

A guide to tobacco-related shadow reporting before United Nations human rights bodies

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee, the Committee on Economic, Social and Cultural Rights (CESCR); and the Convention on the Rights of the Child (CRC) Committee.

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Introduction

The O’Neill Institute for National and Global Health Law at Georgetown University (“O’Neill Institute”) and the InterAmerican Heart Foundation - Argentina (“FIC - Argentina”) have drafted this guide to assist advocates in using shadow reports before United Nations Treaty Monitoring bodies as an effective tobacco control strategy. Shadow reports can propel tobacco control efforts forward at both the national and global levels by (1) placing international pressure on States to implement meaningful tobacco control measures; and (2) strengthening the connection between the World Health Organization’s Framework Convention on Tobacco Control (FCTC)¹ and human rights obligations.

Preliminarily, international human rights treaties typically require States Parties (“State/s”) to submit periodic reports to its respective monitoring committee. These reports should include relevant information on the efforts made to comply with treaty obligations. “Shadow reports,” on the other hand, are tools used by advocates and civil society organizations to supplement, or present information alternative to, the periodic reports that States are required to submit. This process is designed to ensure that a human rights body does not rely solely on a State’s own account of its compliance with an international human rights instrument. Instead, the shadow reporting mechanism allows human rights bodies greater access to the observations, claims and concerns of human rights defenders and other groups independent of the State. As such, a shadow report is meant to highlight and draw attention to critical issues that a State report might seek to minimize or exclude entirely. Importantly, shadow reports can be used strategically: while they can be used to critique official State reports, they can also be used to emphasize positive State efforts toward compliance or to highlight “best practices”.

This guide specifically focuses on the use of shadow reports by tobacco control advocates in the context of three human rights treaties: (1) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); (2) the International Covenant on Economic, Social and Cultural Rights (ICESCR or “Covenant”); and (3) the Convention on the Rights of the Child (CRC). These treaties enshrine human rights that are more closely related to tobacco control, and to the FCTC. This guide is organized as follows: Section I

provides an overview of the country review process for CEDAW, the ICESCR and the CRC, and includes information on provisions applicable to tobacco control and written and oral presentations before the Committees; Section II provides advice on the content and structure of effective shadow reports; and, Section III provides a brief timeline that non-governmental organizations (NGOs) should use to stay current with the various treaty committees' pre-session meetings and formal review periods.

NOTES

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1 WHO Framework Convention on Tobacco Control; 2003. Available at: http://www.who.int/fctc/text_download/en/index.html

_SECTION I

Overview of the country reporting process

A. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Adopted in 1979 by the United Nations General Assembly, CEDAW defines discrimination against women and sets up an agenda for national action to end such discrimination. The Convention entered into force on September 3rd, 1981 and as of June 2012 it has 187 State Parties. Often described as an international bill of rights for women, the Convention defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹

Upon ratification, States commit themselves to undertake a series of measures to end discrimination against women in all forms. These measures require States to: incorporate the principle of equality of men and women in their legal system; abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women; establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and, ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.² States are under an obligation to periodically report to the CEDAW Committee on their progress in achieving these objectives.

The CEDAW Committee consists of 23 members, all of whom serve in their personal capacity (i.e., not as government officials).³ One of the CEDAW Committee’s roles is to monitor States compliance with the treaty. As part of this function, during its sessions, the CEDAW Committee considers States’ reports, along with submitted shadow reports. Following such consideration, the Committee formulates “Concluding Observations” that assist the State under review in further implementing the Convention. These Concluding Observations outline positive

aspects, principal subjects of concern, and the Committee's recommendations on how to address challenges faced by the State. States' reports, lists of issues and questions, Concluding Observations (once adopted), and other documentation for the sessions are made public and can be found on the Secretariat's website at <http://www2.ohchr.org/english/bodies/cedaw/sessions.htm>.

1. CEDAW Provisions Applicable to Tobacco Control

CEDAW is comprised of 16 Articles. Articles 1 through 5 outline its underlying principles: Equality, Non-Discrimination, and State Obligation. Articles 6 through 16 are more specific and, among others, address two issues that are particularly relevant to tobacco control: Educational Information (Article 10) and Discrimination in the Field of Healthcare (Article 12).

In the past, the CEDAW Committee has expressed concern about the relationship between tobacco use and women's health, making this an appropriate area for NGO intervention. The Fourth World Conference on Women held in Beijing, and its accompanying Beijing Platform for Action⁴, acknowledge that there is "significant synergy between the substantive content of the [CEDAW] Convention and the Beijing Platform for Action and they are therefore mutually reinforcing."⁵ 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."⁶ Actions to be taken by governments to strengthen preventive programs that promote women's health under Paragraph 107(o) include "creat[ing] 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."⁷

In its review of the Argentinean report, the CEDAW Committee has recently highlighted the relationship between the tobacco industry's advertisement strategies targeting women and the existing international obligations under this treaty. The Committee even points out that in order to properly comply with these obligations, States should ratify the FCTC:

"39. The Committee is concerned about the widespread use of tobacco among women in Argentina and the serious health impact of tobacco on women. The Committee is particularly

concerned that women are often targets in tobacco advertising campaigns, which encourage and increase the usage of tobacco among women, resulting in tobacco related diseases and deaths.”

“40. The Committee urges the State party to ratify and implement the World Health Organization Framework Convention on Tobacco Control and put in place legislation aimed at banning smoking in public spaces and restricting tobacco advertising.”⁸

Tobacco smoking poses additional specific threats to women, including increased cardiovascular disease, particularly while using oral contraceptives, and higher rates of infertility, premature labor, low birth weight infants, cervical cancer, early menopause, and bone fractures. In the U.S., where the female smoking epidemic first emerged, lung cancer has overtaken breast cancer as the principal cause of female cancer mortality. Additionally, women can also be exposed to tobacco by growing and manufacturing tobacco and tobacco products. In many parts of the world, the growth and manufacturing of tobacco is typically undertaken by women (i.e., in Indonesia and South Asia), thereby exposing female workers to nicotine through the skin. Moreover, in many countries, other occupations that are particularly vulnerable to exposure to tobacco smoke – like those associated with the hospitality industry – are also comprised largely by women.

2. Written Submissions

At each CEDAW Committee session, Committee members listen to a presentation by a government representative and ask questions. For periodic reports, questions are prepared in advance of the session by a pre-sessional working group formed by members of the Committee and conveyed to the country’s UN mission for written answer prior to the country’s appearance before the Committee. In the review session, the country representative introduces the periodic report, presenting comments and information pertaining to the preliminary list of issues posed by the pre-sessional working group. Committee members are then able to ask follow-up questions and engage the State’s representative in a constructive dialogue.

At the conclusion of the session, the Committee issues Concluding Observations on the country, including both commendable progress and recommendations for improvement. These Concluding Observations are the crucial product for NGO

action, as they signify a public statement that specifies further action that a State must take in order to comply with its obligations under CEDAW. Therefore, it is important that NGO shadow reports highlight the major priorities that can be readily reflected in the Concluding Observations. The ultimate objective of a shadow report is to “earn” a concluding observation on the issues raised.

In order to ensure that it is as well informed as possible, the Committee and the pre-sessional working group welcome representatives of national and international NGOs to provide country-specific information on States whose reports they are examining. This can be done orally, in writing, or both. NGOs should regularly review the scheduled reporting sessions as they change with some frequency and the specific instructions of submission for each session⁹.

In general, NGOs can send their reports directly to the CEDAW Secretariat. The mailing address is: UNOG-OHCHR, CH-1211 Geneva 10 (Switzerland). Tel.: +41 22 917 94 43, fax: +41 22 917 90 08, e-mail: cedaw@ohchr.org.

Once received, the Office of the High Commissioner for Human Rights (OHCHR) posts documents containing this information on its website, under the relevant CEDAW Committee session. All submissions should arrive no later than two weeks prior to the beginning of the session to the secretariat of the Committee.

Although submissions to the pre-sessional group meetings could be important, it should be remembered that the most important participation is the submission of shadow reports for the actual sessions, where the Committee reviews the reports submitted by States parties

All submissions to the CEDAW Committee should:

- 1.** Identify the full name of the NGO;
- 2.** Indicate the country for which the information relates to; and
- 3.** Be sent electronically in pdf format and thereafter in 30 copies by post. All reports that are submitted in paper copy must also be sent electronically and should be identical.¹⁰

NGOs can also email their reports to the International Women’s Rights Action Watch (IWRAW) Asia Pacific, an NGO that has made an arrangement with the secretariat of the Committee to submit NGO reports received, either electronically and/or in hard copy to the secretariat. To do so, and/or for further details, an NGO should contact IWRAW Asia Pacific: Wisma Dicklin, 80-B,

Jalan Bangsar, 59200 Kuala Lumpur, Malaysia. Tel: + (603) 2282 2255, fax: + (603) 2283 2552, email: iwraw-ap@iwraw-ap.org; iwraw_ap@yahoo.com.

The OHCHR makes reports received from NGOs available to Committee members at the beginning of the sessional or pre-sessional working group.

NGOs may also submit their reports or other country specific information to the pre-session working group, although this additional level of involvement is not strictly necessary to earn recommendations from the Committee based on a shadow report. During the pre-session, the working group prepares lists of issues and questions which are subsequently sent to each State that is scheduled to be considered two sessions later. NGO representatives attending the pre-sessional working group should send their submissions in pdf format and bring 10 copies for distribution at the meeting of the pre-sessional working group. NGOs not attending the pre-sessional working group should send 10 copies of their submissions two weeks prior to the beginning of the pre-sessional working group. NGOs can also avail themselves of the support of IWRAW Asia Pacific to submit their alternative reports to the secretariat either electronically and/or in hard copy¹¹.

3. Oral Presentations

The CEDAW Committee sets aside time at its sessions for NGOs to provide oral presentations on those countries under review during a given session. The Committee emphasizes that during the oral presentation only highlights of the written submission should be flagged. The focus of the oral presentation, for which only limited time is available, should be on the issues that most critically impact a women's enjoyment of human rights and the implementation of the Convention in the State in question. Oral interventions by NGOs must be concise. On average, not more than 10 minutes overall are allocated for NGOs wishing to intervene on behalf of a particular country. As a result, NGOs should coordinate to share the allotted time as it is strictly monitored.

To obtain permission to attend sessions, all applicants are required to bring a valid national passport or government issued photo ID, such as a driver's license or a state non-driver's ID bearing a photograph to the appropriate United Nations Pass and Identification Unit. If the session is being held in Geneva, applicants should appear in person at the Pass and Identification Unit, Security and

Safety Section, Pregny Gate, United Nations Office in Geneva, at 8-14 Avenue de la Paix. The office hours are 8:00 am to 5:00 pm, Mondays through Fridays. If the session is being held in New York, applicants should appear at the United Nations Pass and Identification Unit located at 801 United Nations Plaza at the corner of 1st Avenue and East 45th Street. The office hours are 9:00 am to 4:00 pm, Mondays through Fridays. NGOs must bring their passports (or government issued photo ID) each time they wish to enter the UN premises. Prior to entering the UN premises, NGOs must fill-out and submit the “Application for Ground Pass”, that is available at specific session website.

For detailed information on past and upcoming Committee sessions, including information regarding which States are scheduled to report to the Committee, as well as session-specific information addressed to NGOs and others interested in following the Committee’s work, see “NGO Note” on the session page, at <http://www2.ohchr.org/english/bodies/cedaw/index.htm>.

B. International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR is a multilateral treaty that was adopted by the United Nations General Assembly on December 16, 1966, and which came into force on January 3, 1976. Parties to the treaty have committed themselves to working toward the fulfillment of the economic, social, and cultural rights of individuals, which include labor rights and the rights to health, education, and an adequate standard of living. As of June 2012, the Covenant had 160 parties, and together with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, constitutes the International Bill of Human Rights. The ICESCR has the potential to be a powerful instrument for articulating, advocating, and monitoring human rights-aspects of tobacco control.

The Committee on Economic, Cultural and Social Rights (CESCR or “Committee”) consists of 18 independent experts, who are elected by the United Nations Economic and Social Council from a list of nominees proposed by nations that have ratified the Covenant. The CESCR’s membership aims to represent a diverse geographical distribution, and also attempts to include ex-

perts from different political and legal systems. Because Committee members are, by the terms of the ICESCR, “independent,” the members serve in their individual capacity and do not take formal instructions from their governments in receiving the reports. However, because they must be nominated by their governments in order to be eligible for election to the CESCR, members are likely to be prominent public figures whose views are acceptable to their respective governments.

At each of the two CESCR sessions (April/May and November/December), reports from approximately five State Parties are reviewed. For each country, the Committee members listen to a presentation by a government representative and ask questions. For periodic reports, as noted earlier for the CEDAW Committee, questions are prepared in advance of the session by a pre-session working group and conveyed to the country’s UN mission for written answer prior to its appearance before the Committee. In the review session, the country representative introduces the periodic report, presenting comments and information pertaining to the preliminary list of issues posed by the pre-session working group. Committee members are then able to ask follow-up questions and engage the State’s representatives in a constructive dialogue.

At the conclusion of the session, the Committee issues Concluding Observations on the country, including both commendable progress and recommendations for improvement concerning economic, social and cultural rights.

1. ICESCR Provisions Applicable to Tobacco Control

Economic, social and cultural rights are closely tied with States’ obligations to protect their populations from the effects of tobacco consumption. The right to health and the right to education fall within the confines of economic, social and cultural rights, all of which provide a legal standpoint for advocates from which to argue that States must adopt strong tobacco control laws, especially those that have ratified the FCTC.

The most important right in this context is the right to health stated in Article 12 of the ICESCR. Regarding Article 12.2(b) of the ICESCR, General Comment No. 14 on the Right to the Highest Attainable Standard of Health, released by the CESCR, “discourages the abuse of alcohol, and the use of tobacco, drugs and other harmful substances.” Moreover, with respect to the

general legal obligations imposed by the ICESCR, General Comment No. 14 states that “The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfill . . . The obligation to protect requires States to take measures that prevent third parties from interfering with Article 12 guarantees.”¹² Regarding violations to the obligation to protect the right to health, the Committee has established that:

“Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as . . . the failure to protect consumers and workers from practices detrimental to health by . . . *the failure to discourage production, marketing and consumption of tobacco, narcotics and other harmful substances.*”¹³ (Emphasis added).

“The scientific and medical evidence is overwhelming that active and passive smoking endanger the public health, injure the health of users and non-users and play a major, preventable role in the development of cardiac and lung diseases, as well as many forms of cancer. States are under an obligation to take measures aimed at preventing and reducing tobacco use as part of the duty to protect citizens’ right to health, imposed by ICESCR. These measures include, but are not limited to, implementation of legislation regulating tobacco production, advertisement, distribution and use, as well as implementation of public policies – such as smoking cessation programs – designed to protect consumers from both active and passive smoking. The Committee has also recommended that States undertake “information campaigns, in particular with respect to ... the use of cigarettes, drugs and other harmful substances.”¹⁴

2. Written Submissions

States Parties are required to submit an initial report to the Committee within two years of ratification. Thereafter, they are required to submit a periodic report every five years on measures taken toward the realization of the rights enshrined in the Covenant. The Committee then holds a conversation, or “constructive dialogue,” about the government’s implementation efforts. The Committee meets twice a year in sessions of three weeks each (April/May and November/December), at Palais Wilson in Geneva, Switzerland. Occasionally, an extraordinary third session is held. Countries are invited to be reviewed ac-

ording to a list drawn up by the Committee at each session for future sessions.

After each session, a working group of approximately five Committee members remains in Geneva for a week to prepare for the following Committee session (which typically takes place one year later). This “pre-sessional” working group discusses the five State Party periodic reports that are scheduled for review at the following session, and each group member serves as a “country rapporteur” for one of the reports. The country rapporteur for a particular report is responsible for preparing a list of issues concerning that report. The list of issues is then sent to the State Party, which is required to provide written replies in advance of the session during which its report is scheduled for review.

NGO contribution at this stage of the process is a key opportunity for ensuring that issues of concern to NGOs find their way into the list of issues, and will then be a point of focus in the dialogue between the Committee and the State party. It is important to note that this additional level of involvement is not strictly necessary to earn recommendations from the Committee based on a shadow report. To participate at this stage, NGOs should submit written information (ideally the full shadow report) directly to the country rapporteur and/or to the CESCR secretariat in advance of the pre-sessional group meetings. NGO representatives also may make oral statements in person during the first morning of the pre-sessional working group meeting. As it is a working group meeting, all members of the Committee may not be present.

Although submissions to the pre-sessional group meetings could be important, it should be remembered that the most important participation is the submission of shadow reports for the actual sessions, where the Committee reviews the reports submitted by States parties

All submissions to the CESCR should:

- 1.** Identity the full name of the NGO;
- 2.** Indicate the country that the information relates to; and
- 3.** Be sent electronically in pdf format and thereafter in 25 copies by post or international service e.g. FedEx. All reports that are submitted in paper copy must also be sent electronically and should be identical¹⁵.

Submissions should be mailed to: Office of CESCR, Office1-025, Palais Wilson - 52, rue des Pâquis, 1211 Geneva 10, Switzerland. Additional information

can be found on CESCR's website,
<http://www2.ohchr.org/english/bodies/cescr/index.htm>.

3. Oral Presentations

If NGO representatives are present in Geneva at the time of the pre-sessional meeting, they may make an oral presentation to Committee members at the beginning of that meeting. Oral presentations may also be made on the first day of the session during which a particular country is being reviewed.

c. Convention on the Rights of the Child (CRC)

The CRC is a comprehensive instrument that sets out rights that define universal principles and norms for children. The Convention entered into force on September 2nd, 1990 and as of June 2012 it has 193 State Parties. It reflects that children have fundamental human rights and freedoms, and also addresses their need for special assistance and protection as a vulnerable group. CRC is monitored through a system of reporting by States Parties to the Committee on the Rights of the Child. The Committee is responsible for examining the progress made by States in fulfilling their obligations under the CRC; and can only receive or consider information on countries that have ratified or acceded to the Convention. The Committee is composed of 18 independent experts who are elected in their personal capacity to four-year terms by States Parties and meets in Geneva three times a year for a period of four weeks for each session.

In order to obtain a more complete picture of children's rights in a country under review, the Committee seeks written information from other sources, such as non-governmental and inter-governmental organizations. Any complementary information received by the Committee is then reviewed in the presence of these organizations during the pre-sessional working group. The pre-sessional working group is a private session composed of Committee members, where a preliminary review of the State party report is conducted and all available information is examined.

1. CRC Provisions Applicable to Tobacco Control

Article 24 of the CRC provides that:

“1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services . . .”

Article 32 further requires States parties to protect children from hazardous occupations or unsafe working conditions. In 2003, the CRC found that States should promote cost-effective measures, including through laws, policies, and programs, with regard to the abuse of alcohol, tobacco, and other harmful substances.¹⁶ Under the General Guidelines for Periodic Reports established by the CRC Committee, States are requested to “provide information on legislative and other measures taken to prevent the use by children of such substances.”¹⁷ The Committee on the Rights of the Child in its 2000 Concluding Observations on South Africa expressed its “concern regarding the limited availability of programs and services and the lack of adequate data in a range of areas including alcohol and tobacco use.”¹⁸ The CRC recognizes the need for more effective tobacco information campaigns and the importance of to-

bacco advertising restrictions.

2. Written Submissions

In its reporting guidelines, the Committee recommends using the reports as an opportunity to review law and policy, and in some cases this process of review can prompt improvements in national law practices. In addition, having reports scrutinized by independent experts provides an opportunity to expose a State's non-compliance with treaty obligations, and such exposure and public notoriety could encourage change. State Parties are required to submit an initial report to the Committee two years after ratification of the CRC. Thereafter, progress reports are required every five years. States must also submit relevant legislative and judicial decisions, along with statistical information, with their reports.

In submitting reports, NGOs should make concrete recommendations on how to improve the situation of children in their country and, if necessary, provide specific indications of how current legislation must be modified in order to bring it into compliance with the Convention. NGO reports may be submitted either to the NGO Group Liaison Unit, who will ensure that the information reaches the Committee, or directly to the OHCHR. The Committee meets for its formal (plenary) sessions three times a year during a three-week period, in January-February, May-June and September-October. Scrutiny of submitted periodic State reports last throughout the course of one day (consisting of two three-hour-long meetings). It may also be possible to informally meet with Committee members either before or during their meeting with the government in order to present additional information or provide updates.

Unlike the CEDAW Committee and the CESCRC, the CRC Committee does not generally favor an article-by-article approach, and instead prefers that submitted reports focus on specific themes:

- General measures of implementation (articles 4, 42, 44.6)
- The definition of "child" (article 1)
- General principles (articles 2, 3, 6, 12)
- Civil rights and freedoms (articles 7, 8, 13, 14, 15, 16, 17, 19, 37(a))
- Family environment and alternative care (articles 5, 9, 10, 11, 18, 20, 21, 25, 27.4)
- Basic health and welfare (articles 18, 23, 24, 26, 27)

- Education, leisure and cultural activities (articles 28, 29, 31)
- Special protection measures (articles 22, 30, 32, 33, 34, 35, 37, 38, 39, 40)

All submissions to the CRC Committee should:

- 1.** Identify the full name of the NGO;
- 2.** Indicate the country that the information relates to; and
- 3.** Be sent electronically in pdf format and thereafter in 25 copies by post. All reports that are submitted in paper copy must also be sent electronically and should be identical.

NGOs can also email their reports to NGO Group for the Convention on the Rights of the Child

c/o Defense for Children International P.O. Box 88 1211 Geneva 20 Switzerland,
Tel: (+41-22) 734-0558, Fax: (+41-22) 740-1145, Email: dci-ngo.group@pingnet.ch

3. Oral Presentations

The procedures for NGOs making oral presentations to the CRC Committee are more developed than for the CEDAW Committee and the CESCR, in large part because the CRC Committee, from its inception, envisioned NGO participation. An NGO should submit a cover letter with all relevant information to the CRC Committee, including a request to attend the working group. Only NGOs who submit such information will be invited. At the working group meeting, the chairperson will ask the NGO to make an introductory statement. Interpretation will be available in English and French, and upon request, Spanish, Arabic, Russian, and Chinese. Additional information on oral presentations before the Committee can be found at:

<http://www.crin.org/docs/Reporting%20Guide%202006%20English.pdf>

NOTES

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1 Convention of the Elimination of All Forms of Discrimination Against Women art 1, Sep. 3, 1981, 1249 U.N.T.S. 13.

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2 Convention of the Elimination of All Forms of Discrimination Against Women art 2, Sep. 3, 1981, 1249 U.N.T.S. 13.

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3 For details about the members of the Committee, please see
<http://www2.ohchr.org/english/bodies/cedaw/membership.htm>.

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4 The Platform for Action is an agenda for women's empowerment. It aims at accelerating the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women and at removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making." Fourth World Conference on Women, Beijing, China, Sep., 4-15, 1995, Beijing Declaration And Platform For Action. Available at:
http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN_E.PDF

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5 Comm. on the Status of Women, on its 52nd Sess., Feb 25 – Mar., 2008, UN Doc E/CN.6/2008/CRP.. Available at: http://www.un.org/womenwatch/daw/csw/csw52/crps/crp1_e.pdf

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6 Fourth World Conference on Women, Beijing, China, Sep., 4-15, 1995, Beijing Declaration And Platform For Action. Available at:
http://www.unesco.org/education/information/nfsunesco/pdf/BEIJIN_E.PDF

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7 Id.

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8 Concluding Observations of the Committee on the Elimination of Discrimination against Women, Argentina, U.N. Doc. CEDAW/C/ARG/CO/6 (2010) p. 39-40.

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9 The schedule is available at:
<http://www2.ohchr.org/english/bodies/cedaw> in the section: Forthcoming Events.

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10 Committee in the Elimination of Discrimination Against Women (CEDAW), Information note prepared by OHCHR for NGO participation. Available at:
http://www2.ohchr.org/english/bodies/cedaw/docs/NGO_Participation.final.pdf (Last visited: May 8, 2012)

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11 Id.

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12 Comm. on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Article 12), U.N. Doc. E/C.12/2000/4 (2000).

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13 Id

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14 Id.

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15 Comm. on Economic, Social and Cultural Rights, (May, 8, 2012)
<http://www2.ohchr.org/english/bodies/cescr/cescrs48.htm>

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16 U.N. Convention on the Rights of the Child [CRC], Comm. on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, ¶ 10, U.N. Doc. CRC/GC/2003/4 (July 1, 2003), p. 10.

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17 See CRC, Comm. on the Rights of the Child, General Guidelines for Periodic Reports, U.N. Doc. CRC/C/58, ¶ 157 (Nov. 20, 1996).

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18 See CRC, Comm. on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: South Africa, ¶ 31, U.N. Doc. CRC/C/15/Add.122 (Feb. 22, 2000)

_SECTION II

Organizing the shadow report

The preliminary step in organizing a shadow report for a particular country is to obtain the government's report on that country. The government report will form the basis for a Committee's review. The number of ministries and governmental agencies that contribute to the government report varies from State to State. States will sometimes appoint a special committee to obtain the necessary information from relevant ministries. Generally, upon completion of the report, the Ministry of Foreign Affairs will submit it to the United Nations (UN). Importantly, if the current government report is available, the NGO report can be organized as a commentary on it. Therefore, NGOs should try, whenever possible, to obtain the government report directly from that country's foreign ministry, as well as from the particular Committee's website, once it is posted. Nonetheless, some governments fail to make the report available within the country, despite the Committee's recommendation that they do so.

The UN makes reports available for public distribution once they have been translated. Frequently, however, the UN will not make reports available until fairly close to the beginning of the Committees' sessions, therefore, it is important to request the report first from the government. If the report cannot be obtained within the country, most reports will be posted to the United Nations High Commissioner for Human Rights' (UNHCHR) website prior to the session.

In drafting a shadow report, advocates should focus on two primary factors in advancing a tobacco control agenda: (A) building as large a coalition as possible to support the shadow report; and (B) using the FCTC as the basis for both criticism and/or praise of government tobacco control policies.

A. Forging a Broad Coalition

Although it is entirely possible for a single organization to prepare an effective shadow report, the preferred strategy, for a number of reasons, is collaboration. First, collaboration can enhance the report's impact on the government

as it more effectively demonstrates a consensus, among a broad range of constituencies, concerning the positions taken in the report. Second, coordination helps the Committee use NGO information more effectively by succinctly incorporating all of the relevant positions in one report; Committee members cannot be expected to give adequate attention to multiple reports, especially if they arrive close to the beginning of the session. Third, and for international coalitions, collaboration realizes economies of scale: while NGOs located in the United States and Europe often have substantial resources for drafting and logistics, NGOs “on the ground” frequently have superior information and better access to the laws and policies of the State party.

When submitting a report in alliance with other NGOs, it is important to budget time for coordination, identifying the strengths of each participating NGO, tasks, resource- and cost- sharing, final editorial decisions, etc. NGO reports prepared by coalitions, rather than individual NGOs, are much more difficult to disregard or discredit, and therefore lend greater legitimacy to information submitted concerning breaches of rights. Consequently, such reports are more likely to earn recommendations from Committees.

B. Using the FCTC

The goal of shadow reporting in the tobacco control context is to promote the full and effective implementation of the FCTC and the guidelines currently in existence for Articles 5.3 (the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry); Article 8 (protection from exposure to tobacco smoke); Articles 9 and 10 (regulation of the contents of tobacco products and of tobacco product disclosures); Article 11 (packaging and labeling of tobacco products); Article 12 (education, communication, training and public awareness; Article 13 (tobacco advertising, promotion and sponsorship); and Article 14 (demand reduction measures concerning tobacco dependence and cessation).¹ Even if the country being reviewed is not a signatory to the FCTC, framing the report in terms of FCTC compliance is still an effective strategy because it can lead the Committee to specifically urge in its Concluding Observations, as it did in the previously discussed CEDAW report concerning Argentina, that the country “ratify and implement the World Health Organization Framework Convention on Tobacco Control” as well as “put in place legislation aimed at banning smoking in public spaces and restricting tobacco advertising.”²

Reports should identify the specific articles of CEDAW, the ICESCR, or the CRC that are applicable to tobacco control and make concrete recommendations as to their fulfillment using the FCTC. For example, the O’Neill Institute filed a shadow report to accompany Egypt’s periodic report to CEDAW. Anchoring its arguments on CEDAW Articles 10 (access to information) and 12 (access to healthcare), the O’Neill Institute argued that Egypt’s failure to regulate waterpipes – a mode of tobacco consumption particularly prevalent among Egyptian women – to the same extent as cigarettes, by failing to include warning labels (FCTC Article 11) and ban waterpipe smoking in enclosed public places, (FCTC Article 8) amounted to a violation of the State’s obligations under CEDAW.³

Similarly, the O’Neill Institute, together with the Campaign for Tobacco-Free Kids and Brazilian NGO ACTBrazil, filed a shadow report to accompany Brazil’s periodic report to the CESCR. The shadow report argued that Brazil’s policy of allowing smoking rooms in enclosed public places (FCTC Article 8), and of permitting the advertising, promotion and sponsorship of tobacco products, which inevitably targets youth (FCTC Article 13), violated its obligations to respect, protect and fulfill the right to health under Article 12 of the ICESCR.⁴ In its Concluding Observations, the Committee noted the following:

30. The Committee notes with concern that it is still permissible to promote the use of tobacco through advertising in the State party and that, while the use of tobacco-derived products is banned in publicly accessible areas, smoking is permitted in areas specially designed for the purpose. The Committee notes, however, that the State party has taken important steps to reduce the threat tobacco poses for life, health, the environment and the general population by ratifying the World Health Organization’s Framework Convention on Tobacco Control and developing public policies to reduce tobacco use. (Art. 12.1) I want you to come... but it seems too complicate it for you...

The Committee recommends that the State party take measures to ban the promotion of tobacco products and enact legislation to ensure that all enclosed public environments are completely free of tobacco.⁵

Most recently, the O’Neill Institute, together with the InterAmerican Heart Foundation – Argentina (FIC – Argentina) and the Argentine NGO Founda-

tion for the Development of Sustainable Policies (FUNDEPS) filed a shadow report to accompany Argentina's periodic report to the CESCR. The shadow report argued that Argentina should ratify the FCTC and take legislative measures to guarantee the treaty's incorporation into national law. The report also argued that Argentina must prohibit "brand sponsorship," and apply a tax policy that generates an increase in cigarette prices, with the aim of reducing tobacco consumption, in order to ensure the effective implementation of Article 12 of the ICESCR as regards tobacco control in Argentina.⁶ In its Concluding Observations, the Committee noted the following:

23. The Committee is concerned about the high level of tobacco consumption in the State party, especially among women and youth (art. 12, para. 1).

The Committee recommends that the State party ratify and implement the WHO Framework Convention on Tobacco Control and develop effective public awareness and tax and pricing policies to reduce tobacco consumption, in particular targeting women and youth.⁷

In the case of every shadow report submission, representatives of O'Neill Institute and partners such as FIC - Argentina met with Committee members during the session breaks in order to advocate that the concerns put forth in the shadow report be addressed in the Concluding Observations.

C. Organization of Content

The content and structure of the shadow report play a crucial role in earning Committee members' attention. Shadow reports should be concise, crisp, and address only one or two articles. Committee members are extraordinarily busy and are often presented with large amounts of information. Focus and brevity (and in-person follow-ups) are key to the successful use of shadow reporting. The following rules will assist advocates in organizing shadow reports.

a. Include some background information about the tobacco-related epidemiological profile of the State or region addressed.

b. Organize the information according to the relevant articles of the Covenant or Convention, not by issue. If an issue concerns more than one article, choose the article that is most on point for a full discussion and briefly indicate the

other relevant articles. Organizing by article indicates knowledge of the treaty and respect for the Committees' time.

Example: In its shadow report on “Challenges in the Prevention and Reduction of Women’s Tobacco Use in Argentina,” which accompanied Argentina’s periodic report to CEDAW, the O’Neill Institute and FIC - Argentina organized the report by first distinguishing the relevant CEDAW articles to tobacco control and women’s health:

“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 health care) are cogent to this document in view of Argentina’s periodic review as it relates to tobacco control and women’s health.”⁸

c. Describe the problems, evidence, and specific suggestions for change. Indicate which government ministries or offices are either in a position to effectively address policy failures, or deserve credit for a good policy. Incorporate varied sources of knowledge, including current legislation and government reports on implementation, government statistics, verbatim records of parliamentary/legislative proceedings, reports published by organizations and professional bodies, published research (government, academic, NGO), books, and periodicals.

d. Prioritize issues. The Committee will not be able to focus adequate attention on more than a few issues. At some point in the process, it is important to decide which issues are the most important to the NGO community.

e. Include comprehensive information regarding which FCTC articles must be complied with in order to remedy any highlighted breaches.

Example: In its shadow report on “Preventing and Reducing Tobacco Use in Brazil,” which was submitted alongside Brazil’s periodic report to the CESC, the O’Neill Institute, in reviewing Brazil’s tobacco control legislation, provided concrete recommendations regarding which FCTC articles Brazil needed to be in closer compliance with:

“Illicit trade in tobacco deprives the State of tax revenues which may be used for health programs and reduces the price of tobacco products facilitating their purchase by minors. The State must take measures commensurate with those established in Article 15 of the FCTC to effectively fight such trade and reduce the impact on this vulnerable group. . .”

“Article 6 of the FCTC requires that states consider price and tax policies that will enhance public health and reduce tobacco use.”⁹

f. For each issue, it is important to provide examples or evidence of how the issue affects residents of the country, and to make specific recommendations for addressing the problem. Including specific language from CEDAW, CESCRC or CTC Committee General Comments, or from Committees’ prior Concluding Observations, is particularly helpful. Questions that remain open following the consideration of prior reports, and which are stated in the Concluding Observations, should be addressed. Conclude the report with a list of concrete steps to be taken by the government, and include as much specificity as to the particular office or ministry implicated as possible.

Example: In the concluding remarks of its shadow report to the CESCRC on “Tobacco Control in Argentina,” the O’Neill Institute, FIC-Argentina and FUNDEPS provided a list of concrete steps to be taken by the government, including:

“**2)** The Argentine State shall apply a tax policy that generates an increase in cigarette prices, with the aim of reducing tobacco consumption, especially among the poorest sectors of the population, and preventing young people from beginning to smoke.”

“**3)** The Argentine State shall ratify the FCTC and take legislative measures to guarantee the treaty’s incorporation into national law.”¹⁰

Example: In the concluding remarks of its shadow report on “Women and Tobacco in Egypt,” the O’Neill Institute provided a list of concrete steps to be taken by the government in order to satisfy its obligations under the FCTC, including:

“**2.** This Report urges the Government of Egypt to regulate equally “tobacco products” and waterpipes by including warning labels on tobacco waterpipes,

ban smoking of waterpipes in enclosed public places and ban advertising of waterpipe smoking because of the unique factors that encourage women’s use of the waterpipe as a mode of tobacco consumption.”¹¹

g. Include a set of questions that Committee members can ask to the government.

h. Limit the report to no more than 15 pages.

i. Write the shadow report in English, Spanish, or French. As English is the working language of nine out of ten experts on any given Committee, documents submitted in French and Spanish should be translated into English.

Illustrative examples of past shadow reports are included in Annex 2 of this guide.

NOTES

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1 WHO Framework Convention on Tobacco Control: guidelines for implementation: Article 5.3; Article 8; Articles 9 and 10; Article 11; Article 12; Article 13; Article 14 -2011 edition. Available at: http://whqlibdoc.who.int/publications/2011/9789241501316_eng.pdf

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2 Concluding Observations of the Committee on the Elimination of Discrimination against Women, Argentina, U.N. Doc. CEDAW/C/ARG/CO/6 (2010) , p. 39-40.

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3 O’Neill Institute for National and Global Health Law. 2010. United Nations Committee on the Elimination of all Forms of Discrimination Against Women, Shadow Report to the Periodic Report by the Arab Republic of Egypt: Women and Tobacco in Egypt: Preventing and Reducing the Effects of Tobacco Consumption through Information, Implementation, and Non-Discrimination. Available at:

http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ONeillInstitute_Egypt45.pdf

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4 O’Neill Institute for National and Global Health Law. 2009. United Nations Committee on Economic, Social and Cultural Rights, Shadow Report to the Periodic Report by the Government of Brazil: Preventing and Reducing Tobacco Use in Brazil: Pending Tasks. Available at:

http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/ONeillInstitute_CTFK_ACT_Brazil42.pdf

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5 Comm. on Economic, Social and Cultural Rights, Concluding Observations, on its 42nd Sess., 4-22 May 2009, UN Doc E/C.12/BRA/C/2 (June 12, 2009)

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6 O'Neill Institute for National and Global Health Law. 2011. United Nations Committee on Economic, Social and Cultural Rights, Shadow Report to the Periodic Report by the Government of Argentina: Tobacco Control in Argentina: Advances and Pending Tasks. Available at:
http://www.law.georgetown.edu/oneillinstitute/publications/pdf/ONeill_FIC_Fundeps_Argentina47_en.pdf

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7 Comm. on Economic, Social and Cultural Rights, Concluding Observations, on its 47th Sess., Nov 14 – Dec. 2, 2011, UN Doc. E/C.12/ARG/CO/3 (Dec. 2, 2011)

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8 O'Neill Institute for National and Global Health Law. 2010. United Nations Committee on the Elimination of all Forms of Discrimination Against Women, Shadow Report to the Periodic Report by the Government of Argentina: Challenges in the Prevention and Reduction of Women's Tobacco Use in Argentina. Available at:
<http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ONeillInstitute.pdf>, p. 6-7.

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9 O'Neill Institute for National and Global Health Law. 2009. United Nations Committee on Economic, Social and Cultural Rights, Shadow Report to the Periodic Report by the Government of Brazil: Preventing and Reducing Tobacco Use in Brazil: Pending Tasks. Available at:
http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/ONeillInstitute_CTFK_ACT_Brazil42.pdf, p. 8.

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10 O'Neill Institute for National and Global Health Law. 2011. United Nations Committee on Economic, Social and Cultural Rights, Shadow Report to the Periodic Report by the Government of Argentina: Tobacco Control in Argentina: Advances and Pending Tasks. Available at:
http://www2.ohchr.org/english/bodies/cescr/docs/ngos/ONeill_FIC_Fundeps_Argentina47_en.pdf, p. 22.

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11 O'Neill Institute for National and Global Health Law. 2010. United Nations Committee on the Elimination of all Forms of Discrimination Against Women, Shadow Report to the Periodic Report by the Arab Republic of Egypt: Women and Tobacco in Egypt: Preventing and Reducing the Effects of Tobacco Consumption through Information, Implementation, and Non-Discrimination. Available at:
http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/ONeillInstitute_Egypt45.pdf, p. 10.

_SECTION III

Conclusions and analysis of how shadow reports propel tobacco control efforts forward at the national level

Shadow reports are a very useful tool for effectively initiating change in the area of tobacco control at both the national and international level. Submitting reports to various United Nations Human Rights bodies, like the CEDAW Committee, the CESCR and the CRC Committee, can often direct international attention to the country in question, creating a powerful incentive for that country to bring its national laws in compliance with the Committees' recommendations. In addition to building up the body of customary international law supporting norms enshrined in the World Health Organization's FCTC, shadow reports place international pressure on State governments to implement meaningful tobacco control laws.

In particular, shadow reports submitted by the O'Neill Institute, FIC - Argentina and other partners have successfully influenced the implementation and legal defense of more comprehensive tobacco control laws in several Latin American countries. Brazil, for instance, recently passed Laws Nos. 4306 and 4351 in the States of Rio de Janeiro and Paraná, respectively, prohibiting tobacco consumption in collective public and private spaces, without reserving an area for non-smokers. Both of these laws were quickly challenged by the tobacco industry on unconstitutionality grounds, claiming that the laws violated the principles of individual liberty, free enterprise, and proportionality, among others. In these cases the Federal Prosecutor¹ submitted documents to the Superior Tribunal of Brazil specifically referencing the CESCR in its opinion, stating:

In May 2009, the United Nations Committee on Economic, Social and Cultural Rights, in analyzing the government of Brazil's second periodic report on the implementation of the ICESCR, involving the ratification of the Framework Convention on Tobacco Control, wrote: '30. The Committee notes with concern that (. . .) while the use of tobacco-derived products is banned in publicly accessible areas, smoking is permitted in areas specially designed for the

purpose.’ It then recommends that the State Party ‘take measures to ban the promotion of tobacco products and enact legislation to ensure that all enclosed public environments are completely free of tobacco’ (emphasis added).²

As previously mentioned, the Concluding Observations issued by the CESCR regarding tobacco control in Brazil were a direct result of the shadow reports submitted to the Committee on this issue. The General Prosecutor’s reliance on the Concluding Observations is illustrative of how these strategies can be relevant at a domestic level as well.

In a similar case involving unconstitutionality proceedings against a Peruvian tobacco control law prohibiting smoking in enclosed public spaces, the Constitutional Court of Peru relied on the General Comments issued by the CESCR in upholding the constitutionality of Law No. 29517.³ The Peruvian tribunal’s reliance on the CESCR in coming to a decision also demonstrates the importance of advocating before the international human rights monitoring bodies.

Moreover, in Argentina, following the CEDAW Committee’s Concluding Observations regarding women’s health and tobacco control in Argentina, which raised concerns about the impact of this epidemic on Argentine women, the issue was taken into account during the legislative debates concerning the approval of a national tobacco law.⁴ Consequently, the shadow report submitted to the CEDAW Committee by the O’Neill Institute and FIC-Argentina regarding Challenges in the Prevention and Protection of Women’s Tobacco Use in Argentina, by earning a concluding observation in the CEDAW periodic report, played an important role in defending the proposed national tobacco control law during the legislative debates.

As the examples mentioned above illustrated, shadow reports submitted by NGOs to UN Human Rights bodies are an effective tool in the promotion and implementation of human rights, and can have far-reaching effects in effectively propelling tobacco control efforts forward at the national, as well as at the international level.

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1 In Portuguese: Ministerio Publico Federal

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2 Federal Prosecutor's brief submitted on the unconstitutionality claim N° 4351 before the Brazilian Superior Tribunal, Confederação Nacional do Turismo – Cntur, p. 17 and 18.

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3 Peruvian Constitutional Tribunal. Jaime Barco Rodas contra el Artículo 3° de la ley N. 28705 – Ley general para la prevención y control de los riesgos del consumo de tabaco, unconstitutionality writ, July 2011. Paragraph 146.

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4 Legislative debates transcript, 06/01/2011 session Deputies Chamber, available at <http://www.diputados.gov.ar/>

ANNEX 1: Timeline for ngo activity

EVENT AT THE UN	NGO ACTION	WHEN
<p>CEDAW, ICESCR or CRC Committee Review Schedule Established (usually approximately one year in advance). Schedules can be found on the Committee websites.</p>	<ol style="list-style-type: none"> 1. Organize an NGO coalition and set deadlines for the completion of a shadow report 2. Prepare a list of issues and write shadow report 	<ol style="list-style-type: none"> 1. Immediately 2. At least six months prior to start of session
<p>Submission of State Party report to the CEDAW Committee, the CDESCR or the CRC Committee</p>	<p>Obtain a copy of the government report</p>	<p>Immediately</p>
<p>Pre-Sessional Working Group Meeting (TYPICALLY NOT FOR INITIAL REPORTS, BUT RATHER FOR SECOND AND SUBSEQUENT REPORTS)</p>	<ol style="list-style-type: none"> 1. Send a shadow report or compiled materials to the Pre-sessional Working Group 2. Make an oral presentation to the Pre-sessional Working Group 	<ol style="list-style-type: none"> 1. At least 2 weeks prior to Pre-sessional Meeting 2. First morning of the Pre-sessional Working Group meeting



<p>Prior to the Session at which the State Party is reviewed.</p>	<p>Send a shadow report to Committee members and to the Committee Secretariat</p>	<p>Committee prefers 3 months before the session, but experts will consider reports received closer to the session (typically 2-4 weeks)</p>
<p>Committee session at which the State Party is reviewed.</p>	<ol style="list-style-type: none"> 1. Make an oral presentation at the meeting 2. Approach Committee members during the session to clarify issues and lobby 3. Attend the government's official presentation and the Committee's "constructive dialogue" with the government 	<ol style="list-style-type: none"> 1. On the first day of the session (Monday) during the session 2. On the scheduled day of the review 3. Scheduled reporting session; check Committee website
<p>Following the review and issuance of Concluding Observations by the Committee.</p>	<ol style="list-style-type: none"> 1. Report to other NGOs, media, etc. in country on the government review 2. Disseminate the Concluding Observations 	<ol style="list-style-type: none"> 1. Immediately 2. As soon as they are issued

ANNEX II: Shadow Reports

1. Shadow Report to the Periodic Report by the Government of Brazil (ICESCR, May 2009).

http://www.law.georgetown.edu/oneillinstitute/publications/pdf/2009_Shadow-Report-Brazil.pdf

2. Challenges in the Prevention and Reduction of Women's Tobacco Use in Argentina (CEDAW, July 2010)

http://www.law.georgetown.edu/oneillinstitute/publications/pdf/2010_Argentina_Shadow_Report.pdf

3. Tobacco Control in Argentina: Advances and Pending Tasks (ICESCR, November 2011)

http://www.law.georgetown.edu/oneillinstitute/publications/pdf/ONeill_FIC_Fundeps_Argentina47_en.pdf

