Using Human Rights Law to Progress Alcohol Control

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Alcohol control has long been recognised as a public health concern. Recent years have also seen increased recognition of the relationship between alcohol control and the human rights agenda. However, fragmentation exists in key global governance instruments over the role alcohol control plays as a human rights priority. The relative success of tobacco control illustrates how utilisation of agendas beyond public health can mobilise action.

I. Introduction

Alcohol control plays an important role in achieving human rights obligations such as the right to health contained in international human rights instruments. However, there has been limited formal recognition of the link between alcohol and human rights, with key alcohol control global governance instruments such as the World Health Organization's (WHO) Global Strategy to Reduce the Harmful Use of Alcohol (Global Alcohol Strategy) neglecting to consider the link. Despite this, recent years have seen increasing consideration of alcohol control measures within the human rights system. Yet, lessons from tobacco control demonstrate that clearer language recognising the link between alcohol and the human rights agenda will help to ensure better utilisation of the human rights agenda for alcohol control. This paper will examine how the human rights agenda – namely, the principles and processes of human rights law as applied internationally – can be used to mobilise action and ensure accountability for alcohol control. Firstly, it will explore, albeit briefly, alcohol as a public health priority. Secondly, it will examine alcohol control within the human rights agenda. It will do this by highlighting examples of how human rights and alcohol control intersect and how human rights mechanisms have been used in order to strengthen alcohol control regulatory and policy measures to date. Thirdly, this paper will put forward key lessons on how framing alcohol control as a human rights concern will ensure this agenda is more effectively utilised for alcohol control. To advance this argument, the paper will draw on the experience of the framing of

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tobacco control as a human rights priority. This article is not intended to be a comprehensive overview of a human rights approach to alcohol control, but rather it aims to illustrate how the principles and processes of human rights law can play a crucial role in alcohol control.

II. Background: alcohol control as a public health priority

Alcohol consumption is recognised as a major public health concern contributing to millions of deaths each year and adversely affecting the health of users and those around them. Alcohol is also one of the five major risk factors for the five main non-communicable diseases (NCDs) – cancers, cardiovascular diseases, chronic respiratory diseases, diabetes and mental health conditions – and is a barrier to sustainable development given the higher burden faced by lower-resource countries. The consumption of alcohol is linked to more than 200 health conditions and injuries.[1] The WHO recognises that *any alcohol use* is associated with some amount of risk,[2] and there is now evidence finding there is no safe level of alcohol consumption.[3] Worldwide, alcohol use is estimated to be responsible for 3 million deaths every year, equivalent to 5.3% of all deaths. Injuries account for the largest proportion of alcohol-attributable deaths at 28.7%, followed by digestive diseases (21.3%), cardiovascular diseases (19%), infectious diseases (12.9%) and cancers (12.6%).[4] It is also well established that low- and middle-income countries face a higher burden of disease and injury from alcohol consumption than high-income countries.[5]

Vulnerable populations including women and children face heightened challenges due to alcohol consumption. For example, alcohol use during pregnancy is an established risk factor for "adverse pregnancy outcomes, including stillbirth, spontaneous abortion, premature birth, intrauterine growth retardation and low birth rate, and can result in a range of lifelong conditions known as fetal alcohol spectrum disorders".[6] In addition, the consumption of alcohol in adolescents is associated with a range of learning and development issues.[7] Women, children and other vulnerable populations may also face specific challenges due to the drinking of those around them, such as violence and financial hardship.[8]

[1] World Health Organization, "Global Status Report on Alcohol and Health 2018" (2018) vii <https://apps.who.int/iris/bitstream/handle/10665/274603/9789241565639-eng.pdf?ua=1> (last accessed 5 June 2020).

[2] World Health Organization, "The SAFER Technical Package" (1 December 2019) <https://www.who.int/publications-detail/the-safer-technical-package> (last accessed 5 June 2020).

[3] MG Griswold et al, "Alcohol Use and Burden for 195 Countries 1990–2016: A Systematic Analysis for the Global Burden of Disease Study 2016" (2018) 392 Lancet 1015.

[4] World Health Organization, supra, note 1, pp 63–66.

[5] World Health Organization, supra, note 1, p 82.

[6] World Health Organization, supra, note 1, p 5 (citations omitted).

[7] World Health Organization, supra, note 1, p 6.

[8] World Health Organization, supra, note 1, pp 7, 63, 133.

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The main international instrument on alcohol control, the Global Alcohol Strategy, was endorsed at the 63rd World Health Assembly in 2010.[9] The Global Alcohol Strategy recognises alcohol control as a leading risk factor for NCDs and sets out ten target areas for policy measures and interventions. The Global Alcohol Strategy also recognises alcohol as a development issue. This was later confirmed through the inclusion of an alcohol-specific target in the 2030 Agenda for Sustainable Development, which was adopted in 2015 and entered into force on 1 January 2016.[10] Target 3.5 calls for the strengthening of the prevention and treatment of substance abuse, including narcotic drug abuse and the harmful use of alcohol.

III. Alcohol: a human rights priority?

Recognition of alcohol control as a human rights concern has not been firmly entrenched at the international level. Despite calls for express references to the link between alcohol and human rights during consultations for the Global Alcohol Strategy commencing in 2008,[11] the final instrument contains limited references to human rights. The only explicit reference to a right is contained in Paragraph 12(g), which provides as one of eight guiding principles that "[c]hildren, teenagers and adults who choose not to drink alcoholic beverages have the right to be supported in their non-drinking behaviour and protected from pressures to drink".[12] The strategy also alludes, albeit very broadly, to a link between alcohol control and human rights commitments by recognising that countries' measures to reduce the harmful use of alcohol must be in accordance with constitutional principles and international legal obligations, and that vulnerable populations must be protected from the harmful use of alcohol.[13] These references require alcohol policies and interventions introduced by countries to comply with human rights obligations enshrined in national constitutions, and international human rights covenants that the country has ratified.

While key global governance instruments have been relatively silent on the links between human rights and alcohol control, the subject has received some consideration by scholars.[14] Commentators have suggested that the human rights

[9] World Health Organization, "Global Strategy to Reduce the Harmful Use of Alcohol", WHA Res 63.13, 63rd sess, 8th plen mtg, WHO Doc WHA63/2010/REC/1 (21 May 2010) <https://apps.who.int/iris/bitstream/handle/10665/44395/9789241599931_eng.pdf?sequence=1> (Global Alcohol Strategy; last accessed 5 June 2020); the 146th Executive Board of the WHO decided to develop an action plan (2022–2030) to effectively implement the Global Alcohol Strategy as a public health priority. World Health Organization, "Accelerating Action to Reduce the Harmful Use of Alcohol", EB146(14), 146th sess, 12th mtg (7 February 2020).

[10] "Transforming Our World: The 2030 Agenda for Sustainable Development", GA Res 70/1, 70th sess, 4th plen mtg, Agenda Items 15 and 116, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015) <https://undocs.org/en/A/RES/70/1> (last accessed 5 June 2020).

[11] See, eg, "WHO Public Hearing on Harmful Use of Alcohol Volume I: Received summaries of all contributions" (World Health Organization, 2009) pp 24, 33, 36, 54, 76, 81 <https://www.who.int/docs/default-source/alcohol/public-hearing-on-harmful-use-of-alcohol/volume-i-summary-of-submissions.pdf?sfvrsn=99d400c8_2> (last accessed 5 June 2020).

[12] Global Alcohol Strategy, supra, note 9, para 12(g).

[13] Global Alcohol Strategy, supra, note 9, paras 17, 27.

[14] See, eg, JF Mosher, "What Place for Alcoholic Beverage Container Labels? A View from the United States" (1997) 92 Addiction 789; AR Chapman, "Can Human Rights Standards Help Protect Children and Youth From the Detrimental Impact of Alcohol Beverage Marketing and Promotional Activities?" (2016) 112 Addiction 117.

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agenda could help to advance alcohol control, particularly in respect of alcohol advertising and promotion.[15] Beyond alcohol control, the last decade has seen scholarship emerge on human rights and NCDs more generally.[16] Comparisons have been drawn to the effective use of human rights in relation to the HIV epidemic.[17] One of the central arguments advanced for the stronger linking of human rights and NCD prevention – and which can be extended to alcohol control specifically – focuses on ensuring accountability for action.[18] The human rights system, as explored below, offers a number of ways to ensure that commitments, such as those outlined in the Global Alcohol Strategy, are met.

Despite the absence of explicit language linking human rights and alcohol, the human rights forum has been used to report on and progress alcohol control measures as well as to contest the compatibility of alcohol control measures with human right obligations. However, the experience from tobacco control outlined below demonstrates that a clearer framing of alcohol as a human rights priority could help to ensure alcohol control is seen as more than purely a health issue.

1. Relevant human rights

Alcohol control is relevant to rights and obligations contained in international human rights instruments such as the right to health. The right to health is contained in international human rights covenants including, *inter alia*, the International Covenant on Economic, Social and Cultural Rights (ICESCR)[19] and the Convention on the Rights of the Child (CRC).[20] In addition to rights contained in international human rights covenants, many regional human rights instruments and domestic constitutions contain a formulation of the right to health.[21]

Under international human rights law, states are the duty-bearers in relation to the rights enshrined in international covenants such as the ICESCR. States have duties to respect, protect and fulfil human rights. The duty to protect includes the states' obligation to take measures preventing third parties such as the private sector (including the alcoholic beverage industry) from interfering with rights such as the

[15] Chapman, supra, note 14.

[16] See, eg, S Gruskin et al, "Noncommunicable Diseases and Human Rights: A Promising Synergy" (2014) 104 American Journal of Public Health 773; L Ferguson et al, "Non-communicable Diseases and Human Rights: Global Synergies, Gaps and Opportunities" (2017) 12 Global Public Health 1200.

[17] See, eg, Gruskin et al, supra, note 16; Ferguson et al, supra, note 16, p 1201; LO Gostin and BM Meier, "The Origins of Human Rights in Global Health" in BM Meier and LO Gostin (eds), *Human Rights in Global Health: Rights-Based Governance for a Globalizing World* (Oxford, Oxford Scholarship Online 2018) pp 36–37.

[18] See, eg, Gruskin et al, supra, note, p 16.

[19] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Art 12.

[20] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Art 24.

[21] See, eg, African Charter on Human and Peoples' Rights 1986 Art 16; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 1988 Art 10; Constitution of South Africa 1996 Art 27; Constitution of Fiji 2013 Art 38; see also AR Chapman, *Global Health, Human Rights, and the Challenge of Neoliberal Policies* (Cambridge, Cambridge University Press, 2016) chs 1, 9.

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right to health. States are also obliged to take positive action, such as implementing evidence-based measures, to facilitate the enjoyment of basic human rights.[22]

The right to health contained in Article 12 of the ICESCR imposes positive obligations on states to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" and includes obligations extending to the prevention of diseases, such as those caused by alcohol consumption. Article 12(2)(c) of the ICESCR specifically requires State Parties to take positive steps to prevent "epidemic, endemic, occupational and other diseases". The adverse health impacts caused by alcohol consumption for the drinker and those around the drinker make alcohol control directly relevant to the human right to health.

Beyond the right to health, alcohol control is relevant to a number of other rights including, *inter alia*, freedom of expression, which is contained in international human rights covenants such as the Universal Declaration of Human Rights,[23] the Convention on the Rights of Persons with Disabilities[24] and the International Covenant on Civil and Political Rights.[25] Freedom of expression – which includes the right to seek, receive and impart information – has been relied on in relation to the use of information and warning labels on alcoholic beverages and restrictions on advertising and promotion of alcohol. In the USA, constitutional free speech protections have been used by the alcohol industry to argue for the inclusion of positive health messages on alcoholic beverage labels, yet at the same time they have been relied on to argue against advertising regulation and information on labels about the health risks from alcohol consumption.[26] Meanwhile, public health advocates have relied on consumers' right to know the health risks associated with alcohol consumption for justifying alcohol labelling measures.[27] However, it is important to note that effective alcohol control involves comprehensive alcohol control measures, only some of which will relate to the freedom of expression.

2. General comments of human rights committees

While no human rights covenant specifically refers to alcohol, alcohol has been referred to in general comments. General comments expand on the meaning of the rights included in treaties.[28] References to alcohol control in general comments have generally highlighted the importance of information on alcohol-related harm and regulation for

[22] Committee on Economic, Social and Cultural Rights, "General Comment No 14 (2000): The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)" UN ESCOR, 22nd sess, Agenda Item 3, UN Doc E/C.12/2000/4 (11 August 2000) paras 33, 51 (General Comment No 14).

[23] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) Art 19.

[24] Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, Art 21.

[25] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art 19.

[26] See, eg, Mosher, supra, note 14.

[27] See, eg, R Mathews et al, "Vested Interests in Addiction Research and Policy: Is the Alcohol Industry Delaying Government Action on Alcohol Health Warning Labels in Australia?" (2013) 108 Addiction 1989.

[28] See generally BM Meier and VB Gomes, "Human Rights Treaty Bodies: Monitoring, Interpreting and Adjudicating Health-Related Human Rights" in BM Meier and LO Gostin (eds), *Human Rights in Global Health: Rights-Based Governance for a Globalizing World* (Oxford, Oxford Scholarship Online 2018) pp 502–23.

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alcohol marketing. General Comment Number 14 on The Right to the Highest Attainable Standard of Health interprets the right to health as extending to the underlying determinants of health, including healthy environmental conditions and access to health-related education and information.[29] Alcohol control advocates calling for stronger linkages between alcohol control and human rights have interpreted a safe and healthy environment for children to be an environment that is free from alcohol advertising and promotion.[30] General Comment Number 14 also explicitly recognises that information campaigns on alcohol abuse are relevant to fulfilling right to health obligations.[31]

In 2013, the CRC Committee adopted General Comment Number 15 on the Right of the Child to the Enjoyment of the Highest Standard of Health, which recognises that in order to achieve the right to health contained in the CRC, children require information and education on all aspects of health, including on the dangers of alcohol, to enable them to make informed choices. General Comment Number 15 further provides that states should protect children from alcohol and recommends regulation of "the advertising and sale of substances harmful to children's health and of the promotion of such items in places where children congregate, as well as in media channels and publications that are accessed by children".[32] Similarly, the CRC Committee adopted General Comment Number 4 on Adolescent Health and Development in the Context of the CRC and noted its concern for the influence exerted by marketing of unhealthy products and lifestyles on adolescents. The Committee urged Parties to "regulate or prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents."[33] Specific reference is made to the measures outlined in the WHO Framework Convention on Tobacco Control (FCTC).[34] Related to these general comments, there have been calls for the adoption of a new optional protocol to the CRC on protecting children from harmful commercial marketing in recognition of the role that the commercial sector plays in the health of children. The protocol would address the marketing of NCD risk factors such as fast foods, sugar-sweetened beverages, formula milk, alcohol and tobacco to children.[35]

General comments have also been adopted on the obligation of states regarding the business sector, such as the alcohol industry. In 2013, the CRC Committee adopted a General Comment on State Obligations Regarding the Impact of the Business Sector on Children's Rights. Considering the influence of the business sector on children's rights, this General Comment recognises that states have obligations to ensure that children's rights are not adversely affected by the business sector. In the context of

[29] General Comment No 14, supra, note 22, para 11.

[30] Chapman, supra, note 14, p 118.

[31] General Comment No 14, supra, note 22, para 36; see also Chapman, supra, note 14, p 118.

[32] Committee on the Rights of the Child, "General Comment No 15 (2013) on the Right to the Enjoyment of the Highest Attainable Standard of Health (Art 24)" UN Doc CRC/C/GC/15 (17 April 2013).

[33] Committee on the Rights of the Child, "General Comment No 4 (2003) Adolescent Health and Development in the Context of the Convention on the Rights of the Child" 33rd sess, UN DOC CRC/GC/2003/4 (1 July 2003) para 25.

[34] ibid, fn 4.

[35] H Clark et al, "A Future for the World's Children? A WHO–UNICEF–Lancet Commission" (2020) 395 Lancet 605, 606, 630–35. See also Chapman, supra, note 14, p 120.

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children's right to life, survival and development contained in Article 6 of the CRC, the General Comment acknowledges that the marketing of alcohol to children can have a long-term impact on their health.[36]

3. References to human rights in NCD global governance instruments

Alcohol control global governance instruments, particularly the Global Alcohol Strategy, have paid limited attention to alcohol as a human rights priority. The absence of an express reference to human rights in the Global Alcohol Strategy is replicated in other key alcohol control instruments. For example, the communique from the 2017 Global Alcohol Policy Conference – the leading forum for the world's alcohol policymakers, researchers and practitioners – did not refer to human rights commitments.[37] Moreover, the three most recent WHO Global Status Reports on Alcohol and Health have not considered a connection between alcohol and human rights.[38]

In contrast, other NCD risk factors, most notably tobacco, have received significant attention as human rights concerns. Commentators have argued that the WHO FCTC makes limited reference to human rights.[39] However, in comparison with the Global Alcohol Strategy, the WHO FCTC contains substantial recognition of human rights obligations. The preamble to the 2005 WHO FCTC explicitly references the right to health contained in Article 12 of the ICESCR, the preamble to the WHO Constitution and the CRC. The WHO FCTC also notes obligations in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and contains an implicit reference to the right to information: "Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke".[40] Furthermore, a number of the articles in the treaty contain expressions of human rights obligations, with many focusing on the right to health and the right to access information.[41]

The inclusion of human rights language in tobacco control extends beyond the WHO FCTC. For example, the Seventh Session of the Conference of the Parties to the WHO FCTC in November 2016 adopted a decision reaffirming that the

[36] Committee on the Rights of the Child, "General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights" UN Doc CRC/C/GC/16 (17 April 2013); see also Chapman, supra, note 14, pp 119–20.

[37] "Mobilising for Change: Alcohol Policy and the Evidence for Action: Communique" (Global Alcohol Policy Conference, 4–6 October 2015) <https://globalgapa.org/wp-content/uploads/2017/10/Melbourne-Communique-10-6-17-final.pdf> (last accessed 5 June 2020).

[38] World Health Organization, "Global Status Report on Alcohol and Health 2011" (2011) <www.who.int/substance_abuse/publications/global_alcohol_report/msbgsruprofiles.pdf> (last accessed 5 June 2020); World Health Organization, "Global Status Report on Alcohol and Health 2014" (2014) <https://apps.who.int/iris/bitstream/handle/10665/112736/9789240692763_eng.pdf?sequence=1> (last accessed 5 June 2020); World Health Organization, supra, note 1.

[39] See, eg, C Dresler and S Marks, "The Emerging Human Right to Tobacco Control" (2006) 28 Human Rights Quarterly 599, 650; OA Cabrera and LO Gostin, "Human Rights and the Framework Convention on Tobacco Control: Mutually Reinforcing Systems" (2011) 7 International Journal of Law in Context 285, 291.

[40] WHO Framework Convention on Tobacco Control (adopted 21 May 2003, entered into force 27 February 2005) 2302 UNTS 166, preamble, Art 4(1).

[41] Cabrera and Gostin, supra, note 39, pp 291–92.

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> effective implementation of the WHO FCTC, its guidelines and protocols facilitate the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, recognized in the WHO Constitution and international human rights law as well as in national legislation of the several States.[42]

At the same November 2016 session, a decision on "International Cooperation for Implementation of the WHO FCTC, Including on Human Rights" encouraged Parties to the WHO FCTC to link "the human rights framework and development to tackling the global tobacco epidemic".[43]

Linking human rights and tobacco consumption has also been considered in other forums beyond the Conference of the Parties. In 2018, the 17th World Conference on Tobacco or Health adopted the Cape Town Declaration on Human Rights and a Tobacco-Free World, acknowledging that the "manufacture, marketing and sale of tobacco are incompatible with the human right to health".[44] In April 2016, civil society groups organised an Inter-American Commission on Human Rights Hearing on Tobacco Addiction and the Right to Health.[45] In June 2019, civil society groups organised a session on Human Rights and Tobacco Control on the side-lines of the UN Human Rights Council Meeting.[46]

In addition to the WHO FCTC and other key instruments and conferences recognising the link between tobacco control and human rights, commentators have also explored this link.[47] Scholars have called tobacco control and human rights "mutually reinforcing" agendas[48] and have argued that a "human right to tobacco control" exists that is an extension from rights to health and life.[49] In addition to the human rights references contained in the WHO FCTC, the human rights agenda has been highlighted as being important for monitoring and accountability purposes, as well as for progressing tobacco control and defending litigation brought against tobacco control measures.[50]

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[42] Conference of the Parties to the WHO Framework Convention on Tobacco Control, "Delhi Declaration" FCTC/COP7(29), 7th sess, 5th plen mtg (12 November 2016) 2.

[43] Conference of the Parties to the Framework Convention on Tobacco Control, "International Cooperation for Implementation of the WHO FCTC, including on human rights" FCTC/COP7(26), 7th sess, 5th plen mtg (12 November 2016).

[44] "Cape Town Declaration on Human Rights and a Tobacco-Free World" (17th World Conference on Tobacco or Health, 2018) para 1 <https://2bark924ef5o2dk1z21reqtf-wpengine.netdna-ssl.com/wp-content/uploads/2019/06/Cape-Town-Declaration-on-Human-Rights-and-a-Tobacco-free-World_FINAL.pdf> (last accessed 5 June 2020).

[45] "Inter-American Commission on Human Rights Hearing: Tobacco Addiction and the Right to Health" (ASH, 2016) <https://ash.org/hrcommission-advisory/> (last accessed 5 June 2020).

[46] "The Convention Secretariat Highlights the Link Between Human Rights and Tobacco Control on the Margins of the United Nations Human Rights Council" (WHO FCTC, 25 June 2019) <https://www.who.int/fctc/mediacentre/news/2019/link-between-human-rights-tobacco-control/en/> (last accessed 5 June 2020).

[47] See, eg, R de Silva de Alwis and R Daynard, "Reconceptualizing Human Rights to Challenge Tobacco" (2008–2009) 17 Michigan State Journal of International Law 291; Cabrera and Gostin, supra, note 39; AE Yamin and A Constantin, "A Long and Winding Road: The Evolution of Applying Human Rights Frameworks to Health" (2018) 49 Georgetown Journal of International Law 191.

[48] Cabrera and Gostin, supra, note 39.

[49] See, eg, Dresler and Marks, supra, note 39; de Silva de Alwis and Daynard, supra, note 47.

[50] See, eg, de Silva de Alwis and Daynard, supra, note 47; Cabrera and Gostin, supra, note 39; see also SY Zhou, JD Liberman and E Ricafort, "The Impact of the WHO Framework Convention on Tobacco Control in Defending Legal Challenges to Tobacco Control Measures" (2019) 28 Tobacco Control 113.

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Alcohol control advocates have long advanced arguments for a WHO FCTC equivalent for alcohol, commonly referred to as a WHO Framework Convention on Alcohol Control.[51] Whether or not alcohol control is subject to a legally binding instrument in the future is beyond the scope of this article; however, the inclusion of language linking alcohol and human rights in any future global governance instrument for alcohol will ensure human rights – itself a legally binding framework – is utilised for alcohol control as it has been for tobacco.

4. Country reporting on alcohol control under human rights conventions

One of the crucial elements of international human rights commitments is that governments, through regular reporting, are accountable for fulfilling their obligations in the human rights treaties that they have ratified.

Country compliance with their human rights treaty obligations is monitored by treaty-specific human rights committees. For example, implementation of the ICESCR is monitored by the Committee on Economic, Social and Cultural Rights. Likewise, implementation of the CRC is monitored by the Committee on the Rights of the Child. Human rights treaties require State Parties to submit regular reports to the committees on how rights are being implemented in the domestic context. After a State Party submits their report, the procedure can involve the committee presenting a list of issues to the State Party, who is then given an opportunity to reply. After an opportunity for dialogue between the committee and the State Party, the committee usually issues concluding observations on the report, including recommendations, after which treaty bodies often include a follow-up procedure. While there are no sanctions or strict enforcement mechanisms for countries that fail to implement domestic measures and legislation compatible with treaty obligations, regional and international human rights arenas can place expectations on states to address human rights shortcomings.[52]

Despite the limited mention of alcohol control as a human rights concern at the international level, alcohol control has been included in human rights reporting. To date, Ireland, which became one of the first countries to introduce comprehensive alcohol control legislation in 2018, has included alcohol in all of its CRC and ICESCR reports. Ireland's first report on the CRC, submitted in 1996, noted a need to shift future emphasis to the prevention of alcohol-related harm, in line with the WHO's opinion.[53] Their second CRC report in 2005 highlighted progress on a bill on alcohol advertising, sponsorship and marketing practices. The report also highlighted ongoing discussions between the Department of Health and Children and the drinks, advertising and broadcasting industries in relation to developing voluntary codes of practice on alcohol advertising, sponsorship and sales promotion/marketing

[51] See, eg, R Room, "Negotiating the Place of Alcohol in Public Health: The Arguments at the Interface" (2005) 100 Addiction 1396; S Casswell, "Current Developments in the Global Governance Arena: Where Is Alcohol Headed?" (2019) 9 Journal of Global Health <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6650642/pdf/jogh-09-020305.pdf> (last accessed 5 June 2020).

[52] See generally Meier and Gomes, supra, note 28.

[53] Ireland, "Committee on the Rights of the Child Consideration of Reports Submitted by States Parties Under Article 44 of the Convention" CRC/C/11/Add.12 (17 June 1996) paras 374, 376.

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practices.[54] The Committee recommended that Ireland develop and implement a comprehensive strategy on alcohol that includes "awareness-raising activities, the prohibition of alcohol consumption by children and advertising that targets children".[55] While a comprehensive examination of all State Party reports under human rights conventions is beyond the scope of this article, Ireland is not alone in including alcohol control measures in its human rights reporting, with many countries including reference to alcohol control measures in their reports.[56]

Recent years have seen welcome progress in recognising alcohol control as a human rights priority in concluding observations.[57] Human rights committees have regularly recommended stricter alcohol control measures. The CRC Committee and the ICESCR Committee have both made recommendations that State Parties implement alcohol control measures such as those outlined in the Global Alcohol Strategy. Recommendations have included, for example, establishing a minimum age for alcohol consumption in Timor-Leste[58] and Venezuela,[59] imposing a legal prohibition on advertising of alcohol in the Cook Islands[60] and Seychelles (recommended in two separate concluding observations of the CRC Committee),[61] implementing awareness-raising strategies in Uzbekistan[62] and Suriname[63] and strengthening the regulation of alcohol sales and the enforcement of such laws among vendors who sell to children in Suriname.[64]

In response to recommendations, states commonly use subsequent reports to highlight how recommendations have been implemented. In Venezuela's August 2012 report to the CRC Committee, in keeping with the Committee recommendation that Venezuela establish a minimum age for consumption of alcohol, Venezuela noted that the Child and Adolescent Protection Act expressly regulates the consumption of alcohol and makes it an offence to sell alcohol to anyone under 18 years of age. The report further highlights other measures aimed at the consumption of alcohol by children,

[54] Ireland, "Committee on the Rights of the Child Consideration of Reports Submitted by States Parties Under Article 44 of the Convention" CRC/C/IRL/2 (9 December 2005) paras 559–60.

[55] Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Ireland" CRC/C/IRL/CO/2 (29 September 2006) para 49.

[56] See, eg, Ferguson et al, supra, note 16, pp 1219–22.

[57] Ferguson et al, supra, note 16, p 1219.

[58] Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Timor-Leste" CRC/C/TLS/CO/2-3 (30 October 2015) para 51(c).

[59] Committee on the Rights of the Child, "Consideration of Reports Submitted by State Parties Under Article 44 of the Convention: Venezuela (Bolivarian Republic of)" CRC/C/VEN/CO/2 (17 October 2007) para 30.

[60] Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Cook Islands" CRC/C/COK/CO/1 (22 February 2012) para 52(f).

[61] Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Seychelles" CRC/C/SYC/CO/2-4 (23 January 2012) para 57; Committee on the Rights of the Child, "Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Seychelles" CRC/C/SYC/CO/5-6 (5 March 2018) para 33(c).

[62] Committee on Economic, Social and Cultural Rights, "Concluding Observations on the Second Periodic Report of Uzbekistan" E/C.12/UZB/CO/2 (13 June 2014) para 24.

[63] Committee on the Rights of the Child, "Concluding Observations on the Third and Fourth Periodic Reports of Suriname" CRC/C/SUR/CO/3-4 (9 November 2016) para 31(e).

[64] ibid.

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including a municipal ordinance prohibiting the sale of alcohol within 200 metres of educational establishments issued by the Mayor's Office in Caracas.[65]

While there has been increasing recognition of alcohol control regulatory measures and policies in country reporting and human rights committee recommendations, the author could not locate any report or concluding observation referring to the Global Alcohol Strategy. This suggests that while alcohol control is broadly seen as a human rights concern, the Global Alcohol Strategy is not seen as guiding these policy measures and recommendations. In contrast, the WHO FCTC has guided tobacco control policies and recommendations in the human rights forum. International human rights committees have increasingly considered ratification of the WHO FCTC as crucial in meeting right to health obligations.[66] Examples include in 2010 and 2016 the CEDAW Committee urging Argentina to ratify the WHO FCTC.[67] In 2014, the ICESCR Committee encouraging Indonesia to ratify the WHO FCTC.[68] Ratification of the WHO FCTC has also been welcomed and highlighted as a positive step in other Committee reports.[69]

5. Other ways to use human rights to progress alcohol control

Civil society organisations have used the human rights system to call for further progress on alcohol control measures.[70] In 2017, South Africa made an implied reference to the Control of Marketing of Alcohol Beverages Bill 2013 in its State Party report on the implementation of the ICESCR, despite the legislation not being publicly available.[71] In response, the Southern African Alcohol Policy Alliance made a parallel submission to the Committee asking for the Bill to be made public.[72] This legislation is significant in South Africa, as if the legislation were to come into force, it is reported that the legislation would ban alcohol advertising in the country. This would significantly impact the alcohol industry.[73] The development of this legislation has been a long process that has been heavily impacted by alcohol industry interference.[74]

[65] Bolivarian Republic of Venezuela, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention" CRC/C/VEN/3-5 (12 August 2013) paras 106–08.

[66] Cabrera and Gostin, supra, note 39, pp 293–94.

[67] Committee on the Elimination of Discrimination Against Women, "Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Argentina" CEDAW/C/ARG/C0/6 (16 August 2010), para 40; Committee on the Elimination of Discrimination Against Women, "Concluding Observations on the Seventh Periodic Report of Argentina" CEDAW/C/ARG/C0/7 (25 November 2016) para 35(g).

[68] Committee on Economic, Social and Cultural Rights, "Concluding Observations on the Initial Report of Indonesia" E/C.12/IDN/CO/1 (19 June 2014) para 35.

[69] See, eg, Committee on Economic, Social and Cultural Rights, "Concluding Observations on the Combined Second and Third Periodic Reports of Armenia" E/C.12/ARM/CO/2-3 (16 July 2014) para 5(c); Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Concluding Observations Cook Islands" CRC/C/COK/CO/1 (22 February 2012) para 51.

[70] See Ferguson et al, supra, note 16, p 1223.

[71] South Africa, "Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights" E/C.12/ZAF/1 (7 June 2017) para 117.

[72] Southern African Alcohol Policy Alliance, "Submission to the United Nations Committee on Economic, Social and Cultural Rights" (2018).

[73] A Bertscher, L London and M Orgill, "Unpacking Policy Formulation and Industry Interference: The Case of the Draft Control of Marketing of Alcoholic Beverages Bill in South Africa" (2018) 33 Health Policy and Planning 786, 787.

[74] ibid.

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The human rights mechanism therefore has provided a valuable avenue for civil society in South Africa to explore in supporting the passage of this important alcohol control measure.

In Ireland, at least one civil society parallel report to the CRC Committee has critiqued the provisions of the recently passed Public Health (Alcohol) Bill, despite the Bill not being referenced in Ireland's CRC report. The Children's Rights Alliance in their September 2015 submission recommended that the CRC Committee recommend Ireland "enacts a comprehensive and ambitious Public Health (Alcohol) Bill to address alcohol misuse as a matter of urgency".[75] The submission also called for further provisions on below-cost selling of alcohol, sponsorship of sports and public events, alcohol availability, alcohol marketing and the link between alcohol misuse and child abuse and neglect.[76]

In addition to progressing alcohol control measures, special procedures of human rights mechanisms have been used to address alcohol control measures that are considered to contravene human rights obligations. In 2010, the Special Rapporteur on the Rights of Indigenous Peoples labelled aspects of alcohol interventions in Australia's Northern Territory as racially discriminatory and incompatible with Australia's international human rights obligations.[77] Components of the Northern Territory Emergency Response (NTER) Programme, including bans on alcohol consumption within Aboriginal communities in prescribed areas, were described by the Special Rapporteur as having an "overtly interventionist architecture, with measures that undermine indigenous self-determination, limit control over property, inhibit cultural integrity and restrict individual autonomy".[78] In response, Australia committed to varying some of the alcohol measures contained in the NTER Programme.[79]

While alcohol has received limited consideration as a human rights issue in the global governance framework, the alcohol industry has for a long time adopted human rights language. The alcohol industry has employed human rights language in submissions to international organisations such as the WHO. During consultations for the Global Alcohol Strategy starting in 2008, the alcohol industry made numerous submissions highlighting what they called the "legitimate right to drink".[80] Human rights language was also employed by the alcohol industry in submissions on the Montevideo Roadmap 2018–2030 on NCDs as a Sustainable Development Priority. Alcohol industry submissions slammed language in an early draft of the Roadmap that referenced "industry interference, including through legal disputes" as hampering NCD measures. The industry argued they have a "legitimate right to present evidence

[75] Children's Rights Alliance, "Are We There Yet? Parallel Report to Ireland's Third and Fourth Combined Report under the UN Convention on the Rights of the Child" (September 2015) para 314.

[76] ibid.

[77] J Anaya, "Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Addendum: Situation of Indigenous Peoples in Australia" A/HRC/15/37/Add.4 (1 June 2010) app B para 37.

[78] ibid, app B para 13.

[79] ibid, app B para 49.

[80] See, eg, "WHO Public hearing on Harmful Use of Alcohol Volume I: Received summaries of all contributions" (World Health Organization, 2009) pp 135–36, 147.

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and views to policy-makers regarding the impact of policies under consideration" and the "right ... to challenge measures which do not have a sound legal basis".[81] The alcohol industry has also allegedly attempted to incorporate language recognising their "right to conduct legitimate and legal business in a responsible way" as a key guiding principle into draft national alcohol policies in Lesotho, Malawi and Botswana.[82]

The alcohol industry has also relied on constitutionally enshrined rights to challenge alcohol control measures. For example, in 2013, in *East Africa Breweries Ltd v Attorney General*, the High Court of Kenya was asked to consider whether the Alcoholic Drinks Control Act 2010 (Kenya), which contained provisions including alcohol health warning labels, was unconstitutional because, *inter alia*, the legislation violated the East Africa Breweries' right to property enshrined in the Kenyan Constitution.[83] In concluding that the legislation was not unconstitutional, the Court held – upheld on appeal[84] – that the right to property was not absolute and must be balanced with other rights in the Kenyan Constitution. Such rights include the right of consumers to the information necessary for them to gain full benefit from goods and services and the protection of consumers' health, safety and economic interests.[85] Similarly, the alcohol industry has used human rights arguments to threaten governments with legal challenges relating to alcohol control measures. In 2017, the alcohol industry relied on the freedom of expression contained in the Canadian Charter of Rights and Freedoms to pressure the Government of Yukon in Canada to halt a cancer warning labelling study on alcoholic beverages.[86] While a comprehensive discussion on human rights litigation involving alcohol control is beyond the scope of this article and will be specific to each country, these examples are illustrative of how the industry has used human rights arguments to challenge – or, in the case of Canada, threaten to challenge – alcohol control measures.

The utility of the Global Alcohol Strategy for countries facing legal challenges, however, remains unclear. The Global Alcohol Strategy was not referenced in support of the Kenyan Government's defence, despite the Strategy referring to "providing consumer information about, and labelling alcoholic beverages to indicate, the harm related to alcohol" as a policy option and intervention.[87] The author could not locate any constitutional case law involving alcohol control measures that relied on the Global Alcohol Strategy in support of the measure. In contrast, the link between

[81] See, eg, International Alliance for Responsible Drinking, "Comments on Draft Outcome Document – Montevideo Roadmap 2018–30 on NCDs as a Sustainable Development Priority (9 August version)" (August 2017) <https://www.who.int/ncds/governance/montevideo-iard.pdf?ua=1> (last accessed 5 June 2020); Comité Européen des Entreprises Vins, "Comments on Draft Outcome Document – Montevideo Roadmap 2018–30 on NCDs as a Sustainable Development Priority" (22 August 2017) <https://www.who.int/ncds/governance/montevideo-ceev.pdf?ua=1> (last accessed 5 June 2020).

[82] Ø Bakke and D Endal, "Alcohol Policies Out of Context: Drinks Industry Supplanting Government Role in Alcohol Policies in Sub-Saharan Africa" (2010) 105 Addiction 22, 24.

[83] *East African Breweries Limited v Attorney General* [2013] eKLR (High Court) [7].

[84] *East African Breweries Limited v Attorney General* [2019] eKLR (Court of Appeal, Civil Appeal Number 344 of 2013).

[85] *East African Breweries Limited v Attorney General* [2013] eKLR (High Court) [33].

[86] T Stockwell et al, "Cancer Warning Labels on Alcohol Containers: A Consumer's Right to Know, a Government's Responsibility to Inform, and an Industry's Power to Thwart" (2020) 81 Journal of Studies on Alcohol and Drugs 284, 287.

[87] Global Alcohol Strategy, supra, note 9, para 36(f).

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WHO FCTC implementation and human rights obligations has been recognised and relied upon to defend legal challenges to tobacco control measures.[88]

IV. Discussion

Alcohol has received some attention as a human rights priority. However, the absence of an explicit reference to the right to health or other relevant human rights obligations and instruments in the Global Alcohol Strategy has hindered this recognition. This exclusion has been translated to other key alcohol reports and conferences excluding consideration of the link between alcohol and human rights. However, encouragingly, the 2020 Global Alcohol Policy Conference included consideration of human rights and alcohol.[89]

In recent years, human rights mechanisms have increasingly considered alcohol control. State Party reports have paid welcome attention to alcohol control measures, and concluding observations have discussed and made recommendations on alcohol control regulatory measures and policies. General Comments have urged State Parties to act in relation to alcohol, and civil society has used parallel submissions to advocate for stronger alcohol control measures, while special procedures have been used to ensure that the measures implemented adhere to human rights obligations.

Despite recent years seeing alcohol control being increasingly considered in the human rights forum, fragmentation exists – especially when contrasted with tobacco control. The CEDAW Committee and the ICESCR Committee have urged countries to ratify the WHO FCTC. In contrast, not a single reference to the Global Alcohol Strategy could be located in State Party reports or by human rights committees. Various human rights committees have made recommendations to implement measures ranging from minimum purchase ages for alcohol to prohibitions on advertising. However, the absence of reference to the Global Alcohol Strategy in human rights mechanisms has resulted in piecemeal references to alcohol control measures rather than a comprehensive approach (ie full implementation of the Global Alcohol Strategy). General Comment Number 4 even refers to the WHO FCTC yet excludes the alcohol-equivalent Global Alcohol Strategy when urging parties to regulate or prohibit marketing of alcohol and tobacco. This general comment is not alone in referring to the WHO FCTC but excluding reference to the Global Alcohol Strategy: for example, General Comment Number 15 encourages State Parties to ratify the WHO FCTC if they have not yet done so.[90] Furthermore, gaps exist in the utilisation of the Global Alcohol Strategy in defending litigation where the strategy has not received the same level of attention as a human rights instrument as the WHO FCTC has.

Including alcohol in the human rights agenda allows for greater monitoring and accountability for the Global Alcohol Strategy. At present, monitoring of and accountability for implementing the Global Alcohol Strategy are largely limited to the

[88] Zhou, Liberman and Ricafort, supra, note 50.

[89] 6th Global Alcohol Policy Conference, "Programme" (Global Alcohol Policy Alliance, 9 March 2020) <https://www.gapc2020.org/programme> (last accessed 5 June 2020).

[90] Committee on the Rights of the Child, "General Comment No 15 (2013) on the Right to the Enjoyment of the Highest Attainable Standard of Health (art 24)" UN Doc CRC/C/GC/15 (17 April 2013).

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global status reports on alcohol and health and a global information system on alcohol and health database managed by the WHO. The inclusion of alcohol control in the human rights agenda will provide for stronger monitoring of and accountability for alcohol control developments, as has started to be seen in the development agenda by alcohol's inclusion in the 2030 Agenda for Sustainable Development. Beyond health, development and human rights forums can provide opportunities to question action or lack of action, which are not presently available under the Global Alcohol Strategy. Examples of this can be seen above, with many concluding recommendations recommending measures outlined in the strategy be introduced. In addition, the human rights agenda allows for an additional avenue for civil society to pursue, as can be seen in the case of South Africa, where civil society has used the human rights mechanism to ensure the government is accountable for the alcohol control measures that they have committed to, and in the case of Ireland, where civil society has used the mechanism to call for stronger legislative provisions. The human rights agenda can also provide further support for countries introducing alcohol control measures. For example, the experience of defending domestic legal challenges to tobacco control has shown that the WHO FCTC can be an important human rights instrument.

The inclusion of language linking alcohol control and human rights in key global governance instruments, such as the Global Alcohol Strategy, the 2022–2030 Global Alcohol Strategy Action Plan currently being developed[91] or a future binding instrument, would help to facilitate alcohol being recognised as a human rights issue as well as a health issue. The experience of including language in key tobacco control instruments such as the WHO FCTC, recognising that tobacco control is relevant to human rights obligations, demonstrates that the inclusion of the explicit recognition of the human rights agenda can help to facilitate greater utilisation of this agenda for tobacco control. The continued consideration of the link between tobacco and human rights by the Conference of the Parties, international conferences and scholars can all in some way be attributed to the importance of the human rights references in the WHO FCTC. While commentators have suggested that the links between tobacco and human rights in the WHO FCTC are minimal, the result of these minimal references is stark when contrasted with alcohol control, where there has been no consistent consideration of alcohol and human rights.

The Preamble to the WHO FCTC references obligations contained in the ICESCR, CRC and CEDAW. These three committees have consistently made references to tobacco control measures, with the ICESCR Committee and the CEDAW Committee both making recommendations for State Parties to implement the WHO FCTC. In contrast, recommendations to address alcohol control have adopted a piecemeal approach, with concluding observations addressing specific concerns such as the purchase age of alcohol or alcohol advertising. No recommendation to fully implement the Global Alcohol Strategy could be found.

[91] The 146th Executive Board of the WHO decided to develop an action plan (2022–2030) to effectively implement the Global Alcohol Strategy as a public health priority; World Health Organization, "Accelerating Action to Reduce the Harmful Use of Alcohol", EB146(14), 146th sess, 12th mtg (7 February 2020).

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V. Conclusion

The human rights agenda can be used to ensure accountability and mobilise action for alcohol control. To date, alcohol control has received welcome attention as a factor that is relevant to achieving rights and the obligations enshrined in international human rights instruments. However, the experiences of tobacco control show that clearer framing in key international governance instruments, particularly the Global Alcohol Strategy or the document that will proceed it, is needed to enable the human rights agenda to be more effectively utilised for alcohol control. While linking alcohol control and human rights is just one part of a comprehensive approach to alcohol control, tobacco control demonstrates the critical role that the human rights agenda can play for public health priorities.

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