



Limiting Exposure to Second-Hand Smoke in Low- and Middle-Income Countries through the U.N. Convention on the Rights of Persons with Disabilities



Background

Nations throughout the world have used law to promote tobacco control goals. For example, countries have employed legislative, regulatory, and litigative approaches to curb individuals' exposure to second-hand smoke. Despite these efforts, the prevalence of smoking is increasing in low- and middle-income countries (LMICs). Therefore, new legal tools are needed to promote global tobacco control.

Convention on the Rights of Persons with Disabilities (CRPD)

In 2006, the United Nations adopted the CRPD, giving countries a new policy tool that can simultaneously protect the rights of disabled persons and limit individuals' exposure to second-hand smoke. The CRPD establishes a legal basis to forbid discrimination due to a person's disability. The Convention's expansive definition of disability arguably includes persons who have severe respiratory conditions and other chronic diseases (e.g., cystic fibrosis; asthma) that may make breathing especially difficult in the presence of tobacco smoke. According to the CRPD, a "reasonable accommodation" must be made when discrimination against disabled persons

occurs. However, if an accommodation would cause an undue burden, the accommodation need not be made. Illegal discrimination may occur within the parameters of the CRPD when a smoke-sensitive disabled individual cannot be in a workplace, restaurant, or other enclosed space due to the presence of tobacco smoke. In the case of individuals who cannot tolerate the presence of tobacco smoke, the use of indoor smoking restrictions would constitute a reasonable accommodation. Other arrangements, such as separate smoking rooms, would not be considered reasonable accommodations, as they have been demonstrated to be ineffective at creating truly smoke-free indoor environments.



Framework Convention on Tobacco Control (FCTC)
Because of the CRPD's utility as a tobacco control tool, it can support the FCTC's mission to limit worldwide use of tobacco products and exposure to second-hand smoke. The FCTC notes that several human rights treaties can be read to support its goals. The FCTC and the CRPD are mutually reinforcing, as the implementation of each Convention can potentially support the implementation of the other.

Information for Advocates

In the 126 countries that have ratified the CRPD—including 14 LMICs within the Bloomberg Initiative to Reduce Tobacco Use—reports about the Convention's implementation must be submitted to the U.N. every four years. Tobacco control advocates can use the reporting requirements as opportunities to determine whether a country has used the CRPD to protect individuals with severe respiratory conditions through the establishment of smoke-free indoor environments. This strategy, however, has not yet been tried. Between reporting periods, advocates can inform policy-makers of the CRPD's possible use as a tobacco control legal tool. In countries that have not ratified the CRPD, advocates can partner with the disability rights community to inform policy-makers of the Convention's potential utility as a tobacco control tool. Finally, in countries that have ratified the CRPD's Optional Protocol, an additional complaint mechanism is available when possible disability-based discrimination has occurred.



This document was created by Lainie Rutkow, JD, PhD, MPH, Jon Vernick, JD, MPH, Greg Tung, MPH, Rachel L. Howard, and Joanna Cohen, PhD, MHSc. Support for this project was provided by a grant from the Institute for Global Tobacco Control with funding from the Bloomberg Initiative to Reduce Tobacco Use.