

ALLYING TOBACCO CONTROL WITH HUMAN RIGHTS

RICHARD A. DAYNARD, RANGITA DE SILVA DE ALWIS, AND MARK GOTTLIEB

The history and growth of the tobacco control movement involves repeated border crossings into other fields and transformations of self-image. In the 1980s we tended to see ourselves as largely involved in nonsmokers' rights, with organizational names like Americans for Nonsmokers Rights, Nonsmokers Rights Association (of Canada), and Group Against Smoking (or even "Smokers'") Pollution. There were organizations with broader titles and missions like "Action on Smoking and Health", but it wasn't until the end of the decade that we had redefined the movement as "tobacco control".¹ Even then, most of us knew little or nothing about "public health", but we soon found ourselves gathering regularly at American Public Health Association meetings. We knew nicotine was addictive long before 1988, when the Surgeon General's Report on Nicotine Addiction placed cigarettes in the spectrum of addictive drugs², leaving many of us to recast our professional identities as members of the Society of Research on Nicotine and Tobacco. And environmentalism didn't seem to have much to do with tobacco control until the 1992 report on Environmental Tobacco Smoke by the U.S. Environmental Protection Agency made the connection clear.³

And so it is with human rights. Ten years ago there was barely any discussion of human rights in tobacco control circles or of tobacco control in human rights circles.⁴ More recently, human rights campaigners have begun to see how they can benefit from tobacco control knowledge and insights, and tobacco control advocates have begun to appreciate how useful human rights vocabulary and the established treaty bodies can be to our efforts.

While the preamble to the Framework Convention on Tobacco Control ("FCTC") references human rights treaties, the unfamiliarity with human rights "treaty bodies" among the NGOs working on the FCTC contributed to this crucial enforcement mechanism's omission from the NGOs priority agenda, and its absence from the FCTC itself.

In human rights instruments, "treaty bodies" are used to pressure the parties to the treaty to meet their obligations by: a) requiring periodic mandatory reports from them to demonstrate their compliance efforts and successes; and b) accepting "shadow reports" from NGOs that may paint a less rosy and more accurate picture. The treaty bodies may then question party representatives at a face-to-face session and issue written and public "concluding observations" that may criticize the party for inadequate compliance.

The connection between tobacco control and human rights is not a stretch. The leading human rights treaties all contain provisions highly relevant to the aspirations of the tobacco control movement. The Universal Declaration of Human Rights, the bedrock on which all rights treaties are founded, recognizes the right to life as "fundamental and non-derogable" and guarantees a standard of living "adequate for the health and well being" of the individual's family.⁵The

International Convention on Economic, Social and Cultural Rights ("ICESCR") guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," and recommends affirmative steps including "the prevention, treatment and control of epidemic, endemic, occupational and other diseases."⁶ These provisions have been further specified by the ICESCR treaty body to require "prevention and reduction of the population's exposure to harmful substances such as ...harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health"; "information campaigns, in particular with respect to...the use of cigarettes, drugs and other harmful substances"; and an obligation to discourage "use of tobacco, drugs and other harmful substances". States are obligated to take all necessary measures to safeguard persons from infringements of the right to health by third parties, and are admonished to avoid the "failure to discourage production, marketing and consumption of tobacco."⁷ The Convention on the Rights of the Child ("CRC") establishes "the right of the child to the enjoyment of the highest attainable standard of health".⁸ The Convention on the Elimination of Discrimination against Women ("CEDAW"), which prohibits both direct and indirect forms of discrimination against women and covers both the public and private spheres, requires state parties to "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services...".⁹ This provision has been interpreted, consistently with the other human rights treaties, to include a right to health as well as health care.¹⁰

While the precise contours of a right to health are often unclear, this is not true with respect to tobacco control issues. These treaties have all been adopted by the great majority of the world's nations: so has the Framework Convention on Tobacco Control. The FCTC represents the considered judgment of the parties to all of these treaties as to the meaning of the right to health with respect to the issues it covers. This greatly simplifies discussions with human rights advocates and treaty enforcement bodies: the issue is not what these treaties require of governments with respect to tobacco control, but rather how to pressure them to honor their obligations.

Expressing tobacco control concerns in human rights terms invokes a universally accepted moral framework. Reaching out to women's and children's rights and other civil society organizations can broaden the existing national coalitions seeking strong and effective tobacco control measures. And noting the failure of specific governments to fully implement FCTC requirements and guidelines – and hence to adequately protect their citizens' human rights – before the ICESCR, CRC and CEDAW treaty monitoring bodies provides a partial substitute for the failure to include such a body in the Framework Convention itself. For that to occur, stakeholders interacting with the treaty bodies must become engaged by the intersection of their movement's goals and those of the tobacco control movement.

One effort to bridge the tobacco control and human rights paradigms and communities has been led by the Public Health Advocacy Institute ("PHAI") at the Northeastern University School of Law. PHAI has, thus far, organized in-country meetings, symposia, and roundtables in 20 countries that brought health ministry and other relevant officials together with both leading national tobacco control advocates and women's rights and children's rights advocates for the first time. These meetings of the movements have helped all participants reconceptualize

women's and children's rights to life and health to include the tobacco control agenda. They are listed in Table 1. PHAI also met with members of the CEDAW and CRC treaty bodies to help sensitize them to the impact of tobacco on women and children.

It is difficult to measure the impact of these initiatives. All of them exposed human rights activists to tobacco control issues and produced at least a verbal commitment to pursue these issues going forward. Many led to discussions of these issues in participants' own publications. Some, as in Nepal, Mexico, Egypt and Argentina preceded national tobacco control measures, but their causal relationship, if any, is unclear. Some, as in Nepal, Bangladesh and Cambodia, directly contributed to the inclusion of tobacco control-related concerns in their CEDAW shadow reports. Another NGO, the O'Neill Institute for National and Global Health Law at Georgetown University, worked with national NGO's to produce shadow reports devoted exclusively to tobacco control issues for Brazil to the ICESCR Committee, and for Argentina and Egypt to the CEDAW Committee.

We do not know what the staying power of these interventions has been. We have yet to assess to what extent, if at all, do human rights advocates in these countries, both leaders and grassroots activists, actually participate in tobacco control campaigns and whether follow-up sessions could solidify commitments. Although measuring the impact of these interventions is challenging, there is no doubt that they contribute to a reconceptualization of tobacco control as a human rights issue and of human rights as a tobacco control issue. Like prior reconceptualizations of our movement, this tends to broaden and strengthen it to better achieve its goal of reducing death and disease caused by tobacco products. Allocating modest resources towards pursuing this strategy will broaden national tobacco control coalitions and build stronger and more enduring alliances to advance tobacco control around the world.

PHAI Tobacco Human Rights and Tobacco Control Interventions to date

Date	State	Stakeholders
June 2006	Nepal	Public Health and Women's Rights NGO's
August 2006	Philippines	Legislators and Lawyers
January, 2007	China	Children's Rights NGO
April 2007	Vietnam	Women's Rights NGO
July, 2007	Bangladesh	Women's Lawyers Association
August, 2007	Georgia	Tobacco Control NGO; Civil Society NGO
November, 2007	Indonesia	Consumer Law Association and Various Women's Rights NGOs
September, 2008	Mexico	Several Legislators and Human Rights Organizations
April, 2008	Cambodia	Women's Rights NGOs; Legislators
August, 2008	Malaysia	Human Rights Lawyers
November, 2009	Russia	Academic Political Reformers; Public Health NGO
December, 2009	Egypt	Government Ministry and Agencies
June, 2010	India	Reform-Oriented Lawyers
August, 2010	Turkey	Civil Society NGO
November, 2010	Argentina	Legislators; NGOs
March, 2011	South Africa	Public Health School; NGO's
January, 2011	Kenya	Law Reform and Public Health NGOs
July, 2011	Romania	Women's Rights NGOs
July, 2011	Bulgaria	Women's Rights NGO and Government Officials
December, 2011	Morocco	Women's Rights and Public Health NGOs

REFERENCES

- ¹ Cohen SB, Davis RM (1995) Tobacco "control": a consumer-friendly term? *Tobacco Control* 4:195–196.
- ² US DHHS: *The Health Consequences of Smoking: Nicotine Addiction. A Report of the Surgeon General. 1988 Center for Health Promotion and Education, Office of Smoking and Health. Pub. No. (CDC) 88-8406.*
- ³ *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders.* Washington, DC: US Environmental Protection Agency; 1992. EPA/ 600/006F.
- ⁴ Appleberry R. Breaking the camel's back: bringing women's human rights to bear on tobacco control. *Yale Journal of Law and Feminism* 2001;1384–88; Wike J, The Marlboro Man in Asia: U. S. tobacco and human rights. *Vanderbilt Journal of Transnational Law* 1996;29: 351–52.
- ⁵ United Nations General Assembly, *Universal Declaration of Human Rights.* Geneva: United Nations General Assembly; Resolution 217 A (III), UN doc. A/ 810 (III) (1948 Dec), Articles 3,22..
- ⁶ *International Covenant on Economic, Social and Cultural Rights, G.A. Res. 22001 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, 993 U.N.T.S. 3 (1966), Articles 12, 12.2. .*
- ⁷ CESCR, General Comment 14
- ⁸ UN General Assembly (1989) *Convention of the Rights of the Child.* UN Document A/Res/44/23. New York, Article 24.1.
- ⁹ *Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, 1249 U.N.T.S. 13, 14 (E), 24 (F) (entered into force Sept. 3, 1981), Article 12.*
- ¹⁰ *Committee on the Elimination of Discrimination against Women, General Recommendation No. 24 (20th session, 1999).*