

NOTE

This report was prepared in collaboration between the McCabe Centre for Law and Cancer, in the exercise of its functions as a Knowledge Hub on legal challenges to implementation of the WHO FCTC, and the International Legal Consortium of the Campaign for Tobacco-Free Kids (CTFK), an observer to the Conference of the Parties at the request of Professor Geoffrey T. Fong (Technical Advisor and member of the Expert Group) to inform the work of the WHO FCTC Expert Group on Impact Assessment. The report was prepared to inform the Expert Group deliberations at its first meeting held on August 10-11, 2015. In light of the limited time that was available, the report should not be considered a comprehensive analysis of the relevant issues.

Please note that the Convention Secretariat is placing this report on its website for informational purposes. Neither the Convention Secretariat nor the Impact Assessment Expert group guarantees the accuracy or completeness of information found in this report.



Report on WHO FCTC in Legislation and Litigation

by

**McCabe Centre for Law and Cancer and
the Campaign for Tobacco-Free Kids**

August 7, 2015



Report on WHO FCTC in Legislation and Litigation

This report has been prepared at the request of Professor Geoffrey Fong to inform the work of the WHO FCTC Expert Group on Impact Assessment. It primarily addresses two aspects of the Expert Group's mandate, which are outlined in paragraphs 9 and 10 of the Convention Secretariat's Report to the sixth session of the Conference of the Parties 'Impact assessment of the WHO FCTC' (FCTC/COP/6/15), namely:

- the impact of the Convention, as an international legal instrument, in protecting Parties' tobacco control measures from the legal challenges brought against such measures and
- the impact of the Convention on strengthening national tobacco control legislation and policies

This report has been prepared in collaboration between the McCabe Centre for Law and Cancer, in the exercise of its WHO FCTC knowledge hub functions, and the International Legal Consortium of the Campaign for Tobacco-Free Kids (CTFK), an observer to the Conference of the Parties. Part I – use of the WHO FCTC in domestic and international litigation – was led by the McCabe Centre. Part II – Legislation that references the WHO FCTC – was led by CTFK.

The report is intended to inform the Expert Group in deliberations at its first meeting. In light of the limited time that was available, the paper does not represent a comprehensive analysis of the relevant issues. The McCabe Centre and CTFK would be pleased to conduct further analysis to assist the Expert Group as it continues its work in the lead-up to the seventh session of the Conference of the Parties.

PART I - USE OF THE WHO FCTC IN DOMESTIC AND INTERNATIONAL LITIGATION

This Part focuses on the use of the WHO FCTC in domestic litigation across countries that are Parties to the Convention, and in international fora (the World Trade Organisation (WTO) and Investor-State Dispute Settlement proceedings)¹.

Analysis indicates extensive geographical breadth in the use of the WHO FCTC spanning the WHO Regions and World Bank income groups, by governments facing legal challenges to tobacco control measures from the tobacco industry and others, by civil society in seeking to hold governments accountable to their obligations under Convention, and by tribunals and courts in handing down decisions on a broad spectrum of tobacco control measures, including bans on tobacco advertising, sponsorship and promotion, the implementation of plain packaging and bans on smoking in workplaces and public places. The WHO FCTC has also been invoked by two Parties, Australia and Uruguay, in defending their tobacco control measures in the WTO and under international investment law. These cases are pending. Their resolution will be important to further understanding the impact of the Convention as an international legal instrument.

We divide our analysis into three broad thematic categories of WHO FCTC use: in the defence of tobacco control measures against legal challenges in domestic jurisdictions; by civil society organisations seeking to compel higher standards of tobacco control; and by Parties defending challenges to tobacco control measures under international trade and investment agreements.

1. Use of the WHO FCTC to defend tobacco measures being challenged

A review of litigation reveals the invocation of the WHO FCTC by governments in defending legal challenges to tobacco control measures, and by Courts in the determination of these cases in four broad ways: as imposing an obligation on Parties to implement tobacco control measures; as relevant to the interpretation and application of domestically applicable constitutions and other laws; as establishing international norms of which the Courts in individual Parties take note; and as a source of evidence.

a. Illustration of an obligation to enact tobacco control measures

The WHO FCTC has been extensively invoked in litigation by Parties as the basis of an obligation to implement tobacco control measures.

In the South African case of *BATSA v Minister of Health*², the Supreme Court of Appeal considered the interpretation of a ban on advertising and promotion of tobacco products

¹ The methodology on the final page of the report provides a list of the countries examined for the purposes of the analysis.

within the *Tobacco Products Control Act*³. The Court ultimately upheld the ban, stating that the resultant limitation on the tobacco industry's freedom of commercial speech was reasonably justified. In the judgement, Mthiyane DP⁴ recognised South Africa's status as a Party to the WHO FCTC and that the objectives of the domestic tobacco control legislation included ensuring that South Africa complied with its obligations under the Convention, stating:

*'I do not think that it was open to the Minister and the legislature to ignore the Framework Convention when considering what steps to take to deal with the risks posed by tobacco use.'*⁵

In the Sri Lankan case of *Ceylon Tobacco Co v Minister of Health*⁶, the Court of Appeal considered regulations designed to implement, amongst other measures, pictorial health warnings on 80% of tobacco packaging. The Ceylon Tobacco Company challenged the regulations, arguing that: the parent Act – the National Authority on Tobacco and Alcohol Act ('NATA' Act) – did not empower the Minister to make the regulations in question (i.e. the regulations were ultra vires); and that the regulations were unreasonable and disproportionate, impossible to comply with, ambiguous, breached rules of natural justice and subverted intellectual property rights of the tobacco company.

The Respondents – the Ministry of Health and National Authority on Tobacco and Alcohol – referred to the preamble of the WHO FCTC, in particular serious concern about the increase in the worldwide consumption and production of cigarettes, Article 8 and Article 11 of the Convention, and Sri Lanka's obligation to implement the relevant measures as a Party to the Convention⁷. The Respondents highlighted the importance of construing the NATA Act in the context of International Treaties and Conventions which had been ratified and signed by Sri Lanka.

The Sri Lankan Court of Appeal upheld the regulations requiring pictorial health warnings but ordered that the size of the warnings be reduced from the prescribed 80% to between 50% and 60%. In interpreting the definition of 'health warning' for the purposes of section 34 of the NATA Act and determining whether the regulations were ultra vires, the court stated that, whilst there was no specific reference to 'pictorial' health warnings in the Act, the Act could not be given a narrow restricted meaning. It was the duty of the court to give an interpretation in keeping with the intention of the legislature⁸. The Court held that there was a need to interpret domestic law in harmony with Sri Lanka's international commitments 'even in cases where no specific domestic law had been enacted to give effect to its international obligations.'⁹ The Court took the WHO FCTC, including its Article 11 Guidelines into account, stating that in light of both documents:

² *BATSA v Minister of Health* (463/2011) [2012] ZASCA 107 (20 June 2012)

³ 83 of 1993

⁴ Deputy President, with Farlam, Malan, Tshiqi JJA and McLaren AJA concurring

⁵ *BATSA v Minister of Health* (463/2011) [2012] ZASCA 107 (20 June 2012)

pg. 13

⁶ CA 336/2012 (Writ), Court of Appeal, Sri Lanka, 12 May 2014.

⁷ CA 336/2012 (Writ), Court of Appeal, Sri Lanka, 12 May 2014, page 8 -9

⁸ CA 336/2012 (Writ), Court of Appeal, Sri Lanka, 12 May 2014, page 24

⁹ CA 336/2012 (Writ), Court of Appeal, Sri Lanka, 12 May 2014, page 29

‘...there cannot be any prohibition to convey the message by pictorial health warnings...Our courts recognize international commitments and [relevant articles] of the Constitution endeavor to foster respect for international law and treaty obligation.’¹⁰

In the Peruvian case of *5000 Citizens v Article 3 of Law 28705*¹¹, in a constitutional challenge filed by over 5000 citizens against a ban on tobacco use in enclosed public spaces, the attorney for the Congress of the Republic of Peru argued that the WHO FCTC was part of the legal system in Peru and held ‘constitutional rank’¹², because it was a treaty concerning the right to health. The Constitutional Court agreed with submissions that the WHO FCTC was a human rights treaty, since it sought to clearly, expressly and directly protect the basic right to health protection.¹³ The Court held that the Convention obliged State Parties clearly and directly to take steps to optimise its effectiveness¹⁴ and imposed obligations on State Parties towards individuals under their jurisdiction, all of them aimed at the protection of their fundamental right to health¹⁵:

‘...the Convention emphasizes that its basis is “Article 12 of the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 16 December 1966, which states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and “the preamble to the Constitution of the World Health Organization, which states that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.’¹⁶

b. In the interpretation of domestically applicable Constitutions and other laws

The WHO FCTC has been judicially recognised as an important instrument to support the protection of the right to health in the interpretation of domestically applicable constitutions and laws, and the restriction of rights or interests claimed by the tobacco industry and others.

¹⁰ CA 336/2012 (Writ), Court of Appeal, Sri Lanka, 12 May 2014, page 30

¹¹ *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011). Unofficial translation

¹² *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011), section III (2). Unofficial translation available at <http://www.tobaccocontrollaws.org/litigation/decisions/pe-20110719-5000-citizens-v.-article-3-of->

¹³ *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011), [para 67]. Unofficial translation

¹⁴ *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011), [para 69]. Unofficial translation

¹⁵ *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011), [para 71] Unofficial translation

¹⁶ *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011).para 67.

In the case of *Philip Morris Norway v Health and Care Services of Norway*¹⁷, proceedings were brought before the Oslo District Court in relation to a prohibition on the visible display of tobacco products. Philip Morris argued that this prohibition constituted an 'unlawful restriction' under Article 11 of the European Economic Area ('EEA') Agreement by imposing a measure that had an effect equivalent to that of a quantitative import restriction. Article 13 of the EEA Agreement provided an exception where the measure was suitable for attaining a stipulated public health objective and did not go further than necessary to attain that objective. In defending the law, the Norwegian Government argued that it did not constitute a restriction for the purposes of Article 11 of the EEA Agreement, and, in any event, was a measure that addressed a legitimate concern, and was suitable and necessary. The Norwegian Government highlighted that in the Article 13 guidelines to the WHO FCTC, a ban on the display of tobacco was recommended to achieve a comprehensive advertising ban.

In supporting the Norwegian Government's defence as *amicus curiae* (friend of the Court), the Norwegian Cancer Society made extensive reference to the WHO FCTC including the extent of its ratification, its relevance as an interpretative tool to understand public health legislation and the EEA, and for providing support for display bans as a suitable and necessary measure.¹⁸

The District Court ultimately found that the Display Ban was not a restriction within the meaning of the EEA Agreement Article 11 and the measure was, in any event, a suitable and necessary measure in light of the criteria of Article 13 of the EEA Agreement to protect public health and that no less interventionist measure could have yielded a corresponding result. In considering the suitability of the measure, the Court found that it was 'accepted knowledge'¹⁹ that tobacco advertising had an impact on consumption, with this premise being found in the WHO FCTC and specifically Article 13 of the Convention. The Court's decision laid out provisions in the Guidelines on implementation of Article 13 of the Convention, including their recognition that the display of products at points of sale constitutes advertising and promotion, and their recommendation that Parties ban displays at point of sale.

Extensive case law in the Region of the Americas has recognised the importance of the WHO FCTC in giving content to domestic human rights instruments, including by supporting limitations on rights such as the rights to property, commercial enterprise, commerce, and free personal development claimed by the tobacco industry and others.

In the Peruvian case of *5000 Citizens v Article 3 of Law 28705*²⁰ mentioned earlier, the applicants alleged that the ban on tobacco use in all enclosed public spaces in the country

¹⁷ *Philip Morris Norway v Health and Care Services of Norway*, Civil Action No 10-041388TVI-OTIR/02, September 14, 2012

¹⁸ *Philip Morris Norway v Health and Care Services of Norway*, Civil Action No 10-041388TVI-OTIR/02, September 14, 2012 pg. 28 (Unofficial translation http://www.tobaccocontrollaws.org/files/live/litigation/1024/NO_Philip%20Morris%20Norway%20v.%20Health.pdf)

¹⁹ *Philip Morris Norway v Health and Care Services of Norway*, Civil Action No 10-041388TVI-OTIR/02, September 14, 2012, pg. 49 (Unofficial translation)

²⁰ *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011).

unreasonably restricted the right of smokers to free personal development, the right to free private enterprise and free trade.²¹ In recognising the WHO FCTC as a human rights treaty, the Constitutional Court of Peru found that the rights claimed by the applicants were not absolute rights but could be validly limited by other rights such as the right to health, through implementation of the WHO FCTC. The Constitutional Court concluded that there were no less restrictive measures that would allow the substantial reduction of tobacco use with equal suitability or satisfaction in accordance with Article 3 of the WHO FCTC.²²

In Costa Rica, the Constitutional Court considered the constitutionality of Costa Rican tobacco control legislation²³ that included a ban on advertising, promotion and sponsorship of tobacco products. The tobacco companies argued that as the cultivation, industrialisation, commercialisation and consumption of tobacco products were legal under the Constitution, it was not possible to impose indirect restrictions by law that had the effect of banning this activity. The Court found that the law constituted a restriction on tobacco advertising, and not a ban on tobacco consumption. It stated that the norm, based on WHO FCTC and in particular the preamble and Article 13, to protect fundamental rights such as the right to protect public health was not only legally permissible but was in accordance with the Constitutional Law on Human Rights²⁴.

In the Colombian case of *Caceres Corrales v Colombia*,²⁵ the Constitutional Court of Colombia upheld a comprehensive ban on the advertising and promotion of tobacco products, stating that the prohibition permissibly restricted commercial speech because it was proportional to the aim of discouraging tobacco consumption. The Court made significant reference to the WHO FCTC, outlining the Convention's definition of tobacco advertising promotion and sponsorship, the nexus between tobacco consumption and advertising, promotion and sponsorship recognised in Article 13 of the FCTC and its guidelines, and the obligation to implement a comprehensive ban. The Court highlighted the duties of Parties to the Convention, including Colombia. The Court held 'the undeniable restrictions of the economic freedoms implied by the bans in question is intended to meet social objectives of first order such as the conservation of public health and of the environment.'²⁶ In acknowledging the suitability of the measure, the court made explicit reference to the guidelines for Article 13 of the FCTC and stated that:

²¹ *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011), section III (1) (unofficial translation)

²² *5000 Citizens v. Article 3 of Law N.º 28705*, EXP. N.º 00032-2010-PI/TC, Tribunal Constitucional del Perú [Constitutional Court](2011).para 118

²³ *Legislative Consultation with Constitutional Division of the Supreme Court*, No. 2012-003918, Constitutional Division of the Supreme Court (2012)

²⁴ *Legislative Consultation with Constitutional Division of the Supreme Court*, No. 2012-003918, Constitutional Division of the Supreme Court (2012), Section V 'Objection to the regulation of advertising, promotion and sponsorship by tobacco products'. (Unofficial Translation, available at http://www.tobaccocontrolaws.org/files/live/litigation/830/CR_Legislative%20Consultation%20with%200.pdf)

²⁵ *Caceres Corrales v. Colombia*, Judgment C-830/10, Corte Constitucional de Colombia [Constitutional Court] (2010)

²⁶ *Caceres Corrales v. Colombia*, Judgment C-830/10, Corte Constitucional de Colombia [Constitutional Court] (2010), pg 54, [para 28]. (Unofficial translation available at : http://www.tobaccocontrolaws.org/files/live/litigation/271/CO_Caceres%20Corrales%20v.%20Colombia.pdf)

*'The suitability of the measure with the proposed purpose shall also be confirmed based on the interpretation of the rules of international law applicable to the matter, which stated that the most effective manner of dissuading the consumption of tobacco is a comprehensive ban on the various modalities of the advertising message.'*²⁷

Two additional Colombian decisions have relied on WHO FCTC Guidelines for Implementation for the interpretation of domestic laws. *Compañía Colombiana de Tabaco S.A. (COLTABACO) v. Coljuegos*²⁸ and *British American Tobacco - Colombia v. Coljuegos*²⁹ concerned a prohibition on tobacco companies using promotional strategies, such as raffles, at the point of sale, under a general ban on tobacco advertising, promotion and sponsorship. The decisions refer to the Guidelines for the implementation of Article 13 as authority that 'promotion' may encompass activities that would constitute 'indirect' promotion. The decisions state that the Guidelines to Article 13 were approved by the parties to the WHO FCTC and thus constitute a valid standard for its interpretation,³⁰ in accordance with the Vienna Convention on the Law of Treaties,³¹ as a subsequent agreement.

A challenge to the constitutionality of Guatemala's smoke-free law as a violation of freedom of industry and commerce was also dismissed in recognition of a constitutional right to health, with reference made to the WHO FCTC³². The Court noted that the State of Guatemala recognised the right to health in its political constitution, and held that to comply with this mandate, state authorities implemented a series of public policies including signature and ratification of the WHO FCTC³³ as a means of recognising the right to health as a fundamental human right.

In Panama, the Supreme Court of Justice³⁴ ruled that an Executive Decree that explicitly included the display of tobacco products at the point of sale under an existing ban on tobacco advertising, promotion and sponsorship complied with the Constitution of Panama. British American Tobacco Panama argued that the Decree infringed a number of constitutional provisions including the right to freedom of expression, the right to private property, freedom of choice and free competition and free market. The Prosecutor General for Panama stated that the Decree ensured Panama's compliance with international treaty obligations, citing the Guidelines to implementation of Article 13 of the WHO FCTC as supporting evidence. BAT counter-argued that Article 13 did not obligate a tobacco display ban if not authorized due to constitutional provisions. The Supreme Court ruled that freedom

²⁷ *Caceres Corrales v. Colombia*, Judgment C-830/10, Corte Constitucional de Colombia [Constitutional Court] (2010), pg 56, [para 29.2] (Unofficial translation).

²⁸ *Compañía Colombiana de Tabaco S.A. (COLTABACO) v. Coljuegos*, Coljuegos, February 12, 2014

²⁹ *British American Tobacco - Colombia v. Coljuegos*, Coljuegos February 12, 2014

³⁰ *Compañía Colombiana de Tabaco S.A. (COLTABACO) v. Coljuegos*, Coljuegos, 2014, pg. 5, *British American Tobacco - Colombia v. Coljuegos*, Coljuegos, 2014, pg. 5

³¹ *Compañía Colombiana de Tabaco S.A. (COLTABACO) v. Coljuegos*, Coljuegos, 2014, pg. 7, *British American Tobacco - Colombia v. Coljuegos*, Coljuegos, 2014, pg. 7

³² *Guatemala Chamber of Commerce v Guatemala*. Case 2158-2009 (2009)

³³ *Guatemala Chamber of Commerce v Guatemala*. Case 2158-2009 (2009), page 14. (Unofficial translation, available at

http://www.tobaccocontrolaws.org/files/live/litigation/267/GT_Guatemala%20Chamber%20of%20Commerce%20.pdf)

³⁴ *Rodriguez Robles & Espinosa on behalf of British American Tobacco Panama, S.A v. The Ministry of Health*, Docket No. 192 -11, Supreme Court of Justice (2014).

of expression was not an absolute freedom but could be limited under fair parameters, particularly where other constitutionally protected rights, such as the right to health, were invoked. The Court also held that the provisions under challenge did not infringe the right to private property, as BAT Panama was still able to use, commercialise, contract and engage in other activities with its tobacco products. The Court held that the Decree did not restrict rights to information to enable freedom of choice as, upon purchasing the product, the consumer would have access to requisite information, and that the limitations imposed by the display ban did not in any way impede competition by buyers and sellers in the market.

In the Brazilian case of *Sindicato da indústria do fumo no Estado do Rio Grande do Sul v. Agência Nacional de Vigilância Sanitária (ANVISA)*,³⁵ the tobacco industry union alleged that health warnings were, amongst a list of concerns, excessively and disproportionately shocking. In upholding the proportionality of the tobacco control measure, the Regional Federal Court of the 4th Region referred to the fact that Brazil had ratified the WHO FCTC and that, in the interests of promoting public health, the Convention supported the adoption of health warnings, explicitly including citations to Articles 2, 3, 4,7,11 and 13 of the WHO FCTC in its decision³⁶.

In the Turkish case of *Izmir Association of Coffeehouses v. Prime Minister*³⁷, the Constitutional Court rejected a challenge brought by coffee shop owners against the application of national smoke free laws to all restaurants including coffeehouses. The owners had claimed the law violated constitutional guarantees of private enterprise, property rights, and equality and the principles of proportionality and necessity. The court rejected these arguments referring to Turkey's obligations under the WHO FCTC, particularly the reflection of Article 8 in local law.

In the Former Yugoslav Republic of Macedonia case of *Miroslav Grcev and Stamen Filipov to the Constitutional Court*,³⁸ the Petitioners challenged the constitutionality of the Anti-Smoking Law, arguing that it violated the constitutional right to equal legal position, freedom of the market, and freedom of movement. The Constitutional Court of Macedonia held that a smoking ban in public places did not infringe on the right to personal autonomy because it did not interfere with the personal decision to smoke but merely regulated it in public places so as to take into account smokers' constitutional duty not to harm non-smokers. In interpreting the law, the Constitutional Court held that the law was aimed at implementing the WHO FCTC and the law was proportional to these aims, and recognized the right to health established by Article 12 of the International Covenant on Economic Social and Cultural Rights and recalled in the preamble to the WHO FCTC.

In the United Kingdom case of *R (on the application of Black) v Secretary of State for Justice*³⁹, a prisoner challenged the application of the ban on smoking in enclosed public

³⁵ *Sindicato da indústria do fumo no Estado do Rio Grande do Sul v. Agência Nacional de Vigilância Sanitária (ANVISA)*, No. 2008.04.00.046270-5, Tribunal Regional Federal da 4a Região [Regional Federal Court of the 4th Region] (2009)

³⁶ *Sindicato da indústria do fumo no Estado do Rio Grande do Sul v. Agência Nacional de Vigilância Sanitária (ANVISA)*, No. 2008.04.00.046270-5, Tribunal Regional Federal da 4a Região [Regional Federal Court of the 4th Region] (2009) Section 8, pg. 21.

³⁷ Main Number 2010/58, Decision Number 2011/8, Issue 27858

³⁸ Case No. 261/2008-0-0 of 16 September 2009, Constitutional Court of Macedonia.

³⁹ [2015] EWHC 528 (Admin)

places and workplaces under the *Health Act* 2006 to prisons, including state prisons. The High Court of Justice⁴⁰ found that the ban did extend to prisons, and in particular state prisons for which the Crown was responsible. In interpreting the *Health Act*, the Court stated that it was important to note the international context in which the Act was to be interpreted, and specifically the fact that the United Kingdom was a Party to the WHO FCTC, which includes Article 8.⁴¹ The Court stated it would be inconsistent with the fundamental objectives of the international framework for there to be a distinction between private prisons and those which were within the state sector⁴².

In the African Region, in the South African case of *BATSA v Minister of Health*⁴³ mentioned above, the Court recognised that the Convention, and the particular tobacco control measure in question, invoked public health considerations that provided a ‘compelling case’⁴⁴ for justifying the limitation on the right to freedom of expression protected in section 16 of the South African constitution:

*‘...in determining whether or not to impose a ban on advertising and promotion of tobacco products the Minister would have been obliged to have regard to the Framework Convention. This Court is therefore obliged, under the Constitution, to give weight to it in determining the question of jurisdiction or the limitation of the right to freedom of speech’*⁴⁵

c. In international norm setting

The WHO FCTC has been cited by courts as establishing international norms and demonstrating international practices, which courts have regarded as relevant to the consideration of the lawfulness of measures in individual jurisdictions.

In the case of *Canada (Attorney General) v. JTI-Macdonald Corp.*,⁴⁶ tobacco companies challenged a law requiring, amongst other measures, graphic health warning labels to occupy 50% of the pack, arguing that the provisions limited their right to freedom of expression. In upholding the law, finding that public health outweighed the companies' freedom of expression, the Court made reference to the international context, stating:

*‘Governments around the world are implementing anti-tobacco measures similar to and, in some cases, more restrictive than Canada’s. The WHO Framework Convention on Tobacco Control (2003)... which Canada ratified in 2004, mandates a comprehensive ban on tobacco promotion, subject to state constitutional requirements’*⁴⁷.

⁴⁰ Queen’s Bench Division, Administrative Court

⁴¹ [2015] EWHC 528 (Admin), para [64].

⁴² [2015] EWHC 528 (Admin), para [67].

⁴³ *BATSA v Minister of Health* (463/2011) [2012] ZASCA 107 (20 June 2012)

⁴⁴ *BATSA v Minister of Health* (463/2011) [2012] ZASCA 107 (20 June 2012) p. 12

⁴⁵ *BATSA v Minister of Health* (463/2011) [2012] ZASCA 107 (20 June 2012), p. 14 para [23]

⁴⁶ *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610, 2007 SCC 30, Supreme Court of Canada (2007)

⁴⁷ *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610, 2007 SCC 30, Supreme Court of Canada (2007), pg. 14, [para 10].

In finding the law reasonable, the Court made reference to measures in other countries:

*'The reasonableness of the government's requirement is supported by the fact that Australia, Belgium, Switzerland, Finland, Singapore and Brazil require warnings at least as large as Canada's, and the minimum size in the European Union is 48 percent of the package. The WHO Framework Convention stipulates that warning labels "should" cover at least 50 percent and "shall" cover at least 30 percent of the package.'*⁴⁸

In the South African case of *British American Tobacco South Africa (Pty) Limited v Minister of Health*⁴⁹ mentioned above, the Court made reference to the fact that South Africa had obligations to implement bans on tobacco advertising and promotion under international law by virtue of the WHO FCTC, and noted that such bans have 'been the practice in many other open and democratic societies'⁵⁰.

In the previously cited Sri Lankan case of *Ceylon Tobacco Co v Minister of Health*, the Court referred to international commitment to tobacco control packaging and labelling measures stating:

*'all necessary and relevant background facts need to be ascertained not only from within our country, but from also a global point of view since pictorial warnings on cigarette packs are accepted displayed and adopted all over the world, both in developed and developing countries...'*⁵¹.

d. As a source of evidence

The WHO FCTC has been cited in case law as evidence of the harms of tobacco use and as providing scientifically proven evidence of the effectiveness of the measures contained within.

In the case of *Saenz Sibaja v. Municipality of Oreamuno*⁵², a case from Costa Rica, the Court ordered an employer to relocate a smoking area from near a dining area due to violations of the right to health and the right to a safe work environment. The Court's decision made reference to the WHO FCTC as evidence of the risk to health posed by tobacco and unequivocally demonstrating the link between exposure to tobacco smoke and death, disease and disability.⁵³

The scientific evidentiary basis for the WHO FCTC was cited in the case of *Shemesh v*

⁴⁸ *Canada (Attorney General) v. JTI-Macdonald Corp.*, [2007] 2 S.C.R. 610, 2007 SCC 30, Supreme Court of Canada (2007), pg. 58, para [138]

⁴⁹ *BATSA v Minister of Health*, (463/2011) [2012] ZASCA 107 (20 June 2012)

⁵⁰ *BATSA v Minister of Health*, No. 463/2011, Supreme Court of Appeal of South Africa (2012), p 12-13, [para 22]

⁵¹ CA 336/2012 (Writ), Court of Appeal, Sri Lanka, 12 May 2014, pg. 11.

⁵² *Saenz Sibaja v. Municipality of Oreamuno*, Res. No. 014593-2008, Corte Suprema de Justicia [Supreme Court](2008)

⁵³ *Saenz Sibaja v. Municipality of Oreamuno*, Res. No. 014593-2008, Corte Suprema de Justicia [Supreme Court](2008), page 6-7

*Focaccetta*⁵⁴ in which the Israel Supreme Court sitting as the Court of Civil Appeals awarded monetary compensation to a pregnant diner and her family exposed to second hand smoke in a restaurant in breach of the national *Restriction of Smoking in Public Places* law. The Court noted that Israel had ratified the WHO FCTC and made specific reference to the fact that Article 8(1) provides that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability,⁵⁵ requiring Parties to adopt measures to protect against exposure to tobacco smoke in indoor public places.

2. Use of the WHO FCTC to compel higher standards of tobacco control

The WHO FCTC has been invoked by civil society organisations in litigation aimed at requiring Governments to implement stronger tobacco control measures.

In the EURO region, in the Belgium case of *Vlaamse Liga tegen Kanker (Flemish Anti-Cancer League), et al. v. Belgium Council of Ministers*,⁵⁶ the Flemish Anti-Cancer League and others filed an application for the annulment of a law establishing general rules relating to the ban on smoking in enclosed public spaces and for the protection of workers due to exceptions contained within the legislation that permitted smoking in certain establishments such as pubs. The Flemish Anti-Cancer League argued that the general ban on smoking in public places and workplaces should be in line with the WHO FCTC, to which Belgium is a Party⁵⁷.

In reaching the decision to annul a number of articles in the law pertaining to the exceptions, the Court stated that, with regard to exposure to tobacco smoke, the right to health protection enshrined in Article 23 of the national constitution had to be, as the applicants argued, combined with the WHO FCTC⁵⁸, explicitly referring to Articles 8 and 18 of the WHO FCTC. In laying out Sections 23 – 27 and the statement of principles of the Guidelines for implementation of Article 8, the Court recognised the creation of an obligation on Belgium to provide protection from exposure to tobacco smoke. Referring also to rights under the European Social Charter (revised), and the European Convention on Human Rights, the Court found customers and catering sector workers must be protected in the same way against the harmful effects of passive smoking, and the distinction under the contested law was contrary to this obligation, in that it had the effect that certain customers and catering sector workers were still exposed to risks to health related to smoking.

In the case of *Dutch Association of Club of Active Non Smokers (CAN) v Netherlands*,⁵⁹ a civil society organisation, CAN, challenged a law enabling an exception for small cafes from a smoke-free environment. CAN argued that the exception for small cafes was in conflict with Article 8 of the WHO FCTC. The Dutch Government responded by stating that the regulations of the Convention should not have direct effect.⁶⁰ The Court of Appeal ruled that the exception made for small cafes was in direct conflict with WHO FCTC obligations and

⁵⁴ *Shemesh v. Focaccetta*, LCA 9615/05, Israel Supreme Court (2006)

⁵⁵ *Shemesh v. Focaccetta*, LCA 9615/05, Israel Supreme Court (2006) at page 93

⁵⁶ Arrêt n° 37/2011 du 15 mars 2011, Constitutional Court of Belgium (2011).

⁵⁷ Arrêt n° 37/2011 du 15 mars 2011, Constitutional Court of Belgium (2011) at page 4

⁵⁸ Arrêt n° 37/2011 du 15 mars 2011, Constitutional Court of Belgium (2011) at page 16, para [B.6.1]

⁵⁹ Case No. 13/02931 (10 Oct. 2014)

⁶⁰ Case No. 13/02931 (10 Oct. 2014), para [3.2.2]

therefore was unlawful. The Court made several notable references to the WHO FCTC and in particular Article 8 paragraph 2. It stated Article 8 paragraph 2 was ‘sufficiently clear and concrete’⁶¹ to establish the obligation to take measures against exposure to smoke in indoor public places, including small cafes and all catering businesses housed in a building. The Court stated that Article 8 of the WHO FCTC was sufficiently defined and suitable for direct application within the national legal system⁶².

In the Indian case of *Love Care Foundation v. Union of India and Others*,⁶³ a civil society organisation petitioned for the implementation of plain packaging. The Allahabad High Court allowed the petition with a recommendation that the Government of India consider the feasibility of implementing the plain packaging scheme. In addition to references to empirical studies in Australia and Brazil, the Court acknowledged that plain packaging was recommended by the WHO FCTC as a component of marketing restrictions.

In the case of *Society of New Zealand & Ors. v. Ministry of Health & Ors*,⁶⁴ three civil society organisations applied for a review of a Ministry of Health determination that a portion of a casino complex constituted an ‘open area’ based on an Open Areas Calculator (a mathematical tool) and was thus exempt from a smoke-free ban for the purposes of the *Smoke-free Environments Act*. The applicants highlighted the fact that New Zealand had ratified the WHO FCTC and that the *Smoke-free Environments Act* had been conceived against a background of international concern about the effects of second-hand smoke, with explicit reference made to Article 8 of the Convention. In ordering the Ministry to reconsider whether the area of the casino could allow smoking under the law, the Court declared that the Open Areas Calculator was inconsistent with the statutory definition of an open area under the Act in light of the clear scheme and purpose of the statute.

The Region of the Americas has witnessed a number of cases in which civil society has relied upon the WHO FCTC to seek higher standards and protections against tobacco use.⁶⁵

3. International Trade and Investment Disputes

The WHO FCTC has been invoked in the defence of tobacco control measures by Australia and Uruguay in pending international trade and investment challenges before the World Trade Organisation and Investor-State Dispute Settlement bodies. The resolution of these cases will be important to further understanding the impact of the Convention as an international legal instrument. In addition, the WHO FCTC has been referred to in a WTO decision in a case between Indonesia and the United States, neither of which is a party to the Convention.

⁶¹ Case No. 13/02931 (10 Oct. 2014), para [3.3.2]

⁶² Case No. 13/02931 (10 Oct. 2014), para [3.4]

⁶³ Writ Petition No.1078 (M/B) OF 2013.

⁶⁴ *Society of New Zealand & Ors. v. Ministry of Health & Ors* CIV-2013-404-488 (2013) NZHC 2538

⁶⁵ See *Balderas Woolrich v. Mexico*, Amparo en Revisión 315/2010, Suprema Corte de Justicia de la Nación [Supreme Court](2011), *FEVACU et al v. Venezuela*, et al, 08-0520, Sala Constitucional del Tribunal Supremo de Justicia [Constitutional Chamber of the Supreme Court] (2008).

a. *Challenges to Australia's tobacco plain packaging measures*

Australia's tobacco plain packaging measures are being challenged by Cuba, Dominican Republic, Honduras and Indonesia in the World Trade Organization, and by Philip Morris Asia under a bilateral investment treaty (the 1993 *Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments*).

One of the objects of Australia's *Tobacco Plain Packaging Act*⁶⁶ is to give effect to Australia's obligations as a party to the WHO FCTC, stated in section 3(1)(b) of the Act and the Explanatory Memorandum to the Tobacco Plain Packaging Bill.⁶⁷

While the parties' WTO submissions are not publicly available, Australia has repeatedly cited the WHO FCTC and its Guidelines in meetings of the WTO's Committee on Technical Barriers to Trade, and TRIPS Council and Dispute Settlement Body. For example, the Minutes from the April 2014 meeting of the Dispute Settlement Body of the WTO record that the representative for Australia stated the following in relation to Australia's tobacco plain packaging measure and the WHO's recognition of the global nature of the tobacco epidemic:

*'Tobacco plain packaging was one of the means recommended by the WHO Framework Convention on Tobacco Control (FCTC) to combat this epidemic and Australia was proud to have been the first country to implement this measure... Australia noted that 178 countries had ratified the FCTC and commended those Members who were now in the process of adopting tobacco plain packaging legislation or had signalled their intention to adopt similar measures in the future.'*⁶⁸

In the investment treaty proceedings, in its Response to the Notice of Arbitration,⁶⁹ Australia stated:

*'Australia's history of progressively more comprehensive and stringent tobacco regulation is consistent with trends in countries around the world, and also international steps to combat the global health epidemic posed by tobacco smoking through the FCTC.'*⁷⁰

Australia noted that the WHO FCTC imposes a 'comprehensive set of obligations'⁷¹ in relation to tobacco control measures, including Articles 11 and Article 13 and their Guidelines for implementation, with the recommendation that Parties should consider adopting a suite of measures, including plain packaging, to give effect to the WHO FCTC. Australia's noted that the implementation of plain packaging was pursuant to the objective of protecting the public health of Australia's population from an addictive and dangerous

⁶⁶ Act No. 148 of 2011

⁶⁷ Pg 2. Explanatory Memorandum. Tobacco Plain Packaging Bill 2011.

⁶⁸ Minutes of Meeting held on 25 April 2014 (14-3721), WT/DSB/M/344, pg 22 [para 7.5]

⁶⁹ Philip Morris Asia Limited v Commonwealth of Australia, Response to Notice of Arbitration — Australia (21 December 2011)

⁷⁰ Philip Morris Asia Limited v Commonwealth of Australia, Response to Notice of Arbitration — Australia (21 December 2011), pg. 5 at para [16]

⁷¹ Philip Morris Asia Limited v Commonwealth of Australia, Response to Notice of Arbitration — Australia (21 December 2011), pg 5 at para [17]

substance causing death and disease, noting ‘strong support’ from the WHO and FCTC Secretariat⁷² for the efficacy of the measure.

b. Challenge to Uruguay’s packaging and labelling measures

Uruguay’s tobacco packaging and labelling laws have been challenged by Philip Morris (Switzerland) and associated companies under a bilateral investment treaty (BIT) between Uruguay and Switzerland (*Philip Morris Brands Sarl v Oriental Republic of Uruguay*⁷³).

Uruguay is invoking the WHO FCTC in its defence of the challenge⁷⁴, arguing, inter alia, that that its laws are ‘in conformity with its obligations to the Uruguayan people to protect public health as well as its international commitments under the WHO FCTC.’⁷⁵ Uruguay set out the stated purpose of the WHO FCTC under Article 3 of the Convention⁷⁶ and the requirement for Parties to adopt and implement effective measures in relation to packaging and labelling of tobacco products outlined in Article 11.⁷⁷ Uruguay stated that, in compliance with these and other provisions in the WHO FCTC, many State Parties implemented new tobacco control measures in the interests of public health⁷⁸:

‘In conformity with its obligation to the Uruguayan people to protect public health, as well as its international commitments under the WHO Framework Convention, Uruguay has implemented measures to reduce tobacco consumption by prohibiting tobacco companies...from advertising or presenting their products in a way that encourages potential customers to ignore the serious health consequences of cigarette smoking, or to falsely conclude that smoking one brand of cigarettes is less unhealthy than smoking another.’⁷⁹

Uruguay also highlighted the fact that the Guidelines for Article 11 of the FCTC reflect the fact that State Parties to the Convention unanimously agree that, ‘when it comes to graphic health warnings on cigarette packs, size matters : the bigger the better.’⁸⁰ It was within this

⁷² Philip Morris Asia Limited v Commonwealth of Australia, Response to Notice of Arbitration — Australia (21 December 2011), pg 11 at para [38]

⁷³ ICSID Case No. ARB/10/7

⁷⁴ Uruguay’s Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7 see pages 5,6,8,9,15,68,80,81,82.

⁷⁵ Uruguay’s Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, page 8, para [18]

⁷⁶ Uruguay’s Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, page 5, para [13]

⁷⁷ Uruguay’s Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, page 6, para [14]

⁷⁸ Uruguay’s Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, page 6, para [15]

⁷⁹ Uruguay’s Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, page 8, para [18]

⁸⁰ Uruguay’s Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, page 81, para [151]

context that six months after the unanimous adoption of the FCTC Guidelines for Article 11, Uruguay issued a Decree for an increase in the size of mandatory health warnings.⁸¹

c. Reference to WHO FCTC in WTO dispute between Indonesia and the US

The WHO FCTC has been cited by a WTO Panel in a dispute between Indonesia and the US, neither of which is a Party to the WHO FCTC. In the *Clove Cigarettes* case,⁸² Indonesia challenged a US law prohibiting the sale of certain flavoured cigarettes, other than menthol or tobacco. Indonesia, a producer of clove cigarettes, argued that the law violated the *Agreement on Technical Barriers to Trade* ('TBT') and the *General Agreement on Tariffs and Trade* ('GATT') on the grounds that it was discriminatory and more trade restrictive than necessary.

In its Report, the WTO Panel referred extensively to the WHO FCTC, including the *Partial Guidelines for implementation of Articles 9 and 10 of the Convention*, which recommend that Parties should regulate, by prohibiting or restricting, ingredients that may be used to increase palatability including menthol⁸³. The Panel recognized a 'growing consensus within the international community'⁸⁴ of reinforcing tobacco control measures through the regulation of tobacco product contents including additives that increase the attractiveness and palatability of cigarettes. The WTO Panel examined the availability of evidence of the impact of banning clove cigarettes and/or other flavoured cigarettes on youth smoking and referred to the WHO *Partial Guidelines* as reinforcing its understanding. The WTO Panel cited the fact that the Guidelines draw upon 'the *best available scientific evidence* and the experience of the Parties'⁸⁵ in reaching the conclusion that there was extensive scientific evidence supporting the conclusion that banning clove and other flavoured cigarettes could contribute to reducing youth smoking.

The Panel found that the measures in question were not more trade restrictive than necessary, but that they were discriminatory. The Appellate Body upheld the finding that the measures were discriminatory on the ground that clove cigarettes and menthol cigarettes are "like products" and the design, architecture, revealing structure, operation, and application of the law in question strongly suggested that the detrimental impact on competitive opportunities for clove cigarettes reflected discrimination against these like products imported from Indonesia. The Panel's finding that the measures were not more trade restrictive than necessary was not challenged on appeal.

⁸¹ Uruguay's Memorial on Jurisdiction, 29 September 2011, *Philip Morris Brands Sarl v Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, page 82, para [152]

⁸² *United States- Measures affecting the production and sale of clove cigarettes – Report of the Panel* WT/DS406/6, 2 September 2011.

⁸³ *United States- Measures affecting the production and sale of clove cigarettes – Report of the Panel* WT/DS406/6, 2 September 2011, page 9 at para [2.32].

⁸⁴ *United States- Measures affecting the production and sale of clove cigarettes – Report of the Panel* WT/DS406/6, 2 September 2011, page 76 at para [7.230].

⁸⁵ *United States- Measures affecting the production and sale of clove cigarettes – Report of the Panel* WT/DS406/6, 2 September 2011 page 121, at para [7.414].

4. Conclusion

This Part has provided case examples from around the world indicating a widespread acceptance and reliance on the WHO FCTC. In particular, the case law reveals that the WHO FCTC strengthens governments in the defence of tobacco control measures, by establishing or reinforcing obligations to implement such measures, aiding in the interpretation of domestically applicable constitutions and laws to promote fundamental rights to health and justify limitations on tobacco-industry claimed rights (such as freedom of expression, rights to property and right to commerce), providing an international context to tobacco control norms, and as evidence of the harms of tobacco use and the effectiveness of tobacco control measures contained in the Convention.

In addition, the Convention has provided support for civil society organisations to initiate litigation aiming to require Governments to implement stronger tobacco control measures. It has been invoked by two Parties – Australia and Uruguay – in defending their tobacco control measures in challenges pending in the WTO and under international investment law, and cited by a WTO Panel in a case involving two non-Parties to the Convention.

METHODOLOGY

Countries selected for review for the purposes of the impact assessment report were determined on the basis of WHO FCTC party status, a mix of geographical representation amongst the WHO regions and World Bank Income classification groups⁸⁶. It should be noted that due to the absence of translation facilities, cases from Japan and China were not reviewed and additional cases in languages other than English were examined without the assistance of certified translation services.

WHO REGION (world bank income group in brackets)					
AFRO	AMRO	SEARO	EURO	EMRO	WPRO
Central African Republic (LI)	Brazil (UMI)	Bangladesh (LMI)	Belgium (HI)	Pakistan (LMI)	Australia (HI)
Lesotho (LMI)	Colombia (UMI)	India (LMI)	EU (N/A)		China (UMI)
Mali (LI)	Costa Rica (UMI)	Nepal (LI)	Finland (HI)		Fiji (UMI)
South Africa (UMI)	Guatemala (LMI)	Sri Lanka (LMI)	France (HI)		Japan (HI)
Uganda (LI)	Mexico (UMI)	Thailand (UMI)	Ireland (HI)		New Zealand (HI)
	Panama (UMI)		Moldova (LMI)		Philippines (LMI)
	Paraguay (UMI)		Northern Ireland (N/A)		Singapore (HI)
	Peru (UMI)		Netherlands (HI)		Tonga (UMI)
	Uruguay (HI)		Norway (HI)		
	Venezuela (HI)		Russian Federation (HI)		
	Canada (HI)		Turkey (UMI)		
			Ukraine (LMI)		
			UK (HI)		
			Macedonia, FYR (UMI)		
			Israel (HIC)		

Cases have been sourced by searching for the terms 'FCTC' or 'Framework' or 'Convention' from the following litigation databases: <http://www.mccabecentre.org/> and <http://www.tobaccocontrolaws.org/>.

⁸⁶ <http://data.worldbank.org/about/country-and-lending-groups>. Code – Low Income Country (LI), Lower Middle Income Country (LMI), Upper Middle Income Country (UMI), High Income Country (HI)

PART II - Legislation that References the WHO FCTC

Methodology

The Campaign for Tobacco-Free Kids reviewed tobacco control legislation from 163 countries and the European Union available at [Tobacco Control Laws-Legislation](#). Laws from fifteen additional countries were not reviewed because a reasonably reliable English translation was not available.

The initial data collection took place in preparation for an article published in the journal *Tobacco Control* on [“Tracking the Relevance of the WHO Framework Convention on Tobacco Control in Legislation and Litigation through the online resource *Tobacco Control Laws*”](#).

Authors for this article reviewed laws from 161 countries and the European Union that were effective as of September 1, 2012. This analysis found that 50 of the 161 countries and the European Union incorporated the FCTC in legislative objectives, definitions, and/or substantive provisions of their tobacco control legislation or policy.

To update the information prepared for the above article, the Campaign reviewed all tobacco control legislation (with reasonably reliable English translations) effective September 1, 2012 or later. A key word search was conducted of each document using the words “FCTC”, “Framework”, “Convention”, “World”, and “Treaty”.

The review of more recent legislation yielded an additional 26 countries that included mention of the FCTC in the legislation.

Results

Using the methods described above, in total we found 135 laws from 75 countries and the European Union that incorporate a reference to the FCTC within the legislation. The vast majority of these laws (more than 100) reference the FCTC in the preamble or introduction to the law, which generally states the law’s purpose. Many of these references acknowledge that the country has ratified the FCTC or is adopting the law in fulfillment of the FCTC’s obligations. Burkina Faso is typical, where the tobacco control law was enacted “[i]n light of the Framework Convention for Tobacco Control of the World Health Organization, ratified by Burkina Faso on July 31, 2006” among a list of other precedents.

Some of the references in the legislative preamble or introduction mention particular elements of the FCTC, such as pictorial health warnings (Venezuela), smokefree areas (Madagascar), regulation of tobacco product contents (Uruguay), and protection from tobacco company commercial interests (United Kingdom). Such references are more common in issue-specific, rather than omnibus, legislation.

A handful of the laws contain multiple references to the FCTC throughout the document. For example, a 2010 law from Nicaragua repeatedly references the FCTC in its introductory provisions, definitions, and substantive regulation, e.g., by referring to standards for emissions testing once adopted by the WHO pursuant to FCTC Article 9.

Options for Additional Analysis

With sufficient time, additional analysis of the legislation would be possible such as:

- In-depth analysis of legislation from a limited number of priority countries to provide additional information on how the law incorporates the FCTC
- A geographic comparison showing which regions have the most number of countries with laws referencing the FCTC
- A graph or table showing the number of laws that reference the FCTC by year of adoption
- Correlation of the date of adoption of laws referencing the FCTC to the year that the FCTC was ratified by the respective country
- Review to determine whether legislation makes use of definitions or other language contained in the FCTC even if the FCTC is not mentioned by name in the legislation. For example, the FCTC provides a definition of Tobacco Advertising and Promotion. We could presume the influence of the FCTC if a law were to use the language from that FCTC definition verbatim.

Countries with "FCTC" legislation

Afghanistan
Algeria
Armenia
Australia
Bahrain
Bangladesh
Belarus
Bermuda
Bhutan
Bolivia
Brazil
Burkina Faso
Cambodia
Chad
Chile
China
Colombia
Costa Rica
Djibouti
Dominican Republic
Ecuador
Egypt
Ethiopia
European Union
Gabon
Ghana
Guinea
Greece
Honduras
Hong Kong
Ireland
Italy
Japan
Kazakhstan
Kiribati
Kosovo
Kyrgyzstan
Laos
Libya

Macau
Madagascar
Maldives
Mexico
Moldova
Montenegro
Myanmar
Namibia
Nepal
Nicaragua
Niger
North Korea
Palau
Panama
Peru
Philippines
Romania
Russia
Rwanda
Sao Tome
Senegal
Serbia
Seychelles
Solomon Islands
South Africa
Spain
Suriname
Swaziland
Syria
The Gambia
Timor-Leste
Trinidad and Tobago
Turkey
United Kingdom
Uruguay
Venezuela
Viet Nam

Country	Law Title	Year	Article/Section Number	Brief Excerpt
Afghanistan	Bylaw for the Ban of Cigarette and Tobacco Use in Governmental Buildings and Public Places	2007	Article 1	· "This bylaw concerns the ban of smoking cigarettes and other tobacco products in public places and government buildings and conforms to the World Health Organisation's conventions regarding the use of tobacco." [Note: quasi-mention – may be a translation issue]
Algeria	Ministerial Instruction No. 10 of December 4, 2014 Prohibiting Smoking in Health Facilities: "Tobacco-Free Hospitals"	2014	Preamble	In light of this threat, Algeria is resolutely committed to tobacco control, and ratified the Framework Convention for Tobacco Control of the WHO in March of 2006, by Presidential Decree No. 06-120 of March 12, 2006, since it had already undertaken to implement the provisions of Executive Decree No. 01-285 of September 24, 2001, determining the public places where tobacco is prohibited.
Australia	Tobacco Plain Packaging Act 2011	2011	· Section 3 – Objects of this Act · Section 4 - Definitions	· 3(1). "The objects of this act are – . . . (b) to give effect to certain obligations that Australia has as a party to the Convention on Tobacco Control." · 4. ". . . Tobacco advertising and promotion has the meaning given to it by the Convention on Tobacco Control."
Australia	Tobacco Plain Packaging Act 2011	2012	Multiple references throughout	Preamble: (1) The objects of this Act are: . . . to give effect to certain obligations that Australia has as a party to the Convention on Tobacco Control." Definitions: "tobacco advertising and promotion has the meaning given by the Convention on Tobacco Control." Simplified outline: "This Act relies on the external affairs power of the Constitution by implementing certain obligations in the Convention on Tobacco Control. However, if this Act is not supported by that power, then this Act will apply in more limited circumstances by relying on the corporations power, the trade and commerce power and the Territories power."
Bahrain	Law No. 8 On the Matter of Controlling Smoking and All Forms of Tobacco	2009	· Preamble · Article XVII(11) · Article XVIII	· References Law Number (26) – Year 2006 on joining the FCTC · "[T]he Minister specifies the following for the [National Commission to Control Smoking, Tobacco, and Tobacco products: . . . (11) Guiding through the instructions appearing in the [WHO FCTC]." · "Taking into account what appears in the approved standards and specifications and what is contained in the [FCTC], the following information must appear on all packages of tobacco or cigarettes in a prominent place and in both Arabic and English . . ."

Bangladesh	Smoking and Using of Tobacco Products (Control) Act (Act No. XI of 2005)	2005	· Preamble	· “Whereas Bangladesh signed the Framework Convention on Tobacco Control . . .”
Bermuda	Tobacco Products (Public Health) Amendment Act 2005	2005	· Preamble	· “Whereas it is expedient to amend the Tobacco Products (Public Health) Act 1987 and to make provisions for ensuring compliance with the [FCTC]. . · “
Bhutan	Tobacco Control Act of 2010	2010	· Preamble (two mentions) · Section 26(c)	· Recalling that Bhutan ratified the FCTC and “acknowledging that as a party to the [WHO FCTC], Bhutan is implied by its provisions to implement through national legislation and policies to fulfill the obligations and to ensure the effective control of tobacco and tobacco products . . .” · “The [Tobacco Control] Board may exercise necessary powers for tobacco control as follows: . . . (c) facilitate and fulfill the obligations under the WHO [FCTC] and its protocols to which Bhutan is a party. . .”
Bolivia	Circular No. 174 Announcing Multi-Ministerial Resolution No. 0003-2009 on Tobacco Control Regulations	2009	· Preamble	· Preamble acknowledges that Bolivia is a Party · Aside from the preamble, all other mentions are in reference to the title of Law No. 3029, the title of Supreme Decree No. 29376, or title of this Circular
Bolivia	Ministry of Health and Sports Ministerial Resolution No. 0576 on Graphic Health Warnings	2011	· Preamble	· Preamble acknowledges that Bolivia is a Party · One other reference to the full title of Law No. 3029
Bolivia	Ministry of Health and Sports Ministerial Resolution No. 0051/2012 Extending the Validity of Health Warnings	2012	· Preamble	· Acknowledges that Bolivia is a Party
Bolivia	Supreme Decree No. 29376, Regulations to Law No. 3029 on the FCTC	2007	· Preamble (two mentions)	· Preamble acknowledges that Bolivia is a Party · Aside from the preamble, all other mentions are in reference to the title of Law No. 3029 or the title of this Supreme Decree
Bolivia	Law No. 3029 of April 22, 2005 on Approval of Ratification of the FCTC	2005	· Title/subject of law	
Brazil	Administrative Rule No. 713 of April 17, 2012	2012	· Attachment – Resolution No. 1 of December 15, 2011 (rule makes this public) – several mentions throughout	· I.e., “Taking into consideration that “upon establishing and implementing their public health policies concerning tobacco control, the Parties shall act to protect these policies from commercial interests or others associated with the tobacco industry, in accordance with national legislation,” pursuant to Art. 5.3 of the FCTC.”
Burkina Faso	Joint Administrative Order No. 2015-366/MS/MICA	2015	Preamble	“IN LIGHT OF the Framework Convention for Tobacco Control of the World Health Organization, ratified by Burkina Faso on July 31, 2006;”

Cambodia	Ministry of Environment Circular (No. 344) on Smoking Ban in Workplaces and Meeting Halls	2007	· Preamble	· "With reference to the [WHO FCTC] . . ."
Cambodia	Sub-Decree (No. 1818 ANKR.BK) on Printing Health Warning on Cigarette Packages	2009	· Preamble	· Referencing Cambodia's ratification of the FCTC
Cambodia	Prakas (No. 1162 ABS) on the Implementation of Printing Health Warning Messages on Cigarette Packs	2009	· Preamble	· Referencing Cambodia's ratification of the FCTC
Cambodia	Ministry of Information Directive (No. 03 A) on Smoking Ban in Workplaces	2010	· Preamble	· "With reference to the WHO [FCTC] ratified by the Kingdom of Cambodia on November 15, 2005 which confirms the enormous hazards of cigarette smoking and inhalation of second-hand smoke to health and the environment."
Cambodia	Sub-Decree (No. 35.ANKR.BK) on Advertising of Tobacco Products	2011	· Preamble	· Referencing Cambodia's ratification of the FCTC
Cambodia	Ministry of Health Prakas (No. 290.OR.BOR.SOR) on Measures for the Banning of Tobacco Product Advertising	2011	· Preamble	· Referencing Cambodia's ratification of the FCTC
Cambodia	Ministry of Health Circular No. 003 SNK on Measures for the Banning of Smoking and Blowing Tobacco Products at Workplaces and Public Places	2014	Preamble	"In compliance with the Royal Gazette No. NS/RKM/0106/002 dated 18 January 2006 which declared to use the Law on Ratification of the Kingdom of Cambodia to the Framework Convention on Tobacco Control (FCTC) . . ."
Chad	Administrative Order No. 039 PP/PM/MSP/SE/SG/DGAS/DSPELM/15 Concerning Regulation of Packaging and Labeling of Tobacco Products in the Republic of Chad	2015	Preamble	"In light of Law No. 20/PR/05 of December 30, 2005, concerning the Ratification of the Framework Convention on Tobacco Control of the WHO; In light of the Guidelines for Article 11 on the packaging and labeling of tobacco products adopted at COP 3 in 2008; "

Chile	Manual for the Implementation of the Law on Tobacco Control	2013	Definitions Bibliography	g) Smoking: . . . This term should be defined to include being in possession or control of a product of snuff on, regardless of whether the smoke is being inhaled or exhaled actively. (Guidelines Framework Convention Tobacco Control, 2011). j) Tobacco Industry: Includes manufacturers, wholesale distributors and importers of snuff (Framework Convention Tobacco Control, 2005). k) Illicit trade: Is any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity (Framework Convention Tobacco Control, 2005). l) second-hand smoke or environmental snuff snuff: The smoke emitted from the burning end of a cigarette or other snuff products, usually in combination with the smoke exhaled by the smoker (Guidelines Framework Convention Tobacco Control, 2011).
Chile	Decree 44, Establishing Health Warning for Packages of Tobacco Products	2013	Preamble	"ESTABLISHES HEALTH WARNING FOR PACKAGES OF TOBACCO PRODUCTS Number. 44.- Santiago, July 15, 2013.- In light of: What is established in Law No 19.419, as amended by Law 20.660; the international obligations assumed by the State of Chile by ratifying the Framework Convention for Tobacco Control the State of Chile by ratifying the Framework Convention for Tobacco Control . . ."
China	Rules on Cigarette Package Labeling in the Territories of the People's Republic of China	2009	· Preamble	· "According to relevant stipulations and requirements in the WHO's Framework Convention on Tobacco Control (FCTC) . . . the current rules are formulated."
Colombia	Ministry of Welfare Decision No. 003961 of 2009	2009	· Preamble	· "Article 4 of the FCTC stipulates . . . that every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption . . . Article 11 of the FCTC requires effective measures . . ."
Costa Rica	General Law No. 9028 on the Control of Tobacco and its Harmful Effects on Health	2012	· Preamble	· "This law regulates the steps the State will take to implement the [WHO FCTC], Law No. 8655 dated July 17, 2008, in order to control tobacco use and reduce its prevalence, together with the exposure to its smoke."

Costa Rica	Ministry of Health Resolution No. 6094 Designating the Unit Responsible for Approving Health Warnings	2013	Preamble	"Health Minister in exercise of the powers conferred on them by . . . Law No. 8655 of July 17, 2008 "Law on Approval of the Framework Convention of the World Health Organization (WHO) for the control of snuff"; Executive No 34705 of August 14, 2008 Decree "Ratification of the Republic of Costa Rica to the Framework Convention of the World Health Organization (WHO) for the control of snuff, signed on July 23, 2003"
Costa Rica	Ministry of Health Directive No. 4979, Guidance Establishing the Contents of Graphic Health Warnings	2014	Preamble	In Spanish
Costa Rica	Regulation for the Labeling of Tobacco Products and Tobacco Derivatives, Executive Decree No. 37778-S	2014	Preamble	In the exercise of the attributions conferred upon them by..."Law of Approval of the Framework Convention of the World Health Organization (WHO) for the Control of Tobacco";
Costa Rica	Ministry of Health Directive No. 6095, Guidance Establishing the Contents of Graphic Health Warnings	2014	Preamble	.."Law for the Approval of the Framework Convention for Tobacco Control of the World Health Organization (WHO)"; Executive Decree N° 34705 of August 14, 2008, "Ratification by the Republic of Costa Rica of the Framework Convention on Tobacco Control of the World Health Organization (WHO), signed on July 23, 2003,"
Djibouti	Decree No. 2007-0230-PR-MS Prohibiting Smoking in Public Places	2007	· Preamble	· Referencing Djibouti's ratification of the FCTC
Djibouti	Order No. 2008-491-PR-MS Specifying the Combined Warnings and Messages on All Packaging of Tobacco Products	2008	· Preamble	· Referencing Djibouti's ratification of the FCTC
Djibouti	Decree No. 2008-492-PR-MS Fixing the Characteristics of the Smoking Prohibition and Prohibition Posting Requirements	2008	· Preamble	· Referencing Djibouti's ratification of the FCTC
Djibouti	Decree No. 2008-0183-PR-MS Specifying the Manner in Which Statements are to Be Printed that Must Appear on the Outside Covering of Packages and Wrapping of Tobacco Products	2008	· Preamble · Article 4	· Referencing Djibouti's ratification of the FCTC · Referencing Djibouti's ratification of the FCTC

Dominican Republic	Secretary of State Education Resolution Prohibiting Smoking in Educational Facilities	2005	· Preamble	· “Considering that our country, accepting the terms and proposals of the International Convention on Tobacco Control, adopted Act No. 48-00 pursuant to which smoking has been banned in all public places . . .”
Ecuador	Organic Law for the Regulation and Control of Tobacco (also referenced in the preamble of the regulations issued under this act)	2011	· Preamble · General Provision 2 · Transitional Provision 2	· “Having ratified [the FCTC] and its protocols, the Republic of Ecuador has taken on the commitment to promote legislative measures to establish proper policies designed to . . .” · [Designating a coordinating mechanism] · “These regulations should be periodically updated in concert with the progress of the directives and protocols of the [FCTC] which are approved by the [COPs].
Egypt	Law No. 154 of 2007 Specific to Amendment of Some Provisions of Law No. 52 of 1981 in the Matter of Preventing Smoking Related Harm (no other reference)	2007	· Article 1 (amending Article 3 of Law No. 52)	· “Recognizing a commitment to the provisions appearing in the [FCTC], which prohibit any slogans making smoking attractive, such as “little tar” . . . it is hereby required that all packages of tobacco products or cigarettes bear the following warning . . .”
Ethiopia	Tobacco Control Directive No. 28/2015	2015	Preamble	WHEREAS, in accordance with the WHO Framework Convention on Tobacco Control, government has the responsibility to prevent and reduce nicotine addiction in addition to its regulatory responsibilities to reduce and prevent tobacco use and exposure to tobacco smoke;
European Union	Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 (tobacco products)	2001	· Preamble, Section 13	· References ongoing negotiation of FCTC
European Union	Council Directive 2010/12/EU of 16 February 2010 (excise duty)	2010	· Preamble, Section 2	· “. . . bearing in mind . . . that the Union is Party to the [WHO FCTC] . . .”
European Union	Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 (tobacco advertising)	2003	· Preamble, Section 8	· References ongoing negotiation of FCTC

European Union	Directive 2014/40/EU, Tobacco Products Directive	2014	Preamble (Multiple References)	E.g.: "Legislative action at Union level is also necessary in order to implement the WHO Framework Convention on Tobacco Control ('FCTC') of May 2003 The FCTC provisions on the regulation of the contents of tobacco products, the regulation of tobacco product disclosures, the packaging and labelling of tobacco products, advertising and illicit trade in tobacco products are particularly relevant. The Parties to the FCTC, including the Union and its Member States, adopted a set of guidelines for the implementation of FCTC provisions by consensus during various Conferences." "in order to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of protection of human health, especially for young people, and to meet the obligations of the Union under the WHO Framework Convention for Tobacco Control ('FCTC')."
Gabon	Law No. 006/2013 on Tobacco Control	2013	Preamble Implementation	"This law, enacted to implement the provisions of Articles 47 and 53 of the Constitution on one hand, and the ratification of the Framework Convention for Tobacco Control of the WHO, has the following purpose:" "The Ministries of Health and of Commerce are authorized, each to the extent that it falls within its purview, to issue regulations concerning prevention of the illegal trade in tobacco products based on all applicable protocols and directives of the Framework Convention on Tobacco Control of the WHO."
Ghana	Food and Drugs Board Guidelines for the Importation of Tobacco Products	Uncertain	Introduction	"In response to the growing threat of the tobacco epidemic, in the year 2004, 192 member states of the World Health Organisation (WHO), including Ghana, adopted the Framework Convention on Tobacco Control (FCTC)." "Ghana as a party to the WHO FCTC and in fulfillment of her obligations under the Convention, drafted the Tobacco Control Bill in 2004."
Ghana	Public Health Act, 2012 (Act 851)	2012	Multiple references throughout	
Greece	Law No. 3730 on Protection of Minors from Tobacco and Alcoholic Beverages and Other Provisions	2008	Article 5(2)	· "2. The Special Service [for the Protection of Minors from Tobacco and Alcohol], according to the provisions of the [WHO FCTC], which was ratified with Law 3420/2005 (Gazette 298 A') is responsible for . . ."
Guinea	Law No. L/2012/039/CNT on Tobacco Control (as promulgated by Decree No. D/2012/131/PRG/SGG)	2012	Preamble	Reference to ratification of the WHO Framework Convention on Tobacco Control (poor pdf so hard to get exact wording)

Honduras	Decree No. 92-2010, Special Tobacco Control Law (LECT)	2010	· Preamble · Article 4	· “On November 10, 2004, the State of Honduras ratified the World Health Organization (WHO) Framework Convention on Tobacco Control through Legislative Decree 192-2004, of January 22, 2005.” · “Binding guiding principles of this law are: . . . (7) the [WHO FCTC].”
Honduras	Executive Agreement No. 05-2011, Regulations of the Special Tobacco Control Law (RLECT)	2011	· Preamble · Article 4 · Article 6 · Article 72	· [Noting ratification of the FCTC by Honduras] · “Binding guiding principles of this Regulation . . . are: . . . (2) the [WHO FCTC].” · “The guiding institution . . . is the Ministry of Health . . . to ensure the correct application of the LECT and the [WHO FCTC] . . .” · “Sources of law for compliance with this Regulation are the Constitution of the Republic, the [WHO FCTC] . . . including the guidelines and protocols of the [COPs] . . .”
Hong Kong	Decision of the Standing Committee of the National People’s Congress (China) on the Ratification of FCTC	2005		
Ireland	Public Health (Tobacco) (Amendment) Act 2004	2004	· Long title · Preamble, Section 8	· “(8) Internationally applicable standards for the advertising of tobacco products and related sponsorship are the subject of negotiations for the drafting of a World Health Organisation Framework Convention on Tobacco Control. These negotiations are intended to create binding international rules complementary to those contained in this Directive.”
Italy	Decree on the Transposition of Directive 2012/9/EU Commission Relating to the New Health Warnings on Tobacco Products	2012	Preamble	“Considering that the Guidelines for packaging and labeling of tobacco, adopted in November 2008 lil the Conference of the Parties to the Framework Convention WHO to fight the . . .” (poor translation)
Japan	Ministerial Ordinance to Amend the Tobacco Business Law	2005	· Background	· “WHO . . . intended to protect current and future generations from the health effects of smoking and has been adopted by the United Nations [FCTC]. Article 11 of the Convention: packaging of tobacco products, to include the words to remind the adverse effects of smoking on health; do not promote the sale of tobacco products by means of terms that may confuse consumers . . . are required to be conducted by each State Party to implement such measures.” (translation is rough)
Japan	Ministry of Finance Bulletin No. 109, Guidelines Concerning the Advertising of Manufactured Tobacco Products	2004	· Introduction	· “In recent years the Japanese people have become more conscious of the link between tobacco and health, and with Japan’s ratification of the [WHO FCTC], the regulations adopted by major nations concerning tobacco, and so on, the environment surrounding smoking has undergone tremendous change.”

Kiribati	Tobacco Control Act 2013	2013	Explanatory memo	"The WHO Framework Convention on Tobacco Control (FCTC), a multilateral treaty to which Kiribati is a party, sets minimum requirements for tobacco control legislation. This Bill provides a vehicle for ensuring compliance with certain requirements in that Convention."
Kosovo	Law No. 04/L-156 on Tobacco Control	2013	Purpose	"promote the health and human rights in accordance with the World Health Organization Framework Convention on Tobacco Control."
Kyrgyzstan	Ministry of Health Order No. 425 Annex 2 (shortened title)	2008	· Annex 2, Section 1	· "1. These Rules, based on article 11 of the Harmful Effects of Tobacco (Public Health Protection) Act and the WHO [FCTC], establish standards for the design of packets and packaging of tobacco products and specify labelling requirements."
Kyrgyzstan	Resolution No. 122 About the Measures to Implement the Law About Protection of Citizens from the Kyrgyz Republic from Harmful Effects of Tobacco	2008	· Intro/Preamble	· "According to the Law of the Kyrgyz Republic . . . and WHO [FCTC] . . ."
Kyrgyzstan	Decree No. 719 of December 22, 2014 on the Approval of the List of Illustrated Health Warnings About the Dangers of Tobacco, Intended for Placement on Packs and Packages of Tobacco Products	2014	Preamble	In order to implement Article 11 of the Law of the Kyrgyz Republic "On the protection of the health of citizens of the Kyrgyz Republic against the harmful effects of tobacco," Article 11 of the Framework Convention of the World Health Organization on Tobacco Control, ratified by the Law of the Kyrgyz Republic "On the ratification of the Framework Convention of the WHO on Tobacco Control on May 21, 2003," the Government of the Kyrgyz Republic declares to do the following:
Laos	Decision on Printing Health Warnings on Cigarette Packets and Cartons (not sure if this is "legislation")	2006	· References	· FCTC is listed as a reference
Laos	Decree No. 155/G, Tobacco Control Fund	2013	Tobacco control fund use [Note: indirect reference]	"The Tobacco Control Fund shall be used in the following activities: 1. Dissemination on policies, strategies, laws and legal instruments, including treaties, international convention on tobacco control that Lao PDR is its party;"
Libya	General People's Committee (GPC) Decision No. 206 for 2009 Approving Rules on the Control of Smoking, Tobacco and all Tobacco Products	2009	· Preamble · Article 1	· "Having reviewed the WHO [FCTC] . . ." · References Libya's ratification of the FCTC
Macau	Chief Executive Order No. 296/2012	2012	Preamble	"Considering also the provisions of Article 8 of the Framework Convention of the World Health Organization on Tobacco Control, under which it determines the adoption by States Parties of executive, administrative and or- back, for protect their populations from the risks of smoking;"

Madagascar	Administrative Order No. 23994/2014 Amending and Supplementing Certain Provisions of Administrative Order No. 14.762/2012 of July 2012	2014	Preamble	In light of Law No. 2004-029 of September 9, 2004, authorizing ratification of the Framework Convention for Tobacco Control of the WHO;"Article 3 (new) – Pursuant to the provisions of Article 11 of the Framework Convention for Tobacco Control of the WHO, all packaging units of tobacco products made locally and abroad for consumption in the territory of the Republic of Madagascar must bear the following statements and warnings:"
Madagascar	Interministerial Order No. 29.511/2013 Concerning the Prohibition of Smoking in all Indoor or Enclosed Places That Constitute Workplaces, Public Places and Public Transportation	2014	Preamble, SF law. and enforcement	In light of Law No. 2004-029 of September 9, 2004, authorizing the ratification of the Framework Convention for Tobacco Control; (2) In application of the Framework Convention on Tobacco Control of the WHO, the acts of smoking cigarettes and tobacco products in any indoor or enclosed spaces comprising: o Workplaces; o Public places; o Public transportation, are strictly forbidden. Agents and Officers of the Judicial Police, law enforcement agents, the Mayor or his Deputy, are charged with enforcement on the basis of this Administrative Order and the Framework Convention on Tobacco Control of the WHO.
Madagascar	Interministerial Order No. 14.762/2012 Setting the Procedures for Implementation of Decree No. 2010-1008 of 14 December 2010 Concerning the Packaging and Labeling of Tobacco Products for Sale in Madagascar	2012	Preamble	"In light of Law No. 2004-029 of September 9, 2004, authorizing the ratification of the Framework Convention for Tobacco Control of the WHO;"
Maldives	Circular No. 23-C3 on Health Warnings	2004	· Intro/preamble	· "As a party to WHO's [FCTC], the government of Maldives has decided to issue health warning messages . . ."
Mexico	Ministry of Health Agreement on Health Messages and Information to Appear on Packaging and Labeling (shortened title)	2009	· Preamble	· "The [FCTC] . . . establishes in its Article 11 the obligation of each signatory country to adopt and apply effective measures according to its legislation for tobacco products packages and wrappers . . ."

Mexico	Ministry of Health Agreement Amending the Health Messages and Information to Appear on Packaging and Labeling (shortened title)	2011	Preamble	Similar to above
Mexico	Ministry of Health Agreement on Health Messages and Information to Appear on Packaging and Labeling Starting on March 24, 2013	2013	Preamble	"The Framework Convention for Tobacco Control of the WHO, published in the Diario Oficial of the Federation on May 12, 2004, whose approval by the Senate of the Republic gave it the standing of a Supreme Law pursuant to what Article 133 of Political Constitution of the United Mexican States establishes in its Article 11 regarding the obligation of each signatory country to adopt and implement, on the basis of its legislation, effective measures so that on packages and containers of tobacco products, and on all packaging and external labeling thereof, there should appear health warnings . . ."
Mexico	Ministry of Health Agreement on Health Messages and Information to Appear on Packaging and Labeling Starting on March 24, 2014	2014	Preamble	"The Framework Convention of the World Health Organization for the Control of Tobacco, published in the Official Gazette on May 12, 2004, whose approval by the Senate gave the character of supreme law in accordance with the provisions of Article 133 of the Constitution of the United Mexican States provides in Article 11 requires each signatory country to adopt and implement in accordance with its law, effective measures to ensure that packages and containers of snuff products and any outside packaging and labeling of such products, carry health warnings . . ." [Google Translate]
Mexico	Ministry of Health Agreement on Health Messages and Information to Appear on Packaging and Labeling Starting on September 24, 2014	2014	Preamble	"The Framework Convention of the World Health Organization for the Control of Tobacco, published in the Official Gazette on May 12, 2004, whose approval by the Senate gave the character of supreme law, as the provisions of Article 133 of the Constitution of the United Mexican States provides in Article 11 requires each signatory country to adopt and implement in accordance with its law, effective measures that packages and containers tobacco products and any outside packaging and labeling of such products, carry health warnings . . ." [Google Translate]

Mexico	Ministry of Health Agreement on Health Messages and Information to Appear on Packaging and Labeling Starting on September 14, 2012	2012	Preamble	"The WHO Framework Convention [on] Tobacco Control, published in the Official Gazette on May 12 2004, whose approval by the Senate gave the character of supreme law in accordance with Article 133 of the Constitution of the United Mexican States provides in Article 11, the obligation each signatory country to adopt and implement in accordance with its law, effective measures to ensure that packages and packages snuff products and any outside packaging and labeling of such products, carry health warnings describing the harmful effects of the consumption of snuff, and other appropriate messages on a rotating basis, large, clear and legible, approved by the competent national authority."
Moldova	Resolution No. 886 on Approval of the National Policy on Health	2007	· Article 99	· "99. Warning labels affixed to the compulsory on the packages of tobacco products will be changed and brought into conformity with the provisions of the [WHO FCTC]." (translation is rough)
Montenegro	Law No. 52/2004 on Limiting the Use of Tobacco Products	2004	· Preambles Section 3(A) · Preambles Section 3(B)(III)	· Notes that the FCTC was consulted in drafting law · "One of the key regulations of the draft law (Article 21) refers to the prohibition of advertising tobacco products. These decisions have been harmonized with . . . the [WHO] Convention from 2003."
Myanmar	Control of Smoking and Consumption of Tobacco Product Law (Law No. 5/2006)	2006	· Section 3(e)	· "3. The objectives of this Law are as follows: . . . (e) to implement measures in conformity with the international convention ratified by Myanmar to control smoking and consumption of tobacco product." (indirect reference)
Namibia	Tobacco Products Control Act, (Act No. 1) 2010	2010	· Preamble	· "RESOLVING to align the health system with the democratic values of the Constitution and the [WHO FCTC] . . ."
Namibia	Tobacco Products Control Act, 2010	2014	Preamble	"RESOLVING to align the health system with the democratic values of the Constitution and the World Health Organisation Framework Convention on Tobacco Control, . . ."
Nepal	Tobacco Product Control and Regulatory Directive	2014	Preamble	"to improve health and economy of the general public WHO Framework Convention on Tobacco Control - WHO FCTC..."

Nicaragua	Law No. 727 on Tobacco Control	2010	· Article 1 · Article 2(2) · Article 3 · Article 4 (Definitions) · Article 20 · Article 22	· “The provisions of this Act are of public interest and in line with the commitments the State of the Republic of Nicaragua has undertaken by signing and ratifying the [WHO FCTC] and other treaties on the protection of the human rights of non-smokers.” · “2. Comply with the commitments of the Republic of Nicaragua under the [FCTC] and other human rights treaties, and adopt measures reflecting international best practices on tobacco control.” · “The Ministry of Health shall be competent to implement this Act and its regulation, adopt tobacco control measures . . . , and to provide . . . other information pertaining to the objectives of the [FCTC] and the objectives and purpose of this Act.” · “Framework Convention means the [FCTC] of the World Health Organization (WHO) signed by the Republic of Nicaragua on 7 June 2004 and ratified by the National Assembly on 24 February 2008.” · “Tobacco products may be sold tax free up to a maximum quantity of 500 grams per adult traveller in establishments, stores or shops located in airport terminals or international ports. It is also forbidden to import tobacco products without paying the taxes established by national taxation legislation. All of the above stipulations are based on this Act and national taxation legislation and are in compliance with chapter (b) article 6 of the WHO [FCTC].” · “. . . Nicaragua, through the Ministry of Health, shall adopt and implement guidelines for testing and measuring the content and emissions of tobacco products, pursuant to the regulation on such contents and emissions. These guidelines shall be approved once the [COP] of the WHO [FCTC], in consultation with the competent international organizations, has issued an opinion on the matter, in accordance with the provisions of article 9 of the WHO [FCTC].”
Niger	Decree No. 2008-223 Establishing the Modes of Enforcement of No. 2006-12 Relative to Tobacco Control	2008	· Preamble	· Noting Niger’s ratification of the FCTC
Niger	Joint Administrative Order No. 441 Concerning the Opening and Operation of Points of Sale for Tobacco Products in Niger	2013	Preamble	"In light of Law no. 2005-006 of April 15, 2005, authorizing the ratification of the Framework Convention for Tobacco Control of the World Health Organization;"

Niger	Joint Administrative Order No. 442 Regulating the Composition, Packaging and Labeling of Tobacco Products in Niger	2013	Preamble	"In light of Law no2005-006 of April 15, 2005, authorizing the ratification of the Framework Convention for Tobacco Control of the World Health Organization;...In light of the Guidelines for the implementation of Article 11 (packaging and labeling of tobacco products) of the Framework Convention for Tobacco Control of the WHO);...
North Korea	National Plan for Tobacco Control (not sure if this is "legislation")	2006	· Introduction	· "This plan will suit to the implementation of the strategy of DPRK, WHO FCTC and strategy of the SEARO for the tobacco control, too. Government, a party ratified to the WHO, FCTC, will revise with 5 years cycle the national plan to implement the conventions of the WHO, FCTC, to protect the prevalence of smoking, to elevate the control capacity and to promote the economic activities."
Palau	RPPL No. 8-27	2011	· Long title · Section 1	· WHO FCTC included in long title of the act · "Legislative findings and purpose . . . This bill separates the tobacco laws from the alcohol laws and creates new tobacco control laws which reflect the Republic's commitment to the [WHO FCTC]."
Palau	Declaration No. 12-001, Office of the Council of Chiefs	2012	· Preamble · Preamble	· "WHEREAS, the world through the WHO [FCTC], conducted in May, 2003 committed to work to eliminate the scourge and devastation of tobacco to ensure a better and healthy world." · "WHEREAS, our Republic has ratified [FCTC] we should join all the nations around the world to work together to eliminate the scourge and devastation of tobacco."
Panama	Ministry of Health Executive Decree No. 611	2010	· Preamble	· FCTC mentioned five times in the preamble
Panama	Ministry of Health Executive Order No. 230	2008	· Preamble · Article 1(4)	· Noting Panama's ratification of the FCTC · "Incorporate as basic topics in the five-year plan: . . . worldwide provisions issued by the parties at the Conference of the WHO [FCTC] . . ."
Panama	Ministry of Health Executive Decree No. 1838 of December 5, 2014	2014	Preamble	Multiple references (not translated into English)
Peru	Supreme Decree No. 015-2008-SA, Regulations of Law No. 28705	2008	· Annex No. 6	· The FCTC is listed under "Regulations of Reference" in Annex No. 6.
Peru	Law No. 29517	2010	· Long Title · Article 1 – Purpose of the Law	· Long title: "Law Which Amends Law No. 28705, General Law for the Prevention and Control of the Risks of Tobacco Use in Order to Adapt to the WHO Framework Convention On Tobacco Control" · "The purpose of this law is to amend Law No. 28705 . . . in compliance with the [FCTC]."

Peru	Supreme Decree No. 001-2011-SA	2011	· Preamble	· “Whereas . . . Through Law No. 29517, Law No. 28705 was amended to adapt it to the World Health Organization (WHO) Framework Convention on Tobacco Control . . .”
Peru	Ministerial Resolution No. 469-2011	2011	· Preamble	· Similar to above
Philippines	Bureau of Internal Revenue, Revenue Memorandum No. 16-2012	2012	· Legal Basis (II(e))	· Cites FCTC ratification by the Senate, and quotes from Article 8
Philippines	Department of Education Order No. 6, s. 2012 - Guidelines on the Adoption and Implementation of Public Health Policies on Tobacco Control and Protection Against Tobacco Industry Interference	2012	· Section 1.c	· “The Department of Education (DepEd) has issued [this policy] in compliance with . . . 1.c. Guidelines for the Implementation of Article 5.3 of the [WHO FCTC].”
Philippines	Joint Memorandum Circular No. 2010-01 on Protection of the Bureaucracy Against Tobacco Industry Interference	2010	· Several mentions throughout, specifically Article 5.3 and its Guidelines	· I.e., “Pursuant to the [WHO FCTC] . . . specifically under the title General Obligations, Article 5.3; the Parties . . . shall act to protect these policies from commercial and vested interests of the tobacco industry.”
Philippines	Graphic Health Warnings Law, Republic Act No. 10643	2014	Preamble	“The State accepts that, as a State-Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), . . .” “The State is cognizant of the Philippines' duty under Article 11 of the FCTC which is to adopt and implement by September 2008 effective health warnings on tobacco products that should describe the harmful effects of tobacco use.”
Philippines	Civil Service Commission Memorandum Circular No. 17 on Smoking Prohibition	2009		· “This policy finds legal basis from the Tobacco Control Act of 2003 (Republic Act 9211) and the [WHO FCTC], Article 8 and its guidelines.”
Philippines	Department of Transportation and Communications, Land Transportation Franchising and Regulatory Board, Memorandum Circular No. 2009-036	2009		· “Pursuant to R.A. No. 9211, also known as the Tobacco Control Act of 2003, and the Philippine's obligation under Article 8 of the [FCTC], . . .”
Philippines	Department of Health Memorandum No. 2010-0126 on Protection of the Department of Health, including all of its Agencies, Regional Offices, Bureaus or Specialized/Attached Offices/Units, against Tobacco Industry Interference	2010		· “Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC) recognizes the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts as well as the need to be informed of activities . . .”

Romania	Ordinance No. 5 of 30 January 2008 Amending and Supplementing Law No. 349/2001	2008	Article 20	· Establishing new Article 8-1, to read: "(A) Ministry of Public Health will establish the National Center for Tobacco Control, unincorporated structure, to implement the WHO [FCTC], ratified by Law No. 332/2005." [Note: see pages 27-31 of file on Legislation Database for Ordinance No. 5/2008]
Russia	Federal Law No. 15-FZ of February 23, 2013	2013	Introduction Definitions Monitoring	"This Federal Law, in accordance with the World Health Organization Framework Convention on Tobacco Control, regulates the relationships arising from the protection of the health of citizens from the effects of second hand smoke and the consequences of tobacco consumption." "Other concepts are used in this Federal Law in the meanings defined by the World Health Organization Framework Convention on Tobacco Control," "3) preparation and submission of a report on the performance by the Russian Federation of the World Health Organization Framework Convention on Tobacco Control."
Russia	Regulation No. 1214 "On Approval of Monitoring and Assessing the Effectiveness of Measures Aimed at Preventing Exposure to Environmental Tobacco Smoke and Reducing Tobacco Consumption"	2013	Monitoring and Evaluation	...v) the report on the implementation of the Framework Convention by the Russian Federation of the World Health Organization on Tobacco Control, presenting it in the manner prescribed above international treaty."
Russia, Kazakhstan, Armenia, Belarus	Eurasian Economic Commission Technical Regulations for Tobacco Products	2014	Introduction	"These technical regulations were developed in accordance with the Agreement on common principles and rules of technical regulations in the Republics of Belarus, Kazakhstan, and the Russian Federation on November 18, 2010, taking into account separate provisions of the World Health Organization's Framework Convention on Tobacco Control (WHO FCTC)."
Rwanda	Instructions of the Minister of Health No. 20/10 of 10/05/2005 Relating to the Protection of Non-Smokers and Environment Against Damages and Bad Consequences of Tobacco	2005	Preamble	· "Given the Presidential Order N° 13/01 of 25/05/2005 ratifying the [WHO FCTC]."

Rwanda	Law No. 08/2013 of 01/03/2013 Relating to the Control of Tobacco	2013	Preamble	"Pursuant to the World Health Organisation (WHO) Framework Convention adopted in Geneva on 21 May 2003, in the Resolution n° 56.1 of the World Health Organisation General Assembly ratified by the Presidential Order n° 13/01 of 25/05/2005, especially in Articles 3, 5, 11, 12, 13, 15 and 16;"
Sao Tome	Law No. 3/2014, Tobacco Control Law	2014	Preamble	São Tomé e Príncipe cannot refrain from engaging in such measures for tobacco control, considering that it has ratified the Framework Convention on Tobacco Control of the WHO.
Senegal	Law No. 2014-14 Concerning the Manufacture, Packaging, Labeling, Sale and Use of Tobacco	2014	Preamble (Explanatory Memorandum)	"However, through Law No.2004 – 36 of December 14, 2004, Senegal renewed its commitment to tobacco control by ratifying the Framework Convention on Tobacco Control of the World Health Organization adopted at Geneva on May 21, 2003. This convention has as its purpose . . . It offers "a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels . . ."
Serbia	Tobacco Control Strategy (No. 321-386-2007) (not sure if this is "legislation")	2007	· Several mentions throughout (including an excerpt of the Preamble to the FCTC)	
Seychelles	Tobacco Control Act	2009	· Section 22(e)	· "The functions of the Board are – . . . (e) to prepare reports to the Conference of the Parties of the [FCTC] as is required by the Convention and its protocols. . . ."
Solomon Islands	Tobacco Control Act 2010	2010	· Long title · Article 2 (definitions) · Article 25(c) · Article 42	· "'Convention' means the [WHO FCTC] that entered into force on the 27th day of February 2005" · "The functions of the Committee are -- . . . (c) to fund or promote the funding of measures required under Articles 12, 14, 20, 21 and 22 of the Convention." · "Subject to such modifications and adaptations, prescribed by regulations, as may be necessary to achieve the objects of this Act, the Convention shall have the force of law in the Solomon Islands."
South Africa	Tobacco Products Control Act 83 of 1993 (as amended)	1993	· Preamble	· "RESOLVING to align the health system with the democratic values of the Constitution and the World Health Organisation's [FCTC] . . ."
Spain	Law 28/2005	2005	· Legislative History	· "These measures must be completely in line with the actions established in the 2002 European Strategy for Tobacco Control of the European Region and the WHO [FCTC] . . . ratified by Spain on December 30, 2004."

Spain	Royal Decree 639/2010	2010	· Preamble	· “Furthermore, article 11.1 of the WHO [FCTC], ratified by Spain on 30 December 2004, stipulates that health warnings in the form of pictures or pictograms can be an effective means of discouraging smoking.”
Suriname	Suriname - Tobacco Act 2013.pdf	2013	Preamble	"Having considered that, in the context of the accession of Suriname to the WHO Framework Convention on Tobacco Control as well as in the context of article 9 of the Constitution, it is in the interest of public health to set rules that limit the use of tobacco and tobacco products."
Swaziland	Tobacco Products Control Act, 2013	2013	Preamble	"AN ACT to give effect to the World Health Organisation 's framework Convention on tobacco control and other matters incidental thereto."
Syria	Ministry of Health Report on Tobacco Control Programme for 2008	2008	· Policy?	· Syria – Ministry of Health Report on Tobacco Control Programme for 2008 – this contains several references to the FCTC, but does not appear to be “legislation”
The Gambia	The Gambia – FCTC is cited Tobacco Products (Ban on Advertisements) Act, 2003 in a section called “Objects and Reasons”; unclear whether this is part of the law	2003		FCTC is cited Tobacco Products (Ban on Advertisements) Act, 2003 in a section called “Objects and Reasons”; unclear whether this is part of the law
Timor-Leste	Circular No. 5-2008 on the Prohibition of Smoking in the Health Facilities and the Health Premises	2008	· Preamble	· “Considering the commitment of the State of Timor-Leste on the Tobacco Control, in accordance with the Resolution of National Parliament No. 13/2004, 29 December by which the parliament ratified the [FCTC]; Taking into account point 2, article 8 of FCTC which is considered as the duty of the State of Timor-Leste . . .”
Trinidad and Tobago	Cabinet Minute No. 1045 of April 21, 2005	2005	· Note for Cabinet (not sure whether this “note” is part of the “legislation”	· 2. Noting ratification of the FCTC and its entry into force · 3. “The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control. It is also to provide measures which are to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.” · 4. “To achieve the objectives of the Convention Parties are expected to be guided by the under mentioned principles: . . . [two principles]”

Trinidad and Tobago	Tobacco Control Act 2009	2009	· Preamble · Section 4 (definitions) · Section 5(d)	· “And whereas resolving to align national laws with the [WHO FCTC] . . .” · “‘Convention’ means The World Health Convention on Tobacco Control of 2003” · “The Minister shall establish a Unit within the Ministry which shall be responsible for – . . . (d) reporting on Trinidad and Tobago’s progress to the [WHO] and at international conferences hosted for signatories to the Convention . . .”
Turkey	Regulation on the Matters That Must Be Complied With in the Issuance of Presentation Conformity Certificates to a Location/Locations That Belong to Businesses Where Hookah Tobacco Materials Are Smoked and the Operation of These Places	2013	Article 1	"(1) This Communiqué has been prepared based on the World Health Organization Framework Convention on Tobacco Control accepted by Decision no. 5261 dated 25/11/2004, . . ."
Turkey	National Tobacco Control Program Action Plan (2015-2018)	2015	B.3: Tobacco Production and Alternative Policies C. Monitoring, Assessment and Reporting of Tobacco, Tobacco Products, and the National Tobacco Control Program Action Plan	"3.The resources specified in article 26 of the Tobacco Control Framework Convention being put into action within the framework of national plans and programs "5.Preparing the annual “Country Report” on the relevant information in parallel with the Tobacco Control Framework Convention"
United Kingdom	Revised Guidelines for Overseas Posts on Support to the Tobacco Industry	2013	Multiple references throughout	" The Department of Health (DH) have decided to be more prescriptive in relation to the provision of support to the tobacco industry, to ensure any such support is consistent with the provisions of the WHO Framework Convention on Tobacco Control (FCTC). The Government takes very seriously its obligations as a Party to the (FCTC). This includes the treaty commitment at Article 5.3 to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. " Other references throughout document. Applies to England, N. Ireland, Scotland, and Wales.
Uruguay	Ministry of Public Health Decree No. 284/008	2008	· Preamble	· “It also aims to eliminate its promotion by any means, pursuant to the provisions of the [WHO FCTC], ratified by the Republic through Law No. 17,793 of July 16, 2004.”

Uruguay	Ministry of Public Health Decree No. 287/009	2009	· Preamble	
Uruguay	Ministry of Public Health Ordinance No. 514	2008	· Preamble	·
Uruguay	Ministry of Public Health Ordinance No. 466	2009	· Preamble	·
Uruguay	Ministry of Public Health Ordinance No. 374	2011	· Preamble	·
Uruguay	Law No. 18.256 on Smoking Control Regulations	2008	· Several mentions throughout	· I.e., "Article 5. . . . The Ministry of Public Health is hereby authorized to adopt guidelines on the analysis and measurement of the content and emissions of tobacco products and the regulation of those contents and emissions recommended by the Conference of the Parties, pursuant to the provisions of Article 9 of the above Framework Convention."
Venezuela	Resolution No. 004 of 2014 Regulating Packaging and Labeling	2014	Preamble	"The World Health Organization (WHO) recommends that corresponding to the health warnings placed on cigarette packs pictures will be changed every two years in order to make an impact on the population consuming cigarettes, as it has been scientifically It has been shown that the use of snuff in any form is addictive, its components are toxic and carcinogenic, and that his presentation can be a means to promote the purchase and consumption of the product."
Viet Nam	Prime Minister Directive No. 12/2007/CT-TTg on Strengthening Tobacco Control Activities	2007	· Preamble · Section 3 (title)	· "In order to strengthen tobacco control activities, to fulfill Vietnam's commitment when joining the FCTC. . ." · "3. Step-by-step implementation of the FCTC regulation about printing health warnings on tobacco packs"
Viet Nam	Prime Minister Decision No. 1315/QĐ –TTg on Ratification of the Plan for the Implementation of the Framework Convention on Tobacco Control	2009	· Several mentions throughout	