A Human Rights-Based Approach to Tobacco Control: Delineating the Rights-Holder and Duty-Bearer

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A human rights-based approach identifies rights holders and their entitlements and corresponding duty-bearers and their obligations, and works toward strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.
Human Rights-Based Approach

Human Right = Valid claim & Corresponding duty
("X has a right against Y in relation to Z")

E.g.: “A child has a valid claim to a right to health, which is realized through the duties of the national government to provide free vaccinations.”

Goals – (1) Define duty-bearers and rights-holders, (2) Impose legal obligations on duty-bearers, (3) Inform rights-holders of their rights, how those rights relate to tobacco control, and how these rights can be claimed and enforced.
Rights-Holders & Duty-Bearers: The Traditional View

Rights-holders

- Every individual, either a man, woman or child, of any race, ethnic group or social condition
- Collective-rights?

Duty-bearers

- Primarily States
- In some cases individuals have specific obligations
- Individuals and private entities have some responsibilities to respect the rights of others

Issue: What do you do when the problem affects a segment of rights holders or cannot be influenced solely by the state as a duty-bearer?
Duty-bearer’s obligation to

- Respect: refrain from interfering with the enjoyment of the right
- Protect: prevent others from interfering with the enjoyment of the right
- Fulfill: adopt appropriate measures towards full realization of the right
Causal Analysis

- Analysis of immediate, underlying and structural causes of development challenges identified

- **Define the problem**
  - Which rights are being violated or unfulfilled?
  - Which groups of people are most affected by the problem?
  - What are the causes (immediate, underlying, fundamental) of the problem and the rights violations?

- **Identify main patterns of exclusion and other root causes of problems**

- **Programmatic context**
  - Right-holders’ disparities in enjoying rights
  - Duty-bearers’ efforts to meet their obligations
  - Existence of laws, policies and institutional mechanisms

- **Define the goal**
  - What is the overall rights-based goal?
  - Which interventions are needed to achieve the goal?
  - Who are the main stakeholders? What are their responsibilities?
  - What are the opportunities and facilitating factors for the stakeholders to fulfil their responsibilities?
Responding to Harm – Capacity Gaps

- Look at the Rights Holders and the Duty Bearers involved, and the capacity gaps that have been identified
  - Unrealized rights
  - Identify Rights- Holders and Duty-Bearers, their roles and responsibilities
  - Identify related elements of capacity gap
- Negotiate interventions that would bring about positive change on the realization of rights (at output and outcome level)
Application to Tobacco Control

- **Rights holders**
  - Who are they?
  - What are their claims?

- **Duty bearers**
  - Who are they?
  - What are their duties?

- **Capacity gaps**
  - Knowledge
  - Responsibility/motivation/leadership
  - Authority
  - Legal/institutional frameworks
  - Access to and control over resources
Rights Holders

- Children
- Women
- Disabled
- Smokers
- Imperfect Obligations?

Identifying Rights-Holders

- Severity of harm
- Pervasiveness of harm
- Most marginalized in relation to the goal
### Rights

- **Respect, protect, and fulfill rights to:**
  - Life
  - Health
  - Clean Environment
  - Education
  - Freedom from Discrimination
  - Privacy

- **Identifying Rights**
  - Long-term vision
  - Related to Problems and Goals
  - Focuses on individual-level
  - Reinforces interdependence of rights

- **Sources of Human Rights**
  - International Treaties
  - Regional Treaties
  - National Constitutional & Statutory Law
  - “Soft Law”
## Duty Bearers

- **State**
- **International Community**
- **Tobacco TNCs**
- **Public Health NGOs**
- **Family Members**

### Identifying Duty Bearer - Responsibility Analysis

- Who is responsible for the harm?
- Who is responsible for respecting, protecting and fulfilling the right?
- Who has the power to affect change?
- What must they do programmatically (what are obligations)?
- What are the obstacles that prevent duty bearers from meeting their obligations?
Model for Human Rights Accountability in Tobacco Control

Rights Holders
- Children
- Women
- Disabled
- Farmers
- Smokers

Rights
- Life
- Health
- Clean Environment
- Education
- Freedom from Discrimination
- Privacy

Duty Bearers
- State
- International Organizations
- Tobacco Companies
- Public Health NGOs
- Family Members
Rights-Holder + Rights + Duty-Bearer = Programmatic Action?

**Strengthen Each Causal Link**
- Strengthen accountability and capacity of duty-bearers to respect, protect and fulfill rights.
- Strengthen rights-holders engagement and capacity in claiming rights.
- Strengthen institutional enforcement mechanisms at the national and local levels.

**Enforcement - Putting Rights into Practice**
- Advocate for policies, laws, programs, and budget allocations.
- Raise awareness of and publicize rights violations (in the language of human rights).
- Establish and monitor standards, rules and procedures.
- Use courts to claim entitlements and to achieve justice and equality.
A Human Rights-Based Approach to Tobacco Control ensures that tobacco control organizations work to develop the capacities of duty-bearers and rights-holders.