

POLICY AND PRACTICE

Advancing tobacco control with human rights

Laura Graen^{1,2}

¹ Human Rights and Tobacco Control Network, Washington D.C., USA

² Freelance human rights and tobacco control expert, Berlin, Germany

Corresponding author: Laura Graen (email: graen@lauragraen.de)

ABSTRACT

Progress in the fight against the tobacco epidemic has been too slow in the WHO European Region. The human rights-based approach provides a novel instrument to advance tobacco control and thereby increase the pace and sustainability of tobacco control policies. This paper discusses how tobacco production, marketing and use are associated with human rights violations and how human rights arguments and instruments can be used to advance tobacco control. Human rights – such as those to life and health as well as the rights to safe working conditions, protection from hazardous child labour

and the best interest of the child – place obligations on governments and, above all, they give them the right to protect the population from the tobacco industry. They help increase support from other government departments and the public, can be invoked in court cases to defend tobacco control measures and have an independent monitoring system, unlike the WHO Framework Convention on Tobacco Control. This paper describes advances that have already been made in the European Region and globally.

Keywords: HUMAN RIGHTS, TOBACCO, INEQUALITIES, WHO FCTC, WHO EUROPEAN REGION

INTRODUCTION

Over the past decades, global tobacco control has made huge advances. Research has provided evidence on the dramatic morbidity and mortality rates related to tobacco, as well as the efficacy of tobacco control policies. Based on this wealth of evidence, the WHO Framework Convention on Tobacco Control (WHO FCTC), the world's first public health treaty, was developed and came into force in 2005. Fifteen years on, 181 parties have ratified the treaty, covering more than 90% of the world's population, and many countries are making progress in its implementation (1). It provides a powerful means to defend public health against the multinational tobacco industry, helping governments to enforce smoke-free public places, tobacco advertising and sponsorship bans, tobacco taxes, product packaging and ingredient regulation, alternative livelihoods for tobacco smallholder farmers and many other measures. The WHO FCTC encourages activities and motivates actors with regular sessions of the Conference of the Parties, working groups, regional meetings in collaboration with the WHO regional offices, and other forums and thereby creates momentum and provides countries with an international arena of exchange and assistance.

However, progress in the fight against the tobacco epidemic has been too slow and this translates into millions of avoidable deaths. Data from the WHO European Region shows that it is unlikely to achieve the 2025 target of a 30% reduction in the prevalence of tobacco use compared to 2010, set in the WHO Global action plan for the prevention and control of noncommunicable diseases 2013–2020, if efforts are not increased rapidly (2). Current trends show that only six countries are on track to reach the target. A further 35 will probably achieve a reduction but not the targeted percentage and six countries are unlikely to experience any significant change. According to current calculations, the European Region is the only one expected to fall short of reaching the targeted decrease of female smoking and will still top the list globally in 2025 in this area (2). Moreover, novel tobacco products like e-cigarettes and heated tobacco, whose long-term health harms are not yet known, are an area of increasing concern: in some countries in the European Region, current e-cigarette use among 13–15 year olds already reaches double digits (1).

At the same time, tobacco control advocates and policy-makers working in the area are confronted with a puzzling fatigue: it seems like policy-makers, the media, the public and donors increasingly believe that the tobacco epidemic is

over and the policies that are already in place are sufficient. However, without continuous commitment to tobacco control and strong enforcement of the WHO FCTC, the decrease in prevalence rates of tobacco use in adults has slowed down in some countries and in several cases prevalence has even increased (3).

By sharing the human rights-based approach to tobacco control, this paper aims at changing the perception of tobacco being a “done business” and inspiring policy-makers and tobacco control advocates to use human rights to advance public health, build bridges to potential supporters and broaden alliances beyond the traditional tobacco control sphere. The human rights-based approach is not a new issue, but it offers a novel instrument to fight the perennial problem of the tobacco epidemic. It specifically adds strength to tobacco control because it opens doors to the powerful judiciary monitoring and enforcement mechanisms that are at the core of international human rights. Moreover, state duties under the human right to health and other fundamental rights at times go beyond the WHO FCTC, and even countries that are not parties to the WHO FCTC are obligated to implement the most effective tobacco control measures because of their ratification of human rights conventions that recognize the human right to health. Additionally, the WHO FCTC focuses on tobacco marketing and use with only a few articles on tobacco production. In this area, tobacco control can benefit from synergies with human rights conventions.

It is important to emphasize that not only do human rights instruments strengthen tobacco control, but that tobacco control mutually helps to achieve human rights objectives as well as the 2030 Agenda for Sustainable Development. This is reflected in the United Nations Human Rights Council Resolution 35/23 on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the implementation of the 2030 Agenda for Sustainable Development (4, 5). Beyond being essential in reaching the Sustainable Development Goal (SDG) on health (especially targets 3.4 on the reduction of mortality from noncommunicable diseases and 3.a on the implementation of the WHO FCTC), tobacco control also contributes to reaching goals on gender equality, the livelihoods and the development of children, poverty reduction, elimination of hunger, safe working conditions as well as environmental targets (6).

HUMAN RIGHTS CONVENTIONS ADOPTED IN THE EUROPEAN REGION

Tobacco control, through the WHO FCTC, is already deeply linked to human rights. In its preamble, the treaty refers to the human right to health and cites the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) (7). These conventions are widely adopted globally and have been ratified by all countries in the European Region (except the ICESCR, which has not been ratified by Andorra) (8).

Other human rights accords that are widely adopted in the Region are the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities (CRPD), the European Convention on Human Rights as well as all fundamental conventions of the International Labour Organization (ILO) (8–10).

The basic characteristics of human rights have already been laid out in the 1948 Universal Declaration of Human Rights: Human rights are fundamental, universal and inalienable (11). They can belong to different realms such as economic, political or social, but they are interdependent and indivisible. A state cannot focus on the implementation of some rights while neglecting the others. Additionally, since they are non-discriminatory, a government has to enforce them for everyone, not just for certain groups (3, 12).

The duty of governments lies in three principles: to respect, protect and fulfil human rights. This means that states are obligated not to interfere with or violate human rights (respect); they have to protect groups or individuals from the violation of their rights by third parties – for example tobacco companies – (protect); and they need to take appropriate measures to ensure that every person can enjoy their human rights (fulfil). Except for rare cases in which governments are owners of tobacco companies, the most relevant principles for tobacco control are protect and fulfil. These two principles place the obligation on governments – and give them the right – to take all necessary measures to regulate the tobacco industry in the most effective way to protect the human right to health and other fundamental rights (12).

TABLE 1. HUMAN RIGHTS THAT ARE MOST RELEVANT TO TOBACCO PRODUCTION, MARKETING AND CONSUMPTION AND THEIR APPLICABILITY ALONG THE SUPPLY CHAIN

| Human rights | Tobacco growing | Manufacturing | Marketing and sale | Tobacco use and SHS | THS |
|--|-----------------|---------------|--------------------|---------------------|-----|
| Right to life: Article 6 of the CRC, Article 10 of the CRPD | | | X | X | |
| Right to health and access to health care: Article 12 of the ICESCR, Article 24 of the CRC, Article 12 of the CEDAW, Article 25 of the CRPD | X | X | X | X | X |
| Children's right to a healthy environment and an adequate standard of living: Articles 24 and 27 of the CRC | X | | | X | X |
| Right to information: Article 17 of the CRC, Article 10 of the CEDAW, Article 21 of the CRPD | X | X | X | X | X |
| Obligation of governments to collect data to facilitate the implementation of human rights: Article 31 of the CRPD | | | | X | X |
| Best interest of the child: Article 3 of the CRC | X | X | X | X | X |
| Right to safe working conditions: Article 11 of the CEDAW, Articles 7 and 12 of the ICESCR | X | X | | X | X |
| Right to protection from child labour and forced labour: Article 32 of the CRC, ILO Conventions No. 29, 138 and 182 | X | X | | | |

Abbreviations in the table: CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women; CRC: Convention on the Rights of the Child; CRPD: Convention on the Rights of Persons with Disabilities; ICESCR: International Covenant on Economic, Social and Cultural Rights; ILO Convention No. 29: Forced Labour Convention; ILO Convention No. 138: Minimum Age Convention; ILO Convention No. 182: Worst Forms of Child Labour Convention; SHS: second-hand smoke; THS: third-hand smoke.

HUMAN RIGHTS VIOLATIONS RELATED TO TOBACCO

A variety of human rights are related to tobacco control (Table 1) and the violation of fundamental rights is rampant along the whole supply chain, beginning with child labour in tobacco growing and ending in death and disease due to tobacco-related diseases and toxics in second- and third-hand smoke (3, 12–14).

RIGHT TO LIFE

Given that tobacco use kills 8 million people annually and the number of deaths is expected to grow (2), it seems obvious that the human right to life is relevant for tobacco control. However, in conjunction with the non-discrimination principle of human rights, it has more specific implications. In most countries in the European Region, tobacco use is more prevalent among people with low socioeconomic status (SES), with the prevalence sometimes even double that of those with a high SES (3). Socioeconomic factors also play a role in access to cessation services and treatment for tobacco-induced diseases (15). Similarly, studies show that people with severe

mental health disorders are much more likely to smoke and, as a consequence, die at much higher rates from tobacco-related diseases than the general population: research estimates that about half of deaths among people affected by schizophrenia, bipolar disorder or depression are caused by tobacco-related diseases (16). Mental health facilities are often not covered by smoke-free laws and rarely offer or encourage smoking cessation (16). These inequalities ultimately translate into higher morbidity and mortality rates in marginalized groups and a government's failure to take action to address them is a clear violation of human rights.

RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

States have a duty to seek the progressive realization of the highest attainable standard of health for all people and must implement core minimum measures to respect, protect and fulfil this right, as stated in General Comment No. 14 of the Committee on Economic, Social and Cultural Rights on Article 12 of the ICESCR (17). If a state is unable to meet the minimum standard, it has to demonstrate that it has made every possible effort and used all available resources to do

so. Tobacco control measures such as advertising bans, plain packaging, smoke-free laws and a ban on tobacco industry interference in policy-making (Art. 5.3 of the WHO FCTC) can be implemented with few resources and one of the most effective instruments – tobacco tax increases – even provides income to the government. The Committee also clearly states that “the failure to discourage production, marketing and consumption of tobacco” is a violation of the obligation to protect (17). This makes it difficult for countries to argue that they are unable to fulfil their core duties regarding tobacco control under the right to health.

The potential long-term health hazards of novel tobacco products are unknown. They contain nicotine, which is highly addictive (1). The widespread unregulated marketing of these products is therefore concerning, especially among children and young people, and a violation of the human right to health.

Since tobacco use is the world’s largest preventable cause of death, tobacco control is essential in achieving the human right to health. It can be concluded that there is a human right to tobacco control, derived from the human right to health (3, 18). In its General Comments No. 15 on health and No. 16 on the impact of the business sector on children’s rights, the CRC Committee emphasizes that countries are required to implement and enforce the WHO FCTC (13, 19). Consequently, even countries that are not parties to the WHO FCTC, such as Monaco and Switzerland, are obligated to implement the most effective tobacco control measures because of their ratification of conventions that recognize the human right to health. The WHO FCTC is the international standard for these measures (3).

RIGHT TO A HEALTHY ENVIRONMENT AND AN ADEQUATE STANDARD OF LIVING

State duties under the right to health go beyond the WHO FCTC: whereas Article 8 of the WHO FCTC only covers public places, the CRC requires states to also protect children from exposure to second-hand smoke (SHS) at home (Articles 24 and 27 of the CRC, General Comment No. 15 of the CRC Committee) (13), which is prevalent in the European Region; in a significant number of states, more than 40% of 13–15 year olds are exposed to SHS at home. Although protection from SHS is important for the best interest of the child and child development (Articles 3 and 6 of the CRC), many countries do not systematically collect data in this area (3). Data collection and protection measures have to reflect that low SES is associated with an increased risk of children’s SHS exposure (3, 13).

Of additional concern is third-hand smoke (THS), which can be hazardous, especially to children (14). THS is the residue of tobacco smoke clinging to furniture and other materials long after exposure. Since children in poorer households are more often exposed to SHS, it is very likely that their exposure to THS is increased, adding to the generally increased exposure to toxics of children with low SES (3). This is a violation of their right to a healthy environment and an adequate standard of living (Articles 24 and 27 of the CRC).

RIGHT TO INFORMATION AND COLLECTION OF DATA

Tobacco control measures are also linked to other human rights such as the right to information (Article 17 of the CRC, Article 10 of the CEDAW, Article 21 of the CRPD) (3, 12, 13). Governments have to ensure that citizens are informed about the hazards of tobacco use, SHS, options to quit and treatment for tobacco-induced diseases. This information has to be distributed through channels and using messages that reach the most vulnerable groups. The right to information requires states to protect its citizens from misinformation such as advertising that uses misleading imagery trivializing the hazards of smoking and promoting tobacco use. This is especially important regarding children and young people (13).

Data is essential in understanding the extent and quality of the problem and in implementing appropriate measures. However, there is no systematic data collection regarding tobacco use and tobacco-related excess mortality among people with severe mental health disorders in the European Region. Most countries in the Region have ratified the CRPD and are therefore obligated to collect appropriate, disaggregated data relevant to the rights of persons with disabilities, which includes people with mental health disorders (Article 31 of the CRPD) (3).

BEST INTEREST OF THE CHILD

The best interest of the child is an overarching norm defined in Article 3(1) of the CRC. It determines that in all actions undertaken by the state and public or private institutions that affect children and their holistic development, the best interests of children must be a primary principle (13). Children’s holistic development is impacted by tobacco advertising, promotion and sale, consumption of tobacco products, exposure to hazards, such as SHS and THS, as well as exploitation and child labour in tobacco growing and manufacturing (see below) (13). This means that governments have a legal obligation to protect children’s best interests throughout the tobacco value chain, from production to consumption.

RIGHT TO SAFE WORKING CONDITIONS, PROTECTION FROM CHILD LABOUR AND FORCED LABOUR

If encountered at the workplace (for example restaurants), SHS exposure and other smoking-related hazards are violations of the human right to safe working conditions that is incorporated in the ICESCR and CEDAW. Globally, about 433 000 people die each year because of occupational SHS exposure (3). Among many other hazards, SHS increases the risk of stillbirth, congenital malformations and lower birth weights, which are a violation of women's right to protection of their reproductive health (Article 11 of the CEDAW) (1, 3).

There are further work-related human rights violations at the beginning of the tobacco supply chain: risks associated with the lack of protective clothing and intense use of chemicals (such as pesticide poisonings), green tobacco sickness (nicotine poisoning) and exposure to smoke or tobacco dust during the drying process (3, 6, 18). Apart from the right to safe working conditions, the right to information comes into play here too, as farmers and workers have to be informed about protective measures against poisonings and other injuries. Because of these hazards, child labour in tobacco growing is banned under Article 32 of the CRC as well as the Minimum Age Convention (ILO Convention No. 138) and the Worst Forms of Child Labour Convention (ILO Convention No. 182) (3, 13). It also impacts the child's right to education (Article 28 of the CRC) (13). Nevertheless, it is rampant in all stages of tobacco growing globally and has also been found in some countries in the European Region (3, 6). Moreover, forced labour has been found on tobacco farms in Malawi, one of the biggest tobacco exporters in the world. This is a violation of the Forced Labour Convention (ILO Convention No. 29) (20).

THE ADVANCEMENT OF TOBACCO CONTROL WITH HUMAN RIGHTS INSTRUMENTS

Human rights treaty bodies have repeatedly strengthened tobacco control by confirming that tobacco production, marketing and use violate various human rights, especially the human rights to life and health (12, 13, 18, 21). The 2000 CESCR General Comment No. 14 on health as well as the 2013 CRC General Comments No. 15 on health and No. 16 on business impacts on children's rights are examples of this (13, 17, 19). Decision FCTC/COP7(26) of the WHO FCTC Conference of the Parties in 2016 also acknowledges "the relationship between

tobacco use and human rights" and recalls "the human rights reflected in the WHO FCTC" (22). The decision asks parties to tackle the global tobacco epidemic and protect public health from the vested interests of the tobacco industry by linking it to the human rights framework.

Moreover, human rights conventions, unlike the WHO FCTC, have an independent monitoring system (3). A committee of experts regularly reviews each state's progress in the implementation of a certain treaty. Government and civil society as well as national human rights institutions and international organizations submit reports and the committee conducts civil society hearings and a constructive dialogue with the state party. Considering the submitted information, it subsequently publishes conclusions and gives recommendations to the government to remedy observed human rights violations. It may also laud progress if a country has done well in a specific area (3). Between 2010 and 2015, the Human Rights and Tobacco Control Network systematically submitted short reports to the Committee on Economic, Social and Cultural Rights (21). As a result, a significantly increased number of the Committee's Concluding Observations documents included references to tobacco. The Committee, for example, appreciated the WHO FCTC ratification by Armenia, Lithuania and Turkmenistan, and an amended Health Act in Bulgaria as well as recommending the improvement of tobacco control policies in Lithuania and Uzbekistan (21). Observations and recommendations from human rights treaty bodies put political pressure on governments, can strengthen civil society positions and help ministries of health to raise the necessary support from the whole government for the implementation of tobacco control measures.

Human rights conventions also give governments the right to protect their citizens by regulating the tobacco industry and defending tobacco control measures in court (3). The tobacco industry and other groups or individuals have used human rights arguments in lawsuits against smoke-free legislation, plain packaging, advertising bans and other measures, arguing that they would infringe the "right to smoke," economic freedom or property rights (12, 23). It is sometimes argued that a "right to smoke" can be derived from the human right to liberty (Article 9 of the International Covenant on Civil and Political Rights (ICCPR)) or the right to self-determination and economic, social and cultural development (Article 1 of the ICCPR and Article 1 of the ICESCR) (23). But as smoking is highly addictive, it constrains free choice. It also cannot be described as beneficial to development because it is extremely harmful to smokers themselves and to others, and negatively impacts personal income as well as the overall economy.

Therefore, there is no legal basis for the “right to smoke” (23). In addition, while property rights and the right to economic freedom have a basis in human rights conventions, tobacco industry claims referring to them usually fail when balanced with the overwhelming evidence of the harms of smoking and the need to implement effective tobacco control measures to protect the human rights to life and health (3, 12, 23).

Additionally, human rights can be invoked to sue a government to force it to implement tobacco control legislation such as strict smoke-free laws. This has successfully been done in Peru, Uganda and India, for example (12). Individuals may also bring cases related to tobacco control and human rights before courts (12, 18). In the 2005 case *Novoselev versus the Russian Federation* held before the European Court of Human Rights, the claimant was granted compensation for being detained in a situation of overcrowding, SHS exposure and lack of sufficient ventilation in the cell (18).

Apart from legally binding human rights conventions that mainly place obligations on states, the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the Human Rights Council in its resolution 17/4 (2011), define the human rights duties of companies. Among others, they state that “the responsibility to respect human rights requires that business enterprises: ... Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (24). After conducting a human rights assessment of the cigarette corporation Philip Morris International, the Danish Institute for Human Rights concluded that “tobacco is deeply harmful to human health, and there can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health. For the tobacco industry, the UNGPs therefore require the cessation of the production and marketing of tobacco” (25). However, since the UNGPs are not legally enforceable, the Human Rights Council in 2014 established the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights to develop a legally binding instrument (HRC Resolution 26/9) (26).

Linking tobacco control to human rights also provides new opportunities for cooperation among policy-makers from different departments as well as civil society groups in the realms of public health, sustainable development and human rights. It is a novel way of looking at tobacco and thereby helps to counter the fatigue of policy-makers, the media and the public. In 2016 for example, the Association PROI in

Bosnia and Herzegovina rallied civil society organizations from various areas as well as educational institutions, private businesses and the media behind a manifesto that urged policy-makers to fulfil their tobacco control and human rights obligations (27). In 2018 the German Network for Children’s Rights and Tobacco Control was formed by the non-profit project Unfairtobacco and more than 20 organizations and individual experts from public health, human rights and children’s rights as well as sustainable development (28). In changing constellations, they publish reports, organize events and submit information to human rights treaty bodies such as CEDAW, tackling human rights violations along the whole tobacco value chain, from production to consumption (28–30). Globally too, the human rights perspective has recently gained momentum, for example with the 2018 Cape Town Declaration on Human Rights and a Tobacco-free World that was endorsed by more than 160 organizations worldwide as well as the 2019 Global Forum on Human Rights and a Tobacco-Free World that brought together global leaders in human rights and public health in Bucharest, Romania (31, 32).

CONCLUSION

The European Region needs to rapidly step up its enforcement of effective tobacco control measures to reach the 2025 target of a 30% relative reduction in the prevalence of tobacco use and save millions of lives in the long run. The human rights-based approach helps to achieve this by generating support and defending tobacco control measures against the tobacco industry, even in the courts, if necessary.

Tobacco control, human rights and sustainable development should be understood as mutually reinforcing. Human rights are the basis for tobacco control and certain rights like the right to health can only be realized if tobacco use is eradicated and the commercial production and sale of tobacco is strictly regulated or phased out. Together, tobacco control and human rights help to achieve sustainable development, especially the SDG targets 3.4 and 3.a.

In the absence of an independent monitoring system within the WHO FCTC and considering that tobacco control is essential to achieve the human rights to health and life, governments should ensure that all reports to human rights treaty bodies contain a section on tobacco control, including information on policy implementation as well as tobacco use prevalence and SHS exposure trends, disaggregated by gender, SES and other factors. Tobacco-growing countries as well as big importers of tobacco leaf should also report on human rights violations in

farming or supply chains. This also applies to countries that are not party to the WHO FCTC because the human rights treaties they have ratified obligate them to implement effective tobacco control measures. To ensure that human rights committees get the full picture, civil society should submit their own reports. Additional capacity-building is needed and tobacco control advocates can use the Tobacco and Human Rights Hub of Action on Smoking and Health to learn more (33). Public health groups should work with human rights organizations and institutions that are more experienced in this area, thereby gaining new allies.

Moreover, all national public health or tobacco control policies and plans should refer to the relevant human rights treaties ratified by the state. This increases policy coherence and raises support from other government departments and the public. It is an additional opportunity to build alliances with actors in other areas.

Since data on the connection between mental health and tobacco-related disease and mortality is largely missing in the European Region, WHO should add relevant indicators to its data collection and support capacity-building for Member States in this area.

It is important to note that even if a country sees a strong overall decline in smoking prevalence in the general population, tobacco control is not achieved if this decline is not reflected in all subsections of the population, for example in the socioeconomically disadvantaged or in those living with severe mental health disorders. The human rights-based approach means that countries have to continuously collect data and tailor their tobacco prevention, cessation and treatment of tobacco-induced diseases to reach marginalized people. Human rights violations in tobacco growing have to be remedied and governments should promote alternative livelihoods for smallholder farmers as well as workers, which is also in line with Article 17 of the WHO FCTC. The tobacco epidemic is not over until tobacco control has reached everyone.

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