

## 12. Women's Rights and International Agreements

### Introduction

Women's right to health is a human right that has been guaranteed through international agreements.<sup>1</sup> It includes the right to protection against second-hand smoke in the work environment and in the home; equal access to health services, including quitting and counselling programmes; protection against misleading health messages such as "light" and "mild"; and the right to full participation in political, economic, social, and cultural decision-making.

The international community can build on existing policy documents, legislative instruments, and international initiatives to develop a gender-sensitive strategy for implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC).<sup>2</sup> The Preamble and Guiding Principles of the WHO FCTC make reference to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights. The provisions of the WHO FCTC, which address issues such as restrictions on advertising and promotion, warning labels, research, protection of minors, health information and education, smuggling, and liability and compensation, are comprehensive. Applied broadly to the general population, these measures may, of course, benefit women. However, the WHO FCTC also recognizes the importance of a gendered approach to the interpretation and implementation of policies, programmes, and research. The Preamble states that [The Parties to the Convention are]... alarmed by the increase in smoking and other forms of tobacco consumption by women and young girls worldwide and [are] keeping in mind the need for full participation of women at all levels of policy-making and implementation and the need for gender-specific tobacco control strategies.

The Guiding principles note that *strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multisectoral measures and coordinated responses, taking into considera-*

*tion... the need to take measures to address gender-specific risks when developing tobacco control strategies* (Article 4, WHO FCTC).

The WHO FCTC also recognizes the importance of women's leadership, calling for emphasis on *the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women's, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts* (Preamble, WHO FCTC).

This chapter examines how the WHO FCTC relates to other important international agreements concerning women's human rights. In particular, the issues of women, tobacco, and the WHO FCTC are analysed in the context of CEDAW.<sup>3</sup> In its Preamble, the WHO FCTC recalls that *the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, provides that States Parties to that Convention shall take appropriate measures to eliminate discrimination against women in the field of health care* (Preamble, WHO FCTC).

### Evolution of United Nations Agreements on Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women

CEDAW is the most important legally binding international document concerning the human rights of women. It has been ratified by more than 185 countries. The importance of CEDAW and its relation to the WHO FCTC can be best understood by examining the context of its evolution. The majority of human rights agreements result from negotiations under the auspices of the United Nations. They are usually initiated in response to global concern about specific issues or tragedies such as the Second World War. In 1948, the United Nations proclaimed a Universal Declaration of Human Rights that clearly describes the "inalienable and inviolable rights of all members of the human family".<sup>4</sup>

This declaration marked a moral milestone in the history of the community of nations, but it lacked the force of law. Therefore, its principles have been codified in treaties, covenants, and conventions to make them legally binding on the countries and entities that became Party to them.

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Two crucial legal instruments followed the Universal Declaration of Human Rights: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, these three documents constitute what is known as the International Bill of Human Rights. Subsequent conventions have elaborated on this bill by focusing in greater detail on specific areas.

The 1960s saw an emergence in many parts of the world of a new awareness of the patterns of discrimination against women and an increase in the number of organizations committed to combating the effects of such discrimination. Although the human rights treaties had established a comprehensive set of rights to which all persons are entitled, over the years they proved insufficient to guarantee women the enjoyment of those rights. Therefore, in 1963, the United Nations General Assembly adopted a resolution requesting that the Commission on the Status of Women prepare a draft declaration combining in a single instrument international standards that articulated the equal rights of men and women. Four years later, the Declaration on Elimination of Discrimination was adopted by the General Assembly.

In 1972, five years after the adoption of the declaration, the Commission on the Status of Women considered

preparing a binding instrument that would give normative force to its provisions. Finally, in 1979, CEDAW<sup>3</sup> was adopted, and on 3 September 1981, just 30 days after the twentieth Party had ratified it, CEDAW entered into force. Often described as an international bill of rights for women, CEDAW was the first international document to embody the concept that rights are basic values shared by every human being, regardless of sex, race, religion, culture, or age.

CEDAW is unique among existing human rights instruments because it is concerned exclusively with promoting and protecting women's human rights and because it operates from the premise that patriarchy is a global reality. It addresses the reality of deep-rooted and multifaceted gender inequality throughout the world. It also emphasizes both public- and private-sphere relations and rights and specifically underlines the almost universal difference between de jure and de facto equality of women in the world. CEDAW focuses on elements of the social traditions, customs, and cultural practices that "legitimately" violate women's rights in many societies, identifying them as elements that help perpetuate de facto inequality. CEDAW is also clear about States Parties' use of economic conditions and factors such as structural adjustment policies and programmes, slow economic growth rates, recessionary pressures, and privatization to justify discriminatory practices against women. It operates with the understanding that the States Parties' failure to remove obstacles to women's enjoyment of all their rights is discriminatory, expanding the concept of rights by holding States Parties accountable for failure to act and for abuse of power by private parties.

The idea of introducing a complaints procedure for CEDAW came about in the early 1990s with the emergence of the international women's rights movement, which called for the strengthening of the existing United Nations human rights machinery for the advancement of women. The adoption of an optional protocol to the Convention to provide a right to petition was one of the commitments made by Member States of the United Nations at the 1993 Conference on Human Rights, in Vienna, and the 1995 Fourth World Conference on Women, in Beijing. In 1995, at its fifteenth session, the CEDAW Committee adopted a suggestion (number 7) that proposed elements for a petition and an investigation procedure for complaints. Then, at the forty-third session of the Commission on the Status of Women, delegates adopted an optional protocol to CEDAW, which entered into force in 2000.

The optional protocol introduces two procedures: a communications procedure whereby individuals or groups of individuals may submit claims of violations of rights to the committee, and an inquiry procedure whereby the committee may initiate inquiries into situations of grave or systematic violations of rights. The optional protocol, ratified by 88 Parties (as of March 2008), encourages states to implement CEDAW to avoid having complaints made against them. It provides an incentive for states to provide more-effective local remedies and to eliminate discriminatory laws and practices. Moreover, it is a major tool for women, as communications concerning violations of “any of the rights set forth in the Convention” may be submitted on behalf of an individual or group of individuals. This is critical given the obstacles many women face, such as low levels of literacy, legal illiteracy, and fear of reprisals. However, although CEDAW is widely ratified, it also has the highest number of reservations of any convention. Removal of these reservations is a major goal for both nongovernmental organizations (NGOs) and governments in the coming years.

## CEDAW and Women's Health

One of the rights guaranteed under CEDAW is the right to equality in the full enjoyment of health. Article 12 requires States Parties to eliminate discrimination in all aspects of women's health care, including drug addiction and related problems. According to Article 12, “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services”.

Although tobacco is not specifically mentioned in CEDAW, it is covered by Article 12 and has been interpreted by the CEDAW Committee as an issue on which governments can be held accountable. Since 1995, the CEDAW Committee has increased its efforts to hold governments accountable for accurate reporting on women and tobacco and compliance with this provision. Governments are requested to provide data on women and tobacco, along with data on drugs and alcohol. In recent years, numerous States Parties to CEDAW have improved their reporting. For example, at the forty-fourth session of the CEDAW Committee, Denmark reported a rise in lung cancer among Danish women resulting from years of tobacco use, with nearly 23% of women and 24.5%

of men smoking daily. Spain also expressed concern that young women were increasingly using tobacco.

A main assumption of CEDAW is that the maintenance of health affects the very existence of human beings and is a fundamental human need. WHO studies indicate that more than 20 million lives could be saved by the provision of necessary medicines, pharmaceuticals, and health-care education and facilitation of improved lifestyles.<sup>1</sup> These can all be considered included under Article 12 as part of women's right to health.

The CEDAW Committee also notes that women's health should have a high priority because women are the providers of health care to their families, and their role in health care, including childbirth and child rearing, is of great significance to national social and economic development. The Committee has worked within a framework in which health care is directly concerned with issues such as population growth, development, and the environment. If malnutrition and poverty are to be overcome, the promotion of health and education and the advancement of women's status must be considered as cardinal elements. In viewing women's enjoyment of health as an intrinsic human right, States Parties are therefore obliged to address the conditions that lead to poor health, as well as women's health status.

A human rights approach to women's health is not limited to Article 12 of CEDAW.<sup>3</sup> Article 7 gives women the right to participate in public life and political decision-making. The effective implementation of this right involves including women in designing and implementing national health policies and programmes. Article 2 notes that states must propose a policy to guarantee women the exercise and enjoyment of human rights and fundamental freedoms, in both the private sector and the public sector. This means that women must be fully informed about their rights, a provision that can be applied to tobacco control legislation. Article 11 refers to women's right to the protection of health and safety in working conditions, a provision that is directly relevant to passive-smoke hazards. Another example is the application of the right to life. Maternal health must be protected by implementation of special proactive measures. Further, under Article 14, States Parties are obliged to take into account the specific problems faced by rural women and, in particular, to ensure that they “have access to adequate health care facilities, including information and counselling”. Article

14 also guarantees rural women the right to social services and security—a right that is increasingly relevant to rural workers in the informal sector.

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Globalization has created more jobs and new employment opportunities for women, but it has also created new forms of informal and insecure employment. Citing Article 1, the Committee has often addressed the indirect discrimination faced by women in the informal sector, regularly expressing its concern about their precarious condition and demanding statistical data from States Parties. Although the data are somewhat unreliable, there is consensus that the informal sector is steadily growing in almost all developing countries.

For example, making tobacco products is one of the major informal sector activities in Malawi and Ghana. Women tobacco workers, such as those making bidis, generally have low and unstable earnings and high risks of exposure to health hazards. It is common for women who make tobacco products at home to have no access to employment benefits or social security entitlements. They often face exploitation, and because they are isolated from each other, they are less able to join in collective bargaining.

For many poor women, street vending of tobacco products—where working conditions again are precarious—is the only occupational option. Street vendors lack legal status, and they experience harassment and evictions from their selling place by local authorities or competing shopkeepers. Reports indicate that their goods are often confiscated, and arrests are common.

In addition to creating articles, the CEDAW Committee has the power to make general recommendations that interpret and update the articles. According to General Recommendation 24, governments have a duty to report to CEDAW on health legislation plans, cost-effective preventive measures, and policies and to provide reliable data disaggregated by sex on the incidence of conditions hazardous to women's health. All data must be based on ethical and scientific research. For example, collection of data on the prevalence of tobacco use by male smokers only would constitute gender discrimination, as women's health problems would remain invisible to policy-makers. As CEDAW states:

*States parties are in the best position to report on the most critical health issues affecting women in that country. Therefore, in order to enable the Committee to evaluate whether measures to eliminate discrimination against women in the field of health care are appropriate, States parties must report on their health legislation, plans and policies for women with reliable data disaggregated by sex on the incidence and severity of diseases and conditions hazardous to women's health and nutrition and on the availability and cost-effectiveness of preventive and curative measures. Reports to the Committee must demonstrate that health legislation, plans and policies are based on scientific and ethical research and assessment of the health status and needs of women in that country and take into account any ethnic, regional or community variations or practices based on religion, tradition or culture (General Recommendation 24, Paragraph 1, CEDAW).*

Under CEDAW, States Parties must also make appropriate budgetary provisions to ensure that women realize their rights to health care. Governments that do not provide these rights in relation to women and tobacco fail to fulfil their obligations under the Convention. General Recommendation 24 specifically notes:

*The duty to fulfill rights places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care (General Recommendation 24, Paragraph 17, CEDAW).*

General Recommendation 24 also outlines the need for states to promote women's health throughout the life-course:<sup>3</sup>

*States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women (General Recommendation 24, Paragraph 29, CEDAW).*

Under the optional protocol to CEDAW, alleged violations may be linked to state action or inaction or to the conduct of state officials in their public functions. Potential claims could include the absence of health warnings on tobacco products or the lack of information concerning the health hazards of tobacco use by pregnant women.

In addition to CEDAW, the following international agreements are also explicit on the issue of women's health:

- The International Covenant on Economic, Social and Cultural Rights (Article 12: 2a)<sup>5</sup>
- The Convention on the Rights of the Child (Article 24: 1d, 1f)<sup>6</sup>
- The Beijing Platform for Action (Articles 89 and 106)<sup>1</sup>
- The United Nations Declaration on Violence Against Women (Article 3f).<sup>7</sup>

When a Party ratifies or accedes to CEDAW and also adopts a policy document, the combination can be mutually reinforcing. The Beijing Platform for Action specifically identified tobacco as a women's health issue and called upon governments to take action. It states:

*[Governments should] create awareness among women, health professionals, policy makers and the general public about the serious but preventable health hazards stemming from tobacco consumption and the need for regulatory and education measures to reduce smoking as important health promotion and disease prevention activities (Paragraph 107o, Beijing Platform for Action).*

*[Governments should] increase financial and other support from all sources for preventive, appropriate*

*biomedical, behavioural, epidemiological and health service research on women's health issues and for research on the social, economic and political causes of women's health problems, and their consequences, including the impact of gender and age inequalities, especially with respect to chronic and non-communicable diseases, particularly cardiovascular diseases and conditions [and] cancers (Paragraph 109d, Beijing Platform for Action).*

Most of the issues in the Twelve Critical Areas of Concern in the Beijing Platform for Action<sup>1</sup> are also included in CEDAW. For example, paragraph 323232 entrusts the CEDAW Committee with the responsibility of monitoring the implementation of the Platform. A government or Party that has ratified CEDAW without reservation and has also signed onto the Beijing Platform for Action is doubly committed, first at the policy level, and second, according to international law. When CEDAW was drafted, the issue of women and tobacco was not widely recognized as a women's rights issue. Today, such policy and treaty agreements can strengthen the WHO FCTC with regard to emerging health issues.

Furthermore, the concept of women's health as a human right has been promoted by United Nations World Conferences, including the Conference on Human Rights, in Vienna (1993); the International Conference on Population and Development, in Cairo (1994); and the Fourth World Women's Conference, in Beijing (1995). The four United Nations World Women's Conferences and follow-up meetings, such as Beijing Plus Ten in 2005, have also produced excellent policy documents. Policy documents, however, are not legally binding, and institutional or individual discretion may determine their implementation.

## Monitoring Implementation and International Mobilization

Monitoring implementation through States Parties' reports is an important tool of CEDAW. Reporting enables a comprehensive review of national legislation, administrative rules, policies, and practices, and it ensures that States Parties regularly monitor the situation with respect to each provision of the Convention. The CEDAW Committee

has expressed concerns about the increase in tobacco use by women, the lack of gender-specific information and statistics (Uzbekistan, Kazakhstan, and the Netherlands in 2001), tobacco addiction (Ukraine in 2002), and women's occupational health, particularly in the tobacco-growing industry (the Republic of Moldova in 2006). A common recommendation is the provision of information and statistics on tobacco use by women (Suriname in 2002, Chile in 1999). At its twenty-first session, the Committee recommended that Spain undertake awareness-raising campaigns concerning the preventable health hazards of tobacco consumption and also that it assess the need for additional regulations and educational measures to prevent or reduce smoking by women. At its twenty-ninth session, it requested that France provide information on smoking as well as sex- and age-disaggregated data.

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Article 18 of CEDAW obliges States Parties to submit reports on implementation of the Convention within one year of ratification and every four years thereafter. In these reports, states must indicate the legislative, judicial, administrative, or other measures they have adopted to implement the provisions of the Convention. Article 17 establishes the Committee on the Elimination of Discrimination against Women, an expert body with 23 members responsible for monitoring the progress made by states in implementing CEDAW. Since the adoption of the optional protocol, the Committee can also receive and consider complaints by individuals or groups of individuals from states that are Parties to the protocol.

The CEDAW Committee has adopted reporting guidelines to assist States Parties in the preparation of periodic reports. The Committee also considers the reports in public meetings in the presence of Party representatives, using a constructive dialogue that provides a non-judgemental approach aimed at assisting the States Parties. Following consideration of the reports, the Committee formulates and adopts concluding comments in a closed

session. The comments outline factors and difficulties affecting the implementation of the Convention for the reporting States Parties, as well as positive aspects, principal subjects of concern, and suggestions and recommendations for enhancing implementation.

Specialized United Nations agencies and other international and national organizations make important contributions to monitoring. Article 22 specifically provides for interaction between the CEDAW Committee and specialized agencies. The Committee and the pre-session working groups invite specialized agencies and other United Nations entities to provide country-specific information on States Parties whose reports are being considered. The Committee also encourages the United Nations country teams to undertake follow-up activities to support States Parties in their implementation of the Committee's concluding comments.

It is noteworthy that at its thirty-third session, in July 2005, the CEDAW Committee provided for the first time an opportunity for a national human rights institution—the Irish Human Rights Commission—to make an oral presentation. At its thirty-fourth session, in January 2006, the Committee further discussed its interaction with such institutions and confirmed its commitment to develop modalities for improved interaction.

It is crucial to recognize the strategic importance of NGOs with regard to mobilizing international political will. Although NGOs do not have formal standing under the reporting procedure, the Committee welcomes information from them, and since its early sessions, it has invited them to follow its work and provide country-specific information on States Parties. National and international NGOs are also invited to provide the pre-session working groups with country-specific information on those States Parties whose reports are being considered. Such information may be submitted in writing prior to or at the relevant session. In addition, the Committee sets aside time at each session, usually at the start, for representatives of NGOs to speak and provide information. The pre-session working groups also provide an opportunity for NGOs to give statements, usually on the first day of a working group. The Committee further recommends that States Parties involve national NGOs in the preparation of their reports and that reports contain information on NGOs and women's associations and their participation in the implementation of CEDAW and the preparation of reports.

## Conclusions

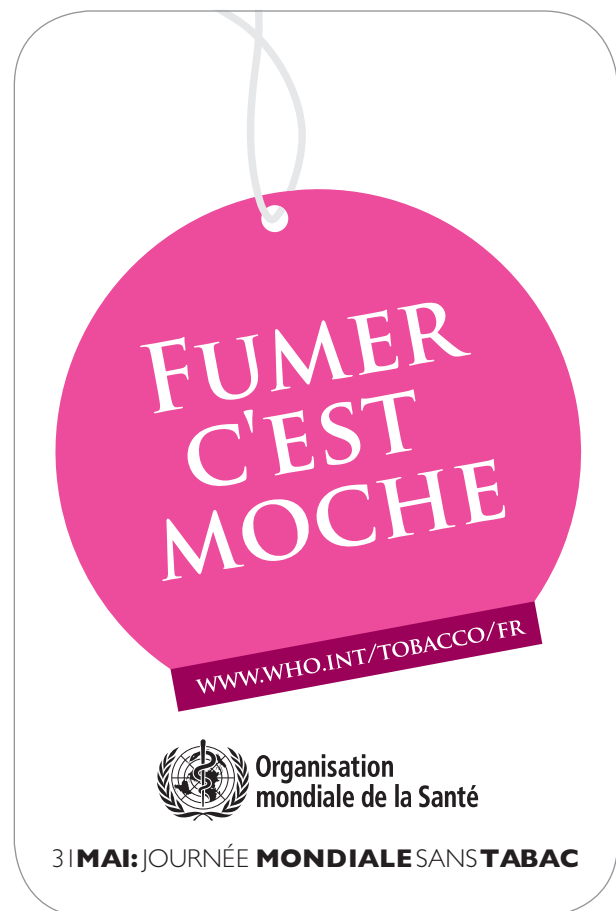
CEDAW is a dynamic document that is flexible enough to adapt to changing international circumstances and attitudes, while preserving its spirit and integrity. The CEDAW Committee endeavours to ensure that women benefit from globalization and that their increased participation in the labour market has an empowering effect on them. Likewise, the WHO FCTC can take up the challenge of improving the lives of women in the informal working sector by making them no longer invisible, unacknowledged, and excluded from protection and benefits.

CEDAW and the WHO FCTC share the common goal of ensuring women's rights to health as a human right. Together, these treaties can be used to commit governments to more gender-sensitive policies and legislation. Both hold governments accountable for commitments made in ratifying or acceding to them, provide a legal basis for interpretation of existing national laws or for amendments to them, and assist in the enactment of new legislation regarding women's health and tobacco. CEDAW can create an expanded human rights framework for women that is acceptable within their own cultures or under their own legal systems. This includes women's right to a safe and smoke-free environment, both in public places and in the home.

For a convention to be effective at both national and international levels, women need to be better informed about their rights under international agreements. CEDAW and the WHO FCTC can be widely disseminated to mobilize support among women's grass-roots organizations. It is also necessary to promote the active support and participation of other institutional actors, including legislative bodies, human rights lawyers, academic and research institutions, local community groups, NGOs, the media, and youth organizations. Other potential partners include national machineries for gender equality and the advancement of women and NGOs engaged in women's empowerment. Women have the right to life and therefore the right to be fully informed about Parties' obligations to protect their health.

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