

Human rights standards and prevention of alcohol consumption

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PAHO

Right to Health



WHO Constitution - The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition

- ✓ Universal Declaration of Human Rights
- ✓ International Covenant on Economic, Social and Cultural Rights
- ✓ Convention on the Elimination of All Forms of Racial Discrimination
- ✓ Convention on the Rights of Persons with Disabilities
- ✓ Convention on the Elimination of All Forms of Discrimination against Women
- ✓ Convention of the Rights of the Child

Protection of the right to health



The Vienna Convention on the Law of Treaties (1969)

- Article 26 - Pacta sunt servanda (good faith)
- Article 27 - Internal law and observance of treaties

- **The obligation to respect** requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health
- **The obligation to protect requires States to take measures that prevent third parties from interfering with the right to health**
- **The obligation to fulfil** requires States to progressively adopt appropriate legislative, administrative, budgetary, judicial, and other measures towards the full realization of the right to health

Human rights & business



For corporations, the general requirement to respect human rights traditionally has been more a matter of social expectation than legal and regulatory requirements, falling under the rubric “corporate social responsibility” rather than “hard law.”

In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, developed by the Special Representative of the UN Secretary General on Business and Human Rights, which seek to put into operation a three-pillar framework promoting corporate responsibility for human rights.

Three pillar framework:

1. Protect against human rights abuses by businesses
2. Articulate a “corporate responsibility to respect human rights requiring corporations to act with due diligence to avoid infringing internationally recognized human rights and to address the negative impacts of their activities.
3. states’ responsibility to provide access to effective remedies for business-related abuses

Right to Health



Committee on Economic, Social and Cultural Rights

- **General Comment No. 12:** The Right to Adequate Food (Art. 11 of the Covenant)
- **General Comment No. 14:** The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)
- **General comment No. 24:** State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities

General comments seeks to clarify the duties of States parties to human rights treaties

Right to Health

Committee on the Rights of the Child

- **General Comment No. 5 (2003):** General Measures of Implementation of the Convention on the Rights of the Child
- **General comment No. 14 (2013):** right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)
- **General comment No. 15 (2013):** right of the child to the enjoyment of the highest attainable standard of health (art. 24)
- **General comment No. 16 (2013):** State obligations regarding the impact of the business sector on children's rights

General comments seeks to clarify the duties of States parties to human rights treaties

Committee on Economic, Social and Cultural Rights



- Under international standards, business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice
- The obligation to protect means that States parties must prevent effectively infringements of economic, social and cultural rights in the context of business activities.
- This requires that States parties adopt legislative, administrative, educational and other appropriate measures, to ensure effective protection against Covenant rights violations linked to business activities
- States parties should consider measures such as restricting marketing and advertising of certain goods and services in order to protect public health, such as of tobacco products, in line with the Framework Convention on Tobacco Control, and of breast-milk substitutes, in accordance with the 1981 International Code of Marketing of Breast-milk Substitutes and subsequent resolutions of the World Health Assembly

General comment No. 24: State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities

Committee of the Rights of the Child



- The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health... affecting Art 6 (right to life, survival and development)
- Measures for implementing article 6 with regard to the business sector should include preventive measures such as effective regulation and monitoring of advertising and marketing industries and the environmental impact of business
- States are required to implement and enforce internationally agreed standards concerning children's rights, health and business, including the World Health Organization Framework Convention on Tobacco Control, and the International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions

General comment No. 16 (2013): State obligations regarding the impact of the business sector on children's rights

Committee of the Rights of the Child



- The Committee recognizes that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises
- All businesses must meet their responsibilities regarding children's rights and States must ensure they do so
- States must ensure that the best interests of the child are central to the development of legislation and policies that shape business activities and operations
- Legislation and regulation are essential instruments for ensuring that the activities and operations of business enterprises do not adversely impact on or violate the rights of the child.
- States should enact legislation that gives effect to the rights of the child by third parties and provides a clear and predictable legal and regulatory environment which enables business enterprises to respect children's rights

General comment No. 16 (2013): State obligations regarding the impact of the business sector on children's rights

Committee of the Rights of the Child



A State will be in breach of its obligations under the Convention where it fails to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children

General comment No. 16 (2013): State obligations regarding the impact of the business sector on children's rights

Human rights in tension



- Human right to personal freedom, free speech, access to information are usually the rights arguments used by the industry and opponents of controlling consumption of tobacco, alcohol and unhealthy food and that regulation of selling and marketing of these products interferes with personal autonomy

BUT

- Bans on advertising and promotion does not interfere with the economic activity of buying, producing and selling products
- Restriction on advertising cannot be compared with freedom of speech (social and political and protected as a fundamental right)
- The human right to health protection is far more compelling than the industry's claim to commercial speech freedom