

the law and unanimously rejected British American Tobacco (BAT)'s legal challenge against the act.¹⁷

- In 2017, Thailand implemented a comprehensive ban on Corporate Social Responsibility (CSR) activities by the tobacco industry. Thailand also implemented a cabinet decision to ensure the state-owned tobacco industry Thai Tobacco Monopoly (TTM) was treated in the same way as any other industry, prohibiting the acceptance of any contributions from TTM.¹⁸
- In 2019, Australia issued “Guidance for Public Officials on Interacting with the Tobacco Industry”, which comprehensively details public health officials’ and organizations’ legal obligations regarding their interactions with the tobacco industry.¹⁹

5. Ministries of justice and law can take important first steps to advance tobacco control and advance progress towards the SDGs.

The right to health is a fundamental and inclusive right. Countries are obliged to mobilize all resources to protect their citizens’ human rights,²⁰ and such rights may be enforceable by law. Ministries of justice and law play a key a role in implementing the obligations of international treaties such as the WHO FCTC. In the first instance, ministries of justice and law should:

- Participate in and prioritise national tobacco control coordination and planning across different ministries and with key senior leaders, including collaborating with the relevant health authorities to develop and adopt a national strategy/action plan for tobacco control.
- Establish or strengthen a National Coordinating Mechanism (NCM) for tobacco control. The formation and success of an NCM relies on high-level political leadership and multisectoral representation, among other factor.²¹
- Call for and facilitate the enactment of legislation on and enforcement of tobacco control measures in accordance with the WHO FCTC to achieve its full implementation and facilitate accession to and implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products.
- Provide legal advice, review, interpretation and support to government ministries to advance the development and implementation of tobacco control policies.
- Implement measures to improve transparency and prevent tobacco industry interference in public health policies with respect to tobacco control, such as legislation, policies, civil service rules and codes of conduct.

In line with the Convention Secretariat’s [Global Strategy to Accelerate Tobacco Control 2025](#) and [UNDP’s Strategic Plan 2022-2025](#) and [HIV, Health and Development Strategy \(2022-2025\)](#), these briefs emphasise the importance of a coordinated, multisectoral whole-of-government approach to tobacco control, empowering Parties to work across sectors to achieve policy coherence.

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Tobacco Control

What Ministries of Justice and Law Need to Know

Key Points

- 1 Tobacco use threatens health, exacerbates inequalities and impedes the achievement of the Sustainable Development Goals (SDGs).
- 2 Evidence-based laws, regulations and policies are effective in reducing the burden of tobacco.
- 3 Ministries of justice and law are well-placed to promote a whole-of-government and whole-of-society response to tobacco control.
- 4 Health policy must be protected from industry interference.
- 5 Ministries of justice and law can take first steps to advance tobacco control and accelerate progress towards the SDGs.

Sustainable Development Goal 3 (SDG 3) aims ‘to ensure healthy lives and promote well-being for all at all ages’.¹ An effective law and justice framework that promotes and enforces health as a human right is crucial to achieving SDG 3, particularly strengthening the implementation of the WHO FCTC in all countries (Target 3.a) and achieving universal health coverage (UHC), access to quality essential health-care services, and access to safe, effective, quality and affordable essential medicines and vaccines for all (Target 3.8).

The WHO FCTC is a legally binding treaty that reaffirms the right to health.² It was developed in response to the tobacco epidemic and currently has 183 Parties, covering more than 90 percent of the global population.³

1. Tobacco use threatens health, exacerbates inequalities and impedes the achievement of the SDGs.

The extensive and preventable impact of tobacco on mortality is incontestable. Tobacco use is one of the leading causes of premature death, and a common risk factor for the main types of non-communicable diseases (NCDs). Globally, tobacco use causes more than 8 million deaths per year: more than 7 million are from direct use and about 1.2 million deaths are due to exposure to secondhand smoke.⁴ Around 80 percent of tobacco users live in low- and middle-income countries (LMICs).⁵

Tobacco use exacerbates inequalities. Poverty and social inequalities are interlinked with NCDs since their rapid spread slows down the implementation of poverty-reduction initiatives, particularly in low-income countries. The negative trend of tobacco-related diseases further affects the social determinants of health, such as socioeconomic status and access to education, thereby worsening the response of health outcomes on the conditions of daily life. Since social determinants are responsible for between 30–55 percent of health outcomes,⁶ NCDs and other tobacco-related diseases also have a negative impact on social protection and access to health-care services, while threatening health equity in LMICs.

Tobacco use also impedes progress towards universal health protection. Aging populations, with growing demands for health services but with a shrinking tax/income base to fund these needs, are already putting a strain on health financing. By putting additional pressure on national social security systems, tobacco use perpetuates and exacerbates these health financing gaps. This creates a need for subsidies, co-financing or increased insurance premiums, and effectively reduces the amount of funds that could be allocated to meeting other needs. Moreover, people of low socio-economic status are more likely to be uninsured, seek health care less often and receive poor health-care service.⁷

Ministries of justice and law have the power to protect the rights and address the needs of vulnerable sectors by developing an effective law and justice framework that is able to promote health as a human right, by guaranteeing UHC and equitable access to high-quality health-care services.⁸

2. Evidence-based laws, regulations and policies are effective in reducing the burden of tobacco.

The WHO FCTC is an evidence-based treaty with the goal of reducing tobacco use and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by Parties at the national, regional and international level. This treaty, which was adopted by the World Health Assembly in May 2003 and entered into force in February 2005,⁹ provides an important framework for protecting the rights of all people to attain the highest standard of health. Due to the complex factors that facilitate the spread of the tobacco epidemic, Parties to the treaty should implement it effectively and without delay, while States that are not party should consider accession. Tobacco control requires a global effort due to the impact of cross-border international trade and direct foreign investment on tobacco use and exposure.

Parties to the Convention have a legal obligation to implement effective evidence-based legislative and/or regulatory measures to reduce the tobacco burden, including the following measures below. The majority of these have been identified as priority measures in the Global Strategy, while WHO FCTC Article 15 has been further elaborated through the Protocol to Eliminate Illicit Trade in Tobacco Products.

- Increasing tobacco taxation to reduce the affordability of tobacco products (WHO FCTC Article 6).
- Creating smoke-free public places and workplaces to protect people from the deadly consequences of tobacco smoke (WHO FCTC Article 8).
- Implementing graphic health warnings on tobacco product packaging and labelling and plain packaging of tobacco products (WHO FCTC Article 11 and the

Guidelines for implementation of WHO FCTC Article 11 and Article 13).

- Enacting and enforcing a comprehensive ban on all forms of tobacco advertising, promotion and sponsorship (WHO FCTC Article 13).
- Combating illicit trade in tobacco products (WHO FCTC Article 15 and the Protocol to Eliminate Illicit Trade in Tobacco Products).

The Protocol to Eliminate Illicit Trade in Tobacco Products, the first protocol adopted under the WHO FCTC to build on and complement Article 15 of the Convention, aims to eliminate all forms of illicit trade of tobacco products through the implementation of a package of measures with an emphasis on international cooperation.¹⁰ Countries should ratify the Protocol and implement it in full to address the serious threat to public health, finance and security brought by illicit trade in tobacco products.

Despite sound and evidence-based measures being adopted by countries, the tobacco industry uses a range of tactics to impede tobacco control efforts. Litigation is one of the tactics most aggressively and systematically used by the industry to impede tobacco control laws and measures, either by delaying or weakening the implementation of laws or by intimidating the government into inaction.

TRIBUNALS HAVE RECOGNIZED THE RIGHTS OF COUNTRIES TO TAKE STRONG TOBACCO CONTROL MEASURES.

Courts and tribunals at national, regional and international levels have consistently rejected legal challenges to tobacco control measures and reaffirmed countries' sovereign right to adopt tobacco control measures and other regulatory measures for public health. Numerous countries have successfully defended tobacco control laws from legal challenges in their domestic courts, including Kenya, Panama, Sri Lanka and Uruguay.^{11,12} The tobacco industry has even resorted to bringing legal challenges to tobacco control measures before international investment and trade tribunals; an investment tribunal comprehensively rejected the legal challenge brought by Philip Morris International against Uruguay's tobacco control measures in 2016,¹³ while the WTO Appellate Body upheld Australia's plain packaging laws in June 2020.¹⁴ Tobacco industry legal challenges have also been rejected under regional economic integration agreements in the European Union and Norway.¹⁵

3. Ministries of justice and law are well-placed to promote a whole-of-government and whole-of-society response to tobacco control.

Ministries of justice and law can play a key role in advancing tobacco control legislation by facilitating the adoption, implementation and enforcement of tobacco control measures in accordance with the WHO FCTC, and by facilitating accession to and implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products. Ministries of justice and law can also play a key role through providing support to other government ministries in the form of legal advice, review, interpretation and other legal support in developing and implementing tobacco control measures.

Ministries of justice and law can promote multisectoral action on tobacco control, including through strong multisectoral coordination mechanisms. Through committee oversight, they can promote horizontal and vertical policy coherence, i.e., across and between government sectors at local, national, regional and global levels. Ministries of justice and law can also facilitate the incorporation of tobacco and NCD prevention and control strategies, policies and programmes into public health policies.

4. Health policy must be protected from industry interference.

Implementing measures to protect health policymaking from tobacco industry interference is critical for effective WHO FCTC implementation. Under WHO FCTC Article 5.3, Parties are obligated to “protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”.¹⁶

Several countries have taken decisive action to protect public health policy from tobacco industry interference:

- Uganda enacted the Tobacco Control Act in 2015, a comprehensive tobacco control law that also included measures to protect against tobacco industry interference. The Constitutional Court of Uganda upheld