


RESEARCH ARTICLE

Human Rights Implications of Unregulated Energy Drink Advertisements in Nigeria

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Abstract

Excessive consumption of energy drinks poses significant risks, including the development of various non-communicable diseases. This trend is driven by a combination of the desire to remain alert and the strategic use of catchy advertising slogans by manufacturers, particularly targeting young adolescents. Unlike tobacco products, which are similarly linked to such diseases, Nigeria lacks legislation requiring energy drink manufacturers to warn consumers about potential adverse health effects. This paper argues that the absence of such regulation constitutes a violation of the right to health in Nigeria. It concludes by advocating for the Nigerian government to enact laws mandating energy drink manufacturers to include clear health warnings on their products.

Keywords: energy drinks; non-communicable diseases; health warning; human rights; right to health; Nigeria

Introduction

Non-communicable diseases (NCDs), including cardiovascular diseases, cancer, diabetes and chronic respiratory conditions, are the leading cause of premature deaths globally.¹ According to

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1 World Health Organization “Non-communicable diseases”, available at: <https://www.who.int/health-topics/noncommunicable-diseases#tab=tab> (last accessed 3 December 2024).

the World Health Organization (WHO),² NCDs account for nearly 75 per cent of global deaths annually and disproportionately affect low- and middle-income countries.³ Nigeria, in particular, faces a significant burden, with NCDs contributing to 29 per cent of annual deaths.⁴ Projections indicate that by 2030, NCDs will account for a substantial percentage of morbidity and mortality in Nigeria,⁵ highlighting the urgency of addressing modifiable risk factors that contribute to these diseases.

Research indicates that NCDs are influenced by a combination of genetic, physiological, environmental and behavioural factors.⁶ Modifiable behaviours such as unhealthy diets, tobacco use, physical inactivity and harmful alcohol consumption are known to increase the risk of NCDs.⁷ Another emerging risk factor is the excessive consumption of energy drinks, which has been linked to diabetes, obesity and cardiovascular diseases.⁸ While moderate consumption of energy drinks may pose minimal risk to healthy individuals, studies highlight significant health risks associated with excessive intake, especially among children, adolescents and individuals with pre-existing health conditions.⁹ Adverse effects such as headaches, insomnia and increased alcohol and tobacco consumption have also been tied to energy drink use.¹⁰

Globally, governments have responded to the public health risks associated with energy drinks by implementing policies aimed at reducing their consumption. Measures include advertising restrictions, mandatory labelling and public awareness campaigns to create a more health-conscious environment.¹¹ In Nigeria, however, the government is yet to regulate the advertisement of energy drinks, even though laws exist to restrict the advertising of other harmful products like alcohol and tobacco.¹² This paper argues *inter alia* that this regulatory gap increases the risk of excessive energy drink consumption and, consequently, the prevalence of NCDs in the country.

The Nigerian government is constitutionally obligated to safeguard public health. Specifically, section 17(3)(c) and (d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the Constitution) mandates the state to ensure that health, safety and welfare are protected and that adequate medical facilities are available for all. By failing to regulate energy drink advertisements, the government not only neglects this obligation but also undermines the right to health, as recognized under international human rights treaties to which Nigeria is a party.

This paper therefore submits that the absence of regulation on energy drink advertisements represents a critical failure to uphold the right to health in Nigeria. It examines the human rights implications of this regulatory gap, explores the link between unregulated advertising and NCD prevalence, and proposes recommendations for aligning Nigeria's advertising policies with its constitutional and human rights obligations.

2 Ibid.

3 Ibid.

4 World Health Organization "Noncommunicable diseases: An information booklet", available at: <<https://apps.who.int/iris/handle/10665/205579>> (last accessed 12 July 2022).

5 IO Idris et al "Prevalence of non-communicable diseases and its risk factors among Ijegan-Isheri Osun residents in Lagos State, Nigeria: A community based cross-sectional study" (2020) 20/1258 *BMC Public Health* 1 at 5.

6 A Budreviciute et al "Management and prevention strategies for non-communicable diseases (NCDs) and their risk factors" (2020) 8/574111 *Frontiers in Public Health* 1 at 1.

7 Ibid.

8 M Rostami et al "A scoping review of policies related to reducing energy drink consumption in children" (2024) 24/2308 *BMC Public Health* 1 at 2.

9 Ibid.

10 Ibid.

11 For instance, Latvia's Law On the Handling of Energy Drinks 2016 and Ghana's Food and Drugs Authority's Guidelines for Food Advertisement 2018.

12 See the National Tobacco Act 2015.

Non-communicable diseases

NCDs are medical conditions / diseases that are not transmissible from one person to another, either through direct contact or the environment.¹³ They are often chronic in nature and tend to progress slowly over time.¹⁴ The most common types of NCDs include cardiovascular diseases (such as heart attacks and stroke), cancers, chronic respiratory diseases (such as chronic obstructive pulmonary disease and asthma) and diabetes.¹⁵ These diseases contribute significantly to the global burden of disease, especially in low- and middle-income countries.¹⁶

The development of NCDs is often influenced by a combination of genetic, environmental and behavioural factors. Genetic predisposition can make certain individuals more susceptible to these diseases, but lifestyle choices often play a major role.¹⁷ Risk factors such as unhealthy diets, physical inactivity, tobacco use and excessive alcohol consumption significantly increase the likelihood of developing NCDs.¹⁸ Accordingly the WHO states that:

“NCDs are largely caused by unhealthy lifestyle or risky behaviours – tobacco use, unhealthy diet, insufficient physical inactivity (sic) and harmful use of alcohol. The presence of these risky behaviours leads to metabolic changes: overweight/obesity, raised blood pressure, raised blood glucose and raised cholesterol levels. Left uncontrolled, these metabolic conditions result in chronic NCDs.”¹⁹

Addressing the rise of NCDs requires a comprehensive approach that includes promoting healthier lifestyles, improving healthcare systems and implementing public health policies that reduce exposure to risk factors.²⁰ Governments, healthcare providers and individuals all play a role in reducing the prevalence and burden of NCDs through initiatives that focus on lifestyle changes and improved healthcare access.²¹ According to Arena et al:

“Policy change is vital to improve health, reduce NCD burden, and drive community, social, and economic development. We urge governments around the world to take a leading role in the HL campaign that is needed. Government at the local, state/regional, and national level has an inherent and legitimate interest, if not obligation, in protecting the health of the population and reducing the NCD burden. Supporting primordial and primary prevention initiatives is of primary importance. The implementation of a single law or regulation can positively impact hundreds, thousands, and even millions of people. For example, comprehensive smoke-free air laws implemented across localities, states, and countries have lowered NCD incidence.”²²

13 World Health Organization “Non-communicable diseases” (16 September 2023) *World Health Organization*, available at: <<https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>> (last accessed 6 October 2024).

14 Ibid.

15 A Oso “Non-communicable diseases: An emerging epidemic in Nigeria” (2023) 18/1&2 *Tropical Journal of Nephrology* 31 at 31.

16 MF Owusu et al “Tackling the non-communicable disease epidemic: A framework for policy action in low- and middle-income countries” (2024) 47/82 *Pan African Medical Journal* 1 at 2.

17 Budreviciute et al “Management and prevention strategies”, above at note 6 at 1.

18 Id at 2.

19 World Health Organization “Non-communicable diseases: An information booklet”, above at note 4.

20 O Omotayo et al “The rise of non-communicable diseases: A global health review of challenges and prevention strategies” (2024) 4/1 *International Medical Science Research Journal* 74 at 74.

21 R Arena et al “Healthy lifestyle interventions to combat non-communicable disease—a novel non-hierarchical connectivity model for key stakeholders: A policy statement from the American Heart Association, European Society of Cardiology, European Association for Cardiovascular Prevention and Rehabilitation, and American College of Preventive Medicine” (2015) 36 *European Heart Journal* 2097.

22 Id at 2101.

Health laws and policies are therefore essential for improving health outcomes, reducing the burden of NCDs and promoting community, social and economic development. It is indeed crucial for governments especially in developing countries like Nigeria to take a leading role to enact relevant laws to protect public health and reduce the NCD burden. As highlighted, a single law or regulation can create a ripple effect, benefiting countless individuals.

Energy drinks and non-communicable diseases

Energy drinks are beverages designed to boost energy, alertness and physical or mental performance.²³ They typically contain high levels of caffeine, sugar and other ingredients like taurine, ginseng and B vitamins.²⁴ These drinks are marketed as solutions for fatigue, helping people stay awake, focused and energized, especially during long work hours, studying or physical activities.²⁵ The stimulating effect of caffeine is one of the main selling points of energy drinks, making them popular among students, athletes and individuals with demanding schedules.²⁶

Despite their popularity, energy drinks pose several health risks, particularly when consumed excessively. The high caffeine content can lead to side effects. For instance, long-term or excessive use of energy drinks has been linked to the development of NCDs such as high blood pressure,²⁷ insomnia²⁸ and stroke,²⁹ primarily due to the high caffeine content. In addition, excessive intake of energy drinks is known to raise blood sugar levels, which can lead to insulin resistance, diabetes and obesity because of its high sugar content.³⁰

It is therefore evident that the excessive and prolonged consumption of energy drinks is a habit that can trigger NCDs, necessitating government action to help the public limit their consumption in Nigeria. There is a regulatory gap regarding the consumption of energy drinks, as most people in Nigeria are unaware of their adverse effects. This paper argues that there is a need for a law that compels manufacturers of energy drinks in Nigeria to warn consumers of these adverse effects, particularly in advertisements.

Right to health in Nigeria

This paper contends that citizens of Nigeria have a right to health and that the need to warn consumers of the adverse effect of excessive consumption of energy drink is part of the obligation of the state to protect the right to health of its citizens. This right is provided for in the Constitution, statutes and the provisions of some international legal instruments Nigeria has signed and ratified. This part of the paper will discuss these laws and demonstrate how they guarantee an enforceable right to health in Nigeria.

23 AA Alsunni "Energy drink consumption: Beneficial and adverse health effects" (2015) 9/4 *International Journal of Health Sciences*, Qassim University 468 at 469.

24 JP Higgins, TD Tuttle and CL Higgins "Energy beverages: Content and safety" (2010) 85(11) *Mayo Clinic Proceedings* 1033.

25 See the advertisement of Supa Komando on Bella Naija "Supa Komando is the energy drink you need to 'fire on'?" (11 March 2021) *Bella Naija*, available at: <<https://www.bellanaija.com/2021/03/supa-komando/>> (last accessed 18 August 2022) and the advertisement of another brand of energy drink called Fearless on Rite Food Ltd, available at: <<https://www.ritefoodsltd.com/fearless-energy-drinks/>> (last accessed 18 August 2022).

26 J Erdmann et al "Effects of energy drink consumption on physical performance and potential danger of inordinate usage" (2021) 13(8) *Nutrient* 2506.

27 S Cappelletti et al "Caffeine: Cognitive and physical performance enhancer or psychoactive drug?" (2015) 13 *Current Neuropharmacology* 71 at 75.

28 Id at 81.

29 M Coenen et al "The multifaceted contribution of platelets in the emergence and aftermath of acute cardiovascular events" (2021) *Atherosclerosis* 132 at 137.

30 Alsunni "Energy drink consumption", above at note 23 at 470.

The 1999 Constitution of the Federal Republic of Nigeria (as amended)

The right to health in Nigeria is recognized under the Nigerian Constitution. Significantly, section 17(3)(c) and (d) mandates the Nigerian government to direct its policy towards ensuring that “(c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused; (d) there are adequate medical and health facilities for all persons”. This provision is in chapter II which are not explicitly categorized as fundamental rights³¹ that are expressly enforceable in Nigeria; but rather as part of the “directive principles of state policy” which are generally referred to as social and economic rights (SERs). Section 17(3), and all the provisions under chapter II of the Constitution, are generally not justiciable pursuant to section 6(6)(c) of the Constitution. This section expressly precludes the Nigerian courts from determining any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of the Constitution.

The obvious implication of section 6(6)(c) of the Constitution is that the rights contained in chapter II are more of guidelines for the government rather than legally binding obligations. Hence, the Nigerian courts cannot entertain claims or lawsuits based on the failure of the government or its agencies to comply with the right to healthcare under section 17(3). It also means that courts cannot question whether a law or policy conforms to the aspirations laid out in section 17(3) unless they are expressly provided in the enforceable portions of the Constitution. For instance, in *Archbishop Olubunmi Okogie v The Attorney General of Lagos State*³² the apex court held that no legal action could be based on the failure of the government to comply with the provisions of chapter II because they do not confer legally enforceable rights on individuals. In this case, the plaintiffs challenged the Lagos State Government’s decision to close private schools, arguing that it violated their rights under the provisions of chapter II of the 1979 Constitution (which is substantially the same as chapter II of the 1999 Constitution) which puts an obligation on the state to provide educational opportunities for its citizens.

The foregoing clearly highlights there is a critical gap in the Nigerian Constitution. Section 6(6)(c) of the Constitution seems to relegate the right to health care and other socio-economic rights to mere “aspirations” as chapter II of the Constitution failed to provide citizens with a legal pathway to enforce these rights. This has significant implications, as the non-justiciable status of socio-economic rights effectively limits the state’s accountability in delivering essential services, such as health care. Accordingly, Nnamuchi³³ argues that:

“While Nigeria’s constitution guarantees civil and political rights, the right to health care and other socio-economic rights enjoy no legal protection. Chapter II of the 1999 constitution, as did its predecessor, characterizes what should be the right to health care as one of the ‘Fundamental Objectives and Directive Principles of state policy’ ... that is, an aspirational or hortatory goal as opposed to a legally binding entitlement.”³⁴

Consequently, this creates a structural disparity between civil and political rights, which are enforceable, and socio-economic rights, which remain unrealized despite being fundamental to human dignity and well-being.

31 Fundamental rights are civil and political rights such as the right to life, the right to dignity of the human person, the right to personal liberty, the right to a fair hearing, the right to a private and family life, the freedom of thought and the freedom of expression which are justiciable.

32 (1981) 2 NCLR 337.

33 O Nnamuchi “Kleptocracy and its many faces: The challenges of justiciability of the right to health care in Nigeria” (2008) 51/1 *Journal of African Law* 1.

34 *Id* at 2.

Notwithstanding the foregoing, the apex court in Nigeria in recent times has adopted a more liberal approach to provide some basis for the enforcement of the provisions of chapter II of the Constitution. Thus in *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*³⁵ it was held that “the non-justiciability of section 6(6)(c) of the constitution is neither total nor sacrosanct as the sub section provides a leeway by the use of the words ‘except as otherwise provided by this constitution’”.³⁶ The implication of this is that if any law is made pursuant to any provisions of the Constitution that demands the implementation of any provision under chapter II that provision becomes enforceable. This is especially in pursuance to section 4 of the Constitution which mandates the legislature to make laws for the good governance of the country and section 13 of the Constitution which places a duty on all organs of government to conform to, observe and apply the provisions of chapter II of the Constitution. In addition, at the international and regional levels there are human rights standards which Nigeria has signed and ratified that contain similar rights. The argument of this paper is that by virtue of those enforceable human rights standards in Nigeria and extant Nigerian laws which provides for the right to health in Nigeria, the right to health is justiciable in Nigeria. A brief discussion of those laws and international standards will demonstrate this fact.

The African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 1983

Although the right to health is not directly enforceable as a fundamental right, various laws address healthcare delivery in Nigeria, including the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 1983 and the National Health Act 2014. The African Charter on Human and Peoples’ Rights (the African Charter), adopted in 1981, is a regional human rights treaty that aims to promote and protect human and peoples’ rights in Africa. It was created under the framework of the Organization of African Unity, now the African Union, and came into force on 21 October 1986. The African Charter covers a wide range of rights, including civil, political, economic, social and cultural rights. It emphasizes duties of individuals to the community and promotes the principle of equality and non-discrimination.

Nigeria ratified the African Charter on 22 June 1983, and later domesticated it by incorporating it into national law through the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act in 1983. This is in line with section 12 of the 1999 Constitution. Accordingly, in *Sanni Abacha and Others v Chief Gani Fawehinmi*,³⁷ the Supreme Court held that the provisions of the African Charter were enforceable in Nigeria since they had been domesticated through the provisions of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.³⁸

Article 16 of this act gives every individual in Nigeria “the right to enjoy the best attainable state of physical and mental health” and mandates the Nigerian government to take “the necessary measures to protect the health of ... [its] people and to ensure that they receive medical attention when they are sick”. The implication of these provisions is that unlike chapter II of the Constitution, the provisions of the African Charter, including the right to health, are justiciable in Nigerian courts. Additionally, it has been contended that with the domestication of the African Charter, the rights outlined in it – whether they are civil and political (similar to those in chapter IV of the Constitution), socio-economic (similar to those in chapter II of the Constitution) or solidarity (third generation)

35 [2018] LPELR 50830 (SC).

36 Id at 59-60, per Chima Centus Nweze JSC.

37 [2000] FWLR Pt 453.

38 See also the decision of the court in *Ubani v Director SSS* [1999] 11 NWLR pt 129; *Nemi v The State* (1994) 1 LRC 376 where the court also affirmed that the Charter has become part of our domestic law and enforceable in Nigerian courts; *El-Rufai v Senate of the National Assembly* 6(2016) 1 NWLR (Pt 1494) CA 504.

rights – are now incorporated into Nigeria’s domestic legal framework³⁹ and are enforceable. This reasoning was clearly reflected in the decision of the court in *Odafe and Others v Attorney-General of the Federation and Others*⁴⁰ where Nwodo J (as she then was) held that the right to health is enforceable in Nigeria by virtue of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act. In this case, the plaintiffs were a group of prisoners who were HIV-positive and were being detained in prison. They filed a suit against the attorney-general of the federation and prison officials, alleging violations of their rights. They argued that they were denied adequate medical care and treatment which violated their constitutional rights under the Constitution and the African Charter. The court held that the prison authorities had a duty to provide adequate medical treatment to inmates, especially those suffering from life-threatening conditions like HIV. The court declared that the denial of medical care violated the prisoners’ fundamental rights to life, dignity and health, as protected under the Constitution and the African Charter. It is therefore clear that, even with the gap in the Constitution, that the right to health is enforceable in Nigeria.

The National Health Act 2014

Nigerians can also rely on the provisions of the National Health Act 2014 to enforce their right to health in Nigeria. This act is a comprehensive framework that outlines the rights and responsibilities of various stakeholders in the healthcare sector, including health care providers, health workers, health establishments and patients.⁴¹ Significantly, section 1(1)(e) mandates the government to “protect, promote and fulfil the rights of the people of Nigeria to have access to health care services”. It is therefore obvious that the National Health Act provides an additional legal basis for individuals in Nigeria to enforce their right to health and complements the rights already integrated through the domestication of the African Charter. This act therefore reinforces the justiciability of the right to health and ensures that it is not just a directive principle but an enforceable right within the Nigerian legal system. The provisions of the National Health Act also strengthen the legal avenues through which individuals can claim their right to health. As the awareness of the National Health Act grows, there is potential for future litigation to directly rely on its provisions to demand the implementation of the right to health in Nigeria.

The Universal Declaration of Human Rights

Nigeria as part of the international community is also a signatory to some international instruments that have enforceable provisions on the right to health. In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) as a direct response to the horrors of the Second World War. Its primary purpose was to promote peace, stability and the preservation of human dignity for every individual, regardless of their gender, race or nationality.⁴² The UDHR establishes clear, universal and minimal obligations that states have toward their citizens and individuals residing in their territories.⁴³ It serves as a globally recognized testament to the idea that basic rights and fundamental freedoms are inherent to all human beings and is often referred to as a “beacon of hope”⁴⁴ for all, without any form of discrimination.⁴⁵

39 See O Nnamuchi et al “Justiciability of socioeconomic rights in Nigeria and its critics: Does international law provide any guidance?” (2022) 19 *The Age of Human Rights Journal* 137.

40 (2004) AHRLR 205.

41 National Health Act 2014, sec 1(d).

42 J Morsink “World War Two and the Universal Declaration” (1993) 15/2 *Human Rights Quarterly* 357 at 357.

43 Ibid.

44 G Brown (ed) *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World* (2016, Open Book Publishers) at 2.

45 Universal Declaration of Human Rights (1948), art 7, available at: <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> (last accessed 4 March 2025).

The UDHR is widely recognized as the cornerstone of international human rights law, influencing national and international legal frameworks. Hannum emphasizes that nearly all human rights treaties reference the UDHR, underlining its foundational role.⁴⁶ Brown further highlights its transformative impact, describing the UDHR not merely as a legal standard but as a powerful cultural and educational tool that has shaped global human rights protection.⁴⁷ A key provision, article 25(1), enshrines the right to an adequate standard of living, including essential needs like food, housing and healthcare, reinforcing the importance of social welfare in human dignity. Regrettably, the UDHR lacks the binding force of a ratified treaty. It is a declaration aimed at fulfilling the objective of promoting human rights and fundamental freedoms, as stipulated in article 13 of the United Nations Charter. As Eleanor Roosevelt, Chair of the UN Commission on Human Rights during the drafting of the Declaration, famously remarked:

“In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.”⁴⁸

While the UDHR itself lacks legal binding force, it served as the foundation for two international covenants that do carry legal weight in international law: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁹ These covenants were adopted by the General Assembly in 1966, expanding upon the principles outlined in the UDHR.

The International Covenant on Economic, Social and Cultural Rights

The UN General Assembly adopted the ICESCR in 1966 and it entered into force in 1976. It is a fundamental international treaty that recognizes a range of economic, social and cultural rights, including the right to health. Nigeria ratified the ICESCR in 1993,⁵⁰ thereby committing to the progressive realization of these rights within its jurisdiction. Specifically, article 12 of the ICESCR emphasizes the right of everyone to the highest attainable standard of physical and mental health. It places an obligation on state parties, including Nigeria, to take steps to prevent, treat and control diseases, improve environmental and industrial hygiene, and ensure the provision of medical services to all citizens. State parties also commit to take steps to ensure the prevention, treatment and control of epidemic, endemic, occupational and other diseases.⁵¹

Despite Nigeria's ratification of the ICESCR, it has not been integrated into its legal framework as prescribed by the Constitution. The Constitution adheres to the dual system of international law, as outlined in section 12(1), which dictates that “no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted

46 H Hannum “The status of the Universal Declaration of Human Rights in national and international law” (1996) 25 *Georgia Journal of International & Comparative Law* 287 at 290.

47 Brown *The Universal Declaration of Human Rights in the 21st Century*, above at note 44 at 13.

48 See MM Whiteman *Digest of International Law* (1965, United States of America Department of State Publication) at 7873. See also *State v Tapley* [1952] IR 62 (Ir SC 1950), an early Irish Supreme Court case which observed: “This Declaration does not, however, purport to be a statement of the existing law of nations. Far from it ... The Declaration, therefore, though of great importance and significance in many ways, is not a guide to discover the existing principles of international law”.

49 International Covenant on Economic, Social and Cultural Rights (1966), UN Treaty Series vol 993 (ICESCR).

50 United Nations Treaty Collection “International Covenant on Economic, Social and Cultural Rights”, available at: <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtldsg_no=IV-3&chapter=4> (last accessed 22 September 2024).

51 ICESCR, art 12(2)(c).

into law by the National Assembly”. In a dualist legal system, international law, including treaties and agreements, must be formally adopted into a country’s domestic legal structure before it can be enforced by the national courts. In the context of Nigeria, this means that any international treaty entered into by the Nigerian government does not carry legal weight or become binding until it has been officially legislated by the National Assembly. Regrettably, the consequence of section 12 of the Constitution on the ICESCR is that the right to health as articulated in article 12 is not legally enforceable in Nigeria. This lack of integration into domestic law renders the right to health established by the ICESCR unenforceable within Nigeria’s legal system.

However, the ICESCR imposes general and specific obligations on state parties to ensure the enjoyment of SERs⁵² and by extension the right to health. The ICESCR recognises the funding constraints in the implementation of SERs and therefore calls for a progressive implementation strategy that entails a gradual but consistent protection of these rights depending on available resources.⁵³ This approach, which is largely a product of the intervention of judges, academics and human rights advocates has led to the development of some theories to guarantee some level of enforcement for SERs. One such theory is the principle of minimum core obligations which mandates states to meet the core minimum demands of SERs,⁵⁴ such as ensuring access to health care, education, sanitation facilities among others. In other words, notwithstanding the arguments by low-income countries that funding constraints hinder the implementation of SERs,⁵⁵ there is an obligation on all parties to the ICESCR to take progressive measures to ensure the enjoyment of SERs such as the right to health in their states. It is therefore imperative for the Nigerian government to take necessary steps to ensure that the ICESCR is enforceable in Nigeria considering that it further protects the right to health amongst other rights.

World Health Organization Non-communicable Diseases Framework

The WHO mandates member states to safeguard global health.⁵⁶ In May 2013, the 66th World Health Assembly adopted the NCDs Global Monitoring Framework,⁵⁷ a comprehensive policy agenda for the prevention and control of NCDs. This framework provides a set of indicators applicable across diverse regions and country contexts to monitor trends and evaluate the implementation of national strategies on NCDs.⁵⁸ It aims to guide member states in accurately measuring these indicators and tracking their progress over time. Notably, the WHO set ambitious targets, including a 25 per cent relative reduction in overall mortality from cardiovascular diseases, cancer, diabetes and chronic respiratory diseases, and a 30 per cent relative reduction in the prevalence of tobacco use.⁵⁹

However, a critical omission in the framework is its failure to explicitly address energy drink consumption and the need for its regulation. While the framework calls on states to develop policies to mitigate the impact of marketing unhealthy foods and non-alcoholic beverages, particularly those high in sugar on children, it does not directly reference energy drinks. Nevertheless, it is submitted

52 International Commission of Jurists “Adjudicating economic, social and cultural rights at national level: A practitioners guide” (2014), available at: <<https://www.icj.org/wp-content/uploads/2020/02/Universal-ESCR-accountability-guide-summary-Publications-Reports-Thematic-report-2020-ENG.pdf>> (last accessed 28 February 2025).

53 See ICESCR, art 2; D Olika “Taxation and human rights: Towards a sustainable realisation of minimum core obligations in Nigeria” (2024) 24/1 *African Human Rights Law Journal* 31 at 34–35.

54 Olika, id at 31.

55 Id at 35.

56 World Health Organization “The International Health Regulations” (2005), available at: <https://www.who.int/health-topics/international-health-regulations#tab=tab_1> (last accessed 14 December 2024).

57 World Health Organization “The World Health Organization Non-communicable Diseases Global Monitoring Framework: Indicator definitions and specifications”, available at: <https://cdn.who.int/media/docs/default-source/inaugural-who-partners-forum/gmf_indicator_definitions_version_nov2014438a791b-16d3-46f3-a398-88dee12e796b.pdf?sfvrsn=4b337764_1> (last accessed 14 December 2024).

58 Ibid.

59 Ibid.

that energy drinks fall within the scope of these recommendations, given their high sugar content and potential health risks.

In 2019, Nigeria's Federal Ministry of Health introduced the "National multi-sectoral action plan for the prevention and control of non-communicable diseases (2019–2025)"⁶⁰ to align with the WHO framework. Among its priority areas is the promotion of healthy lifestyles, including the recommendation to limit portion and package sizes to reduce energy intake and combat obesity.⁶¹ However, Nigeria still lacks specific laws or policies regulating the marketing, portion sizes or packaging of energy drinks. This reinforces the need for binding regulatory strategies to reduce the consumption of energy drinks in Nigeria.

Right to health and the advertisement of energy drinks in Nigeria

Advertisements generally help manufacturers promote their products and ultimately increase sales and profits.⁶² To boost sales, it is common for manufacturers to educate the public about the benefits of using their products, with the aim of encouraging purchase and driving profits.⁶³ To prevent manufacturers from misleading the public, governments often regulate the information that must be disclosed, ensuring that consumers can make informed decisions – especially when withholding information could be harmful to public health. For instance, Nigeria enacted the National Tobacco Act 2015, which requires informing consumers about the health risks, addictive nature and mortality threats associated with tobacco use or exposure to tobacco smoke.⁶⁴ The act also seeks to raise awareness about the harmful effects, risks and specific dangers of tobacco use among consumers and the general public.⁶⁵

Similarly, the Food, Drugs and Related Products (Registration, etc) Act 2004 prohibits false or misleading advertisements.⁶⁶ Furthermore, the Advertising Regulatory Council of Nigeria Act 2022 (the ARC Act) was introduced to ensure that advertisements in the Nigerian market are legal, decent, honest, truthful and respectful of Nigerian culture, constitutional principles and relevant laws.⁶⁷ The ARC Act mandates that advertisements be socially responsible and free of misinformation or disinformation, protecting the public from misleading, harmful or offensive content.⁶⁸

Unfortunately, while both laws prohibit misleading advertisements, neither provides a definition of these terms. As a result, manufacturers of energy drinks in Nigeria have exploited this gap by advertising their products solely for their energy-boosting benefits, without warning consumers about the potential risks of developing NCDs. This is because there is no law expressly requiring such warnings, nor is there any regulation that classifies the omission of these warnings as deceptive. Consequently, just as there is a law mandating tobacco manufacturers in Nigeria to warn the public about the harmful effects of tobacco, there is a need for a similar law requiring energy drink manufacturers to inform the public about the risks of excessive consumption.

60 Nigerian Federal Ministry of Health "National multi-sectoral action plan for the prevention and control of non-communicable diseases (2019 – 2025)", available at: <https://arua-ncd.org/wp-content/uploads/2022/10/NCDs_Multisectoral_Action_Plan.pdf> (last accessed 14 December 2024).

61 Ibid.

62 V Bondarenko and B Vyshnivska "Promotional marketing as a method of increasing sales" (2023) 4(2) *Three Seas Economic Journal* 21.

63 Ibid.

64 National Tobacco Act 2015, sec 1(g).

65 Id, sec 1(f).

66 According to reg 12(1)(a) of The Food, Drugs and Related Products (Registration Etc) Act (Cap F33 LFN 2004) Food Product Advertisement Regulations 2021, advertisements shall not contain any false or misleading information. Reg 12(2) states that advertisements shall contain information that is reliable, accurate, truthful, informative, balanced and can be substantiated.

67 Advertising Regulatory Council of Nigeria Act 2022, sec 2(g).

68 Id, sec 2(b).

It is important to note that the regulation of tobacco advertising in Nigeria was prompted by research showing that prolonged tobacco use increases the risk of NCDs, including chronic lung diseases, asthma, angina, depression, arthritis, diabetes and hypertension.⁶⁹ The legislative measures taken by the Nigerian government regarding tobacco are therefore aimed at reducing the risks of these diseases. To reiterate, there are indications the high caffeine content in energy drink exposes people who consume it excessively to NCDs including high blood pressure,⁷⁰ insomnia⁷¹ and stroke.⁷² Also, disproportionate drinking of energy drinks could cause blood sugar levels to rise which predisposes consumers to insulin resistance, diabetes and obesity due to its high sugar content.⁷³

Given these health risks, this paper argues that energy drink advertisements in Nigeria are misleading – not because they are false, but because they omit crucial information about the dangers of excessive consumption and its link to NCDs. Unfortunately, these advertisements are not considered illegal in Nigeria, as there are no law compelling manufacturers to disclose the health risks associated with excessive energy drink consumption.

This paper therefore argues that the absence of a law mandating manufacturers to warn the public about the adverse effects of excessive consumption of energy drinks increases the risks of developing NCDs in Nigeria and most importantly is an infringement of the right to health in Nigeria. The lack of regulation on the advertisement of energy drinks in Nigeria poses a serious threat to the right to health, as it allows potentially harmful products to be promoted without sufficient oversight. These risks are amplified by the aggressive marketing tactics employed by energy drink companies, which often target young people⁷⁴ and portray the beverages as safe, energizing and even essential for daily performance.⁷⁵ In the absence of regulatory standards, these advertisements though not strictly misleading makes consumers of energy drinks in Nigeria underestimate the health risks, thereby exposing them to preventable NCDs.

The right to health as protected by the National Health Act and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act clearly extends beyond access to healthcare. It includes the protection of individuals from harm through preventive measures, which involve regulating products that may jeopardize public health. In this regard, Twinomugisha clearly contends that:

“The obligation to fulfil the right to health further enjoins the state to take steps, including legislative measures, to prevent, treat and control epidemics such as NCDs. The obligation to protect the right to health also requires the state to take appropriate measures, including legislation, to ensure that activities of private actors, including corporations, do not compromise the enjoyment of the right.”⁷⁶

The above shows that to guarantee the enjoyment of the right to health, the Nigerian government therefore has an obligation to take active measures, including passing laws, to prevent and control health crises like NCDs. Additionally, the obligation to protect the right to health mandates the

69 A Ayodapo and B Ibisola “Smoking and non-communicable” in KD Monyeke and HCG Kemper (eds) *Lifestyle and Epidemiology* (2021, IntechOpen) 1 at 6.

70 Cappelletti et al “Caffeine”, above at note 27 at 75.

71 Id at 81.

72 Coenen “The multifaceted contribution of platelets”, above at note 29 at 137.

73 Alsunni “Energy drink consumption”, above at note 23 at 470.

74 See OT Adepoju and VO Ojo “Consumption pattern of energy drinks by University of Ibadan students and associated health risks factors” (2014) 5 *Food and Nutrition Science* 2209; FA Olatana et al “Energy drinks consumption among football players in Lagos” (2018) 31/4 *South African Journal of Clinical Nutrition* 84; UM Ibrahim et al “Prevalence and factors associated with energy drink consumption among undergraduate students in Kano, Nigeria” (2021) *Nigerian Postgraduate Medical Journal* 204.

75 See above at note 25.

76 BK Twinomugisha “Using the right to health framework to tackle non-communicable diseases in the era of neo-liberalism in Uganda” (2020) 20 *African Human Rights Law Journal* 147 at 167.

Nigerian government to ensure that private actors, such as corporations, do not engage in activities that compromise public health. This involves implementing regulations to prevent businesses from misleading the public or promoting harmful products, ensuring that the right to health is safeguarded against corporate practices that could endanger it.

It is therefore argued that by not regulating energy drink advertisements, Nigeria has failed to fulfil its duty to protect public health and has inadvertently allowed corporations to prioritize profit over the well-being of the population. It therefore follows that there is a need to enact a law that will control the advertisement of energy drinks to safeguard the right to health and to also align with global best practices in public health protection. This law must mandate energy drink manufacturers to include in their advertisements warning signs, which clearly state the inherent risk in the excessive consumption of energy drinks. Also, the law must go further than just requiring the inclusion of warnings signs. For television advertisements, health warnings must be clearly visible on-screen and occupy a large percentage of the screen size for a specified duration. Similarly, for radio advertisements, audible warnings must be included at the beginning and end of the advertisement, ensuring that they are delivered in a clear and understandable tone. To accommodate people who can neither read nor write, the manufacturers must deliver the warnings using widely spoken Nigerian languages such as Hausa, Yoruba, Igbo and Pidgin English. Also, visual warnings must include universally recognizable symbols such as a red triangle with an exclamation mark, paired with images that represent potential health risks like heart to signify cardiovascular dangers.

Regulation of energy drinks in other countries

Many countries have implemented restrictions on the marketing of energy drinks, recognizing the health risks these products pose to consumers. The main objective of these regulations is to help consumers make informed decisions about energy drinks, thereby reducing the health burden associated with overconsumption and safeguarding the fundamental right to health. A good example is Latvia's law on energy drinks,⁷⁷ which places several restrictions on advertising and information. Section 4 of the law explicitly requires energy drink advertisements to include a warning about the adverse effects of excessive consumption.⁷⁸ It also mandates that at least 10 per cent of the advertisement space be allocated for this health warning,⁷⁹ ensuring that manufacturers provide detailed information rather than vague or insufficient warnings.

Moreover, the law specifies that the health warning must be placed at the bottom of the advertisement, with black letters on a white background. The letters must be of a size that ensures the warning text covers the largest possible area designated for the message. This ensures the warning is clear and prominent, preventing manufacturers from minimizing or obscuring important health information.

In contrast to Nigeria, Ghana has established clear regulations for the advertisement of energy drinks. The Food and Drugs Authority's Guidelines for Food Advertisement 2018 aim to regulate the promotion of pre-packaged foods, alcoholic beverages and energy drinks. These guidelines ensure that advertisements are not misleading and encourage responsible consumption of energy drinks. It is illegal to advertise pre-packaged foods without prior approval from the Food and Drug Administration,⁸⁰ which mandates that advertisements be factual, comprehensive, transparent and aimed at fostering credibility with the public. The guidelines also forbid any language or imagery that could mislead the public, placing a responsibility on manufacturers to maintain public trust in advertising and uphold the integrity of the food industry.⁸¹

⁷⁷ Law on the Handling of Energy Drinks 2016.

⁷⁸ *Id.*, sec 4(1).

⁷⁹ *Id.*, sec 4(2).

⁸⁰ Food and Drugs Authority Guidelines for the Advertisement of Foods (2018), sec 3.1.2, available at: <<https://gazettes.africa/archive/gh/2018/gh-government-gazette-dated-2018-03-22-no-33.pdf>> (last accessed 25 August 2022).

⁸¹ *Id.*, sec 3.1.7.

Moreover, the guidelines require that all claims made in advertisements must be thorough, accurate and supported by evidence.⁸² Specific rules for energy drink promotions are provided in section 3.3, which mandates that such advertisements include health warnings such as “excessive consumption can be harmful”⁸³ and “[n]ot recommended for individuals under 18, lactating mothers, pregnant women and those sensitive to caffeine”,⁸⁴ as well as any additional health warnings specified by the authority.⁸⁵ Additionally, energy drink advertisements are prohibited from using language or imagery that could encourage excessive consumption or misuse of the product. The guidelines also strictly prohibit promoting energy drinks as substitutes for rest, solutions for fatigue or remedies for any kind of physical or sexual non-performance.⁸⁶ The foregoing present a commendable precedent in the regulation of energy drinks to Nigerian policy makers in food and drinks administration. Nigeria can adapt and improve on the examples presented by these countries in formulating a regulation or law on energy drink manufacture, advertisement and consumption.

Conclusion

This article has examined the global and national burden of NCDs, emphasizing their significant role as a leading cause of death. It highlights the connection between NCDs and modifiable factors such as alcohol and tobacco consumption, with particular focus on the excessive consumption of energy drinks as a contributing factor to diseases like diabetes and cardiovascular conditions. While many countries have responded to these risks by enacting laws to restrict energy drink advertising and raise public awareness, Nigeria lacks a specific legal framework to regulate energy drink advertisements or mandate warnings about their potential health risks.

The absence of such a law in Nigeria represents a critical gap in protecting public health and an infringement on the right to health, as enshrined in both domestic and international legal frameworks. This paper has argued that the failure to regulate energy drink advertisements and educate the public about their adverse effects undermines the government’s obligation to safeguard citizens’ health and well-being. To address this issue, this paper concludes by highlighting the need for a new law that will mandate energy drink manufacturers to include clear health warnings in their advertisements. This law would not only promote public health awareness but also align Nigeria’s regulatory policies with its constitutional and human rights obligations.

Competing interests. None

⁸² Id, sec 3.1.10.

⁸³ Id, sec 3.3.1(a).

⁸⁴ Id, sec 3.3.1(b).

⁸⁵ Id, sec 3.3.1(c).

⁸⁶ Id, sec 3.3.3.