

**Linking Tobacco Control
and Human Rights:
SMOKE FREE AIR IS A HUMAN RIGHT**

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Human Rights Approach to Tobacco Control

- ▶ **To shift a trend: the tobacco industry has more effectively used human rights arguments.**
 - Such as freedom of speech; rights of property; rights of privacy
- ▶ **To strengthen a political position: human rights law has a prominent role in political and policy discourses.**
 - Once a relevant societal issue acquires the status of a human rights, it has special consideration in public policy
- ▶ **To link FCTC provision with existing human rights obligations**
 - Strengthening the fctc implementation
- ▶ **Human rights bodies can monitor implementation of FCTC**
- ▶ **The FCTC to define content of governments human rights obligations**

What is Human Rights?

- ▶ **Rights that belong to all human beings at all time and all places by virtue of being born as human beings. (*Natural Rights Theory*).**
 - ▶ **Traditionally classified into two broad categories: negative and positive rights (civil and political rights; economic, cultural and social rights).**
 - ▶ **This twofold characterization of human rights increasingly has been replaced with threefold classification of human rights obligation: focuses on the type of state obligation**
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Subjects in International human rights Law

- ▶ **State** : **Duty Bearer**
(fulfills responsibility)
- ▶ **Persons** : **Right Holder**
(claims rights from...)
- ▶ **Society** : **Respecting**

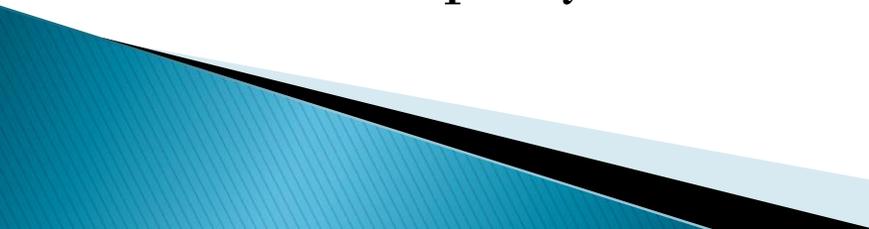
Note: The reciprocal relationship between rights holders and duty bearers



The type of state obligation

- ▶ **Respect:** refrain from interfering with the enjoyment of the rights
 - ▶ **Protect :** prevent others from interfering with the enjoyment of the rights
 - ▶ **Fulfill :** adopt appropriate measures toward full realization of the rights
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Convention on Tobacco Control

- ▶ The member countries of WHO approve FCTC:173 states ratify the FCTC
 - ▶ Main objective: to protect the people from the negative effects of tobacco consumption and exposure to tobacco
 - ▶ The treaty contains clauses for tobacco taxation, prevention of smoking and treatment, smuggling, advertising, sponsorship and promotion, and product regulation
 - ▶ The treaty obligations are enforced through legislation by the state party
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The Human Rights Connection

- ▶ Tobacco control policies are being connected with human rights treaties and obligations in international human rights procedures.
- ▶ Recently, this connection has impacted a number of decisions at domestic level:
 - Tobacco control legislative debates
 - High profile judicial cases

The Human Rights Connection

- ▶ The International Covenant on Economic Social and Cultural Rights (ICESCR) addresses the right to health in the following terms (article 12):

“The States Parties to the present Covenant recognize the rights of everyone to the enjoyment of the highest attainable standard physical and mental health...”

The Human Rights Connection

▶ State Obligation related to Tobacco Control

Committee on Economic Social and Cultural Rights (CESCR), General Comment 14:

“(...) violations of the obligations to protect arise from the fact that a State may not adopt all necessary measures within their jurisdiction in order to protect persons against violation of the right to health by third parties. Included in this category are such omission as ... non-protection of consumers and workers from damaging health practices as occurs in the case of... not deterring the production, marketing and use of tobacco, drugs and other harmful substances”

The FCTC and Human Right Obligations - Treaties

- ▶ UN Bodies using the FCTC as a standards to measures States compliance with Human Rights Law:
 - CESCR, concluding observations on Brazil, 2009
 - CEDAW concluding observation on Argentina, 2010
 - CESCR, concluding observation on Argentina, 2011
 - CESCR, concluding observation on Indonesia,

Concluding observation on Indonesia

- ▶ The Committee is concerned at tobacco addiction, which affects almost one third of the State party's population. The Committee also expresses concern at the provisions of Law 35/2009 on Narcotics which among others provide for the compulsory treatment of drug users (art. 12).
- ▶ The Committee recommends that the State party:
 - ▶ (a) Conduct preventive awareness-raising on the serious health risks associated with smoking and illicit substance abuse, targeting primarily youth and women, including in rural areas;
 - ▶ (b) Enact anti-tobacco legislation which prohibits indoor smoking in public buildings and in the workplace and enforces a comprehensive ban on tobacco advertising, promotion and sponsorship;
 - ▶ (c) Bring Law 35/2009 on Narcotics into line with international human rights standards;
 - ▶ (d) Apply a human rights-based approach to the treatment of tobacco and drug addiction, and provide appropriate health care, culturally sensitive psychological support services and rehabilitation to such persons, including effective drug dependence treatment such as opioid substitution therapy.
- ▶ The Committee also encourages the State party to ratify the World Health

The FCTC and Human Right Obligations

– Domestic Litigation

- ▶ The FCTC, human rights and constitutional litigation
- ▶ FCTC as a standard that justifies government regulation and the FCTC as legal obligation for government to regulation
- ▶ Examples of relevant case law:
 - Indonesia, Guatemala 2010, Columbia 2010, Peru 2011, and Belgium 2011

Conclusion

- ▶ Human rights and tobacco control are mutually reinforcing, supported both by human rights law and by the FCTC –two complementary regime in international law
- ▶ Using human rights can be effective not only in defending tobacco control, but also in affirmatively advancing tobacco control at the national level.
- ▶ FCTC Conference of the Parties develops a mechanism to monitor implementation of the FCTC, international and regional human rights system can monitor the implementation of the FCTC duties