

UNITED NATIONS COMMITTEE ON THE ELIMINATION OF ALL FORMS  
OF DISCRIMINATION AGAINST WOMEN

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

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## **Tobacco Control in Argentina: Pending Tasks to Protect Women's Health**

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REPORT FILED BY:



**FIC – ARGENTINA:** Fundación  
Interamericana del Corazón Argentina  
[Interamerican Heart Foundation- Argentina],

whose mission is to promote public policies and social changes that guarantee the protection of the right to health, through the reduction of chronic non-communicable diseases (NCDs). FIC – Argentina is an affiliate of the Interamerican Heart Foundation, an organization with a trajectory of over 20 years. Within the field of the prevention of NCDs, FIC Argentina takes different action lines to promote the design and implementation of tobacco control, alcohol abuse control, nutrition and prevention of obesity and physical activity policies with a human rights perspective. Furthermore, it also develops a variety of activities and projects to raise awareness of the importance of these measures with the final objective of protecting the right to health.  
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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**

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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**

Fundación Interamericana del Corazon- Argentina (FIC – Argentina), the O’Neill Institute for National and Global Health Law (the “O’Neill Institute”), the Foundation for Women’s Study and Research (FEIM), the Foundation for the Development of Sustainable Policy (FUNDEPS) and the Tobacco Smoke-Free Alliance- Argentina (ALIAR), 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 seventh periodic report filed by the Argentine Republic (the “State” or “Argentina”). This report will focus on the State’s obligations under Articles 3, 10, 11 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”).

In this report we set forth areas of the greatest concern with respect to Argentina’s efforts to combat the threat that tobacco consumption epidemic pose for women and girls. Argentina’s progress, or lack thereof, in its obligations to protect, respect, and fulfill the right to health of women and girls is within this Committee’s competence and authority.

In the first section we analyze the effects of tobacco consumption among women and girls’ health in Argentina. Then, we present the deficits in the prevailing tobacco control legal framework and policies. We pay particular attention to the weaknesses and challenges in the statutory and regulatory language, with a special focus on Argentina’s failure to ratify and implement the World Health Organization Framework Convention on Tobacco Control (“FCTC”)<sup>1</sup> and the impact of this Convention on tobacco use among women.

Afterwards, we highlight how the obligation to protect women’s health stems from both the National Constitution and from international human rights treaties that have been ratified by the State.

Finally, this report suggests recommendations for the Committee to consider in formulating its concluding observations to the government of State on its compliance with CEDAW and its Optional Protocol.

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<sup>1</sup> World Health Organization, Framework Convention on Tobacco Control, 2003. Available at: [http://www.who.int/tobacco/framework/WHO\\_FCTC\\_english.pdf](http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf)

## **I. EFFECTS OF THE TOBACCO EPIDEMIC AMONG WOMEN'S HEALTH IN ARGENTINA**

Non-communicable diseases (NCDs), mainly cancer, cardiovascular disease, chronic respiratory diseases and diabetes, **are the most common cause of death and disability worldwide, accounting for 68% of global mortality**. NCDs are caused mainly by four risks factors, all of them preventable social determinants: tobacco consumption and secondhand smoke exposure, unhealthy diet, abusive alcohol consumption and physical inactivity<sup>2</sup>.

In particular, the tobacco epidemic is a global problem with devastating health, social, economic and environmental consequences. It is responsible for more than 6 million deaths per year worldwide, and for health and environmental costs that at least double tax revenues from tobacco taxation. Tobacco takes more lives than tuberculosis, HIV/AIDS and malaria combined, and it is the leading cause of preventable premature death in the world<sup>3</sup>. **Tobacco consumption is growing steadily, especially among the poor, women and youth. Specifically, tobacco consumption generates several negative effects on women's health**, such as:

- 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 among others.
- Metabolic disease: Reduces estrogens, thereby producing bone decalcification, osteoporosis, whose principal complication is hip fracture.<sup>4</sup>
- Fertility and fecundity<sup>5</sup> reductions, increasing the risk during pregnancy of premature membrane rupture, and placenta detachment. There is higher risk for premature birth and low birth weight.

In Argentina, tobacco is responsible for a significant number of deaths, illnesses and health care costs. In sum, tobacco causes the loss of 998,881 years of life each year and accounts for 13.2% of all deaths occurring in the country. This represents 44.851 deaths per year that could be avoided<sup>6</sup>. **Out of all deaths from diseases associated with**

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<sup>2</sup> NCD Alliance, NCDS: A major challenge for sustainable development, 2015. Available at: [https://ncdalliance.org/sites/default/files/rfiles/Two\\_pages\\_NCDS\\_in\\_SDGs\\_forWeb.pdf](https://ncdalliance.org/sites/default/files/rfiles/Two_pages_NCDS_in_SDGs_forWeb.pdf)

<sup>3</sup> World Health Organization, WHO REPORT on the global TOBACCO epidemic, The MPOWER package, 2008. Available at: [http://www.who.int/tobacco/mpower/mpower\\_report\\_full\\_2008.pdf](http://www.who.int/tobacco/mpower/mpower_report_full_2008.pdf)

<sup>4</sup> Riancho Moral, José A. and Jesús González Macías, Osteoporosis and Mineral Metabolism Diseases practical handbook, 2004, p 154. Available at <http://www.unican.es/NR/rdonlyres/EB68B8BC-3AF3-46BC-96FF-AA2CC84834F4/47174/LIBRO.pdf>

<sup>5</sup> Women and the tobacco epidemic. Challenges for the 21st century. WHO/NMH/TFI/01.1.

<sup>6</sup> Deaths, illness and tobacco taxation in Argentina. Institute of Clinical Effectiveness and Health (IECS). May 2016. [http://www.iecs.org.ar/wp-content/uploads/FINAL-OK-MAYO-2016-Flyer\\_Argentina1.pdf](http://www.iecs.org.ar/wp-content/uploads/FINAL-OK-MAYO-2016-Flyer_Argentina1.pdf).

**smoking 11.731<sup>7</sup> are women.**

**Indeed, one in three women dies from cardiovascular disease<sup>8</sup>. Lung cancer has duplicated among women since 1980 (it has increased 1.7% annually) as a consequence of tobacco consumption, which in Argentina has one of the higher rates in Latin America<sup>9</sup>.**

In line with what is happening around the world, tobacco epidemic in Argentina is shifting from men to women and from rich to poor people<sup>10</sup>. In this context, according to the Risk Factors' National Survey (*Encuesta Nacional de Factores de Riesgo* in Spanish) (ENFR)<sup>11</sup> that includes people over 18 years old, **although consumption diminished among women (22.4% in 2009 and 20.9% in 2013) and men (32.4% in 2009 and 29.9% in 2013), the gap between them was reduced.**

**Also, there is a 20% higher consumption in teen girls compared to boys.** The Global Youth Tobacco Survey (GYTS) 2012<sup>12</sup> showed that smoking prevalence among teens aged 13 to 15 years corresponds to 19.6% (21.5% girls and 17.4% boys). According to the Global School-based Students Health Survey (GSHS)<sup>13</sup> among young people aged 13 to 17 years in 2012, where the prevalence is 18.8%, there is a higher consumption among teen girls (girls 20.5% and boys 17%). Finally, according to the Secretary for the Prevention of Drug Addiction and the Fight against Drug Trafficking (SEDRONAR)<sup>14</sup> 2014 the prevalence within teens aged 14 to 17 years is 15.1%, shows higher rates among girls (15.9%) than boys (14.4%).

**Tobacco related deaths and illness can be prevented if the State adopts effective tobacco control policies. The increasing tobacco consumption among girls and women together with the harmful consequences in women's health show that Government is not taking enough measures to protect women's right to health from the tobacco epidemic in Argentina.**

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<sup>7</sup> Disease Attributable to smoking in Argentina. Institute of Clinical Effectiveness and Health. (IECS). July 2013. <http://www.iecs.org.ar/wp-content/uploads/N7Carga-de-Enfermedad-Tabac-Argentina.pdf>

<sup>8</sup> Liprandi, Harwicz. Causes of death in women and the trend over the last 23 years in Argentina Rev. Argent. Cardiol. v.74 n.4 Buenos Aires jul. 2006

<sup>9</sup> Schargrodsky H et al. CARMELA: assessment of cardiovascular risk in seven Latin American cities. AmJ Med.2008 Jan; 121(1):58-66

<sup>10</sup> Lopez AD, Collishaw NE, Piha T. A descriptive model of the cigarette epidemic in developed countries. Tobacco Control. 1994;3(3):242.

<sup>11</sup> National Ministry of Health, National Institute of Statistics and Census; "Third National Risk Factor Survey 2013"; First edition, Buenos Aires, 2015 Available at: [http://www.msal.gov.ar/images/stories/bes/graficos/000000544cnt2015\\_09\\_04\\_encuesta\\_nacional\\_factores\\_riesgo.pdf](http://www.msal.gov.ar/images/stories/bes/graficos/000000544cnt2015_09_04_encuesta_nacional_factores_riesgo.pdf)

<sup>12</sup> National Ministry of Health, Health Promotion and Non Communicable Disease Control Area, Global Youth Tobacco Survey GYTS. 2012. Available at: [http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/2014-03\\_informe-gyts-jovenes.pdf](http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/2014-03_informe-gyts-jovenes.pdf)

<sup>13</sup> World Health Organization, Global School-based Students Health, Argentina, 2012. Available at: [http://www.who.int/chp/gshs/Argentina\\_GSHS\\_FS\\_2012\\_National.pdf?ua=1](http://www.who.int/chp/gshs/Argentina_GSHS_FS_2012_National.pdf?ua=1)

<sup>14</sup> Secretary for the Prevention of Drug Addiction and the Fight against Drug Trafficking (SEDRONAR) Sixth national study on substance use in high school students. Newsletter N.1: patterns and magnitude of consumption: diagnosis at the country level. 2014

## II. TOBACCO CONTROL IN ARGENTINA

Argentina has been slow to develop the legal framework for tobacco control at a national level, as exemplified by the failure to ratify the FCTC and the delay in adopting a comprehensive national tobacco control law, which did not happen until mid-2011.

### (a) CEDAW Committee's recommendations to Argentina

After the last review of Argentina before this Committee in 2010 (46th session period) the Committee expressed its concerns regarding the increasing use of tobacco products and their harmful effects on women and girls:

*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.<sup>15</sup>*

In this year-follow up report, the State provided a vague response that did not give any information on the effectiveness of tobacco control policies implemented in Argentina. Further, the State did not mention or address its obligation to respect, protect and fulfill women's right to health through measures that prevent the harmful consequences of tobacco epidemic. The State simply answered:

*106. **Legislation controlling tobacco consumption:** In relation to Recommendation 40, Argentina approved the WHO Framework Convention on Tobacco Control but did not ratify it. Nonetheless, a very wide range of regulations are in force at the national, provincial and/or municipal levels restricting or banning smoking and/or regulating tobacco advertising, in particular Law 26.687/2011, regulating the publicity, promotion, consumption of tobacco products<sup>16</sup>.*

It is important to mention that by the time the CEDAW recommendations to the State took place, Argentina had already signed the Framework Convention on Tobacco Control, as it was approved by the president in 2003. This situation shows that **the**

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<sup>15</sup> CEDAW, Concluding Observations by the CEDAW Committee: Argentina, para. 8, U.N. Doc. CEDAW/C/ARG/CO/6 (12-30 July 2010).

<sup>16</sup> CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention, Seventh periodic report of States parties due in 2014: Argentina. (28 January 2015).

**Government is recognizing its failure to comply with the recommendations given by the Committee concerning the ratification of the FCTC.**

Regarding the national tobacco control law 26.687, its inefficiency to protect women's health from the tobacco epidemic is proven by the number of annual tobacco related deaths among women. Moreover, it will be shown in the following sections that the law is not efficient to protect women from being targeted by the tobacco industry in its advertising campaigns.

**(b) Argentina's ratification of the Framework Convention on Tobacco Control (FCTC)**

The FCTC is the legal framework that places obligations upon States to adopt tobacco control policies. It facilitates the implementation of laws that are necessary to protect the global population from the toxic effects of tobacco consumption and exposure to secondhand smoke. By October 2016, 180 countries had ratified the FCTC<sup>17</sup>, and Argentina is the only country in South America that is still not a member of this Convention; the first public global health treaty.

The FCTC establishes a set of measures that are proven to be effective to protect human right to health from the consequences of tobacco consumption and exposure to secondhand smoke. Among others, the treaty requests governments to implement 100% smoke-free environments, complete bans of tobacco advertising, promotion and sponsorship, warning labels on the package, measures to raise tobacco prices, mechanisms to control illicit trade and to promote transparency and accountability in the relationship between tobacco industry and decision makers.

This treaty also has established a gender perspective in its principles and obligations. As an example, it recalls *“that the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, provides that States Parties to that Convention shall take appropriate measures to eliminate discrimination against women in the field of health care”*. In addition, it takes into account the current tobacco consumption trends. Thus, the FCTC signatories are *“alarmed by the increase in smoking and other forms of tobacco consumption by women and young girls worldwide and keeping in mind the need for full participation of women at all levels of policy-making and implementation and **the need for gender-specific tobacco control strategies**”*.

Scientific evidence demonstrates that, worldwide, the tobacco industry has undermined country's efforts to implement effective tobacco control policies that endanger industry

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<sup>17</sup> United Nations Treaty Collection, Who Framework Convention on Tobacco Control Status. Available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX4&chapter=9&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX4&chapter=9&clang=en)



profitability<sup>18</sup>. **In order to properly protect the right to health of its population and in particular women, from the tobacco industry strategies, it is not enough to approve tobacco control legislation. There is a clear need of ratifying the FCTC.**<sup>19</sup>

Ratifying the FCTC would give Argentina greater legal tools to advance tobacco control policies according to the international standards and it will allow the government to participate in decision-making process together with FCTC member States. **The ratification will also promote the adoption of tobacco control measures with a gender perspective.**

Thus, Argentina shall promptly ratify the FCTC, according not only to CEDAW recommendation, but also to ESCRC Committee that in its concluding observations of 2011 recommended “*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.*”

### **(c) Deficits in the prevailing tobacco control legal framework and policies in Argentina**

After Argentina signed the FCTC, but refused to ratify it, it enacted Law 26,687 in 2011, which was intended to regulate the advertising, promotion, and consumption of tobacco products.<sup>20</sup> The law imposes a partial prohibition on advertisement of tobacco products, directly or indirectly, through any means of communication<sup>21</sup> and it establishes some legal exceptions that allows the tobacco industry to advertise at point of sales and through direct communications. **In this context, these exceptions gave the opportunity to the industry to take advantage of those permitted marketing channels (such as point of sales) and therefore keep advertising products that have been crafted specifically for a female audience, as it has been doing for decades<sup>22</sup>.** We can mention as an example the “low tar”, “light” cigarettes and flavoring cigarettes, which employ design and marketing strategies based on extensive psychographic research sponsored by the tobacco industry.<sup>23 24 25 26 27</sup>

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<sup>18</sup> Panamerican Health Organization. Profits over people. 2002. Available at: [http://www1.paho.org/English/DD/PUB/profits\\_over\\_people.pdf](http://www1.paho.org/English/DD/PUB/profits_over_people.pdf)

<sup>19</sup> FIC Argentina, Reasons why Argentina needs to ratify the Framework Convention on Tobacco Control (FCTC), 2016. Available at: [http://www.ficargentina.org/images/stories/Documentos/160922\\_documento\\_cmct.pdf](http://www.ficargentina.org/images/stories/Documentos/160922_documento_cmct.pdf)

<sup>20</sup> Law 26,687, Jun. 13, 2011, [CXIX] B.O. 1 (Arg.).

<sup>21</sup> Id. 21 Article 5.

<sup>22</sup> S. Braun, R. Mejia, PM Ling, E.J. Perez-Stable, Tobacco Industry Targeting Youth in Argentina, *Tob Control* 2008;17:111-117

<sup>23</sup> Id. 22.

<sup>24</sup> Johns Hopkins Bloomberg School of Public Health & FIC Argentina. Research Protocol. Tobacco products advertising in Buenos Aires City’s point of sales. 2016.

<sup>25</sup> FIC Argentina. Parties in the Atlantic Coast: The strategy to attract young people to tobacco consumption. 2016. Available at: [http://www.ficargentina.org/images/stories/documentos/160205\\_factsheet\\_costa.pdf](http://www.ficargentina.org/images/stories/documentos/160205_factsheet_costa.pdf)

<sup>26</sup> FIC Argentina. The advertising strategies Massalin Particulares and Nobleza Piccardo violating the law. 2015. Available at: [http://www.ficargentina.org/images/stories/Documentos/150522\\_tabacaleras\\_en\\_la\\_mira\\_final.pdf](http://www.ficargentina.org/images/stories/Documentos/150522_tabacaleras_en_la_mira_final.pdf)

<sup>27</sup> FIC Argentina. Tobacco products advertising, promotion and sponsorship in points of sales in Argentina:

**The law has had limited effects on the health and well-being of women and girls. It has been insufficient to block the promotional efforts of the tobacco industry, which continues to create and advertise products specially targeting women<sup>28</sup>. Furthermore, women are bombarded with advertisements intended to selectively target them. For example, the products are pink, promise less tobacco odor, or are shown in a more feminine context, like a fashion show.** These techniques were employed in the aggressive campaign led by Virginia Slims throughout the country, in spite of the existence of law 26,687.<sup>29</sup> For instance, according to a 2014 FIC Argentina study, 73.7% of the products at different points of sale did not follow the law in terms of product display.<sup>30</sup>

Taking advantage of the loopholes in law 26,687, the tobacco industry has been using an unconventional marketing tool called "Bellow the line" (BTL). FIC Argentina has been closely monitoring the industry's activities regarding this type of aggressive marketing and has concluded that tobacco product marketing is present in all types of mass means of communication, from e-mail newsletters to advertisement for cultural events.<sup>31</sup> Tobacco marketing, which includes advertising, promotion and sponsorship, has been shown to increase youth initiation of smoking<sup>32</sup>. **This is particularly concerning when taking into account the trends of tobacco consumption among teenage girls in the country. According to the Global Youth Tobacco Survey (GYTS), teenage females between the ages of 13 and 15 who never previously smoked show greater susceptibility to starting tobacco use in the coming years (31.6% female vs. 24.3% male)<sup>33</sup>.**

It is relevant to mention that the tobacco industry has developed aggressive campaigns to promote flavored cigarettes in Argentina. The national tobacco control law 26, 687 does not regulate cigarettes content which gives the industry the opportunity to sell tobacco tasting like sweets or alcoholic drinks<sup>34</sup>. It has been proved that flavored cigarettes are more appealing to young people and the tobacco industry has been promoting these products in order to catch new smokers<sup>35</sup>. This strategy was clearly successful among

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Characteristics and compliance within the existing national legislation and the innovative industry's strategies. 2015. Available at:

[http://www.ficargentina.org/images/stories/documentos/151104\\_informe\\_publicidad\\_tabaco\\_kioscos\\_2015.pdf](http://www.ficargentina.org/images/stories/documentos/151104_informe_publicidad_tabaco_kioscos_2015.pdf)

<sup>28</sup> FIC Argentina, Research Protocol: Current regulations' features and fulfillment on tobacco products' advertising, promotion and sponsorship in points of sale, (2013-2014). Available at: [http://www.ficargentina.org/images/stories/Documentos/informe\\_ppp\\_ley\\_nacional.pdf](http://www.ficargentina.org/images/stories/Documentos/informe_ppp_ley_nacional.pdf)

<sup>29</sup> Website of Virginia Slims sponsoring the "Buenos Aires Fashion (BAF) Week" and promoting cigarettes with less smoke odor in "your hair, hands and clothes" (Feb. 2016).

<sup>30</sup> Id. 26

<sup>31</sup> Id. 26

<sup>32</sup> DiFranza JR, Wellman RJ, Sargent JD Weitzman M, Hipple BJ, Winickoff JP. Tobacco Promotion and the Initiation of Tobacco Use: Assessing the Evidence for Causality. *Pediatrics*. 2006; 117: p. e1237-e1248.

<sup>33</sup> National Ministry of Health, Global Youth Tobacco Survey (GYTS) in Argentina, 2009.

<sup>34</sup> FIC Argentina, Mojito Fest Analysis, 2015. Available at: [http://ficargentina.org/images/stories/Documentos/informe\\_mojito\\_fest.pdf](http://ficargentina.org/images/stories/Documentos/informe_mojito_fest.pdf)

<sup>35</sup> Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: tobacco marketing strategies. *Health Affairs (Millwood)*. 2005 Nov-Dec;24(6):1601-10.

women in Argentina as, according to the Global Adult Tobacco Survey (GATS) 2012<sup>36</sup> among people aged 15 years or more, **women smoke significantly more flavored cigarettes than men (12.3% in women and 4.7% in men). This situation shows the urgent need for stronger regulations concerning cigarettes content prohibiting flavored tobacco and total bans of advertising, promotion and sponsorship.**

Also, the tobacco industry has been implementing corporate social responsibility strategies by contributing to events, activities or individuals with the aim of promoting tobacco products and tobacco consumption. These sponsorship strategies are recognized as marketing and, ignoring the international standards, they are allowed by the national tobacco control law 26,687. For example, **the industry has offered funding to women's groups working on gender violence in order to support their activities<sup>37</sup>. However, the real purpose of those actions was to contact communities and women's group in particular to keep promoting their products taking advantage of a delicate situation. These actions demonstrate the necessity of adopting measures that ban tobacco industry corporate social responsibility and its sponsorship strategies.**

The CEDAW Committee has pointed out the international responsibility of States that omit to address private practices that put women's health in danger in the following terms: “[T]he 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>38</sup> **Argentina has systematically disregarded the actions of tobacco companies that sponsor events targeting women, or that offer products designed to appeal to women. Further, there are no gender perspective within the existing laws that addresses the troubling pervasiveness of the tobacco industry's quest to attract and retain new female customers.**

In addition to this, though smoke-free environments have also been implemented in accordance with national law 26,687, they lack monitoring and enforcement at both the national and the provincial levels, which has made this policy ineffective<sup>39</sup>. Scientific evidence shows that only 100% smoke-free environments, which are created by total elimination of smoking and tobacco smoke in closed places, are safe. Comprehensive smoke-free places laws protect children and non-smoking adults from second-hand smoke, which causes disease and premature death among them.

In Argentina 69.4% of teenagers said that they have been exposed to tobacco smoke in public places, and 47.5% of them in their own homes. **Moreover, in all cases, girls reported greater exposure than boys, 50.1% compared to 44.5% (Global Youth**

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<sup>36</sup> National Ministry of Health, INDEC, OMS/OPC, CDC; Global Adult Tobacco Survey (GATS) 2012; Ciudad de Buenos Aires, 2013. Available at: [http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/2013-09\\_encuesta-tabaquismo-adultos-25-junio.pdf](http://www.msal.gov.ar/ent/images/stories/vigilancia/pdf/2013-09_encuesta-tabaquismo-adultos-25-junio.pdf)

<sup>37</sup> Pamela Sabrina Alvarez. “The corporative communication and branding of the tobacco industry”. Graduation project. Universidad de Palermo. 2014. Available at: [http://fido.palermo.edu/servicios\\_dyc/proyectorgraduacion/archivos/2892.pdf](http://fido.palermo.edu/servicios_dyc/proyectorgraduacion/archivos/2892.pdf)

<sup>38</sup> CEDAW Committee, General Recommendation N° 24, Article 12 of the Convention (Women and Health), P. 15, A/54/38/Rev.1, chap. I (20th session period, 1999), available at <http://www.refworld.org/docid/453882a73.html>.

<sup>39</sup> Id. 27.

**Tobacco Survey GYTS 2012).** For example, in the City of Buenos Aires<sup>40</sup> and Buenos Aires Province<sup>41</sup>, results showed that despite the laws that establish smoke-free environments, people are still exposed to tobacco secondhand smoke. **Another study<sup>42</sup> showed that in 25 cities in Argentina exposure to tobacco smoke was significantly higher in young people and women, even cities with smoke free policies.**

Clearly, despite the presence of smoke free regulation, monitoring and enforcement are deficient at both national and provincial levels. **By strengthening these mechanisms, the population, and especially women, would be protected from the harmful effects of tobacco smoke.** Additionally, smoke-free environments laws also reduce tobacco consumption by discouraging initiation by young people and non-smokers and by helping motivate smokers to quit.

#### **(d) Tobacco prices and consumption**

Tobacco taxes are the most cost effective way to reduce tobacco consumption and generate revenue to treat women and girls who have become addicted to tobacco products. In 2011, the Committee on Economic, Social and Cultural Rights, concerned about the high level of tobacco use in Argentina, recommended the State to “*develop effective public awareness and tax and pricing policies to reduce tobacco consumption, in particular targeting women and youth.*”<sup>43</sup> Prices of cigarettes, which can easily be increased with taxes, are a strong determinant of consumption levels, specifically among young women. **An increase of 10% in the real price of cigarettes induces a delay in the smoking onset in about 4% of men, whereas the same policy has a positive impact in 5.6% of women.**<sup>44</sup>

Cigarettes in Argentina are among the cheapest and most affordable in the world and the Latin-American region.<sup>45</sup> Although, “[s]tudies of the individual and combined effects of various policies showed that increasing the price of tobacco products through excise taxes or duty tariffs constitutes by far the most important policy tool available.”<sup>46</sup> In 2016, the Government implemented a decree that increased tobacco taxes slightly reducing the affordability of cigarettes<sup>47</sup>. However, the increase did not include all

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<sup>40</sup> FIC Argentina, Public opinion survey in the City of Buenos Aires. Opinions, attitudes and behaviors around Smoke-Free Environments laws, 2013. Available at:

[http://ficargentina.org/index.php?option=com\\_content&view=article&id=299%3Aencuesta-de-opinion-publica-en-la-ciudad-de-buenos-aires-2013&catid=11%3Aambientes-100-libres-de-humo&Itemid=22&lang=es](http://ficargentina.org/index.php?option=com_content&view=article&id=299%3Aencuesta-de-opinion-publica-en-la-ciudad-de-buenos-aires-2013&catid=11%3Aambientes-100-libres-de-humo&Itemid=22&lang=es)

<sup>41</sup> FIC Argentina, 100% smoke free environments in Buenos Aires and Gran La Plata: Legislation features and enforcement, 2014. Available at:

[http://www.ficargentina.org/images/stories/Documentos/encuesta\\_alh\\_conurbano\\_laplata\\_11\\_2014.pdf](http://www.ficargentina.org/images/stories/Documentos/encuesta_alh_conurbano_laplata_11_2014.pdf)

<sup>42</sup> Schoj V, Allemandi L, Ianovsky O, Lago M, Alderete M. Smoke-free environments: age, sex, and educational disparity in 25 Argentinean cities. *Cancer Causes & Control*. 2012;23(10):1607-14.

<sup>43</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights on Argentina, E/C.12/ARG/CO/3 ¶ 23 (Dec. 2, 2011).

<sup>44</sup> Martín González Rozada; Giselle Montamat. How increasing tobacco prices affects the decision to start and quit smoking: evidence from Argentina. Universidad Torcuato Di Tella. September 2015.

<sup>45</sup> Eriksen M, J. Mackay, & H. Ross. *The Tobacco Atlas*: American Cancer Society and World Lung Foundation; 2013.

<sup>46</sup> *WTO Agreements & Public Health: A Joint Study by the WHO and the WTO Secretariat*, WHO AND WORLD TRADE ORGANIZATION. P. 72 (2002). Available at [https://www.wto.org/english/res\\_e/booksp\\_e/who\\_wto\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/who_wto_e.pdf).

<sup>47</sup> Decree 626/2016 available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/260938/norma.htm>

tobacco products and it allowed the industry to raise the prices of some trademarks and not all of them. This situation created a breach between premium and cheaper products.

In this context, several smokers are substituting from smoking premium trademarks to cheaper ones, and the tobacco industry is advertising strongly cheaper cigarettes. This strategy from the industry is undermining governmental efforts to reduce tobacco consumption by raising tobacco prices. In addition, it is important to mention that this decree will be applicable until December 2016. Consequently, the Government has to pass a law ratifying the decree before its due date, including all tobacco products and an updating mechanism, in order to make the tax increase sustainable. **A comprehensive, national-level tobacco control law must include a stringent taxing scheme on tobacco products, including all tobacco products. In addition, it must include a control mechanism that prevents the industry from implementing prices strategies that weaken the public health measure.**

#### **(e) Provincial and Sub-National Laws and Regulations Addressing Tobacco Control**

It is important to address that Argentina is a country with a federal political system. Argentina's National Constitution establishes in Article 31:

*“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...”*

Many sub-national governments established regulations aimed at reducing the negative impacts of the tobacco epidemic in their respective jurisdictions. In this context, provinces like Santa Fe, Neuquén, La Pampa, San Luis and Santa Cruz, enacted regulations establishing smoke-free environments and total bans of advertising, promotion and sponsorship. However, at a practical level, the implementation of provincial tobacco control laws is not good since governments are not enforcing the law. In a context of multiple legal frameworks with a weak implementation, the tobacco industry continues to market its products regardless of the restrictions established by law<sup>48 49</sup>.

**There are still some provinces (in particular tobacco grower provinces) that have not passed any tobacco control regulation, and others that are not enforcing the minimum standards contained in law 26,687.** In this context, clear policies from the Federal Government are needed to guarantee the effective implementation of the current legislation across the country. In addition, these policies could promote the adoption of tobacco control measures in those provinces that are not enforcing at least the minimum standards adopted by the national tobacco control law 26,687 or even more protective

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<sup>48</sup> Id. 28

<sup>49</sup> Id. 26

measurements

Indeed, in 2010, CEDAW addressed these issues, highlighting the responsibility of the federal government to ensure that sub-national governments take action required to fully implement and enforce the Convention:

*11. While the Committee is cognizant of the complex federal constitutional structures of the State party, it underlines that the federal Government is responsible for ensuring the implementation of the Convention and providing leadership to the provincial and territorial governments in that context. The Committee expresses its concern that the federal Government lacks an efficient mechanism to ensure that the provincial governments establish legal and other measures to fully implement the Convention in a coherent and consistent manner.*

*12. The Committee, taking into account the responsibility of the federal Government for the implementation of the Convention, urges the State party to establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the Convention throughout its territory, in which all levels of government — national, provincial and municipal — participate<sup>50</sup>.*

**The same criteria can be applied for tobacco control laws and regulations, which should assure a minimum protection throughout the country, including effective coordinating mechanisms between the federal and sub-national governments.**

The delay in the ratification of the FCTC only deepens the legislative vacuum. The FCTC guiding principle in Article 4.2(d) emphasizes the need to take measures to address gender-specific risks by the creation of tobacco control strategies, which of course includes the sub-national and provincial levels. **Women and girls are being left behind in the efforts to fight the tobacco epidemic by the reluctance of the national government to adopt adequate policies, a trend also evident at the sub-national level.**

### **III. ARGENTINA'S DUTY TO PROTECT WOMEN'S HEALTH**

Argentina's obligation to protect women's health is contained in both the National Constitution and in the international human rights treaties that enjoy a constitutional hierarchy due to their incorporation in the domestic system.

Among the international law context, Argentina's obligations regarding right to health can be found in two types of sources: International treaties and the interpretative

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<sup>50</sup> CEDAW (2010). Concluding observations of the Committee on the Elimination of Discrimination against Women. Argentina.

guidelines of those same instruments produced by authoritative sources, such as the CEDAW Committee.

**(a) Argentina's duty to protect women's health according to national legislation**

The right to health is contained in different provisions of Argentina's National Constitution. Article 41 of the constitution guarantees a right of all inhabitants "*to a healthy, balanced environment, apt for human development and for productive activities which meet their present needs without compromising those of future generations (...)*". **This article addresses the individual aspects of the right to health, in addition to its collective or communal features, which are both affected by the activities of the tobacco industry.** Furthermore, the link between the right to health and the right to a safe environment contained in Article 41 informs why the State is urgently required to strengthen its policies addressing tobacco control and to prevent the expansion of the tobacco industry.

Additionally, Article 42 explicitly protects the right to health when referring to consumer's rights in the following terms: "*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 (...)*." **The connection between consumer rights and the right to health, as expressed in the Constitution, reaffirms Argentina's obligation to protect its women and girls from the deceptive marketing tactics that the tobacco industries are specifically directing towards them.**

Finally, article 75 of the Constitution, subsection 22, grants special hierarchy to a list of international human rights treaties and affords them a higher status in the domestic system than that conferred upon national laws. In that sense, international instruments, which guarantee the right to health, such as the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW Convention"), the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights, are considered as binding as any other constitutional provision.

**(b) Argentina's obligation under CEDAW to Protect Women and Girls from the tobacco epidemic.**

CEDAW imposes the obligation on States Parties to adopt measures for the 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.

Therefore, Argentina is obligated under CEDAW to shield women and girls from the harms of Non-Communicable Diseases, in particular from the harmful consequences of tobacco consumption and secondhand smoke exposure. NCDs are the leading cause of

death in Argentina<sup>51</sup> being rampant among women, due in part to high rates of smoking and tobacco use. Tobacco use can also lead to cancers of the “mouth, throat, larynx, blood, lungs, stomach, pancreas, kidney, bladder, and cervix.”<sup>52</sup>

**The CEDAW Convention imposes the obligation on States Parties to adopt measures for the inclusion of the right to women’s health into national legislation as a means to prevent discrimination and to promote equality. Article 3 compels States to take all appropriate measures to ensure women can exercise and enjoy their fundamental rights, especially those in the social, economic, and cultural fields. Article 10(h) guarantees access to educational information to ensure the health and well-being of their families. Article 11.1(f) obligates States to protect the right to health of women in the workplace, which also includes providing them with a healthy work environment that for example, does not promote habits such as tobacco use.**

Article 12 of CEDAW provides women with the most critical protections. It reads:

*1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*

In other words, **Article 12 of the CEDAW Convention imposes a two-fold obligation on Party States: it must include women’s health in domestic legislation and policies, while simultaneously eliminating the barriers that prevent women and girls from achieving the highest attainable level of health and well-being. These obligations can only be fulfilled by the implementation of stringent prevention measures against tobacco use, which the Argentine government has failed to achieve since its last review before the Committee.**

### **(c) Other International Instruments**

General Comment 24 (“General Comment”) on women and health, adopted in 1999 by the CEDAW Committee, recognizes that there are societal factors that determine more favorable or detrimental health outcomes for women and girls.<sup>53</sup> These factors do not respond to the biological differences between men and women, but rather to the political and cultural value that is assigned to their health and well-being by the State. **Therefore, governments should take appropriate measures, whether preventive or corrective, if women’s health fares worse than that of their male counterparts.**

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<sup>51</sup> *Non-Communicable Diseases in Argentina*, FIC ARGENTINA, [http://www.ficargentina.org/index.php?option=com\\_content&view=category&id=76&Itemid=52&lang=en](http://www.ficargentina.org/index.php?option=com_content&view=category&id=76&Itemid=52&lang=en).

<sup>52</sup> *Drugs, Brains, and Behavior: The Science of Addiction, Addiction and Health*, NATIONAL INSTITUTES OF HEALTH, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/addiction-health>.

<sup>53</sup> General Comment 24, U.N. GAOR, Hum. Rts. Comm., 52d sess., p. 6. Available at <http://www1.umn.edu/humanrts/gencomm/hrcom24.htm> [hereinafter General Comment 24].



Paragraph 31 of the General Comment places women in the center of the creation and implementation of new government policies:

31. States parties should also, in particular:

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

The General Comment also refers to the obligation of the State to produce reliable data regarding health conditions that disproportionately affect women and girls in Argentina, such as certain NCDs. It reads:

*10. States parties are encouraged to include in their reports 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.*

Reinforcing the obligation of the State contained in Article 42 of its Constitution, paragraph 31(b) of the General Comment also concerns the connection between women's health and access to information and education. It requires States Parties to:

*(b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;*

In addition to this, general Comment 14 of the ICESCR Committee recognizes three types of obligations on Party States: Respect (refrain from interfering); protect (take measures to prevent future violations) and fulfill (adopt positive measures to promote the rights).<sup>54</sup> According to the ICESCR Committee, the right to health can only be attained if the services or initiatives created to guarantee the right meet the elements of availability, accessibility, acceptability, and quality.<sup>55</sup> These elements gain a special importance in the case of upholding the right to health of women and girls. Campaigns should be designed with a gendered focus in order to reach that segment of the population. **The government must also be attentive and impede any initiative led by individuals or organizations that particularly targets women and girls to harm their health, such as aggressive tobacco advertising.**

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<sup>54</sup> ESCR Committee, General Comment N<sup>o</sup>. 14, The Right to the Highest Attainable Standard of Health, P. 33, U.N. Doc. E/C.12/2000/4 (Nov. 8, 2000), available at <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

<sup>55</sup> *Id.* 54 at parr. 12.

Despite the fact that in the Americas NCDs seem to currently affect men and women equally, **the World Health Organization (WHO) anticipates that the biggest rate of NCD growth will be in women.**<sup>56</sup> According to the Pan-American Health Organization (“PAHO”), gender norms and other social constructs play a key role in understanding the present and the future outcomes of NCDs in women and girls.<sup>57</sup> Social customs which reduce women’s physical mobility or range of activities can draw them towards tobacco consumption.<sup>58</sup> **Cigarette manufacturers have detected wide gaps in national policies and have used these gender gaps to advertise smoking as a way of “empowering” or “liberating” women.**<sup>59</sup>

Furthermore, the United Nations has recognized the importance of the right to health by incorporating it into the Sustainable Development Goals. “*Goal 3: Ensure healthy lives and promote well-being for all at all ages*” *compels States to work on a list of indicators to achieve this development agenda. One of the priority targets is to “[s]trengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries.”*<sup>60</sup> **Argentina also recognized the importance of this Agenda in its last submission before this Committee, even though it has not ratified the FCTC.**<sup>61</sup>

108. (...) is a priority objective of the Post-2015 Development Agenda; and it is expressing this view in the different international forums in which it participates. It also believes that the main basis of the Post-2015 Development Agenda should arise from the Sustainable Development Goals recently agreed upon by the States parties of United Nations, following the recent adoption of General Assembly resolution 68/309.

Finally, regarding other international obligations undertaken by the State, it is important to note that Argentina has been a Party to the American Convention on Human Rights since September 5, 1984 and accepted the contentious jurisdiction of the Inter-American Court of Human Rights (“Inter-American Court”) on that same date. Chapter III of the American Convention concerns “Economic, Social, and Cultural Rights.” The Chapter includes article 26 as the most important provision that guarantees the right to health,

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<sup>56</sup> *Gender, Health, and Ageing*, WHO (2003). Available at <http://www.who.int/gender-equity-rights/knowledge/a85586/en/>.

<sup>57</sup> Pan American Health Organization [PAHO], Non-communicable diseases and gender, available at [http://www.paho.org/hq/index.php?option=com\\_docman&task=doc\\_view&gid=17118&Itemid=](http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=17118&Itemid=).

<sup>58</sup> *Id.* 57

<sup>59</sup> Pathania, Vikram S, Women and the Smoking Epidemic: Turning the Tide, 89 Bull. World Health Org., 161, 162 (2011). Available at <http://www.who.int/bulletin/volumes/89/3/11-086389/en/>.

<sup>60</sup> Open Working Group for Sustainable Dev. Goals, Outcome Document (2014), Goal 3, available at [http://sustainabledevelopment.un.org/content/documents/4518SDGs\\_FINAL\\_Proposal%20of%20OWG\\_19%20July%20at%201320hrsver3.pdf](http://sustainabledevelopment.un.org/content/documents/4518SDGs_FINAL_Proposal%20of%20OWG_19%20July%20at%201320hrsver3.pdf).

<sup>61</sup> *Consideration of reports submitted by States parties under article 18 of the Convention*, CEDAW/C/ARG/7. p 38. Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fARG%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fARG%2f7&Lang=en) [hereinafter Consideration of States Parties Reports].

commanding States to achieve progressively, by legislation or other appropriate means, the full realization of this right.<sup>62</sup>

The Inter-American Court's jurisprudence has established that Article 26 can only be understood by incorporating the standards set forth in the American Declaration and the Charter of the Organization of American States ("OAS Charter") as amended by the Protocol of Buenos Aires.<sup>63</sup> The OAS charter, Article 34(i), includes within its goals of integral development the protection of women and men's "*potential through the extension and application of modern medical science*," which also entails the protection of their right to health. The Inter-American Court has also reiterated that there is a duty of non-regression in economic and social rights, including the right to health.<sup>64</sup> **This obligation compels Argentina's government to block any private initiative from the tobacco industry that constitutes a regression on the protection of women and girls from developing NCDs.**

## V. CONCLUSIONS AND RECOMMENDATIONS

In the first section of this report we have presented the situation of tobacco epidemic among women and girls in Argentina. We have provided evidence of the weaknesses of Argentina's current laws, policies, and their implementation. Also, we have suggested strategies that can be easily undertaken by the government to combat the rampant tobacco use among women and girls, such as the ratification of the FCTC.

Finally, we have highlighted how the obligation to protect the right to health stems from both the National Constitution and from international human rights treaties that have been ratified by Argentina. We also analyzed other documents produced by interpretative authorities, which provide further content to the obligation of Argentina to protect women and girls from the tobacco epidemic.

**For the reasons outlined above, we conclude that the national Argentine tobacco control framework does not fulfill Argentina's obligation under the CEDAW Convention to protect women's health.** We therefore respectfully request this Committee to take our analysis and suggestions into account and to consider making the following recommendations to the government of Argentina:

1. The government of Argentina must ratify the FCTC. Ratifying the FCTC would provide the government with better tools to protect women's health.

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<sup>62</sup> American Convention on Human Rights, opened for signature Nov. 22, 1969, 36 O.A.S.T.S. (entered into force July 18, 1978) [hereinafter American Convention].

<sup>63</sup> Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of the Man Within the Framework of Article 64 of the American Convention on Human Rights, Inter-Am. Ct. H.R. (July 14, 1989), para. 20, available at [http://www.corteidh.or.cr/docs/opinion/es/seria\\_10\\_ing1.pdf](http://www.corteidh.or.cr/docs/opinion/es/seria_10_ing1.pdf).

<sup>64</sup> *Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru*, Reparations & costs, Inter-Am. Ct. H.R. (ser. C) No. 198 (Jul 1, 2009).

2. The government of Argentina must ban all forms of advertising, promotion and sponsorship of tobacco product according to the FCTC standards in order to prevent the tobacco industry to implement marketing strategies targeting women and girls.
3. The government of Argentina should raise the taxes and prices of tobacco products through an effective and sustainable taxation policy addressed to protect public health according to the international standards from the FCTC. Women and girls would be greatly benefitted from this policy.
4. The government of Argentina must regulate tobacco contents and ban the use of flavors and additives on tobacco products, according to the FCTC standards, in order to prevent the tobacco industry from targeting women with tobacco flavored products.
5. The government of Argentina should promote the adoption of strong tobacco control policies at the sub-national level in order for provinces to meet the minimum standards to protect women's health. These sub-national policies can be stricter than those adopted at the national level.