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INCORPORATING HUMAN RIGHTS INTO THE WHO FCTC
SPEAKERS

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The Nexus Between Tobacco Control and Human Rights

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Incorporating Human Rights into the WHO FCTC
11 November 2020
OUTLINE

1. Do human rights support smokers rights (clash between human rights and tobacco control)?

2. Isn’t tobacco primarily a health issue, which is only confused by invoking human rights?

3. What are the theoretical linkages between tobacco control and human rights?

4. What are the practical applications of these linkages?
1. Do human rights support smokers rights? Is there a clash between human rights and tobacco control?
Human rights vs. public health

“the potential for human rights rhetoric to be co-opted by public health’s opponents,” citing tobacco interests as an example

CELEBRATE
WORLD SMOKER'S DAY
OCTOBER 10-11
www.worldsmokersday.org
Although the United Nations no longer seems to believe in, or abide by, their own Declaration of Human Rights, smokers are here to remind them that at least one segment of global society still take their Articles seriously.

Human Rights: “Smokers’ Rights”

Citizens Lobbying Against Smoker Harassment (CL.A.S.H.)

Smokers’ Rights Declaration: “it is essential for smokers to rebel against tyranny and oppression”

Parallel to the “right” to own guns
2. Isn’t tobacco primarily a health issue, which is only confused by invoking human rights?
Public health approach

- Surveillance: data collection, problem profiling
- Identify risks and protective factors: research
- Implementation: scale up what works
- Interventions: develop and evaluate
Human Right Approach

• Norm-creating process
  - Authoritative decision-making to define norms
  - Clarification of what is expected to realize a right
  - Concern → Study → Lobbying for a resolution → Declaration → Convention → Ratification
  - Can take decades, reflects global consensus

• Norm-enforcing process
  - Measures to ensure rights are *respected, promoted, fulfilled*
  - Promote and protect (see ”Practical Applications” below)
3. What are the theoretical linkages between tobacco control and human rights?
Recalling Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,

Recalling also the preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition,

Recalling further that the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, provides that States Parties to that Convention recognize the right of the child to the enjoyment of the highest attainable standard of health,
Right to Health the in core
UN Human Rights Documents

• article 25 (1) of the Universal Declaration of Human Rights (UDHR)

• article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

• article 24 of the Convention on the Rights of the Child (CRC)

• article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

• article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
Right to health IN THE ICESCR

Art. 12.1 "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”

Art. 12.2(b) “The improvement of all aspects of environmental and industrial hygiene" (art. 12.2 (b)) - “discourages the use of tobacco” (GC 14)

Art. 12.2(c) "The prevention, treatment and control of epidemic, endemic, occupational and other diseases" (art. 12.2 (c)) “prevention and education programs for behavior-related health concerns”
And in Regional Human Rights Treaties

- Article 11 of European Social Charter (revised 1996)
- Article 29 (1) ASEAN Human Rights Declaration
The Emerging Human Right to Tobacco Control

Carolyn Dresler*
Stephen Marks**

Chapter 19
Global tobacco control: a vital component of the right to health
Oscar A. Cabrera and Lawrence O. Gostin
2013

The obligation to respect = refrain from actively promoting the use of tobacco products

The obligation to protect = regulate the tobacco industry

The obligation to fulfil = comprehensive tobacco control legislation
Authoritative Interpretation of the right to health

General Comment 14 - 5 features

1. Scope of the RTH
2. Relation of the RTH to other human rights
3. Normative content of the RTH
4. “Core minimum”
5. “Obligations of comparable priority”
General Comment No. 14 (2000)

The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)

15. “The improvement of all aspects of environmental and industrial hygiene” (art. 12.2 (b)) comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment. The 12.2 (b) also embraces adequate housing and safe and hygienic working conditions, an adequate supply of food and proper nutrition, and discourages the abuse of alcohol, and the use of tobacco, drugs and other harmful substances.

23. States parties should provide a safe and supportive environment for adolescents, that ensures the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.
Violations of the obligation to protect

51. Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others; the failure to protect consumers and workers from practices detrimental to health, e.g. by employers and manufacturers of medicines or food; the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances; the failure to protect women against violence or to prosecute perpetrators; the failure to discourage the continued observance of harmful traditional medical or cultural practices; and the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.
4. What are the practical applications of these linkages?
6 Practical ways to introduce TC into HR procedures

1. County reports to treaty monitoring bodies
2. Special procedures
3. Universal Periodic Review
4. Action in relation to the business and human rights agenda
5. Action in relation to the 2030 Development Agenda
6. Litigating national and international cases
7. European human rights mechanisms
Three mechanisms to hold the PRC to account …

- Treaty monitoring
- Special procedures
- Universal Periodic Review (UPR)
Conclusion: COP9 a transformative moment for Incorporating Human Rights into the WHO FCTC

COP 8 agreed to the preparation of a draft decision for adoption at COP 9 on HR in the FCTC

The COP9 decision will probably 1) request the Convention Secretariat to improve the coordination and collaboration with OHCHR, and 2) to develop modalities of cooperation; 3) to work with the WG on a treaty on TNCs and human rights; and 4) urge parties to implement Target 3.a of the SDGs from a human rights perspective, and 5) the include TC in their reporting under human rights treaties.
UNGPs “require the cessation of the production and marketing of tobacco. ... the tobacco industry is such that it cannot be a partner in these efforts.”
In 5 days … (TI not on the agenda)

Concept note
2020 Virtual UN Forum on Business and Human Rights
16-18 November 2020

Preventing business-related human rights abuses:
The key to a sustainable future for people and planet
Draft treaty on Business & HR (TI not mentioned)

OEIGWG CHAIRMANSHIP SECOND REVISED DRAFT 06.08.2020

LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

26 to 30 October 2020: Sixth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (chaired by Emilio Rafael Izquierdo Miño, Ecuador)
“… invite States and other relevant stakeholders to fill, no later than February 2021, … concrete textual suggestions, modifications, additional language, …”

third revised text no later than the end of July 2021

WILL THE FCTC SECRETARIAT AND THE TC COMMUNITY RISE TO THE OCCASION?
Dr. Flavia Senkubuge
President
The Colleges of Medicine of South Africa

Read the full Declaration at
https://ash.org/declaration/
Contribution of the WHO-FCTC to the promotion and fulfillment of human rights
1. ENCOURAGES Parties to cooperate internationally to address the issue of increased tobacco consumption that is exacerbated by transnational tobacco companies’ strategies to enter emerging-market economies, particularly in lower-income countries, by linking the human rights framework and developing tackling the global tobacco epidemic;

2. INVITES the Convention Secretariat to collaborate with existing United Nations mechanisms and processes working on issues of business and human rights, in order to protect public health interests from the commercial and other vested interests of the tobacco industry.
Ecuador proposed a draft decision entitled “Promotion of the WHO FCTC through human rights”. Speakers warmly welcomed the draft decision and its focus on human rights.

Following a lengthy debate, one Party, summarizing a majority of views, proposed that the title of the decision should be: “Contribution of the WHO FCTC to the promotion and fulfilment of human rights” and that the proposals for deletion and addition of new text should be adopted bearing in mind the comments made in the meeting.*

The Convention Secretariat confirmed that given that several Parties had submitted a formal request and that the discussion of the item had not been completed at COP8, under Rules 7(g) and 13 of the RoP of the COP, the item should be included on the agenda of the COP9.

COP9 was postponed until November 2021 as a result of the COVID-19 pandemic.
Contribution of the WHO FCTC to the promotion and fulfillment of human rights *

Recognizing the obligation of states to protect, respect, promote and fulfill the right to the enjoyment of the highest attainable standard of health when implementing the WHO FCTC;

1. URGES Parties to consider including WHO FCTC implementation efforts when engaging with United Nations human rights mechanisms.

2. REQUESTS the Secretariat to improve the coordination and collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR), within their mandates, to raise awareness of the importance of the WHO FCTC implementation in the fulfilment of human rights.

*Summary records of the Third Meeting of the Bureau elected by the Eighth Session of the Conference of the Parties (COP8) to the WHO Framework Convention on Tobacco Control (WHO FCTC)
The FCTC warrantees the right to the highest attainable level of health.

- Governments are already obligated to uphold their obligations to the treaties they are party to, including the FCTC. Including human rights in the COP adds no new responsibilities.

Implementing the FCTC thus helps countries achieve their human rights commitments.

- Addressing tobacco as a human rights issue may help governments to meet requirements of both the FCTC and other human rights treaties at the same time.

Parties to the FCTC can use human rights to strengthen their efforts to implement the Global Action Plan and other measures of NCD prevention and control.
Why a COP Decision on Human Rights is important to civil society

November 11, 2020

Kelsey Romeo-Stuppy
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Everyone has a right to life and to health

Governments therefore have a duty to protect their citizens from the tobacco industry and harms from tobacco

Governments have a duty to enforce those rights

Legal remedies are available at the international, regional, and national levels.
RUGGIE PRINCIPLES

Protect = Protect citizens from tobacco industry

Respect = Industry should respect human rights norms

Remedy = Mechanisms and processes to request reparation when industry infringes on human rights
HOW TO USE HUMAN RIGHTS TO ADVANCE PUBLIC HEALTH

- Support COP decision
- Use Human arguments (with COP decision for support) for advocacy
  - Litigation
  - Country reporting
  - Human Rights Council
  - Other international mechanisms

Tobacco infringes on

- right to life
- right to health
- right to education
- children’s rights
- women’s rights
- and many others
A NOTE ON LITIGATION
Success story: Argentina

“...The Committee urges the State party to ratify and implement the World Health Organization Framework Convention on Tobacco Control...”
How it comes together: a real life example
TOBACCO AND HUMAN RIGHTS HUB

Visit: ash.org/hrhub
SIGN UP TO GET INVOLVED

Action Alerts’ sign up form: ash.org/hrhub

Human Rights and Tobacco Control Network (HRTCN) listserv: email romeo-stuppyK@ash.org to join
Thank you!

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@ASH: Action on Smoking and Health

Tobacco infringes on
right to life
right to health
right to education
children’s rights
women’s rights
and many others
Q&A
Stay Involved

Twitter
@ASHorg
@LaurentHuber

Facebook
@ASHglobalAction

Instagram
@ASHorg

Info@ash.org

Recordings from previous webinars and Live Chats on social media: https://ash.org/webinars

Toolkit for Advocates
Talking with government and media about the COVID-19 and tobacco use co-morbidity and policies to protect the health of everyone during the pandemic.

ash.org/covid19

NEXT WEBINARS:
Daily THIS WEEK at 9:00am ET

ASH with support from its partners, including the Framework Convention Alliance and Corporate Accountability International, will host a week of webinars. These webinars are focused on the FCTC and at times may be more technical than some of our previous webinars, but the topics we will cover, including endgame, liability, human rights, and COVID, will be useful to advocates from every background.

Thursday, Nov. 12:
COVID-19’s Impact on the FCTC, Cessation, and Tobacco Policy

Friday, Nov. 13th:
Closing the Funding Gap for FCTC Implementation at the Global and National Level

Full Descriptions & Registration Links: https://ash.org/cop2020