



ASH is going LIVE now!

INCORPORATING HUMAN RIGHTS INTO THE WHO FCTC

SPEAKERS



Professor Steve Marks

Professor of Health and Human Rights at Harvard T.H. Chan School of Public Health



Dr. Flavia Senkubuge

President, The Colleges of Medicine of South Africa



Kelsey Romeo-Stuppy

Managing Attorney at Action on Smoking and Health (ASH)



Pablo Analuisa

Clinical Psychologist at Central University of Ecuador and Specialist & Coordinator of Mental Health Promotion at the Ministry of Public Health of Ecuador

MODERATOR



Laurent Huber

ASH Executive Director

The Nexus Between Tobacco Control and Human Rights

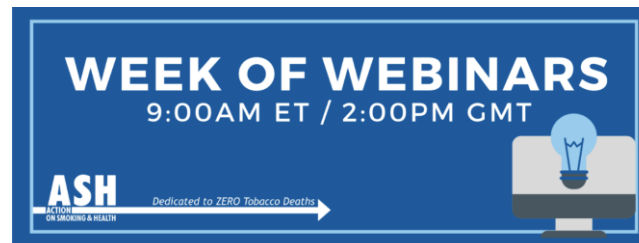
Stephen P. Marks

François-Xavier Bagnoud Professor of Health and Human Rights

Harvard T.H Chan School of Public Health

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

Peter D. Jacobson & Soheil Soliman, Co-Opting the Health and Human Rights Movement, 30 J.L. Med. & Ethics 705, 713 (2002).

Aaron Eckhart Maria Bello Cameron Bright Adam Brody Sam Elliott Katie Holmes David Koechner Rob Lowe William H. Macy J.K. Simmons and Robert Duvall



THANK YOU FOR SMOKING

FOX SEARCHLIGHT PICTURES and WMMV ENTERTAINMENT PRESENT A DAVID L. SACKS PRODUCTION A JASON REITMAN FILM "THANK YOU FOR SMOKING" MARIA BELLO CAMERON BRIGHT ADAM BRODY SAM ELLIOTT KATIE HOLMES DAVID KOECHNER ROB LOWE WILLIAM H. MACY J.K. SIMMONS AND ROBERT DUVALL "THANK YOU FOR SMOKING" WRITTEN BY DAVID L. SACKS AND DIRECTED BY JASON REITMAN CASTING BY JESSICA KAPLAN COSTUME DESIGNER JESSICA KAPLAN MUSIC BY JASON REITMAN EDITOR JESSICA KAPLAN PRODUCTION DESIGNER JESSICA KAPLAN EXECUTIVE PRODUCERS JESSICA KAPLAN AND JASON REITMAN PRODUCED BY JESSICA KAPLAN AND JASON REITMAN FOR FOX SEARCHLIGHT PICTURES AND WMMV ENTERTAINMENT
www.foxsearchlight.com

CELEBRATE
WORLD SMOKER'S DAY
OCTOBER 10-11
www.worldsmokersday.org



SMOKERS' RIGHTS

“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.”

World Smokers' Day, Smokers' Rights Declaration, available at <http://www.worldsmokersday.org/srd.html>.



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



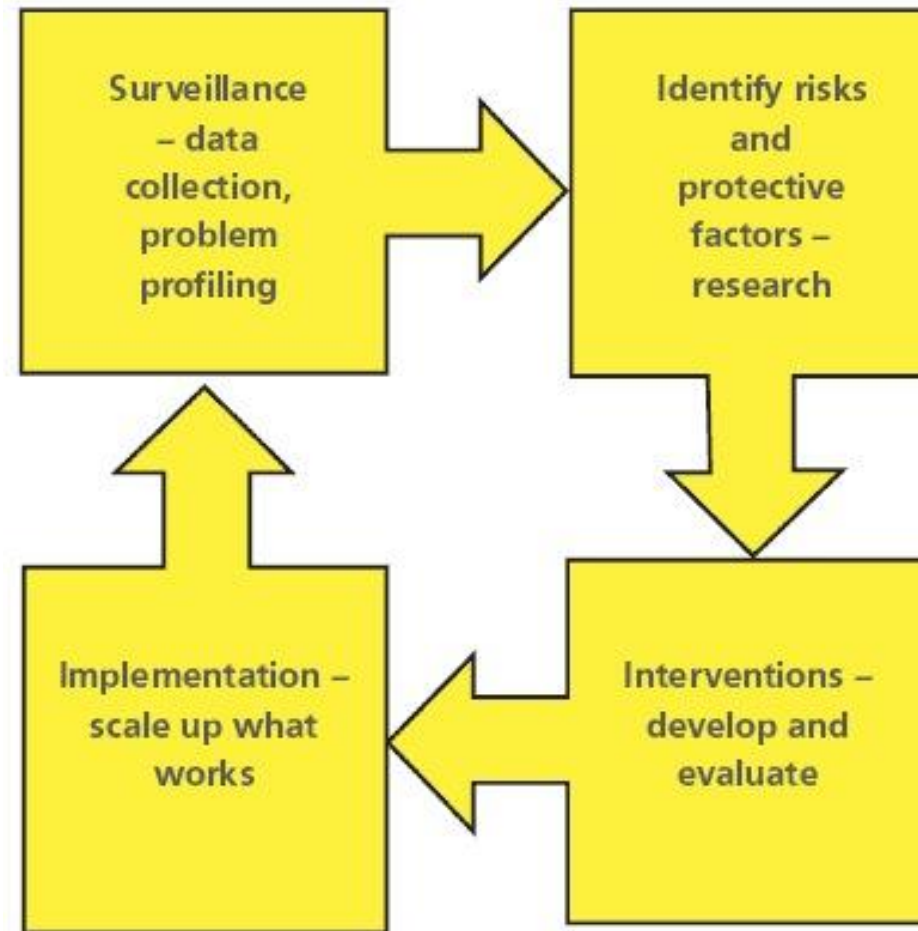
2. Isn't tobacco **primarily a health issue**, which is only confused by invoking human rights?



VS.



Public health approach



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?

WHO Framework Convention on Tobacco Control-Preamble

- *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 10 of Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)
- Article 16 of African Charter on Human and Peoples' Rights (1981)
- Article 39 Revised Arab Charter on Human Rights (2004)
- Article 29 (1) ASEAN Human Rights Declaration

The Emerging Human Right to Tobacco Control

*Carolyn Dresler**
*Stephen Marks***

Human Rights Quarterly 28 (2006) 599–651 © 2006 by The Johns Hopkins University Press

RECONCEPTUALIZING HUMAN RIGHTS TO CHALLENGE TOBACCO

Rangita de Silva de Alwis^{*}

Richard Daynard^{**}

MICHIGAN STATE UNIVERSITY COLLEGE OF LAW
JOURNAL OF INTERNATIONAL LAW

VOLUME 17

2008–2009

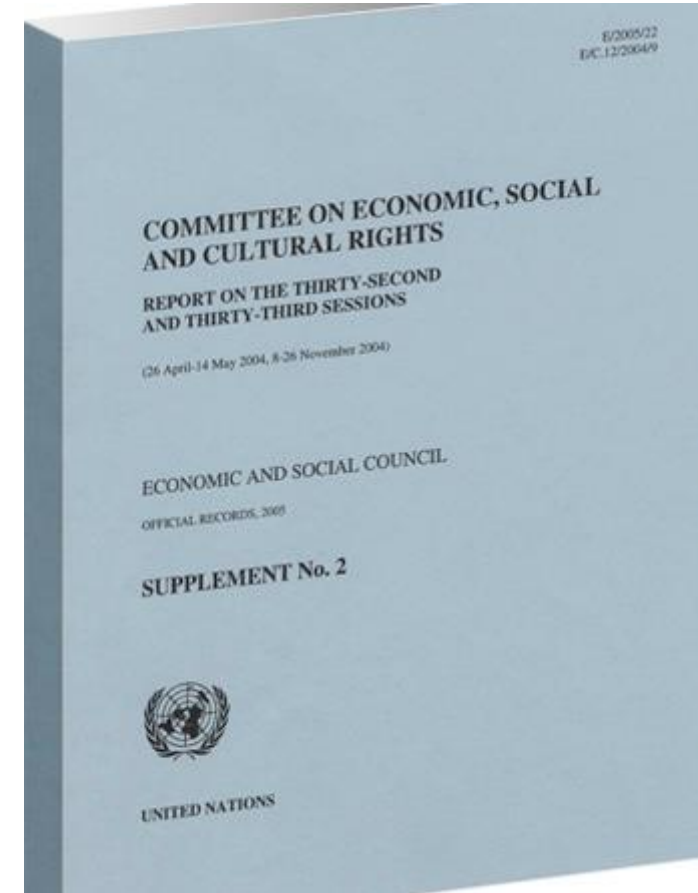
ISSUE 2

Melissa E. Crow, “Smokescreens and State Responsibility: Using Human Rights Strategies to Promote Global Tobacco Control,” 29 **Yale J. Int’l L.** 209 (2005).

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)

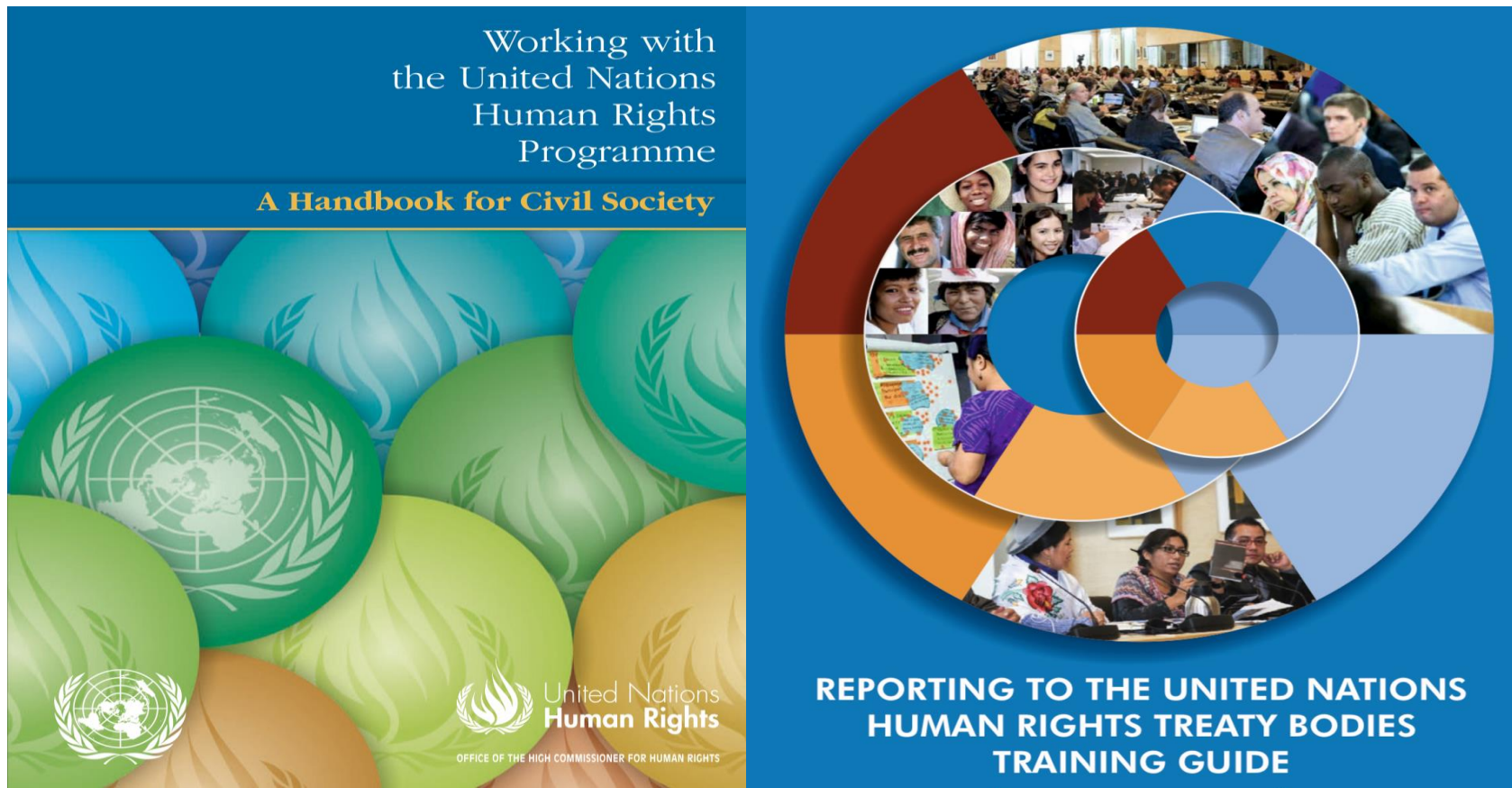
15. “The improvement of all aspects of environmental and industrial hygiene” (art. 12.2 (b)) comprises, *inter alia*, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and 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.¹³ Furthermore, industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment.¹⁴ Article 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**.

United Nations Guiding Principles on Business and Human Rights (UNGPs)



17TH WORLD CONFERENCE
ON TOBACCO OR HEALTH

UNITING THE WORLD FOR A TOBACCO FREE GENERATION

7-9 MARCH 2018 | CAPE TOWN | SOUTH AFRICA

Cape Town Declaration on Human Rights and a Tobacco-free World

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)

Report on the sixth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*

Chair-Rapporteur: Emilio Rafael Izquierdo Miño

“... 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?**



Cape Town Declaration on Human Rights and a Tobacco-free World

We, participants in the 17th World Conference on Tobacco or Health, meeting in Cape Town, South Africa, on 7-9 March 2018, and civil society organizations as well as individuals from across the globe, are firmly committed to promoting and protecting public health and human rights in relation to the tobacco epidemic, which kills 7 million people each year globally, and agree to the following general principles and call to action to achieve a tobacco-free world.

I. General Principles Relating to Human Rights and Tobacco Control

A. Human Rights Applicable to Tobacco Control

1. We agree that the manufacture, marketing and sale of tobacco are incompatible with the human right to health. In this regard, we reaffirm the value of the preamble of the WHO Framework Convention on Tobacco Control (FCTC), in which the Parties express their determination "to give priority to the right to protect public health," and to respect the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as expressed in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
2. We reaffirm the position taken by the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 that the "failure to discourage production, marketing and consumption of tobacco" constitutes a violation of the obligation to protect under Article 12 (right to health) of the ICESCR.
3. The concept of the right to a tobacco-free world as a component of human rights implies the obligation of States to address human rights implications over the whole life-cycle of tobacco growing, manufacturing, marketing, distribution, consumption and post consumption, including child labor, violations of workers' rights and the rights of special populations as well as environmental destruction.

B. Human Rights Relevance of the FCTC

4. We further agree that the manufacture, marketing and sale of tobacco are incompatible with other human rights obligations States have accepted by ratifying the FCTC and various global and regional human rights treaties, as well as under their own constitutions, in particular the rights to life; to health, including safe and healthy working conditions; children's rights, including protection of children in tobacco production and from advertising; and women's rights, including protection from the impact of smoking on pregnancy.

Read the full Declaration at
<https://ash.org/declaration/>

Dr. Flavia Senkubuge

President

The Colleges of Medicine of South Africa





Contribution of the WHO- FCTC to the promotion and fulfillment of human rights



sembramos
Futuro

Lenín



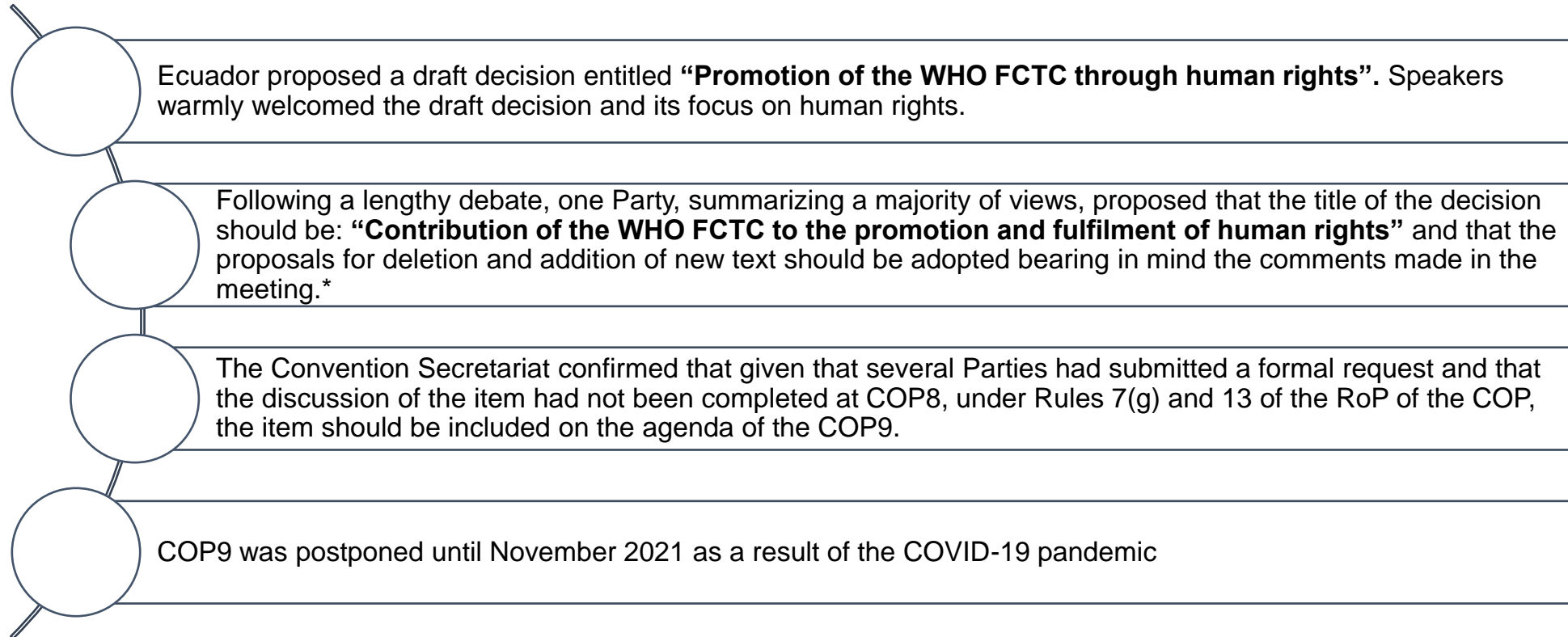
COP7

FCTC/COP7(26)* International cooperation for implementation of the WHO FCTC, including on 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.

* https://www.who.int/fctc/cop/cop7/FCTC_COP7_26_EN.pdf?ua=1

COP8



COP9

The Bureau: a) agreed to add the Human rights item to COP9 provisional agenda and b) requested the Convention Secretariat to work with Ecuador to review and redraft the decision presented at COP8 and circulate the new draft decision to Parties for discussion at the next virtual meeting.

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)

GOALS AND BENEFITS OF A COP HUMAN RIGHTS DECISION

The FCTC warrants 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

Managing Attorney

Action on Smoking and Health

Romeo-stuppyk@ash.org

ASH

ACTION
ON SMOKING & HEALTH

Global action for everyone's health.



HUMAN RIGHTS: THE ARGUMENT

Everyone has a
right to life and
to health

Governments
have a duty to
enforce those
rights

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

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

RUGGIE PRINCIPLES

Protect =

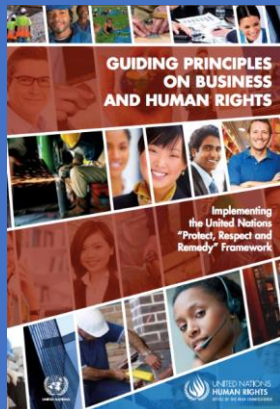
Protect citizens from tobacco industry

Respect =

Industry should respect human rights norms

Remedy =

Mechanisms and processes to request reparation when industry infringes on human rights



development tobacco poorest rights local GDP right barrier human health use covid inequality nations inequality connection million cigarettes outcomes important stemming catalyst causes essential attention unchecked economy accelerator smoke remains smoking poverty transitional

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

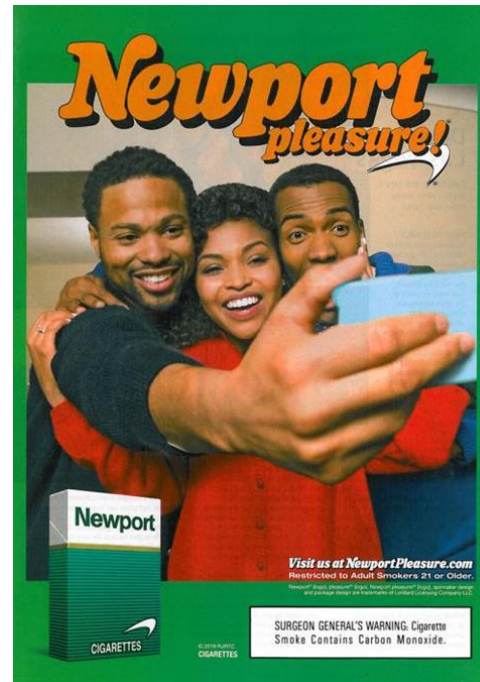
Case 3:20-cv-04012 Document 1 Filed 06/17/20 Page 1 of 45

Christopher K. Leung (SBN 210325)
Pollock Cohen LLP
60 Broad St., 24th Fl.
New York, NY 10004
Tel.: (212) 337-5361
Fax.: (347) 696-1227
Chris@PollockCohen.com

*Counsel for Plaintiffs African American Tobacco
Control Leadership Council and Action on Smoking
and Health*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AFRICAN AMERICAN TOBACCO)
CONTROL LEADERSHIP COUNCIL and) Case No.:
ACTION ON SMOKING AND HEALTH,) **COMPLAINT**
(Administrative Procedure Act Case)
Plaintiffs,)



International Convention on the Elimination of All Forms of Racial Discrimination

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965

entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

TOBACCO AND HUMAN RIGHTS HUB

Visit:
ash.org/hrhub

Advocacy Tools for the Fight for the Right to Health

When people think of tobacco, they often think of it as a public health problem, but it is a human rights problem as well.

The marketing and sale of tobacco violate the right to health and life of people all around the world.

ASH has been working to convince both the tobacco control community and the human rights community that it is time to address tobacco through a human rights based approach. The resources found in this database are designed to help advocates achieve that goal. This hub is meant as a living resource and will be frequently updated with new information.

[Not sure where or how to dive into this new database? Watch our Hub How-To video here.](#)



SEARCH HUMAN RIGHTS HUB



TOBACCO AND HUMAN RIGHTS BASICS

GLOBAL MECHANISMS

INTERNATIONAL HUMAN RIGHTS TREATY BODIES

LEGISLATION

ACADEMIC ARTICLES

PARALLEL ISSUES

THE FRAMEWORK CONVENTION ON TOBACCO CONTROL

THE HUMAN RIGHTS COUNCIL

REGIONAL HUMAN RIGHTS BODIES

LITIGATION

LEARNING RESOURCES



Global action for *everyone's* health.

SIGN UP TO GET INVOLVED



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



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

Thank you!

Kelsey Romeo-Stuppy
Managing Attorney
Action on Smoking and Health

romeo-stuppyk@ash.org
<https://ash.org>



@ASHOrg



@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



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@ASHglobalAction



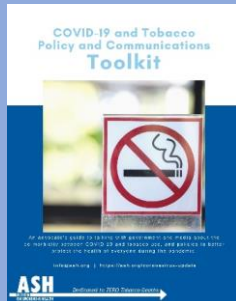
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@ASHorg



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>



Global action for *everyone's* health.