

COMMENTARY

**TOBACCO CONTROL AS A HUMAN RIGHT
AND DEVELOPMENT GOAL IN KENYA**

Richard Daynard², Rangita de Silva de Alwis*¹, Ruth Oniang'o³

*Corresponding author email: rdesilva@comcast.net

¹Wellesley Centers for Women, Wellesley College

²Northeastern University School of Law, BostonUSA

³Founder, Rural Outreach Program (ROP)
Editor-in-Chief, African Journal of Food, Agriculture, Nutrition and Development
(AJFAND)
P.O. Box 29086-00625, Nairobi, KENYA

In January 2011, the Public Health Advocacy Institute of Northeastern University, School of Law in collaboration with Professor Ruth Oniang'o and the Institute for Legislative Affairs, convened a roundtable discussion on integrating the human rights based approach and the Millennium Development Goals to Kenya's Tobacco Control efforts. These two interrelated approaches are potentially powerful tools of tobacco control in Kenya.

The historic new Constitution in Kenya that came into force in 2010 guarantees equal protection to a broad category of persons and holds the promise of a new era of rights consciousness. The vibrancy of the human rights agenda is the way it can be reconceptualized and reinvented to meet new challenges and the war against tobacco is one of the foremost public health challenges of our times. Tobacco must be seen with the lenses of the Constitutional guarantees of equality and anti-discrimination. As tobacco usage wanes in the West, developing countries have become the newest markets and thus the newest battlegrounds on which this public health crisis rages.

The conference brought together tobacco control leaders with women's rights at the forefront of social change to form alliances to advance cross cutting issues related to women's and children's health, education and food security. The hope was that this forum would be a catalyst for collaborative work on shared goals of tobacco control, land, women and youth rights and would ignite a more powerful campaign to advance tobacco control in Kenya. The conference also introduced an innovative model of the human rights based approach to tobacco control. This article draws from the presentations made at the conference.

Broadened human rights advocacy helps to hold the state accountable for tobacco-related rights violations. This model helps to integrate women's and youth health rights with tobacco control and provides a platform for joint action by different civil society groups so as to build common cause.

Participation of different stakeholders is pivotal to tobacco control and it is critical to build bridges between tobacco control advocates and human rights advocates. Those partnerships have been pivotal to create renewed energy around tobacco control. These alliances have also strengthened the human rights agenda. Broad participation is a cornerstone of putting human rights into practice. Tobacco control in Kenya can be most effective only if it forges alliances with a broad network of civil society organizations including women's, youth and children's organizations to broaden the scope of tobacco control advocacy. Echoing this need, the Chairman of the Kenya Tobacco Control Board in Kenya, Professor (Dr) Peter Odhiambo, too has made a call to action for the creation of partnerships and bridges across civil society groups to build capacity to enforce the new tobacco control law of 2007.

Why is Tobacco a Cardinal Women's Rights Issue?

The latest statistics in Kenya show that girls' smoking is on the rise. Dr. Odhiambo has pointed out that statistics for women smoking are the highest ever recorded in the country. In Kenya, women and children who labour and toil in tobacco plantations

suffer from green tobacco sickness caused by nicotine absorbed through direct contact with the plant, as well as from illnesses caused by toxic farm inputs like pesticides and herbicides. In Kenya, tobacco farming relies on household labour including women and children, often at the cost of education.

The tobacco companies prey on women's vulnerabilities and relative lack of agency. Women's unequal status both at home and at work make them vulnerable to second hand smoke. Women are unable to control their space and are, therefore, disproportionately affected by second hand smoke (SHS). Furthermore, women's bodies are manipulated in unethical advertising and marketing campaigns. Sexualized images of women and youth in tobacco *ads* exploit women and create a false image of beauty - and often of women's agency and progress - linked to tobacco. Given that tobacco companies often exploit women's unequal and vulnerable positions to sell and market tobacco, and that marketing practices in Kenya reveal the commodification of women and the false images of glamour that is often linked to smoking, a framework of gender equality and non-discrimination is key to tobacco control.

Despite bans on tobacco advertising, indirect advertising through musical shows is common in Kenya. Although the tobacco industry creates false images of women's empowerment associated with smoking, the real narrative is far from women's empowerment; tobacco erodes women's health and wellbeing and diminishes the agency of women at several levels. By succumbing to tobacco marketing practices, women are sacrificing their capacity to make informed choices based on what is best for their health and well being, and the health and well being of their families.

Targeting women and vulnerable communities as consumers of tobacco is not just a violation of health rights but can be challenged on grounds of gender discrimination. A gender perspective to tobacco control will bring to the surface the need to challenge the commodification of women and the frequent portrayal of women as sex objects.

Tobacco-related diseases are of epidemic proportion and the war against tobacco cuts across different social causes and demands forging of non-traditional alliances. Alliances must be forged with all civil society constituencies especially women's movements. That is why the coming together of different constituencies and the broadening of coalitions in order to create joint goals for women's rights and tobacco control mutually reinforce the agendas of all human rights movements. Men also have an important role in protecting women's rights to health. As the majority of the world's smokers, men are primarily responsible for women's involuntary exposure to SHS.

The Beijing platform for Action adopted by all States parties in 1995 at the end of the Fourth World Conference on Women acknowledges that women throughout the world, especially young women, are increasing their use of tobacco with serious side effects on their health and that of their children. States are asked to create awareness among women, health professionals and others in a position to help deal with the problem.

One of the most effective ways of holding the State accountable for women's rights violations is through the shadow reporting process to the Committee on the Convention on the Elimination of Discrimination against Women (CEDAW). This has been done successfully in other countries and it is important for Kenya to follow suit. In July 2010, several national and international NGOs in Argentina prepared a shadow report before the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) in response to the sixth periodic report submitted by the Argentinean government. The report, "Challenges in the Prevention and Reduction of Women's Tobacco Use in Argentina," outlined recommendations on how Argentina could improve its tobacco control policies:

After its official review, the CEDAW Committee released its concluding observations, which included the shadow report's recommendations on public smoking bans and restrictions on tobacco advertising. This recommendation by the CEDAW Committee highlights the negative health impacts of tobacco use in women and links tobacco control, gender, and human rights. This is a meaningful step forward in not just Argentina's but the global tobacco control movement in connecting tobacco control with human rights. The CEDAW Committee noted that it had urged the State party to address the increasing usage of tobacco among women and its serious health impact. This marks one of the first times the CEDAW Committee has made a specific recommendation on implementing concrete tobacco control measures. Additionally, the CEDAW Committee's recommendation that Argentina ratify and implement the Framework Convention on Tobacco Control (FCTC) is also relevant in the efforts to connect tobacco control with human rights.

Why is Tobacco Control Critical to Children's Rights?

Children and youth are in the frontlines of this attack by tobacco companies:

Starting to smoke as a child is the biggest indicator in adult smoking. Studies in Kenya show that students start to experiment with smoking at the age of five years. A majority of students start at ages 12- 16. The students who went through age 17 years without starting to smoke were very unlikely to smoke by the age of 20 years. There was no significant difference in the age of smoking initiation between the male and female students.

Children and young adults who know less about the health effects of tobacco than adults face greater obstacles in making informed choices. It is difficult for most teenagers to comprehend the damage that tobacco use would cause to their health at some distant future, as it is difficult for them to avoid, reduce or stop the use of tobacco once they start smoking it. In Nairobi, it is common to see children as young as 12 years smoking cigarettes with some of them picking discarded remains of cigarettes and others buying single sticks from the kiosks and vendors. Cigarettes are sold in single sticks, making them easily available to the children.

Women and children are often the majority of the victims of passive smoking as well. This must be seen both in the context of a violation of a health right as well as in the context of gender and child discrimination. Exposure to second hand tobacco smoke

increases the risk of heart disease, stroke, lung cancer, asthma, chronic pulmonary disease and deteriorated lung function. During pregnancy, the risk is higher for spontaneous abortion, pre-term delivery and low birth weight. Furthermore, smoking during pregnancy or exposure to second hand smoke increases the risk during pregnancy of premature membrane rupture, placenta previa and placenta detachment. There is higher risk for premature birth and low birth weight.

Around the world, children have an enormous impact on parents' behavior and life style. What children learn in school and on TV is often communicated to parents by the children who become watch dogs of their parental behaviour. Thus, educating children not only has an impact on future generations but also on the adult population in the country.

In terms of the Convention on the Rights of the Child (CRC) and ILO Conventions, child labor in tobacco cultivation is one of the worst forms of child labor. Given the overwhelming evidence as to the impact of green tobacco sickness, advocates could come together to challenge such employment practices as unconstitutional.

Women and children play a crucial role in growing tobacco. The cause and effect relationship between poverty and women in low wage positions is especially evident in women's and children's work in tobacco cultivation. Women in these industries frequently work under enormous hardship and in near bonded labor conditions. This results in further economic disempowerment of already marginalized women and children. Understanding the link between tobacco cultivation and the feminization of poverty will lead to better policies and programs to address tobacco control in general.

Article 32 of the CRC protects the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development Article 32(b) also provides for appropriate penalties or sanctions to ensure the effective enforcement of the article. Article 36 of the CRC seeks to protect the child against all forms of exploitation. Article 39 of the CRC is also applicable as it covers child victims from all forms of abuse and exploitation. These rights may be violated in the case of child labor in the tobacco cultivation.

Exploitation of children in marketing and sale of tobacco

Although Kenya prohibits the sale of tobacco to children, the tobacco industry often promotes smoking in the developing world to youth, including through the use of sports and arts sponsorships, marketing techniques which deliberately target children, and misleading advertising targeting youth. By failing to prohibit such tactics, governments give tobacco companies license to expand their base of consumers, who incur substantial health risks. By preying on children's relative lack of access to information, tobacco advertisements that link smoking to sports, success and glamour mislead the young and exploit their vulnerability to harmful addictive life styles.

A child rights perspective to tobacco control will also bring to the surface the need to counter the commodification of youth and the frequent portrayal of youth as sex objects in tobacco advertising and promotional campaigns to lure more men and women to smoke. Women and children are often exploited to market tobacco especially in some of the poorest countries in Africa.

Why are the Millennium Development Goals Relevant to Tobacco Control?

The face of poverty is often that of a woman. Feminization of poverty is one of the most serious violations of women's rights and is a cross cutting MDG issue. Tobacco consumption by women and men further escalates feminization of poverty and creates an intergenerational cycle of poverty. Understanding the correlation between tobacco and food security is another pivotal issue. The correlation between tobacco and food security has a disproportionate impact on women and girls.

The consumption of tobacco impacts the whole family. In low income communities and families, the cash spent on tobacco results in disadvantaging and subordinating the most marginalized in the family. In communities and families that devalue the girl child, this translated often into discrimination against the girl child in the family whose rights to education, health care and food are often subordinated and sacrificed at the altar of tobacco consumption.

At the dawn of a new millennium, 192 countries of the United Nations came together to agree on an overarching set of development goals to reduce poverty and improve the lives of people around the world. Although some progress has been made on each individual MDG, success has been very slow. The mosaic of evidence based research shows that without renewed commitments and new strategies, goals cannot be met. "It is clear that improvements in the lives of the poor have been unacceptably slow, and some hard-won gains are being eroded by the climate, food and economic crises," UN Secretary-General Ban Ki-moon states in the Millennium Development Goals Report 2010, issued on 23 June of this year. The global summit in September 2010 was to serve for the setting of new commitments for the implementation of these goals. Ten years later, it is not only important to measure countries decade-long commitment to the MDG goals but to also come up with innovative strategies to meet those goals. We argue that tobacco control is pivotal to meeting MDG goals by 2015. In this paper, we look at why tobacco control is a critical strategy to meeting MDG goals.

The United Nations calls for "bold" strategies to be adopted by developing country governments so as to meet the the 2015 deadline. While free mass distribution of malaria bed-nets and effective anti-malaria medicines for all children in regions of malaria transmission has been touted as a quick win, tobacco control must be also brought to the forefront as an inexpensive and quick win.

While children and women in smoking households tend to be more food insecure, the health care costs of smoking is also a cause of impoverishment of a family. The loss of productivity as a consequence of disease caused by smoking can further lower family income and thus increase the risk of food insecurity. Moreover, tobacco

related illnesses, including heart disease, stroke and cancer are costly. In 2000, the Indian government spent \$5.8 billion on tobacco related diseases. Medical costs from smoking lead to impoverishment. Tobacco-control interventions are one of the most effective ways to reduce health care costs and need minimal capital investments. The economic burden of tobacco-related diseases in the world is compounded by the money spent by families who live below the poverty line on tobacco. Money diverted to food, health care and education can fight poverty in achieving the MDG targets.

At the UN Summit on the Millennium Development Goals in 2010, Secretary-General Ban Ki-moon kicked off a major concerted worldwide effort to accelerate progress on women's and children's health. With pledges of more than \$40 billion over the next five years, the Global Strategy for Women's and Children's Health has the potential of saving the lives of more than 16 million women and children. "We know what works to save women's and children's lives, and we know that women and children are critical to all of the MDGs," Secretary-General Ban Ki-moon said. "The 21st century must and will be different for every woman and every child

Increasing efforts to control the sale and consumption of tobacco to the most vulnerable communities will save the lives of millions of children world wide. UNICEF's Executive Director, Anthony Lake stated recently, that investing first in the world's most disadvantaged children and communities can save millions of lives and help spur progress towards achieving internationally agreed development targets. He stated that "Our findings challenge the traditional thinking that focusing on the poorest and most disadvantaged children is not cost-effective." One of the most cost-effective ways to help halve poverty and hunger is by advancing tobacco control.