

# Human Rights and Tobacco Control



## The WHO FCTC and SDG Alignment

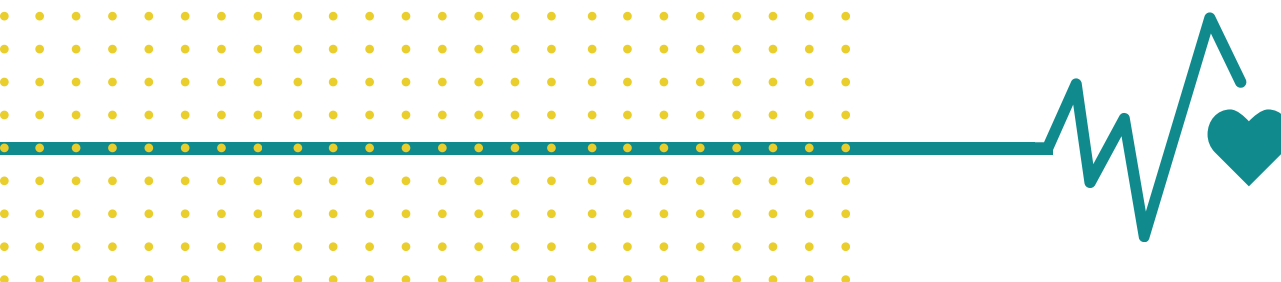
The **World Health Organization (WHO)** reports that tobacco use kills over 8.7 million people each year and is still a major preventable cause of premature disease and death worldwide. What is even more alarming is that 1.3 million of these deaths are among non-smokers, including infants and children. On top of that, second hand smoke exposure is particularly dangerous for women and children.<sup>1</sup> But effective efforts like comprehensive bans on tobacco marketing, creating 100% smoke-free public places, and taxation policies work to curtail the global tobacco epidemic.<sup>2</sup> Few legal measures are as effective in safeguarding and advancing the right to health as the landmark international treaty, the **WHO Framework Convention on Tobacco Control (WHO FCTC)**, the first treaty to be adopted under the auspices of WHO. The WHO FCTC is a powerful tool that Parties to the treaty can use to safeguard human rights, particularly the right to health. Further, the respect, protection, and fulfillment of numerous other human rights are integral to effective tobacco control.<sup>3</sup>

Within the **United Nations Sustainable Development Goals (SDGs)**, SDG 3 aims to ensure healthy lives and well-being for people of all ages. A pivotal component of this goal is strengthening the implementation of the WHO FCTC (Goal 3.a.), thereby underscoring that tobacco control is paramount in promoting the global population's health. This human rights perspective, along with other international conventions and treaties, seamlessly aligns with the articles of the WHO FCTC. This unified approach emphasizes the importance of a collective effort to combat the global health challenges posed by tobacco use.

The **Conference of the Parties (COP)** to the WHO FCTC, the treaty's governing body, plays a pivotal role in shaping and implementing policies that can have a profound impact on public health worldwide. At the seventh session of the COP in 2016, the COP adopted a decision reiterating the human rights principles enshrined in the WHO FCTC. The decision highlighted the relationship between tobacco consumption and human rights, including but not limited to the right to the highest attainable standard of health, and urged Parties to link the human rights and development frameworks in tackling the global tobacco epidemic.<sup>4</sup>

The COP also invited the **Convention Secretariat** to the WHO FCTC to collaborate with other United Nations (UN) bodies to protect public health interests from the tobacco industry's commercial and other vested interests and encouraged nations to foster international cooperation in combatting tobacco consumption and counter the strategies used by tobacco companies in low- and middle-income countries. In subsequent sessions of the COP, it has considered the issue and there is an expectation for the COP to adopt a decision on the contribution of WHO FCTC to human rights respect and promotion during its tenth session.<sup>5</sup>

SDG 3 aims to ensure healthy lives and well-being for people of all ages.



## The UN Human Rights Treaties and Their Connection to Tobacco Control

The UN human rights treaty system consists of nine main international human rights treaties and ten treaty bodies.<sup>6</sup> When a State becomes a Party to a treaty, that State agrees to implement the treaty’s provisions at a national level and to be monitored by the corresponding treaty body. If a State becomes a Party to multiple treaties, the rights contained in those treaties are interrelated, and the realization of one right is connected to the realization of others.

**Tobacco use and the implementation of tobacco control measures are related to many of the human rights protected by the treaties.** For example, the right to life, survival, and development, right to health, right to a healthy environment, right to an adequate standard of living, right to education, and right to information, to name a few, are all impacted by tobacco use. Three treaties serve as the leading promoters and protectors of these rights:

- The [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#) recognizes the right to the highest attainable standard of physical and mental health, and related rights, such as the right to education and the right to enjoy the benefits of scientific progress and its applications.
- The [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#) addresses the elimination of discrimination against women in the fields of education and health care.
- The [Convention on the Rights of the Child \(CRC\)](#) recognizes the right to the highest attainable standard of health and related rights of children, such as, the rights to adequate standard of living, education and information.

## The Right to Health

The right to health is widely acknowledged in numerous international agreements and conventions. Of notable significance is ICESCR, which explicitly recognizes the right to the highest attainable standard of physical and mental health. The committee overseeing ICESCR explicitly underlines the connection between tobacco control and the right to health in its General Comment 14, where it emphasizes that governments should actively “discourage the abuse of alcohol and the use of tobacco, drugs, and other harmful substances.”<sup>7</sup> As described in ICESCR General Comment 14, the right to health includes four interrelated elements:

**AVAILABILITY** of public health and health-care facilities, goods and services;

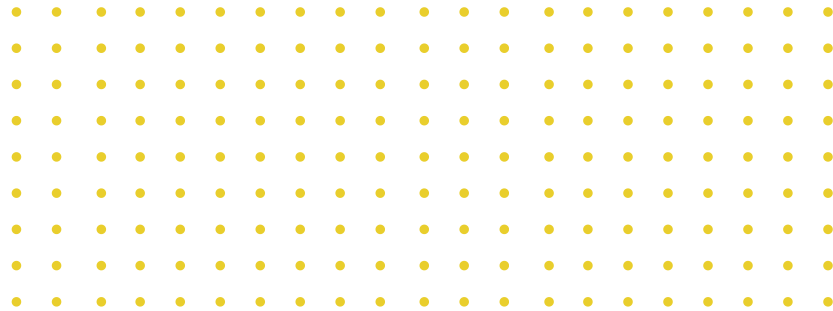
**ACCESSIBILITY** to such services with four components— non-discrimination; physical accessibility for persons with disabilities or persons in remote or rural communities; financial accessibility; and information accessibility;

**ACCEPTABILITY** of services, which requires consideration of factors such as age, gender, religion, and culture in the design and delivery of such services; and

**QUALITY**, which demands that the personnel, facilities, and equipment used to deliver such services are appropriate for their purpose.

States are obligated to respect, protect, and fulfill all human rights. They are required to refrain from interfering directly or indirectly with the enjoyment of the right to health, to prevent third parties from interfering with the right to health, and to adopt legislative, administrative, budgetary, judicial, and promotional measures toward the full realization of the right to health. Also, the obligation to fulfill includes the States’ responsibility to facilitate (take positive measures to enable and assist the enjoyment of the right), provide the right when individuals or groups are unable to, and promote (take action to create, maintain, and restore the health of the population).<sup>8</sup>

**ICESCR explicitly recognizes the right to the highest attainable standard of physical and mental health.**



## Human Rights as an Advocacy Tool for Tobacco Control

Human rights provide a framework to address and promote tobacco control measures, and the UN system and treaty bodies play a pivotal role in shaping the discourse around tobacco control and promoting its alignment with human rights principles. As recognized actors that can influence the development of international rights norms and standards, civil society can advocate through different mechanisms to promote and defend human rights and plays a significant role before international human rights bodies.

To do that, it is essential to understand where the opportunities to advocate are found. The ten treaty bodies, each corresponding to a specific international human rights treaty, are comprised of a set number of independent experts serving four-year terms.<sup>9</sup>

The experts have the main responsibilities of reviewing State Parties during the reporting cycle, issuing Concluding Observations on the status of treaty implementation, drafting General Comments, and, in some cases, adjudicating complaints of human rights violations.

They also receive and analyze shadow reports from National Human Rights Institutions (NHRIs) and non-State entities. Lastly, Special Rapporteurs are another important mechanism of the UN human rights system where civil society can potentially advocate.

Special Rapporteurs are prominent human rights experts whose functions include responding to individual complaints, conducting studies, providing advice on technical cooperation, and undertaking country visits to assess specific human rights situations.

While treaty bodies lack direct enforcement mechanisms, their pronouncements, including General Comments (topic-specific) and Concluding Observations (State-specific), hold immense authority (See Box 1). Though non-binding in nature, they provide authoritative interpretations of individual human rights and the legal obligations enshrined in the Conventions, thus influencing State behavior and advocacy efforts.

## WHAT ARE...

## BOX 1

**CONCLUDING OBSERVATIONS?** Under the international human rights treaties, State Parties are obligated to submit initial and periodic reports every two to five years.<sup>11</sup> This reporting process serves as an avenue for non-governmental organizations, civil society members, and institutions to contribute valuable information on human rights conditions within a country. Treaty bodies critically assess these reports, posing inquiries to the State Party. Subsequently, *they issue Concluding Observations that acknowledge positive measures taken while recommending further actions to enhance treaty implementation.*<sup>12</sup> This process provides a platform for civil society engagement and facilitates the alignment of tobacco control efforts with human rights norms.

**GENERAL COMMENTS?** General Comments or General Recommendations issued by treaty bodies play a crucial role in interpreting treaty provisions.<sup>13</sup> Covering a range of topics, these comments provide valuable guidance on issues such as non-discrimination, the rights to health,<sup>14</sup> education,<sup>15</sup> life, adequate housing,<sup>16</sup> children's rights in the digital environment,<sup>17</sup> and State obligations regarding the business sector.<sup>18</sup> They serve as a reference point for harmonizing tobacco control with human rights standards.<sup>19</sup>

**SHADOW REPORTS?** National Human Rights Institutions and non-State entities, such as civil society organizations, possess the capacity, within the framework of the periodic reporting cycle, to submit reports commonly known as "shadow reports". These reports may be authored by individual organizations or collaboratively by a coalition of organizations.<sup>20</sup> They offer a platform for presenting supplementary viewpoints, areas of concern, or data that these entities believe have been overlooked in the official State Party's report.<sup>21</sup>

**SPECIAL RAPPORTEURS?** Special Rapporteurs are independent experts appointed by the UN Human Rights Council to fulfill two primary mandates: 1) to monitor, advise, and publicly report on human rights situations in specific countries (country mandates); and 2) to address human rights violations globally, covering a wide range of issues related to civil, cultural, economic, political, and social rights (thematic mandates). Special Rapporteurs carry out various tasks, including responding to individual complaints, conducting studies, providing technical cooperation advice, and conducting country visits to assess human rights situations in specific countries. They also gather information on alleged human rights violations and may send urgent appeals or letters of allegation to governments, seeking clarification and concrete measures to address these violations.<sup>22</sup>

According to international human rights treaties, States must regularly submit reports on the human rights situation in their countries to the treaty bodies. During this process, non-governmental organizations and other institutions can submit information to the treaty bodies addressing omissions or inaccuracies in the official government report by submitting shadow reports. At the conclusion of this process, the treaty body will issue a concluding observation, which includes recommendations for actions to be taken to fully implement the treaty. For example, the CEDAW Committee recommended Argentina in 2016 to “ratify and implement the WHO Framework Convention on Tobacco Control and reduce the high tobacco consumption among adolescents, in particular girls, and address the health consequences”.<sup>10</sup>

Human rights offer a powerful framework and tools for advancing tobacco control efforts. By using these tools, advocates can not only critique harmful practices but also work toward the broader goal of safeguarding the health and well-being of individuals and communities worldwide.

As international structures and laws evolve, the role of civil society strengthens. Developments in the international arena can have an impact on local advocacy campaigns as well as the other way around (see Box 2).

## BOX 2

### ARGENTINA'S REVIEW

The case of Argentina's review by the CEDAW Committee and the submission of a shadow report on tobacco control and women's rights by the local NGO FIC Argentina together with other organizations exemplify how actions in the international arena can impact local advocacy campaigns and vice versa. FIC Argentina's inclusion of this topic in its oral presentation before the CEDAW Committee reflects a growing consensus within civil society that tobacco prevention measures are essential to effectively uphold the right to health.

A key aspect of Argentina's CEDAW review was the Committee's continued emphasis on the serious health consequences of tobacco consumption for women in the country. The Committee highlighted that Argentina was not fulfilling its obligations under the Convention as long as it failed to take measures to reduce tobacco consumption and prevent tobacco-related deaths among women and girls. These international advocacy efforts not only position non-communicable diseases and tobacco control as integral components of human rights protection but also provide tools to promote the local adoption of measures that align with the international commitments of the State.<sup>23</sup>

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