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SHADOW REPORT TO THE SIXTH PERIODIC REPORT BY THE  
GOVERNMENT OF ARGENTINA

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CHALLENGES IN THE PREVENTION AND REDUCTION OF  
WOMEN'S TOBACCO USE IN ARGENTINA

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**REPORT FILED BY:**

**O'Neill Institute**

for National and Global Health Law

Georgetown Law • Georgetown Nursing & Health Studies

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**The Campaign for Tobacco-Free Kids** is an organization dedicated to the fight to reduce tobacco use and its devastating consequences in the United States and around the world through education about the tobacco problem; exposure of tobacco industry tactics; and advocacy and

mobilization of organizations and individuals through sharing programs and information with partners around the world. By changing public attitudes and public policies on tobacco, the Campaign for Tobacco-Free Kids strives to prevent kids from smoking, help smokers quit, and protect everyone from second-hand smoke.

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**ALIAR** makes its primary goal the promotion of effective legislation for 100% tobacco smoke-free environments with the aim of protecting people's health against the **deadly effects of second-hand tobacco smoke** and discouraging people's use of tobacco. A federal initiative, it seeks to facilitate greater involvement and strengthening of the organizations in local civil society on the problem of second-hand tobacco smoke and to coordinate joint network action to educate the community and professionals and influence the creation of public policy in the local sector.

[www.aliarargentina.org](http://www.aliarargentina.org)



**FIC – ARGENTINA:** Fundación Interamericana del Corazón Argentina [Argentine Interamerican Heart Foundation], whose mission is to promote changes in public policy in order to prevent cardiovascular disease. FIC – Argentina is an arm of the Interamerican Heart Foundation, an organization with a trajectory of over 20 years. It works primarily in three areas: tobacco control, promotion of healthy food and physical activity. Its team is a multi-disciplinary team in charge of the development of activities.



**FUNDACIÓN CARDIOLOGICA ARGENTINA [CARDIOLOGY FOUNDATION ARGENTINA]**

**Fundación Cardiológica Argentina** is the community arm of the **Sociedad Argentina de Cardiología [Argentine Cardiology Society]** Its mission is to provide the community the information it needs to promote health and the prevention of cardiovascular disease, which are the number one causes of morbidity and mortality among adults in our country. It is made up of medical and non-medical members who take part voluntarily to spread and promote the principles of cardiovascular disease prevention in the community. The FAC is affiliated with the World Heart Federation and the Interamerican Heart Foundation.



**Center for the Study of State and Society**

Multi-disciplinary in nature, from its beginning CEDES has focused on study of the social, political and economic problems of Argentina and Latin America. Its mission is to strengthen research ability in social sciences in Argentina and Latin America to foster the spread and application of the results. Its hope is to contribute to social and economic development, to the strengthening of democracy, the promotion of human rights and social gender equity.



**Foundation for Women's Study and Research -FEIM-**

FEIM is a non-governmental organization (NGO) of women and young people that works to improve the social, political, work, educational, economic and health condition of women and girls in Argentina by defending their rights and promoting better living conditions and parity between women and men.



**Argentine Cardiology Society (SAC):** Whose mission is to be the scientific benchmark for cardiology in the medical community, government and general society through the formation of human resources, the promotion of research, quality control and cooperation with the community on education about cardiovascular diseases.



**The Foundation for the Development of Sustainable Policy (FUNDEPS)** is a non-profit organization whose work is focused on the building of a more just, equitable and inclusive society, in which every stakeholder will engage in the promotion of sustainable processes of widening opportunities. Considering its commitment to Human Rights, FUNDEPS established a Legal Clinic which is set up as a space for the promotion of rights and which endeavors to offer visibility and effective recognition to certain economic and social rights that are largely omitted.

**SHADOW REPORT TO THE PERIODIC REPORT BY THE GOVERNMENT OF  
ARGENTINA**

**CHALLENGES IN THE PREVENTION AND REDUCTION OF WOMEN'S TOBACCO  
USE IN ARGENTINA**

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## SHADOW REPORT TO THE PERIODIC REPORT BY THE GOVERNMENT OF ARGENTINA

### CHALLENGES IN THE PREVENTION AND REDUCTION OF WOMEN'S TOBACCO USE IN ARGENTINA

The *O'Neill Institute for National and Global Health Law* (the "O'Neill Institute"), the Campaign for Tobacco-Free Kids ("CTFK"), ALIAR, the Tobacco Smoke-Free Alliance-Argentina ("Aliar"), the Interamerican Health Foundation – Argentina (FIC – Argentina), the Argentina Cardiology Foundation, the Foundation for Women's Study and Research (FEIM), the Argentine Cardiology Society (SAC) and the Foundation for the Development of Sustainable Policy (FUNDEPS) hereby respectfully submit the following shadow report, the purpose of which is to assist the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (the "Committee" or "CEDAW Committee") as it evaluates the sixth periodic report filed by the Argentine Republic (the "State" or "Argentina"). This report will focus on the State's obligations regarding Articles 3, 10 and 12 of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"). In our shadow report we analyze the prevailing tobacco control legal framework in Argentina and the most important weaknesses in the statutory and regulatory language with special attention to Argentina's failure to ratify and implement the WHO's Framework Convention on Tobacco Control and the impact of this statute on tobacco use among women. Examining the fulfillment of governments' obligations to protect the right to health vis-à-vis tobacco control and women is well within this Committee's competence and authority. This report suggests recommendations for the Committee to consider in formulating its concluding observations to the government of Argentina on its compliance with CEDAW.

#### I. ARGENTINA, WOMEN'S HEALTH AND TOBACCO

In view of the importance of health for women's dignity and equality, countries around the world have assumed the obligation to recognize, protect and guarantee the right to the highest attainable standard of health for women. Argentina accepted this obligation under international law when it signed and ratified international human rights treaties – the International Covenant on Economic, Social and Cultural Rights, ("ICESCR"), the UN Convention on the Rights of the Child, as well as CEDAW – that enshrined the right to health and set forth requirements for its fulfillment.<sup>1</sup>

Specifically, CEDAW imposes the obligation on Party States to adopt measures for inclusion of the right to women's health into domestic legislation while also serving as the principal document for the advancement of women's equality in international human rights law. In particular, the obligations established by CEDAW in its articles 3 (obliges States to take all appropriate measures to guarantee women their fundamental rights), 10 h (establishes access to educational information that contributes to ensuring the health and wellbeing of their family) and 12 1 (obliges States to take measures to eradicate discrimination against women in the field of

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<sup>1</sup> Argentina ratified CEDAW on July 15, 1985; the ICCPR and the ICESCR on August 8, 1986; and the CRC on September 27, 1990.

health care) are cogent to this document in view of Argentina's periodic review as it relates to tobacco control and women's health.

Along these same lines, Paragraph 100 of the Beijing Platform for Action acknowledges that “women throughout the world, especially young women, are increasing their use of tobacco with serious effects on their health and that of their children”<sup>2</sup>. Actions to be taken by governments to strengthen preventive programs that promote women’s health under Paragraph 107(o) include “creating awareness among women, health professionals, policy makers and the general public about the serious but preventable health hazards stemming from tobacco consumption and the need for regulatory and education measures to reduce smoking as important health promotion and disease prevention activities.”<sup>3</sup> The World Health Organization estimates that the prevalence of smoking among women worldwide will be 20% by 2025, a sharp increase from the 12% of the world’s women who smoke presently. Yet, even if smoking rates remain constant, the number of female smokers will increase simply because the number of women in developing countries will increase by approximately 1 billion from the current 2.5 to 3.5 billion by 2025.

It is appropriate for the O’Neill Institute, CTFK, Aliar and FIC-Argentina in conjunction with other civil society organizations identified above to evaluate the position taken by Argentina concerning its obligation to respect, protect and fulfill women’s right to health within the framework of the fight against smoking and tobacco use.

In this report we set forth areas of the greatest concern with respect to Argentina’s efforts to combat the threat tobacco consumption poses for women with particular emphasis on the State’s failure to ratify the World Health Organization’s Framework Convention on Tobacco Control.

## **II. ARGENTINA’S DUTY TO PROTECT WOMEN’S HEALTH ACCORDING TO INTERNATIONAL HUMAN RIGHTS TREATIES AND THE NATIONAL CONSTITUTION**

Argentina's obligation to protect women's health is specified in the National Constitution and in international human rights treaties which have been incorporated into its domestic laws.

Article 75, subsection 22, grants constitutional hierarchy to international human rights treaties when referring to the inclusion of international treaties into domestic law. In consequence, the protection of health established in such international instruments as the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man (Art. XI), The International Covenant on Economic, Social and Cultural Rights (Art. 12), the Convention on the Rights of the Child (Art. 19) and the American Convention on Human Rights (Art. 5) form part of the constitutional mandate. 5). In the same way, CEDAW also enjoys constitutional hierarchy.

On the other hand, in regulating the consumer relationship, specific reference is made to the right to health in Article 42. This provision establishes that "Consumers and users of goods and services have the right, in the consumer relationship, to the protection of their health, safety and economic interests, to adequate and truthful information, to freedom of choice, and to conditions of equitable and dignified treatment..." Moreover, and in another guarantee linked to the matter

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<sup>2</sup> Beijing Statement and Platform for Action. Fourth World Conference on Women Held in Beijing, 1995. p. 100. Available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20S.pdf>

<sup>3</sup> Ibid.

of this document, Article 41 of the National Constitution recognizes the right of all inhabitants to a healthy and balanced environment.

Insofar as the domestic legal order which could determine the obligations stemming from these instruments, Article 31 of the Argentine National Constitution establishes: “This Constitution, the laws of the Nation that as a result thereof may be enacted by the Congress, and treaties with foreign powers, are the supreme law of the Nation, and the authorities of every Province are bound to conform to it...” This article makes clear the supremacy of the constitution which has contained the instruments described above since the 1994 Reform.

It is important to note that the Argentine National Supreme Court has affirmed that the case law of international human rights bodies has interpretative guideline value in applying these instruments locally.<sup>4</sup> Along these lines it is of greater importance to mention the documents issued by international human rights bodies.

So, it is important to look at General Commentary 24, adopted in 1999 by the CEDAW Committee, which affirms in Paragraph 31:

31. States parties should also, in particular:

(a) Place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;

With the information presented in the following section borne in mind, it would be important to recall paragraph 6 of the same general comment, which poses;

6. While biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

So, this General Commentary establishes the obligation to implement public policy with a gender perspective that considers not just biological differences but also social ones between women and men. For these purposes the Committee has recommended that the reports include “*information on diseases, health conditions and conditions hazardous to health that affect women or certain groups of women differently from men, as well as information on possible intervention in this regard.*”<sup>5</sup>. Thus, in addition to the obligation to design public health policy from a gender perspective, the State must draw up information to that regard and include gender indicators in the programs it implements.

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<sup>4</sup> CSJN- 07/04/1995 - Ruling "Giroldi, Horacio y otro", paragraphs 11 and 12.

<sup>5</sup> CEDAW Committee, General Recommendation N° 24 (20th session period, 1999), p. 15.

In this interpretative framework the CEDAW Committee has created specific recommendations on women's situation and the tobacco epidemic, such as the case of the Luxembourg Report in 2008. This framework includes the following among its recommendations:

27. While noting the favorable health situation in Luxembourg and welcoming the Party State's intention to develop an anti-smoking program, the Committee is concerned at the reported increase in smoking among women, particularly young women, and its effects on children. (...)

28. The Committee recommends that the Party State conduct a study on the underlying causes of popularity of smoking among young women and to integrate a gender perspective in its anti-smoking strategy, including in any awareness-raising campaigns. The Committee invites the Party State to include in its next periodic report information on the results of measures taken to address smoking problems, disaggregated data on the situation of women and young girls' mental health in the Party State and information on its response thereto, and particularly access to relevant services. Furthermore, the Committee calls the Party State's attention to the Committee's General Recommendation 24 which gives guidelines on gender sensitive approach to health policies.<sup>6</sup>

In view of this general framework, below we shall analyze the tobacco epidemic situation in Argentina and later analyze the responses which the Argentine government is implementing in light of international commitments to human rights with emphasis on CEDAW.

### **III. THE TOBACCO EPIDEMIC IN ARGENTINA**

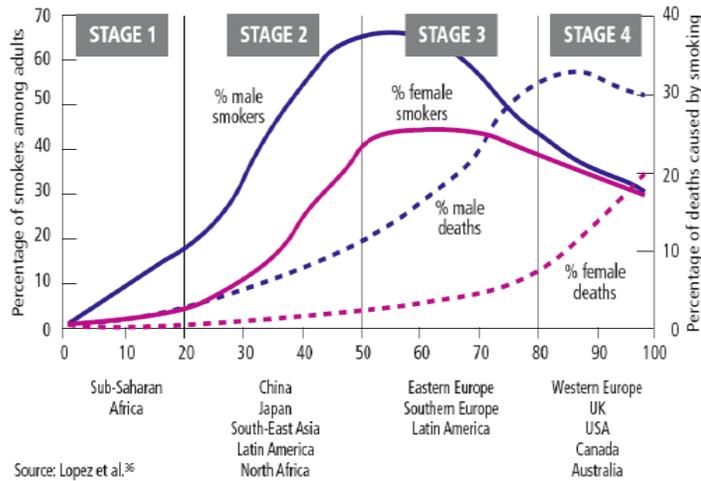
#### **A. Prevalence of Tobacco Use in Argentina**

Argentina is in an advanced stage of the tobacco epidemic with increasing prevalence among women and a death rate attributable to tobacco use among men that still has not reached its peak.<sup>7</sup>

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<sup>6</sup> Final observations of the Committee for Elimination of Discrimination Against Women, CEDAW/C/LUX/CO/5. Emphasis added.

<sup>7</sup> Lopez A, Collishaw N, Piha T. A descriptive model of the cigarette epidemic in developed countries. *Tob Control*1994;3:242-7.



a. General Information on Prevalence Among Argentine Women

Tobacco-related diseases and illness kill 11,348 Argentinean women every year.<sup>8</sup> One out of 3 women die of cardiovascular disease, more than men since 1980, and double that of all the deaths caused by malignant tumors.<sup>9</sup>

Smoking prevalence among women in Argentina is among the highest in Latin America.<sup>10</sup> 24.9% of women between the ages of 18 and 64 smoke in Argentina.<sup>11</sup> According to data published in the latest 2008 National Survey on the Prevalence of Psychoactive Substance (ENPreCoSP), tobacco use has remained practically unchanged (prevalence 26%) among women between the ages of 16 and 65.<sup>12</sup>

According to the Health Ministry<sup>13</sup>, comparing data from 1980 to the one in 2008, lung cancer has duplicated among women. Since 2008, men dead because of lung cancer reduced by 2% annually while women increased 1.7% annually. As it will be seen in this section, these trends are clearer among teenagers. This fact shows that the pattern will strengthen during the upcoming years if there is no public effective and timely intervention.

b. Information on Prevalence Among Pregnant Women

<sup>8</sup> R. Mejia, V. Schoj, J. Barnoya, M. Flores and E.J. Perez-Stable, Tobacco industry strategies to obstruct the FCTC in Argentina, 3 CVD Prevention and Control 173-79 (2008).

<sup>9</sup> Sosa Liprandi, María I; Harwicz, Paola S; Sosa Liprandi, Alvaro. Causas de muerte en la mujer y su tendencia en los últimos 23 años en la Argentina Rev. Argent. Cardiol. 2006; 74: 297-303.

<sup>10</sup> Schargrodsky H et al. CARMELA: assessment of cardiovascular risk in seven Latin American cities. AmJ Med.2008 Jan; 121(1):58-66

<sup>11</sup> Daniel Ferrante y col. Encuesta Nacional de factores de Riesgo 2005, Argentina, Ministerio de Salud de la Nación Argentina. Rev. Argent. Cardiol. 2007;75 20- 29.

<sup>12</sup> Available at <http://www.indec.gov.ar>

<sup>13</sup> 13. Health Ministry Report on Tobacco, available at <http://www.msal.gov.ar/htm/site/pdf/informe-especial-Tabaco-31mayo2010.pdf>

Eleven percent of pregnant women in Argentina continue to smoke during pregnancy.<sup>14</sup> It is believed that this number is due to women hiding their being smokers when asked the standard question of whether they smoke or not. Considering the importance of such a classification, the determination of the status of being a smoker during pregnancy would have to be made through another type of test that helps women address their smoking status and thereby help pregnant women to agree to receiving support to quit smoking.

On the other hand, a survey was done on thirteen urban hospitals of doctors responsible for the care of pregnant women in which the medical training they received was evaluated on knowledge about smoking, the damage caused by second-hand tobacco smoke and aptitude for promoting smoking cessation. Forty-eight point five percent responded that they did not have enough knowledge to counsel their patients on smoking cessation and to tell them about the consequences of exposure to second-hand tobacco smoke. Twenty-two percent reported having received training specifically on cessation. Eighty-nine point three percent of the professionals surveyed ask their pregnant patients whether they smoke, and 88.9% recommend complete abstinence during pregnancy. However, 64.6% reported that they would let pregnant women smoke up to 6 cigarettes a day if the pregnant women found it impossible to quit smoking.<sup>15</sup> Obstetricians who participated in the study do not identify the obstetrician's office as an opportunity for women to quit smoking during pregnancy and are not using recommended methods to assist pregnant women to help them quit smoking.

Intervention to train doctors to be able to advise smokers on smoking cessation is highly needed, and this would mean more medical offices and fewer pregnant women being exposed to second-hand smoke.

#### c. Prevalence of Use in Women Studying Medicine

A WHO (World Health Organization) survey directed at fourth year medical students was done at the National University of Buenos Aires. The objective was to assess knowledge and attitudes about tobacco use. The survey was done on 354 students. The study showed that the prevalence of tobacco use is similar to the adult Argentine population and that female students smoke more than males (32.2% F vs. 22.2%).<sup>16</sup> Within the conclusions presented by the above study it reports the need to include a tobacco course in the medical curriculum. A recent study on medical students in Argentina also showed that medical students are especially susceptible to cigarette use and nicotine dependency and that it called for smoking to be banned in enclosed places as a primary measure to reduce prevalence.<sup>17</sup>

#### d. Prevalence in Teenagers

A reduction in the age of onset for tobacco use in women has been noted. Teenage girls in Argentina between the ages of 13 and 15 smoke more than males (27.3 Females vs. 21.1%

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<sup>14</sup> Althabe F, et al Smoking during pregnancy in Argentina and Uruguay. *Medicina (B Aires)*.2008; 68(1):48-54.

<sup>15</sup> Raul Mejia et al Physician counseling of pregnant women about active and secondhand smoking in Argentina. *Acta Obstetricia et Gynecologica*. 2010; 89: 490-495

<sup>16</sup> Mediar, Konfino J, Knowledge and attitudes related to tobacco use among medical students in Buenos Aires. Hospital of Buenos Aires Clinics (Non-published)

<sup>17</sup> Raul Pitarque, Medical Students Global Health Professionals Survey, [http://www.14wctoh.org/abstract/abstract/NCPA/09%20-%20March/1030%20-%201200%20hrs/Godrej%20Dance%20Academy/GHPSS\\_Argentina\\_Pitarque.pdf](http://www.14wctoh.org/abstract/abstract/NCPA/09%20-%20March/1030%20-%201200%20hrs/Godrej%20Dance%20Academy/GHPSS_Argentina_Pitarque.pdf).

Males).<sup>18</sup> Teenage females between the ages of 13 and 15 who did not smoke ever show greater susceptibility to starting tobacco use in the coming year (31.6% Female vs. 24.3% Male).

#### B. Exposure to Second-Hand Tobacco Smoke in Argentina

Adult women in Argentina are more exposed to tobacco smoke. (39% Female vs. 33% Male).<sup>19</sup> Teenagers in their homes (57.7% Female vs. 51.1% Male) and public places suffer greater exposure to second-hand tobacco smoke (70.7% Female vs. 66.4% Male).<sup>20</sup>

#### C. Effects of Tobacco Use on Women's Health

There are many negative effect of tobacco for women:

Cardiovascular Disease: Acute myocardial infarction, angina, peripheral vascular disease, abdominal aortic aneurism and strokes.

Respiratory illnesses: Pneumonia, pulmonary emphysema, chronic bronchitis, chronic obstructive pulmonary disease, increases the appearance of asthma and the number of asthma crises.

Oncological disease: Mouth, pharynx, esophagus, lung, kidney, breast and bladder.

Metabolic disease: Reduces estrogens, thereby producing bone decalcification, osteoporosis, whose principal complication is hip fracture.<sup>21</sup>

Reduces fertility and fecundity<sup>22</sup>, increases the risk during pregnancy of premature membrane rupture, placenta previa and placenta detachment. There is higher risk for premature birth and low birth weight.

#### D. Effects of the Exposure to Second-Hand Smoke on Women's Health

Exposure to second-hand tobacco smoke increases the risk of heart disease, strokes, lung cancer, asthma, chronic obstructive pulmonary disease and deteriorated lung function. During pregnancy the risk is higher for spontaneous abortion, preterm birth and low birth weight.<sup>23</sup> The risk of lung

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<sup>18</sup> World survey on smoking in teenagers in Argentina 2007 results and comparison with previous surveys. May, 2009

<sup>19</sup> SchargrodskyH et al. CARMELA: assessment of cardiovascular risk in seven Latin American cities. AmJ Med.2008 Jan; 121(1):58-66

<sup>20</sup> GYTS, World survey on smoking in teenagers in Argentina, National Ministry of Health, 2008

<sup>21</sup> Riancho Moral, José A. and Jesús González Macías, Manual práctico de Osteoporosis y Enfermedades del Metabolismo Mineral, 2004, p 154. Available at <http://www.unican.es/NR/rdonlyres/EB68B8BC-3AF3-46BC-96FF-AA2CC84834F4/47174/LIBRO.pdf>

<sup>22</sup> Women and the tobacco epidemic. Challenges for the 21st century. WHO/NMH/TFI/01.1.

<sup>23</sup> U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

cancer goes up by 20% to 30%. The risk of breast cancer goes up 40 to 70% more than for unexposed women. It is associated with a higher incidence of cancer of the uterine neck.<sup>24</sup>

In short, women are taking up smoking at higher rates than men, subjecting them to illness and complications which are more severe. In light of these circumstances and based on the information in the above section, the failure to implement effective tobacco control is tantamount to discrimination against women in the field of health in violation of CEDAW.

#### **IV. INDUSTRY'S INFLUENCE ON THE INCREASE IN TOBACCO USE IN WOMEN IN ARGENTINA**

The increase in tobacco use may be attributed to different factors, and as we will see in the following section, many of them cannot be treated with Argentina's current system of tobacco control. All these factors may also be notably reduced if Argentina ratifies and effectively implements the World Health Organization's Framework Convention on Tobacco Control.

In the first place, the tobacco industry – especially the affiliates of Philip Morris International and British American Tobacco – has created detailed psychographic profiles of women in Argentina to selectively target them<sup>25</sup> according to those profiles. In particular, “low tar” and “light” cigarettes are aimed at women in Argentina based on extensive psychographic research by the tobacco industry<sup>26</sup>.

Second, the tobacco industry sponsors concerts and events that draw older teenagers with the explicit intent of indirectly attracting younger teenagers to imitate the behavior of the older ones.

Since the tobacco industry understands and markets its products differently to women than to men and with strategies targeting certain age segments, the public health policy response on tobacco control must include these differences. Furthermore, when the government of Argentina plans and implements national strategies on tobacco control, it must consider not just the discriminatory animus hidden behind tobacco's advertising, promotion and sponsorship, but also must analyze the discriminatory effect of its action or inaction. A total ban on tobacco advertising, promotion and sponsorship is the ideal way to eliminate both forms of discrimination.

The CEDAW Committee has addressed the obligation of preventing and sanctioning the behavior of individuals and organizations that put women's right in danger. It has thus affirmed that “*the obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations*”<sup>27</sup>. This reference may be linked to the need for regulations on the tobacco industry, since many of its practices, like those described above, involve women's right to health.

Furthermore, *when the government of Argentina plans and implements national strategies on tobacco control, it must consider not just the discriminatory animus hidden behind tobacco's*

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<sup>24</sup> International Agency for Research on Cancer (IARC) 2009

<sup>25</sup> S. Braun, R. Mejia, PM Ling, E.J. Perez-Stable, Tobacco Industry Targeting Youth in Argentina, *Tob Control* 2008;17:111-117

<sup>26</sup> Id.

<sup>27</sup> CEDAW Committee, General Recommendation N° 24 (20th session period, 1999), p. 15.

*advertising, promotion and sponsorship, but it also must analyze the discriminatory effect of its action or inaction. The total ban on tobacco publicity, promotion and sponsorship generates a policy that would eliminate both kinds of discrimination.*

## **V. THE LEGAL FRAMEWORK FOR TOBACCO CONTROL IN ARGENTINA**

While Argentina has taken steps to reduce the effects of tobacco consumption, at the present time there is no national health law in our country in accordance with the international standards on laws of tobacco control nor that meets the obligations undertaken with respect to women and their health. Bearing in mind that many of the standards come directly from international Human Rights treaties, Argentina would not be complying with public international law obligations. In Argentina, the principal laws and national decrees designed to protect the people from the risks of tobacco use and exposure to tobacco smoke are insufficient and consistent with tobacco industry interests.

There is no law in the national sector establishing that enclosed public places must be smoke free. The exposure to second-hand smoke not only directly increases the risk of developing tobacco-related illnesses, but smoke-free public places and work places have also been shown to be an effective method for helping smokers quit smoking. The failure to adopt a national smoke-free law has a discriminatory effect on women's health, since the absence of a differentiated regulation fails to recognize the diverse trends in use and practices between women and men.

Generally speaking, national laws regulate tobacco cultivation, marketing and export in detail (Law 19,800). Similarly, there are laws restricting advertising and that impose the inclusion of the legend "Smoking is damaging to health" on cigarette packages (Law 23,244).

It is clear that Argentina maintains internally contradictory policies toward tobacco control, since on the one hand is the campaign to prevent and combat the use of tobacco and place some voluntarily enforced restrictions on advertising, promotion and availability, and on the other hand, Argentina actively promotes the interests of the tobacco industry through such actions as the creation of a Special Tobacco Fund that subsidizes production or carries out negotiations to facilitate marketing and exportation of the crop.

*Hence, the government of Argentina should develop public health policies on tobacco control, ensuring that they respect the standards from international human rights treaties and that they are not consequence of sector pressures.*

### **A. Legal Framework in the Provincial Sector**

Because there is no comprehensive national legislation addressing prevention and reduction of tobacco consumption that requires 100% smoke-free enclosed places, many of Argentina's provinces and cities have implemented policies of varying strength and effectiveness. Thus, Santa Fe, Córdoba, Tucumán, La Rioja, Chubut, the city of Buenos Aires and Mendoza have tobacco control laws which are in many cases insufficient.

*Therefore, the Government of Argentina should adopt strong tobacco control policies at the national level, ensuring a minimum floor that meets international standards according to the emerging obligations under Articles 3, 10 and 12 of CEDAW. In that context the provinces would have the opportunity to develop regulations more protective of health rights.*

So, the Argentine government could ensure compliance with international obligations, even though there may be variations in the regulations at a provincial level. This interpretation concurs with Article 27 of Vienna Convention on the Law of Treaties which affirms that “*A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.*”<sup>28</sup>.

## **VI. FRAMEWORK CONVENTION ON TOBACCO CONTROL**

The Framework Convention on Tobacco Control is an international treaty created within the framework of the World Health Organization, whose end goal is the eradication of the smoking epidemic. This instrument recommends that Party States apply the following measures, among others: Implementation of laws regulating the production, advertising, distribution and use of tobacco, and public policies (such as smoking cessation programs and informational programs) designed to protect women against tobacco use and exposure to tobacco smoke.

The preamble to the FCTC recalls CEDAW, while it expresses alarm at the potential rise in women’s and girls’ tobacco use worldwide and encourages full participation by women at all levels of policy making and implementation and emphasizes the need for gender-specific tobacco control strategies. The FCTC guiding principle (Article 4.2(d)) emphasizes the need to take measures to address gender-specific risks when developing tobacco control strategies, acknowledging the evidence that women and girls are affected differently by the smoking epidemic and even that they are separately and distinctly targeted by the tobacco industry.

To date Argentina has not ratified the Framework Convention. Nestor Kirchner, former President, signed the FCTC in 2003, but the treaty languished in the Senate where tobacco industry advocates and their affiliated front groups mounted a concerted campaign to delay or obviate ratification and undermine effective tobacco control<sup>29</sup>.

Argentina could comply with part of the obligations which come with signing and ratifying of CEDAW through the ratification of the FCTC as it would heighten its standards with regards to the right to the health for women. In any case, legislative changes must be followed by specific policies addressing these issues.

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

In the first sections of this report we have presented the general framework from the National Constitution and from International Human Rights Treaties and have briefly described tobacco epidemic trends in Argentina. Then we have emphasized key weaknesses in Argentina’s regulation of tobacco control and the particular effect of those flaws on women’s health. For the reasons outlined above, the national Argentinean tobacco control framework does not fulfill Argentina’s obligation under CEDAW to take all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them

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<sup>28</sup> Vienna Convention on Treaty Rights UN Doc A/CONF.39/27 (1969), Art. 27.

<sup>29</sup> R. Mejia, V. Schoj, J. Barnoya, M. Flores and E.J. Perez-Stable, Tobacco industry strategies to obstruct the FCTC in Argentina, 3 CVD Prevention and Control 173-79 (2008).

the exercise and enjoyment of human rights and fundamental freedoms; to provide them with adequate health-related information; or, to ensure equality with respect to health.

We therefore respectfully request this Committee to take our analysis into account when drafting recommendations to the Argentinean government. In sum, we ask that you consider making the following recommendations to the government of Argentina:

1. The government of Argentina must ratify the FCTC. It was signed by the Argentinean President in 2003 and to date has not been ratified.
2. The government should enact a national tobacco control law pursuant to international standards.
3. When devising and implementing its national tobacco control strategies, the Government of Argentina should not only consider the discriminatory animus behind tobacco advertising, promotion and sponsorship, it should also examine the discriminatory effect of its action or inaction. The total ban on tobacco publicity, promotion and sponsorship generates a policy that would eliminate both kinds of discrimination.
4. The Government of Argentina should not only encourage but also develop formal mechanisms for civil society participation (women's rights NGOs, academic institutions, etc.) in the decision making processes of national tobacco control regulation.
5. The government of Argentina should develop public health policies on tobacco control, ensuring that they respect the standards from international Human Rights treaties and that they are not the consequence of sector pressures.
6. The Government of Argentina should adopt strong tobacco control policies at the national level and leave its provinces free to exceed the minimum guarantees required to meet its obligations under Articles 3, 10 and 12 of CEDAW. In that context the provinces would have the opportunity to develop more protective regulations of health rights.
7. The government of Argentina should include gender indicators in health programs in order to guarantee proper oversight with the goal of implementing commensurate policies.
8. The Ministry of Health's tobacco control program for the Argentine nation should incorporate the gender perspective into the program and actions it implements for tobacco control in Argentina.
9. The Ministry of Health's tobacco control program for the Argentine nation should articulate women's health programs to include smoking as a women's health problem that needs to be addressed by including the gender perspective.