

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

Benjamin Mason Meier, JD, LL.M, MPhil
International Development & Globalization
Fellow
Columbia University

Tobacco Control & Human Rights Symposium
Lausanne, Switzerland
August 1, 2008



Human Rights & Tobacco Control

- **What are Human Rights?**
- **Human Rights-Based Approach to Tobacco Control**



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?

Obligations

**Duty-bearer's
obligation to**

Respect

Protect

Fulfill

**refrain from
interfering with
the enjoyment
of the right**

**prevent others
from interfering
with the enjoyment
of the right**

**adopt appropriate
measures towards
full realization of
the right**

Causal Analysis

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

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