responsibility of the Ministry of Health (MOH) alone.
- **Interference from the tobacco industry:** There have been various consultations; however, the MOH thought it wise not to involve the tobacco industry. Nonetheless, since a draft Bill has been completed, the tobacco industry contacts MOH officials every month for status updates.

Opportunities

1. There is the **evidence to support the adoption of comprehensive legislation**. For example, Saint Vincent and the Grenadines has **local evidence available** from its participation in four rounds of the *Global Youth Tobacco Survey* (**GYTS**) and also from *WHO STEPwise approach to Surveillance* (**STEPS**).
2. There is already **voluntary compliance to restrict smoking in some public spaces**, such as in restaurants and in some other businesses.

Session 4: Nutrition and the Law

4.1 Technical Presentation: Policy Options in Regional and Global Instruments: Evidence, Public Health Rationale and Status of Implementation

Dr. Audrey Morris, *Decentralized Regional Advisor – Food and Nutrition, PAHO/WHO*

Dr. Morris' presentation focused on nutrition data for overweight and obesity in children, as well as the key global nutrition targets, mandates and recommendations **(Table 5)**. She remarked that over the past decade, there has been an increase in the consumption of high calorie processed foods which are rich in fats, salts and sugars and a decrease in the consumption of fruits and vegetables, as well as physical activity levels. Dr. Morris presented statistics which showed that over 10 times more children and adolescents were obese in 2016, representing some 124 million children when compared to 1975 where only 11 million children were obese. The childhood overweight and obesity trend continues to move upwards with increases between 1990 (6.2%) and 2018 (7.5%) for children under 5 years in Latin America and the Caribbean; figures now well above the global average of 5%. The overweight and obesity trends among Latin American and Caribbean adolescents and adults have taken a similar course.

These overweight and obesity statistics make meeting the various global and regional nutrition and diet-related targets important. In this regard, Dr. Morris reminded participants that 2016–2025 is the ***United Nations Decade of Action on Nutrition***, where the overarching goal is to *"reverse the rising trends in overweight and obesity and reduce the burden of diet-related non-communicable diseases in all age groups."*

Dr. Morris also provided an overview of school nutrition policies, guidelines and/or standards in the Caribbean subregion; from the school nutrition guidelines or standards in development (Jamaica, Trinidad and Tobago) or developed (Barbados, Cayman Islands) to the school nutrition policies in development (Dominica, Jamaica, Saint Vincent and the Grenadines) or completed (Grenada).

The ***International Code of Marketing of Breastmilk Substitutes*** needs to be legislated by each country in order to be effective. However, only one Caribbean country, Trinidad and Tobago, is recorded as having legislated any aspect of the International Code (labelling of breastfeeding substitutes).

In closing, Dr. Morris reiterated the need for a comprehensive policy and regulatory approach to nutrition challenges, including FOPL, regulating the school nutrition environment as well as the marketing of foods to children and of breastmilk substitutes and foods for infants and young children.

TABLE 5: KEY GLOBAL AND REGIONAL NUTRITION AND DIET-RELATED TARGETS, MANDATES AND RECOMMENDATIONS

NUTRITION AND DIET-RELATED TARGETS, MANDATES AND RECOMMENDATIONS	
Name	**Synopsis of contents**
WHO ***Global Strategy on Diet, Physical Activity and Health*** (2004)	Addresses 2 NCD risk factors of unhealthy diet and physical inactivity.
WHO **Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children** (2010)	Contains 12 recommendations structured under 5 sub-headings, namely, rationale; policy development; policy implementation; policy monitoring and evaluation; and research.
PAHO ***Recommendations from a Pan American Health Organization Expert Consultation on the Marketing of Food and Non-Alcoholic Beverages to Children in the Americas*** (2011)	Includes 13 recommendations for the application of the WHO Set of Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children, notably recommendations on the definition of marketing food to children.
WHO ***Comprehensive Implementation Plan on Maternal, Infant and Young Child Nutrition*** (2012)	Identifies 6 global targets related to key nutrition outcomes to be achieved by 2025, namely: 1. 40% reduction of the global number of children under five who are stunted; 2. 50% reduction of anaemia in women of reproductive age; 3. 30% reduction of low birth weight; 4. no increase in childhood overweight; 5. increase the rate of exclusive breastfeeding in the first six months up to at least 50%; and 6. reduce and maintain childhood wasting to less than 5%.
PAHO ***Plan of Action for the Prevention and Control of Noncommunicable Diseases in the Americas*** (2013–2019)	Proposes actions on NCDs, giving consideration to the regional and subregional initiatives, contexts, and achievements.
WHO ***Global Action Plan for the Prevention and Control of Noncommunicable Diseases*** (2013–2020)	Establishes 6 objectives, the implementation of which will support the attainment of the 9 NCD targets by 2025 and movement towards the realisation of SDG 3.
PAHO ***Plan of Action for the Prevention of Obesity in Children and Adolescents*** (2014–2019)	Sets out 5 strategic lines of action, namely: 1. Primary health care and promotion of breastfeeding and healthy eating; 2. Improvement of school food and physical activity environments; 3. Fiscal policies and regulation of food marketing and labelling; 4. Other multisectoral actions; 5. Surveillance, research and evaluation.

NUTRITION AND DIET-RELATED TARGETS, MANDATES AND RECOMMENDATIONS	
United Nations ***Decade of Action on Nutrition*** (2016–2025)	Represents a commitment to undertake 10 years of sustained and coherent implementation of policies, programmes and increased investments to eliminate malnutrition in all its forms, everywhere, leaving no one behind.
WHO ***Report of the Commission on Ending Childhood Obesity Implementation Plan: Executive Summary*** (2017)	Provides 6 key areas of action for the implementation of the recommendations of the Commission on Ending Childhood Obesity: 1. Promote intake of healthy foods; 2. Promote physical activity; 3. Preconception and pregnancy care; 4. Early childhood diet and physical activity; 5. Health, nutrition and physical activity for school-age children; 6. Weight management.
WHO ***Guideline: Sodium intake for adults and children*** (2012)	Provides recommendations on the consumption of sodium to reduce child and adult NCDs.
WHO ***Global Nutrition Target 2025***	Set of 6 global targets for improving maternal, infant and young child nutrition.
WHO ***Guideline: Sugars intake for adults and children*** (2015)	Provides global, evidence-based recommendations on the intake of free sugars to reduce the risk of NCDs in adults and children.
United Nations ***Sustainable Development Goals*** (2015)	SDG 3.4 includes a target related to reducing premature mortality from NCDs by one third by 2030 and explicitly requests strengthening the implementation of the WHO *FCTC*.
PAHO ***Nutrient Profile Model*** (2016)	Establishes evidence-based regional criteria for acceptable amounts of critical nutrients – salt, sugar, saturated fats and trans fats.
WHO ***Tackling NCDS 'Best Buys'*** (2017)	Provides a list of 'best buys' and other recommended interventions to address each of the four key NCDs and risk factors.

4.2 Round Table: Experiences and Lessons Learned in Nutrition

Dr. Carlene Radix, *Head of Health, Organization of Eastern Caribbean States (OECS) Commission* chaired the round table which was comprised of ***Mr. Fulgence St. Prix***, *Regional Technical Officer Standards Development, CARICOM Regional Organisation for Standards and Quality (CROSQ)*, ***Ms. Michelle Ash***, *Chief Nutritionist, Ministry of Health, Trinidad and Tobago* and ***Dr. Chesta Sewthal***, *Head of Noncommunicable Disease Unit, Ministry of Health of Suriname*. A summary of the key interventions from the round table is now provided below.

Mr. St. Prix provided an overview of the FOPL development process; commencing from the 2018 endorsement by CARICOM Heads of State and Government of FOPL as a priority, to the work of the Committee of Technical Experts in developing a first draft of the Standards, followed by the consultation in each CARICOM Member State led by the respective National Standards Body. He also identified the importance of the National Mirror Committees (NMCs) as a mechanism by which all stakeholders could engage in the FOPL process. The final Standard is to be presented to the COTED for review and acceptance or rejection. In closing, Mr. St. Prix reiterated that the Standards are voluntary by

The Cabinet in Trinidad and Tobago agreed to adopt the WHO guidelines on sugar intake and issued a Cabinet Minute banning soft drinks, juice drinks, flavoured water, sports/energy drinks, tea, coffee and milk-based drinks with added sugars and/or artificial sweeteners.

nature so that each CARICOM Member State would need to use the appropriate legislative or regulatory means in order to make them enforceable.

Ms. Ash shared regarding Trinidad and Tobago's experience in introducing a ban on the sale or serving of SSBs in all government and government-assisted schools in April 2017. Critically, the Cabinet in Trinidad and Tobago agreed to adopt the WHO guidelines on sugar intake and issued a Cabinet Minute banning soft drinks, juice drinks, flavoured water, sports/energy drinks, tea, coffee and milk-based drinks with added sugars and/or artificial sweeteners.

She noted that by the second term (first quarter May 2018), there was close to 90% compliance in all of the aforementioned categories of drinks. Nonetheless, she described the challenges and barriers to implementation as follows:

Challenges

- **Cafeteria operators** had difficulty understanding product labels and did not know which products to choose, despite the sensitisation sessions prior to the release of the policy. Cafeteria operators also pushed back against implementation of the policy as they were concerned about loss of profits.
- **Other stakeholders** also challenged the policy. For example, some vendors would set up outside the perimeter of the school compound and children would purchase SSBs from those vendors. In addition, some parents would still pack soft drinks and other SSBs in children's school lunches whilst children themselves would engage in bartering of the now contraband SSBs at school.

Opportunities

- The Ministry of Health (MOH) had **facilitators**, such as the Ministry of Education (MOE), who were proactive in the implementation of health initiatives in schools.
- The **short time frame** generated more interest in stakeholders to get education. For example, schools would call the MOH to obtain nutrition education, especially so that parents would know what to include in children's lunch kits.
- The **timing** of the policy also presented an opportunity since around the same time, Jamaica was releasing the JA Moves campaign. This acted as an impetus to also do a country-level "moves".
- The MOH is now trying to **monitor gaps in the policy**, such as introducing additional verification methods.
- There is still considerable work to do in relation to **regulating the marketing** of the products to children in schools.

Dr. Sewthal provided brief remarks on the national regulation of the ***International Code of Marketing of Breastmilk Substitutes*** and the challenges with the marketing of breastmilk and substitutes in Suriname. She noted that the signing of a protocol with importers and distributers in Suriname in 1981 meant that signatories to that protocol were prohibited from advertising breastmilk, substitutes or related products. However, since 2013 the MOH has noted an increase in the infringements of that protocol, particularly among new importers and distributors. Suriname therefore recognised the need to develop legislation, with the assistance of UNICEF and PAHO. Dr. Sewthal continued by explaining other facilitators of the process such as MOH leaders and the commitment of the health commission in

Labelling provides information to the public and can create incentives for industry to reformulate products.

the Parliament. She closed by sharing some of the foreseeable challenges, namely, compliance with the law and proper enforcement.

Session 5: Common Approaches to NCD Risk Factors: Labelling Measures

5.1 Interactive Discussion: Labelling Measures across NCD Risk Factors

Dr. Benn McGrady, *Technical Officer (Legal), Public Health Law and Policies Unit, Health Promotion Department, WHO*

Dr. McGrady's presentation focused on the similarities and differences in the role of labelling measures across risk factors. He highlighted that labelling measures represent legal interventions which are applicable to all of the NCD risk factors. However, he noted that the objectives of those labelling measures differ across the context of the various NCD risk factors.

In the tobacco use context, Dr. McGrady indicated that the overall objective of labelling measures was to reduce demand for tobacco products. In the context of physical inactivity and unhealthy diets, he relied on the WHO ***Global Strategy on Diet, Physical Activity and Health (2004)*** to highlight that the overall objective of labelling measures was to provide consumers with accurate, standardised and comprehensible information on food content. Dr. McGrady noted that the ***Codex Alimentarius*** provides food labelling guidance for the identification of food, ingredients and allergens, best before dates, nutrient reference values, nutrition facts and supplementary nutrition information. This labelling approach underscores the overarching objectives of promoting food safety and nutrition. Guidelines are also being developed at Codex on FOPL.

Separate from the Codex context, Dr. McGrady noted that FOPL objectives include increasing consumer awareness of the nutritional quality of food, encouraging consumers to make healthier choices, incentivising product reformulation and reducing consumption of nutrients of concern. He also indicated that many of the objectives underpinning tobacco and food labelling measures are also relevant to the harmful use of alcohol risk factor.

Despite the focus on labelling measures and their objectives, Dr. McGrady was careful to emphasise the importance of a comprehensive approach to managing NCD risk factors.

Key Discussion Points
Most of the WHO *Best Buys* require laws to be implemented.
Labelling provides information to the public and can create incentives for industry to reformulate products. Currently, in the context of FOPL the use of warning or signposting symbols is being implemented in various countries around the world and could be viewed as an option for a harmonized approach in the Caribbean.
Laws are also a determinant of health, with their comprehensiveness influencing their effectiveness.
Enforcement of laws also needs to be considered in any law reform.

However, he closed the discussion by reiterating that mandatory requirements implemented through laws have the effect of levelling the playing field for economic operators and forces those entities to comply with international and domestic health requirements.

The tobacco industry uses product packaging as a marketing tool to make tobacco appealing and distract users from the health risks.

5.2 Technical Presentation: Warning Labels and Plain Packaging in the Tobacco Control Context

Dr. Francisco Armada, *Tobacco Control Team, PAHO/WHO*

Dr. Armada opened his presentation by highlighting some of the evidence in support of health warnings (HW), such as the fact that the tobacco industry uses product packaging as a marketing tool to make tobacco appealing and distract users from the health risks. He further noted that HW with pictograms have a greater impact than only text warnings and are proven to impact on initiation and motivate tobacco users to quit.

Dr. Armada proceeded to explain some of the various interventions under the ***WHO FCTC***, such as **Article 11** (Packaging and labelling of tobacco products) and its guidelines which establishes the need for HWs which are rotating, large, clear, visible and legible with 50% or more of the principal display areas but shall be no less than 30% of the principal display areas, among other features. In relation to **Article 13** (Tobacco advertising, promotion and sponsorship—TAPS), Dr. Armada highlighted the importance of a total ban on TAPS, covering all forms and media. In addition, he highlighted the existence of time limits within the WHO *FCTC*, such as the three-year period for the adoption and implementation of effective measures for tobacco product packaging and labelling **(Article 11)** or the five-year period for implementing appropriate legislative and other measures to comprehensively ban all tobacco advertising, promotion and sponsorship **(Article 13)**. However, several CARICOM states were behind the WHO *FCTC* implementation schedules.

His presentation continued with a look at the ***WHO FCTC Guidelines for implementation of Article 11*** and ***Article 13*** which address all aspects of tobacco warning labels and plain packaging requirements from colour to message content, size and location. Importantly, Dr. Armada highlighted that the guidance on the use of qualitative rather than quantitative information on tobacco products contents further evidences that there are not safe levels for harmful substances identified in tobacco products.

He also cited the advantage which the CARICOM states have in terms of the Regional Standard for the Labelling of Retail Packages of Tobacco Products, as developed by CROSQ. In closing his presentation, he encouraged participants in the *Subregional Workshop* to consider using the PAHO and CTFK ***Manual for Developing Tobacco Control Legislation in the Region of the Americas***.

5.3 Technical Presentation: Tobacco Industry Interference in the Caribbean

Ms. Barbara McGaw, *Project Adviser – Tobacco Control, Jamaica Coalition For Tobacco Control, Tobacco Advisor, HCC and Project Manager, Global Health Advocacy Project, Heart Foundation of Jamaica*

Ms. McGaw's presentation provided an overview of the tobacco industry's interference in policy in the Caribbean. As a starting point, she cited **Article 5.3** of the **WHO *FCTC***, by which State parties agree to *"act to protect [tobacco control] policies from commercial and other vested interests of the tobacco industry."* She noted that the fundamental and irreconcilable conflict between the tobacco industry's interests and public health interests resulted in the industry's use of various manipulative tactics to resist tobacco control policies, such as corporate philanthropy, whereby profits generated from tobacco sales are sometimes used to promote the tobacco industry under the guise of corporate social responsibility. Other tactics include funding

Profits generated from tobacco sales are sometimes used to promote the tobacco industry under the guise of corporate social responsibility. Other tactics include funding and promoting 'junk' science, massive advertising campaigns, manipulating its existing relationships at the highest level and advocating for self-regulation/voluntary measures.

and promoting 'junk' science, massive advertising campaigns, manipulating its existing relationships at the highest level and advocating for self-regulation/voluntary measures, among others.

Turning her attention to the Caribbean, Ms. McGaw highlighted that two main tobacco companies and their subsidiaries dominate the industry in the subregion. However, she provided numerous examples of various breaches of the WHO *FCTC* by the tobacco industry in the Caribbean, such as seeking to increase tobacco production, making financial and in-kind donations to political figures, the sponsoring of youth programmes, scholarships or coordination of training in counterfeit goods identification for government officials. Importantly, she acknowledged the role that civil society groups, such as the Jamaican Coalition for Tobacco Control (JCTC) and various regional and international partners, play in identifying and timely and effectively addressing such breaches, through the use of open letters to the highest level of government, producing articles and launching petitions, for example.

In closing her presentation, Ms. McGaw provided a summary of the key lessons learned, such as the importance of civil society and its partners' 'watchdog' efforts and the need for governments to implement the *WHO FCTC*.

Key Discussion Points and Recommendations from the Discussion Session
Awareness: Awareness is a critical aspect to recognise and counter industry interference. For example, there is a need for campaign financing legislation.
Affiliation: The affiliation is not always clear since some tobacco industry players 'wear different hats' and operate in many spheres within the society.
Border security: The entry of inferior quality tobacco products which are purchased by poor persons is a challenge. However, it should be noted that some countries with the highest taxation have the lowest level of illicit activity.
Taxation: Taxation revenue should go towards programmes for improving the lives of persons living with NCDs so that support from the tobacco industry would not be required or accepted. Jamaica is currently the only country in the region which has earmarked a percentage of its tobacco tax revenue for the prevention of NCDs.
Weigh the costs: It is important to remember that the costs to health, development and the environment supersede any sponsorship or contribution from the tobacco industry.
Information sharing: PAHO to share additional information regarding the relationship with the tobacco industry as set out in the WHO *FCTC* Articles 5.3 and 13 as well as the Guidelines.

The lack of legislation in Caribbean countries has allowed companies to place inappropriate labels on products for infants and children.

5.4 Technical Presentation: Front-of-package and Other Labelling Regulations

***Dr. Audrey Morris**, Decentralized Regional Advisor – Food and Nutrition, PAHO/WHO*

From the outset of her presentation, Dr. Morris highlighted the disconnect between the existing food based dietary guidelines developed by most countries and the reality of the vast consumption of packaged products. She emphasised the need for consumers to be educated about the contents of the foods which they consume and the corresponding need for nutrition information on food labels.

Dr. Morris explained the challenges of existing nutrition labels and contrasted this with FOPL, a simplified way of presenting nutrition information through interpretive and strategic labelling of food products. She also provided an overview of some existing FOPL systems, such as the endorsement system, summary score system, and GDA (monochromatic or colour-coded) systems along with their respective pros and cons. In concluding this comparative analysis of FOPL systems, Dr. Morris described the Warning or High-In approach as being able to provide direct information that allows consumers to quickly and easily identify products which have an excessive amount of nutrients associated with the major causes of death and loss of years of healthy life. She cited the use of the FOPL approach in countries such as Chile, Peru and Uruguay and signalled that a similar approach was being considered in Brazil, Canada and the CARICOM Region.

In concluding her presentation, Dr. Morris emphasised the importance of clear labelling information in the context of breastfeeding. She noted that nutrition and health claims are not permitted on foods for infants and young children, except where specifically provided for in the relevant ***Codex Alimentarius*** standards or national legislation. However, she remarked that the lack of legislation in this area in Caribbean countries has allowed companies to place inappropriate labels on products for infants and children.

5.5 Technical Presentation: Industry Opposition to Labelling in the Nutrition Context

***Ms. Maisha Hutton,** Executive Director, HCC*

Ms. Hutton started her presentation by emphasising that FOPL should be viewed as a foundational policy from which all other policies, such as healthy school policies and sweet beverage taxation policies, can be launched. She noted that the CARICOM Heads of Government endorsed the implementation of policies geared to *"preventing childhood obesity, including for health-promoting school environments and FOPL."*[13] However, despite this endorsement and strong public support for FOPL, she expressed the need for targeted strategies to support the regional FOPL development process, such as mapping and monitoring the national and regional FOPL process, building a strong effective regional network of FOPL advocates and countering industry opposition.

According to Ms. Hutton, mapping and monitoring the FOPL development process seeks to improve transparency and accountability. As such, she highlighted the importance of NMCs comprised of a balanced and representative set of stakeholders to engage in the FOPL process. However, she lamented

13 Communiqué issued at the conclusion of the Thirty-Ninth Regular Meeting of the Conference of the Heads of Government of the Caribbean Community. Available from: ***https://caricom.org/communique-issued-at-the-conclusion-of-the-thirty-ninth-regular-meeting-of-the-conference-of-heads-of-government-of-the-caribbean-community/***

that the NMCs in the subregion were not fulfilling their true potential due to late establishment and unbalanced representation. Nonetheless, she noted that a regional network of FOPL advocates aims to sensitise, support and foster greater engagement around the FOPL process.

Ms. Hutton highlighted industry's use of a variety of arguments to oppose FOPL and the FOPL development process. However, given the lack of evidence in support of industry's position, she also identified the counterarguments **(Table 6)**.

In concluding, Ms. Hutton acknowledged that the delay in the regional FOPL process allowed the Caribbean subregion to learn from Mexico, yet another jurisdiction which has implemented FOPL laws and which has also used the PAHO NPM to do so.

Key Discussion Points and Recommendations from the Discussion Session
A whole-of-government approach is required for FOPL success.
Once the COTED adopts the Regional Standard, each Caribbean country would have to determine whether to make the Standard mandatory or not.
Stickers may be used on imports from foreign manufacturers who do not already have FOPL requirements. However, some manufacturers may adjust their products for foreign export markets.

TABLE 6: INDUSTRY'S OPPOSING ARGUMENTS TO FOPL AND COUNTERARGUMENTS[14]

CATEGORIES	INDUSTRY'S ARGUMENTS OPPOSING FOPL	COUNTERARGUMENTS
FOPL WILL BE DIFFICULT FOR SMALL COMPANIES	Cost to rebrand/relabel; Blacklisting of products; Impact on sales; May cause job losses.	Rebranding is done for other purposes (e.g. sporting events) and in keeping with labelling requirements from other jurisdictions; Obesity and NCD rates continue to increase so that the balance of cost favours healthcare and FOPL.
TRADE IMPLICATIONS	Not aligned to international partners; Not aligned with CODEX; May create a barrier to trade; Will create preferential trade dynamic with Chile resulting in a flood of local markets with Chilean products.	FOPL has been approved by other countries (Canada, Israel, Peru, Uruguay); FOPL is being considered at the CODEX level; The USA is a top trading partner for Brazil, Chile and Jamaica (food product import and export).
ALTERNATIVE SCIENCE	No basis for FOPL; We need sugar in our bodies; There should be balance – people have different needs; Sugar in foods is as much a problem as in drinks.	FOPL is evidence-based.
PREFERENCES	Strongly against the PAHO NPM and prefer other less restrictive profile models; Prefer USA/UK model over Chilean model (black octagon); Adopt traffic light used by UK – more attractive and less solemn; Self-regulation.	FOPL are better able to help consumers correctly identify products with high content of unhealthy nutrients compared to traffic light; In Chile, FOPL have been effective in shifting consumption behavior; Studies have shown self-regulation is ineffective.

14 Source: HCC and the ***Heart Foundation of Jamaica***

The tobacco industry spends billions of dollars annually on increasingly sophisticated and covert forms of TAPS which help to create an illusory view of tobacco as an ordinary consumer product.

Session 6: Common Approaches to NCDs: Marketing Restrictions

6.1 Interactive Discussion: Marketing Restrictions across NCD Risk Factors

Dr. Benn McGrady, *Technical Officer (Legal), Prevention of Noncommunicable Diseases, WHO*

Dr. McGrady provided an introduction of the objectives and best practices for marketing restrictions across NCD risk factors. He highlighted that although marketing restrictions may be implemented as stand-alone interventions, they ought to be implemented as part of a comprehensive approach for greater impact on reducing demand.

Starting with tobacco, Dr. McGrady explained that **Article 13** of the ***WHO FCTC*** creates an obligation to implement comprehensive bans on tobacco advertising, promotion and sponsorship (TAPS). Dr. McGrady noted that this obligation is constrained if the State's Constitution, by way of provisions such as freedom of expression, places a limit on restrictions which can be imposed on TAPS. Such a State would need to implement the maximum restrictions possible in line with its constitutional provisions.

Next, Dr. McGrady discussed the marketing restrictions in relation to alcohol and remarked that the ***WHO SAFER*** package recommends comprehensive bans on alcohol advertising, sponsorship and promotion, to reduce demand and to protect children, adolescents and abstainers from the pressure of starting to consume alcohol.

In relation to unhealthy diets, Dr. McGrady noted that the 2008 ***WHO Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children*** recommends that governments pursue the objective of reducing the power of marketing to children and their exposure to marketing.

To conclude, Dr. McGrady explained that the objectives of the restrictions on marketing were critical to the policy process since they represent exactly what the government hopes to achieve and by extension the type of policy option to be taken. According to Dr. McGrady, clear objectives are critical since the court will consider the objectives to determine the policy's success and effectiveness, if challenged.

6.2 Technical Presentation: Bans on Tobacco Advertising, Promotion and Sponsorship

Dr. Francisco Armada*, Tobacco Control Team, PAHO/WHO*

Dr. Armada commenced his presentation with a summary of some of the available evidence in support of bans on tobacco advertising, promotion and sponsorship (TAPS). He noted, for example, that TAPS increase tobacco use and smoking initiation among youths. Further, the tobacco industry spends billions of dollars annually on increasingly sophisticated and covert forms of TAPS which help to create an illusory view of tobacco as an ordinary consumer product. However, TAPS bans are effective in reducing tobacco sales and consumption.

In examining **Article 1** of the ***WHO FCTC***, Dr. Armada highlighted that its use of the phrase *"likely effect"* would tend to widen the coverage of the bans. He then provided several examples of direct TAPS, such as advertising in newspapers and journals, on billboards or via the internet or the mail, and indirect TAPS, such as free samples, incentive promotions, sponsorship, corporate social responsibility activities and brand stretching and brand sharing.

Dr. Armada noted that under **Article 13** of the ***WHO FCTC*** and the ***Guidelines for implementation of Article 13***, States are to undertake a comprehensive ban on all forms of TAPS, including a comprehensive ban on cross-border advertising, promotion and sponsorship originating from their territories. States should implement such TAPS bans within a five-year period from the entry into force of the *WHO FCTC* and are encouraged to go beyond those measures.

Importantly, Dr. Armada highlighted that tobacco product packaging and design are critical aspects of tobacco advertising and promotion which should be tackled by implementing plain packaging requirements. Tobacco product displays at points of sale and in vending machines should be banned since they constitute advertising and promotion. Likewise, Dr. Armada noted that brand stretching and brand sharing should also be regarded as tobacco advertising and promotion and banned, if they have the effect or likely effect of promoting a tobacco product or the use of a tobacco product directly or indirectly. He also described other TAPS strategies used by the tobacco industry which would also be banned in line with ***Article 13***, namely, the use of social media for TAPS and the depiction of tobacco in entertainment media products, such as films and games.

Finally, he highlighted that the corporate social responsibility guise used by the tobacco industry, such as the financial and in-kind contributions to community, health and other organisations, should also be recognised as TAPS and be banned. With tobacco industry interference being a well-recognised challenge, Dr. Armada closed his presentation by summarising industry's typical arguments and the counterarguments **(Table 7)**.

TABLE 7: TOBACCO INDUSTRY ARGUMENTS AND COUNTERARGUMENTS

TOBACCO INDUSTRY ARGUMENTS	COUNTERARGUMENTS
A ban on tobacco advertising will not decrease tobacco use.	Sound evidence that comprehensive bans on TAPS significantly reduce the use of tobacco.
TAPS only targets adult smokers; it only affects market share.	Internal tobacco industry documents revealed targeting of youth.
Tobacco industry does not promote use by minors. To the contrary, the tobacco industry promotes youth prevention campaigns.	Industry youth prevention programs aim at improving the industry's public image and discourage tobacco control.
A TAPS ban will harm the advertising industry and the economy.	TAPS only corresponds to a small fraction of the total advertising industry.
A ban on TAPS will lead to other advertising bans.	Uniqueness of the product because of its lethality, while similar restrictions exist with other products such as medicines and firearms.
Tobacco is legal and it is not banned. Part of freedom of expression.	Rights may be limited in the interest of public health.
A ban on sponsorship will affect cultural and sportive events.	Evidence from several countries where other sponsors have substituted tobacco industry.
Banning TAPS at the point of sale leads to increased illicit trade.	Aimed at overall decrease regardless of legal or illegal status of the products.

Unlike for tobacco, there is no international or regional agreement to restrict alcohol marketing.

6.3 Technical Presentation: Reducing Exposure to Alcohol Marketing

Dr. Maristela Monteiro, *Senior Advisor on Alcohol and Substance Abuse, PAHO/WHO*

Dr. Monteiro's presentation commenced with an outlook of the concentrated and well-resourced global alcohol market which engages in increasingly sophisticated alcohol marketing and promotion, including to young people. She noted the strong evidence regarding the effect of exposure to alcohol marketing, namely, earlier alcohol drinking initiation and more drinking **(Table 8)**.

She highlighted the range of policy options to reduce exposure to alcohol marketing, such as industry self-regulation, co-regulation that is between industry and the government, partial bans and total bans. In evaluating these policy options, Dr. Monteiro highlighted that at one end of the spectrum of policy options, self-regulation was systematically violated by alcohol industry players and ineffective in the absence of an independent body with power to approve or veto advertisements and impose sanctions. At the other end of the spectrum of policy options, a total ban was easiest to implement, least expensive to implement but will generate the most industry opposition.

Dr. Monteiro was careful to point out that, unlike for tobacco, there is no international or regional agreement to restrict alcohol marketing. This situation has therefore allowed industry to engage in largely unhindered marketing of alcohol, even to children.

In closing, she identified the alcohol industry's key deceptive messages, such as alcohol marketing is not harmful and is simply intended to assist the consumer in selecting a product or brand by which it tries to normalise alcohol consumption and downplay the negative impact of harmful alcohol consumption.

TABLE 8: ALCOHOL MARKETING EVIDENCE

ALCOHOL MARKETING EVIDENCE
Youth exposure is associated with earlier initiation and more drinking;
Youth are more exposed than adults to alcohol advertising of various kinds;
Alcohol industry self-regulation is ineffective;
Brand exposure studies increase the size of the advertising effect on consumption;
Marketing increases purchase and consumption of alcohol;
Increasingly sophisticated range of techniques used in online alcohol promotion to integrate alcohol into the everyday lives of young people;
Alcohol sponsorship of sporting events leads to greater alcohol consumption and implicit brand familiarity and liking among young people;
Point of sale promotions increase the amount of alcohol young people buy on a single occasion.

6.4 Technical Presentation: Restricting Marketing of Foods to Children

Dr. Audrey Morris, *Decentralized Regional Advisor – Food and Nutrition, PAHO/WHO*

Dr. Morris' presentation started by highlighting three seminal documents regarding restricting marketing of foods to children, namely, ***A Framework for Implementing the set of Recommendations on the marketing of foods and non-alcoholic beverages to children***, the ***Set of Recommendations on the Marketing of Foods and Non-Alcoholic Beverages to Children*** and the ***Recommendations from a Pan American Health Organization Expert Consultation on the Marketing of Food and Non-Alcoholic Beverages to Children in the Americas***.

Food marketing needs to be regulated because of its influence on children's food preferences, requests and consumption patterns but also because the type of foods and beverages which are marketed are those which are out of line with dietary recommendations.

Using the Framework for Implementing the set of Recommendations, Dr. Morris identified various types of marketing techniques employed by the food and beverage industry, such as direct advertising, product placement and branding, direct marketing, sponsorship, point of sale and product design and packaging.

She highlighted that the ***Plan of Action for the Prevention of Obesity in Children and Adolescents (2014 – 2019)***, which countries of the Americas unanimously agreed to at the 53rd Directing Council of the Pan American Health Organization, establishes as one of its objectives the enactment of *"regulations to protect children and adolescents from the impact of marketing of sugar-sweetened beverages, energy-dense nutrient-poor products, and fast foods."*

Dr. Morris' presentation not only emphasised that food marketing needs to be regulated because of its influence on children's food preferences, requests and consumption patterns but also because the type of foods and beverages which are marketed are those which are out of line with dietary recommendations. In addition, she pointed out that the marketing of complementary foods, that is, foods other than breastmilk or infant formula, was on the rise and that these foods were being promoted as replacements for breastmilk in contravention of the ***International Code of Marketing of Breastmilk Substitutes***.

In concluding her presentation, Dr. Morris highlighted that voluntary/self-regulatory schemes are ineffective in achieving health objectives since they are typically industry-led and lack genuine enforcement measures while mandatory food marketing regulatory schemes, such as those imposed in Chile (2016) and Mexico (2014), reach expected outputs. She also recommended the use of the *PAHO Nutrient Profile Model* (***PAHO NPM***) to determine which food products to regulate and that the marketing bans or restrictions imposed should target all forms of marketing in accordance with existing PAHO/WHO recommendations.

6.5 Technical Presentation: Marketing of Unhealthy Foods and Non-alcoholic Beverages to Children in the Caribbean

Ms. Maisha Hutton, *Executive Director, HCC*

Ms. Hutton's presentation provided an overview of the marketing of unhealthy foods and non-alcoholic beverages to children in the Caribbean. Key considerations include: the marketing arena is currently unregulated in the Caribbean despite the fact that all CARICOM Member States are signatories to the ***CRC***, which calls for marketing regulations. Ms. Hutton illustrated the ingenuity of civil society who developed a regional Food and Beverage Industry Monitor which identifies industry actors and their main processed and ultra-processed products and instances of industry engaging in activity to influence policy and public opinion, among other activities.

Her presentation continued with visual examples of direct and indirect marketing of sweet beverages to children in Caribbean school settings, at school events and in other contexts. Here, examples evidenced the fact that the food and beverage industry employs a number of tactics, such as the use of brand characters, donations of school materials, such as note books and school planners and donations to school feeding programmes and the sponsoring of school spelling bees and sporting events, among others.

Ms. Hutton identified various challenges in the regulation of marketing of unhealthy foods and non-alcoholic beverages to children, namely, the lack of hard data on the scope and scale of the issue; the lack of public and policy support for this intervention; limited resources leading to heavy financial reliance on food and beverage industry sponsorship in school settings; absence of conflict of interest guidance for public sector actors engaging with the food and beverage industry; and limited public sector capacity to regulate various types of marketing, including in school settings.

In closing, Ms. Hutton presented some solutions such as creating the evidence required for policy formulation, the use of rights-based language, the identification of champions who have political influence, the engagement of private sector entities which are health-promoting which can fill the critical funding gap in schools and education, and leveraging growing momentum for regulation on sweet beverages in schools to push for joint policies banning sale and marketing on school premises and at school events.

Key Discussion Points and Recommendations from the Discussion Session
There should be specific guidelines, similar to the WHO *FCTC* Guidelines for nutrition and alcohol as it relates to conflict of interest in NCD prevention and control.
Common entry points which make marketing as a whole attractive must be considered in the same way that tax laws apply to not just one product but all products.
Public campaigns linked to a clear plan of regulatory reform can be helpful.
Participants requested policy guidelines in relation to the use of sweeteners.

Session 7: The Role of Human Rights in Shaping Countries' Actions to Tackle NCDs

7.1 Technical Presentation: The Role of Human Rights in Shaping Countries' Actions to Tackle NCDs

Dr. Alejandro Morlachetti, *LEG/Human Rights, PAHO/WHO*

Dr. Morlachetti provided an overview of the main human rights instruments relevant to the prevention and control of NCDs. He noted, for example, that the right to health, as first identified in the WHO Constitution, is also recognised in several other international instruments, such as the ***Universal Declaration of Human Rights*** (UDHR), the ***International Covenant on Economic, Social and Cultural Rights*** (ICESCR), the ***International Convention on the Elimination of All Forms of Racial Discrimination*** (CERD), the ***Convention on the Elimination of All Forms of Discrimination against Women*** (CEDAW), the ***Convention on the Rights of the Child*** (CRC) as well as the ***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.***

The right to health, as Dr. Morlachetti went on to describe, is an interconnected and interrelated right, linked to the right to food and access to information, among other rights. He also explained that in relation to human rights, like the right to health, a State has a tri-fold duty to respect, protect and fulfil its treaty obligations. He emphasised that the duty to protect included the need to take measures to prevent non-State third parties, such as industry players, from interfering with the right to health.

Dr. Morlachetti noted that each treaty has a corresponding Committee which has various functions, namely, to monitor treaty compliance, to issue recommendations and to prepare General Comments which seek to clarify the duties of States in relation to the particular treaty. Then, giving attention to the rights of the child, Dr. Morlachetti highlighted that all of the CARICOM Member States have ratified the CRC; a phenomenon which indicates an acceptance of the corresponding Committee on the Rights of the Child and its General Comments related to health and health rights **(Table 9)**. CARICOM Member States are obligated to report every 5 years on their progress in implementing the treaty to the Committee on the Rights of the Child.

Dr. Morlachetti's main message to participants was that States' international obligations arise at the moment of ratification, that is, States are accountable at the international level for treaty compliance. In closing, Dr. Morlachetti mentioned ***PAHO's Strategy on Health-Related Law (2015)*** and the ***Strategic Plan of the Pan American Health Organization 2020-2025 (SP20-25)*** which suggest that a human rights approach should be adopted for any cooperation.

TABLE 9: GENERAL COMMENTS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD WHICH ARE RELEVANT TO THE RIGHT TO HEALTH

COMMITTEE	GENERAL COMMENT	SUBJECT MATTER
Committee on the Rights of the Child	General Comment No. 5 (2003)	General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)
	General Comment No. 7 (2005)	Implementing child rights in early childhood
	General Comment No. 14 (2013)	The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)
	General Comment No. 15 (2013)	The right of the child to the enjoyment of the highest attainable standard of health (art. 24)
	General Comment No. 16 (2013)	State obligations regarding the impact of the business sector on children's rights

Key points from the Q&A session:
Typically, the process of ratification implicates the Executive power and the Legislative power. However, dualist countries, like the majority of Commonwealth countries, require implementing legislation for treaties to have full domestic legal force.
When a state ratifies a treaty, whether it is monist or dualist, it has international responsibility to progressively adopt measures, such as adopt legislation, to implement the treaty and cannot take measures that are flagrantly in breach of the treaty.
The Organization of American States' Rapporteur on Economic, Social and Cultural Rights just published a new report entitled "***Business and Human Rights: Inter-American Standards***" which includes obligations of the OAS member states regarding private entities involved in violating or helping to realize human rights.

Session 8: Comparative Litigation

8.1 Technical Presentation: Comparative Litigation

Dr. Benn McGrady*, Technical Officer (Legal), Public Health Law and Policies Unit, Health Promotion Department, WHO*

Dr. McGrady's presentation focused on the 'typical' legal claims which companies bring to challenge the implementation of the ***WHO 'Best Buys'***, such as tobacco plain packaging. In introducing this topic, Dr. McGrady noted that multinational corporations tend to make the same or similar regulatory, political and legal arguments regardless of the applicable domestic and/or international law. As such, knowledge of these 'typical' claims would help States to anticipate the arguments, strengthen their legal positions and design strong laws and regulations.

Dr. McGrady highlighted the fact that companies often used constitutional or international litigation to challenge domestic implementation of the WHO *'Best Buys',* primarily those which require legal intervention. Using tobacco plain packaging as an example, he highlighted that the 'typical' claim purports that the imposition of such an intervention is disproportionate, an infringement of property

A fair balance ought to be struck between the public interest in the protection of health, on the one hand, and the private interest of the tobacco company, on the other hand.

rights or the right to freedom of expression and/or that the intervention is more trade restrictive than necessary **(Table 10)**. However, he indicated that similar claims have been made with regards to other interventions, such as graphic HWs and TAPS bans.

According to Dr. McGrady, constitutional courts, in addressing such claims, have to engage in a balancing act to determine the legitimacy of government action which interferes with the rights of companies. However, under the common law, notions of rationality, reasonableness and necessity are applied to determine the legitimacy of government action.

To date, plain packaging claims have been made to domestic courts, the European Court of Justice (ECJ), the World Trade Organization (WTO) and before an international investment arbitration tribunal. Dr. McGrady used the ***British American Tobacco UK Ltd & Others, R (on the application of) v The Secretary of State for Health***[15] case to illustrate the 'typical' arguments in greater detail. In this case, British American Tobacco UK Ltd (BAT) and other tobacco or tobacco-related companies as claimants unsuccessfully appealed an earlier High Court judgment. The Court of Appeal rejected BAT's 17 grounds of appeal and upheld the UK's tobacco plain packaging law.

Dr. McGrady went on to highlight three key arguments emanating from the case, namely:

(1) arguments on the nature of rights,

(2) arguments on how rights are affected, and

(3) arguments on how legal tests apply.

In relation to arguments on the nature of rights, he explained that both the UK High Court and Court of Appeal found that the trademark property rights in question were negative rights. This means that BAT could prevent others from using its trademarks on similar products; however, BAT did not have a corresponding positive right to use the trademark on its own tobacco products. BAT's arguments about its rights being severely affected were also rejected by the UK Court of Appeal, which instead found that the legal control imposed was not a deprivation on the use of BAT's trademarks which could still be asserted. In terms of BAT's arguments on how the legal tests should apply, the court found that a fair balance ought to be struck between the public interest in the protection of health, on the one hand, and the private interest of the tobacco company, on the other hand. Dr. McGrady noted that these three arguments are also representative of the typical legal claims which companies make.

In arriving at its decision in favour of the Secretary of State for Health (UK), the court relied on the proportionality principle and considered, not only the right to health but also *superior health interests*. Dr. McGrady noted that this latter concept is linked to public interest and recognises that the UK has an inherent authority to regulate in the public interest, even in the presence of some other competing right, such as a property right.

In closing, Dr. McGrady reiterated that the framing of clear objectives is critical to strengthen states' legal, political and policy positions. The objectives will determine the benchmark against which the specific government intervention will be measured and either upheld or struck down.

15 [2016] EWCA Civ 1182 (30 November 2016).

TABLE 10: SUMMARY OF THE 'TYPICAL' INDUSTRY CLAIMS IN CONSTITUTIONAL OR INTERNATIONAL LITIGATION TO CHALLENGE TOBACCO CONTROL MEASURES

INTERVENTIONS	TYPICAL CONSTITUTIONAL OR INTERNATIONAL LITIGATION
Tobacco Plain Packaging	Proportionality – Property Rights (IP) – Free Expression – Necessity (Trade)
Tobacco taxation	Ultra Vires – Equal Treatment
Smoke-free policies	Rights to Conduct a Business – Proportionality
Tobacco health warning	Proportionality – Free Expression – Property Rights
Tobacco advertising, promotion sponsorship bans	Free Expression – Proportionality
Alcohol availability regulations	Rights to Conduct a Business – Ultra Vires
Alcohol advertising or promotion bans	Proportionality – Free Movement – Free Expression
Alcohol pricing policies	Free Movement – Non-Discrimination (Trade)
Marketing to children restrictions	Free Expression – Proportionality – Property Rights
Marketing of breastmilk substitutes restrictions	Free Expression – Property Rights (IP)

Session 9: Pursuing Policy Coherence: Trade, Investment and NCDs

9.1 Technical Presentation: Pursuing Policy Coherence: Trade, Investment and NCDs

***Ms. Nicole Foster**, Deputy Dean, Law Faculty, UWI Cave Hill and Policy Advisor, HCC*

Ms. Foster provided a comprehensive introduction to WTO law, the disputes pertaining to NCDs and to investment law specifically in the context of the ***Philip Morris v Uruguay***[16] case. She opened her presentation by explaining several foundational concepts of the WTO regime, namely, Most Favoured Nation, National Treatment and tariff bindings. Ms. Foster explained the various legal tests applied to determine whether there are infringements of these rules in the areas of trade in goods and services including the key concept of whether the product or services in question are 'like'. She indicated that 'likeness' is determined based on factors such as the specific product's tariff classification, physical characteristics and the end users' tastes or preferences. She also explained the general exceptions in **Article XX (General Exceptions)** of the ***General Agreement on Tariffs and Trade (GATT)*** (and its equivalent under **Article XIV** of the ***General Agreement on Trade in Services (GATS)***) which may be applicable to NCDs, such as measures which are *"necessary to protect human, animal or plant life or health."*

Ms. Foster also noted that the ***Agreement on Technical Barriers to Trade*** (TBT), which provides for *"technical regulations"*, would also regulate FOPL. However, she highlighted that the technical regulations or FOPL must not be *"more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create."*[17] She noted that specifically listed within the TBT Agreement was the very clear public health objective of *"protection of human health or safety..."*[18]

16 Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7 (formerly FTR Holding SA, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay)

17 TBT Agreement, Article 2, para 2.2.

18 Ibid.

Using key WTO cases,[19] Ms. Foster illustrated several of the WTO principles and exceptions. She however emphasised the recent ***Australia–Tobacco Plain Packaging***[20] decision where Honduras, the Dominican Republic, Cuba and Indonesia brought claims against, the eventually successful, Australia, under the TBT Agreement, for its tobacco control regulations, in particular its tobacco plain packaging requirements. Importantly, the Appellate Body considered that Australia's labelling measure, being a part of a comprehensive suite of tobacco control measures, could not be removed since the measures were most effective as a collective. In addition, Ms. Foster noted the reliance placed on the evidence from the joint submission or amicus brief submitted by the WHO and the WHO *FCTC* Secretariat. She concluded the trade aspect of her presentation by reiterating the importance of clear and well-articulated public health objectives in legislation and regulations.

Considering NCDs in the context of investment law, Ms. Foster explained that there was no WTO equivalent or multilateral organization to govern investment. As such, the individual bilateral agreements and regional agreements must be analysed to determine the existing State and investor commitments.

Relying on the ***Philip Morris v Uruguay*** arbitration, Ms. Foster illustrated that the arbitral Tribunal rejected Philip Morris' direct and indirect expropriation claim and found that adoption of the tobacco measures was a valid exercise of the state's police powers and did not cause a "a 'substantial deprivation' of the value, use or enjoyment of the Claimants' investments". Ms. Foster explained several of the legal tests, such as whether the actions in question were for "*bona fide* for the purpose of protecting the public welfare,...non-discriminatory and proportionate". Importantly, the Tribunal relied on evidence from the WHO, the WHO *FCTC* Secretariat and PAHO regarding the extent of the public health threat posed by smoking within Uruguay and the desirability and effectiveness of the measures taken by Uruguay in response.

In closing, Ms. Foster reiterated the significance of the ***WHO FCTC*** and the importance of amicus briefs in the face of legal challenges.

Session 10: Opportunities to Advance the Use of Law: the Way Forward

10.1 Technical Presentation: Opportunities to Advance the Use of Law: the Way Forward

The Honourable Mr. Justice Winston Anderson*, Judge of the Caribbean Court of Justice (CCJ) and Chairman of the CCJ Academy for Law (CAFL)*

Justice Anderson shared the opening remarks of his presentation with young Nia, who stated, *"change will not come, if we wait for some other person or some other time. We are the change that we have been waiting for."*[21] He continued the presentation by highlighting that the effective use of law as a tool to address NCDs and their risk factors should be actively pursued in the Caribbean.

Recognising the role that courts play in law enforcement, Justice Anderson provided an overview of the two jurisdictions of the ***Caribbean Court of Justice*** (CCJ), the highest court in the CARICOM Region. In its appellate jurisdiction, the CCJ interprets and applies the relevant national laws of CARICOM Member States which have acceded to that jurisdiction.[22] In relation to health, he mentioned that the CCJ in its appellate jurisdiction would have to apply and interpret national health laws or

19 Panel Report, European Communities – Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/R and Add.1, adopted 5 April 2001, as modified by the Appellate Body Report, WT/DS135/AB/R (EC Asbestos); Appellate Body Report, European Communities – Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, adopted 5 April 2001 (EC Asbestos); United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/AB/R adopted 16 May 2012 (US Tuna II); Appellate Body Report, Philippines – Taxes on Distilled Spirits, WT/DS396/AB/R, WT/DS403/AB/R, adopted 20 January 2012 (Philippines – Spirits); Appellate Body Report, United States – Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R adopted 4 April 2012 (US Clove Cigarettes).

20 Appellate Body Report, Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging, WT/DS435/AB/R and WT/DS441/AB/R.

21 Quote by Barrack Obama, former President of the United States of America.

22 Guyana, Barbados, Belize and Dominica have all acceded to the appellate jurisdictions of the CCJ.

The responsibility for change is on those desirous of change.

constitutional provisions on health, for example.[23] On the other hand, in its original jurisdiction, the CCJ has compulsory and exclusive jurisdiction to interpret and apply the *Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy* (***RTC***).[24] To assist with its interpretative task, the CCJ uses customary international law – a source of international law in its own right, made up of both state practice and opinion juris or acceptance as law. Importantly, several widely endorsed declarations and resolutions on health, such as the ***POSD***, may be evidence of state practice.

Justice Anderson also noted that the RTC includes substantive provisions, which may have health implications, and institutional provisions, which may also establish institutional responsibility for the protection and promotion of health. As examples of the substantive provisions, he cited **Article 6** (Objectives of the Community), **Article 65** (Environmental Protection) and **Article 226** (General Exceptions) of the RTC. In relation to the institutional provisions establishing responsibility for the protection and promotion of health, Justice Anderson noted that the Conference of Heads of Government (COHG), CARICOM Region's main Organ, has power to determine the policy direction of the Community pursuant to **Article 12** (Functions and Powers of the Conference) of the RTC and its Decisions are legally binding on CARICOM Member States, subject to **Article 240** (Saving)[25] of the RTC. He also noted that the COTED and the COHSOD are Community organs with health implications. However, the absence of litigation to date on either the substantive or institutional provisions regarding health means that the interpretation and application of those provisions remain unknown.

Justice Anderson emphasised the ease of access to the CCJ for Member States, as well as for private entities, such as individuals, companies and NGOs who satisfy the **Article 222** (Locus Standi of Private Entities) requirements. However, another means of access was for Member States parties to a dispute or the Community to request advisory opinions concerning the interpretation and application of the substantive and institutional provisions of **Article 212** (Advisory Opinions of the Court).

In closing, Justice Anderson reiterated that the responsibility for change was on those desirous of change. As such, the way forward in advancing the use of law to prevent and control NCDs was, quite plainly, to *use* the law. Participants were therefore left to reflect on the value of litigation to further the health agenda and to address the several unanswered questions, namely:

- How are the provisions of the RTC pertaining to health to be interpreted and applied?
- Are international standards on NCDs binding as customary international law?
- What is the legal obligation on CARICOM Member States which have signed and accepted the WHO FCTC?
- Can a private entity from a CARICOM Member State which has ratified but not domestically implemented the WHO FCTC bring an action on the basis of legitimate expectation?

23 Constitution of the Co-operative Republic of Guyana, Article 146; Belize Constitution, Cap. 4, Preamble.

24 Article 211 of the RTC states that the CCJ "shall have compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty".

25 Article 240 (1) states "Decisions of competent Organs taken under this Treaty shall be subject to the relevant constitutional procedures of the Member States before creating legally binding rights and obligations for nationals of such States".

- Can the health exceptions be used to restrict the importation of unhealthy products?
- Can public interest groups establish standing to bring these cases?

Key Discussion Points
Consideration should be given to the formation of a public interest litigation group if the Caribbean is going to effectively use law to tackle NCDs.
Member states may seek Advisory Opinions of the CCJ in relation to the health measures which they are interested in taking, especially if such measures are likely to experience push-back from the industry.

III. OUTCOMES AND PRIORITY ACTIONS

Following the discussions in the working groups on tobacco control, alcohol control, nutrition and health law research, the Rapporteur selected by each working group reported to the Plenary on the key messages and priority actions. The key messages and priority actions for these Working Groups are provided below:

Working Group on Tobacco Control

Key Messages

- **Tobacco control efforts in the Caribbean subregion continue to lag**. As of December 2019, only three Caribbean countries had fully implemented three of the four ***WHO 'Best Buys'*** for tobacco control, while seven countries had not yet implemented any of those measures at the highest level.
- The full implementation of the ***WHO FCTC*****'s evidence-based measures continues to be crucial for addressing the tobacco epidemic**. The WHO FCTC is mandatory for State Parties and legislation is fundamental for its implementation.
- Caribbean countries have used different approaches to implement *WHO FCTC*-compliant tobacco control legislation, such as through comprehensive tobacco control Acts (***Guyana*** and ***Suriname***), tobacco control regulations under the Public Health Act (***Jamaica***) and tobacco health warnings regulations under the Standards Act (***Saint Lucia*** and ***Barbados***). However, regardless of the different situations of tobacco control legislation in the Caribbean subregion, there is a need to strengthen tobacco control using laws with interventions aimed at either disseminating existing legislation, drafting new legislation and regulations or strengthening their enforcement.
- There are concrete **global, regional and subregional mandates which provide an opportunity to accelerate the implementation** of the *WHO FCTC*, including a mandate for a 100% smoke-free Caribbean by 2022.
- **100% smoke-free environments are cost-effective measures** with short-term health benefits that increase over time. These are feasible and effective measures falling primarily within the portfolios of the Ministries of Health which do not require large budgets, and which have already been successfully implemented by a number of Caribbean countries.
- **100% smoke-free environments do not have a negative impact on businesses or the economy**. In fact, evidence from developed countries indicates that smoke-free workplace policies have a net positive effect on businesses and the same is likely to be the case in developing countries.
- Only comprehensive smoking bans for at least all indoor public and working places, as required by the *WHO FCTC* and the *Guidelines for implementation of Article 8,* can provide effective protection since **there is no safe level of exposure to second-hand smoke.**

- Key considerations for drafting effective 100% smoke-free legislation include: (1) ensuring **adequate definitions**; (2) including a **complete smoking ban in all indoor public places and workplaces and in all public transport**; (3) **placing duties of compliance on the person responsible for the premises;** and (4) **specifying the inspection authorities** and duties as well as the **enforcement and penalties**.
- **Multisectoral collaboration**, including between health and foreign affairs, lies at the core of the implementation of the *WHO FCTC*. However, greater coordination among sectors is still required to ensure policy coherence and align priorities at national, regional and international levels.
- The **tobacco industry interference is the single most important challenge** for strengthening tobacco control in the Caribbean. As such, anticipating and counteracting such interference is critical for developing and implementing sound tobacco control legislation. Legislation itself can also contribute to counteract tobacco industry interference by promoting transparency in the interaction with the industry, managing conflicts of interest and limiting the industry actions to interference with public policies.
- A **network of lawyers and health policy experts in the Caribbean could be a useful mechanism for exchanging experience and expertise**, building capacity for tobacco control and addressing common and emerging challenges for the use of law for tobacco control.

Priority Actions and Required Technical Assistance

- **Address industry interference**, including concerns regarding funding of political campaigns.
- Provide **information on new tobacco products**.
- **Share best practices** within the Region, particularly now that more countries are developing tobacco control legislation.
- In collaboration with CARICOM, **review the impact of CARICOM policies on taxation, economic development law** such as duty free, and consider the development of model tobacco legislation.
- **Engage with customs officers** on duty free laws and special privileges.
- Create **opportunities for the orientation of legal practitioners on public health law**, including drafters and AGs.
- Request the **designation of a legal focal point for NCDs** who would operate in addition to the technical focal point.
- Propose the **implementation of special taxes on companies and use the revenue for work in the specific public health area.**

Working Group on Alcohol Control

Key Messages

- **Alcohol is a key risk for public health beyond NCDs**, including violence, injuries, maternal and child health, adolescent health and mental health.
- **The *WHO SAFER* is a core set of proven alcohol policies** that can effectively reduce the harmful use of alcohol nationally and serve as common language for regional cooperation.
- The three key strategies: **implement, monitor, protect**, facilitate the planning of activities and the elaboration of national plans, supported by civil society and leaders, with a clear view on the need to balance commercial and public health interests to win the battle of sustainable development with better health.

- There are many **similarities between alcohol, tobacco, SSBs and ultra-processed foods in terms of the policies needed to reduce their consumption** as well as the role of related industries in interfering with their development or implementation. Working across sectors, building on the lessons learned and the essential elements of health law making from one risk factor can be used to speed up progress on implementing the necessary regulatory measures for reducing alcohol-related harms.
- Each country can **commit to the adoption of a national plan with an assigned budget and activities to achieve progress on reducing alcohol related harms** due to NCDs, injuries, mental health, and infectious diseases. Such plans could include at least one of the WHO '*Best Buys*' and one 'good buy' from the WHO *SAFER*.

Country-Specific Priority Actions and Required Technical Assistance

- **Jamaica**: technical support requested to facilitate a multisectoral national workshop on alcohol policy and to create awareness about the foetal alcohol spectrum disorders (FASD), including training of health professionals.
- **Suriname**: technical support requested to accelerate the adoption of the national alcohol policy and facilitate a national dissemination workshop once it is adopted.

Proposed Subregional Priority Actions and Required Technical Assistance

- In collaboration with CARICOM, **harmonize legislation for drunk driving and minimum drinking/purchasing age in the Caribbean**.
- **Include the harmful use of alcohol as an agenda item in the meeting of CMOs**, showing the broad implications of alcohol beyond NCDs (e.g. violence and crime, road safety, adolescent health).

Working Group on Nutrition

Key Messages

- **Demand and supply reduction policies** to reduce processed and ultra-processed food and drink products, including breastmilk substitutes, are necessary to curb the obesity and NCD epidemics. These policies may include: (1) regulation of labelling (FOPL and elimination of persuasive elements); (2) restriction of marketing; and (3) regulation of school environments and other settings.
- **Policies and standards at the global or regional level must be given effect through national legislation** and must be seen through to approval and implementation.
  - Existing opportunities to adopt each of these policies at the country and subregional level in the Caribbean include:
    - CROSQ's revision of the CARICOM labelling standard, including FOPL.
    - Suriname's national legislation of the ***International Code of Marketing of Breastmilk Substitutes*** is the first such legislation in the English-speaking Caribbean at this level and should be emulated.
    - Grenada and Trinidad and Tobago have used different processes in policies for regulating the school environment.

Country-specific Priority Actions and Required Technical Assistance

- **Guyana**: complete development of a national nutrition strategy (currently in draft form); work on banning SSBs in schools; implement a public education campaign on FOPL and implement FOPL.
- **Saint Lucia**: develop a National School Nutrition Policy, a national plan to reduce trans fats and a public education strategy to reduce trans fats.
- **Suriname**: finalize, launch and implement a salt reduction plan; reformulate foods to reduce the three critical nutrients (salt, sugar, fat); and continue work on the legislation of the Code.

Proposed Subregional Priority Actions and Required Technical Assistance

- In consultation with member states, **comprehensive regional nutrition policy** covering all aspects of nutrition (e.g. banning trans fats, FOPL, taxation, restriction of marketing, reformulation, breastmilk substitutes, school nutrition environment).
- Conduct a **mapping of existing food and nutrition country policies and legislation**, revise policies based on regional policy and explore amending existing laws and/or introducing new comprehensive legislation.
- Provide **technical guidance for countries in banning trans fats**, including dissemination of the final report of a technical meeting held by PAHO in Mexico in 2019.
- Share **technical recommendations for school nutrition standards** for countries to use.

Working Group on Public Health Law

Key Messages and Priority Actions

- **Identify and encourage a cadre of lawyers interested in and/or committed to addressing public health and NCDs issues.**
- **Establish a research agenda to promote enforcement of NCD legislation** and increase use of the courts more effectively, as well as research into how to treat with mental health issues and the health precursors to crime and violence
- **Establish a pressure group**, that is, a group dedicated to litigation of public health matters, within universities or civil society and determine the areas of litigation (such as FOPL, smoke-free public spaces, challenge marketing and advertising practices) as a strategic intervention.
- **Develop legal resources**, including:
  - a detailed report of the Subregional Workshop on the use of law to address NCDs in the Caribbean;
  - a special publication (e.g. special issue of the Pan American Journal of Public Health) based on the contents of the meeting;
  - develop a collection or manual of relevant conventions, legislation, case law, and law articles;
  - contribute to a proposed meeting of judges and legal officers to be convened by the O'Neill Institute for National and Global Health Law and PAHO.

Discussion about a Caribbean Network of Legal Officers

Working on Health

***Dr. Ignacio Ibarra**, Advisor on Health-related Legislation, PAHO/WHO* chaired a plenary discussion about the proposed Caribbean Network of Legal Officers working on health. He explained that such a network is in line with PAHO's regional mandate, namely, to strengthen legal capacity and to provide useful tools.

Presentation by Campaign for Tobacco-Free Kids (CTFK) Network

The CTFK presentation provided practical examples of its work with several networks and provided participants with a first-hand look at a prototype for the proposed Caribbean Network. CTFK also provided guidance on the experiences and lessons learned from one of its most active networks, namely, the Latin American Lawyers Network.

Experiences and Lessons Learned from the Latin American Lawyers Network

- The registration process includes the name of the facilitator, conflict of interest (COI) declarations, terms of use and privacy policy approvals.
- The network is primarily used for sharing legislative developments from the region and around the world as well as updates regarding litigation, whether directly involving persons on the network or through partners of the network.
- Members of the network who are developing legislation may ask questions or solicit recommendations for the legislative provisions from the network and this encourages interaction and knowledge-sharing.
- Some members also share litigation strategies. However, caution is required regarding who has access to this information where the network has government and non-government members.
- The network is also used to request support from various partners, such as requesting amicus briefs.
- It is important to link the network to a face-to-face meeting.
- It is important that many persons participate, not just the facilitator. Strategies to encourage participation which have been successfully used include: (a) encouraging all members to share relevant information received via email on the network instead of sending that information to the facilitators to share, (b) posting a question on the network and then following up with members, sometimes off of the network, for their response or (c) linking new posts to the network to an older post.

Summary of the Discussion on the Establishment of a Caribbean Network on the Use of Law to Advance Public Health
Title:
Consider a broad title to reflect the eventual broad scope of the network in terms of content and membership. Participants suggested using the title "**Caribbean Public Health Law Forum**".
What?
Scope: The network's scope should initially focus on NCDs and their risk factors as an entry point. However, this scope should eventually be expanded to include other public health law topics.
Why?
Purpose and objectives: The purpose and objectives of the network must be clearly articulated to guide other features of the network, such as membership and usage. Participants agreed that the purpose should be to provide a space for continued communication, engagement and collaboration.

Who?

Membership: The categories of members should initially include:

1. government officials, including CARICOM;
2. regional institutions, such as CROSQ and CARPHA;
3. lawyers and health officials/personnel;
4. NCD focal points;
5. civil society organizations; and
6. academia, including law students.

All prospective members should be required to sign COI declarations as part of the membership process. Invitations for membership can be shared with others; however, prospective members must indicate who invited them to join the network as part of the registration process.

There should be visibility afforded to all members to know who the other members on the network are at any time. However, members should have different levels of access depending on their membership profile and based on the platform's information technology capabilities.

Participants agreed that membership of the network should be modest initially but expand progressively. PAHO should request formal nominations from the various Ministries of Health and Legal Affairs to establish an initial core group while opening participation to as many legal officers as requested by countries.

Where?

Platform: The CTFK platform created for the Caribbean Network was well received by participants.

How?

The platform will be provided by CTFK but administered by PAHO. Important features of the platform would include messaging board functionality for sending and receiving messages to and from specific categories of members, file sharing or posting forums, library, resources or database tool and email updates.

The functionality should facilitate the following uses of the network, including but not limited to:

1. Discuss common concerns related to NCDs;
2. Exchange legislative drafting and litigation strategies;
3. Observe worldwide or regional trends in legislation and litigation;
4. Share legal documents such as laws and court pleadings;
5. Search posts and document library;
6. Debate, question, comment and connect with each other; and
7. Technical cooperation requests.

Priority Actions

Participants agreed:

1. To establish a small work group to review the Terms of Reference based on the broad agreements outlined above;
2. To indicate their interest on being included in the platform while PAHO seeks formal nominations from the various Ministries of Health and Legal Affairs;
3. That PAHO will seek clearance from its PAHO/WHO legal team to use the CTFK platform.

IV. CONCLUSION

In conclusion, the three-day Subregional Workshop provided an important opportunity to consider the use of law to address NCDs in the Caribbean through the various technical presentations and the sharing of country experiences in working groups and round table and plenary discussions. From day one of the Subregional Workshop, participants were provided with a comprehensive overview of the global and regional public health mandates across NCD risk factors, whether soft law or hard law. Subregional Workshop participants also benefitted from a clear situation mapping of the Caribbean NCDs and their risk factors from various technical experts and civil society advocates.

With that foundation firmly established, day two provided participants with an opportunity to get familiarised with best practices in the use of law to regulate and control NCDs and their risk factors and to make connections across NCD risk factors, particularly in relation to marketing regulations and labelling requirements. It was quickly evident from the various technical presentations and round table discussions that industry interference with public policies is pervasive across all risk factors. However, the presentations and discussions also highlighted the ongoing 'watchdog' efforts of civil society and partners in mapping industry interference and addressing such. Overall, there was greater recognition of the scope which exists for cross-learning and inter-sectoral collaboration in relation to NCD risk factor policies, such as tobacco products packaging and labelling.

The workshop offered meeting participants with an opportunity to network, formally and informally, with persons from several professional profiles or affiliations. This not only provided an opportunity to identify the potential for greater South-South experience and knowledge sharing. Critically, the Subregional Workshop opened the doorway for continued communication, collaboration and engagement on NCD prevention and control and law matters via the agreement to establish a Caribbean Public Health Law Forum.

Finally, the Subregional Workshop also resulted in a set of strategic actions to advance the enactment, implementation and enforcement of NCD risk factor policies through laws and regulations in the Caribbean at the country-specific and regional levels. Overall, the Subregional Workshop reinforced the importance of law to address NCD risk factors and illuminated for its participants the potential avenues to be explored in the use of the RTC to address NCDs.

The Use of Law to Address Noncommunicable Diseases in the Caribbean

Subregional Workshop Report. Miami, 3–5 March, 2020

The Pan American Health Organization and the International Legal Consortium at the Campaign for Tobacco-Free Kids, with support from the European Union, held the subregional workshop 'The Use of Law to Address Noncommunicable Diseases in the Caribbean' on 3–5 March 2020 in Miami, the United States of America. The three-day workshop sought to build capacity to advance the use of law and regulations to address noncommunicable diseases (NCDs) and their risk factors in the Caribbean.

NCDs and their four main risk factors (tobacco use, physical inactivity, the harmful use of alcohol, and unhealthy diets) remain leading causes of mortality, morbidity, and disability in the Caribbean. However, this subregion lags in terms of the implementation of NCD risk factor policies that require regulatory action. In this context, the use of law has a central role to play. Therefore, the workshop familiarized participants with the best practices in the use of law to regulate and control NCDs and their risk factors.

This Subregional Workshop Report reflects the contributions made during the technical presentations and question and answer segments, round-table discussions, plenary discussions, and working groups. It highlights the important connections made across NCD risk factors, particularly in relation to marketing regulations and labelling requirements.

Finally, the Subregional Workshop Report reflects the set of strategic actions to advance the enactment, implementation, and enforcement of NCD risk factor policies through laws and regulations in the Caribbean. These include the establishment of a Caribbean Public Health Law Forum for continued communication, collaboration, and engagement on health and law matters.

PAHO Pan American Health Organization
World Health Organization Regional Office for the Americas
Campaign for Tobacco-Free Kids®