

# NEW PAPER – THE IMPACT OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL IN DEFENDING LEGAL CHALLENGES TO TOBACCO CONTROL MEASURES

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We have just [published a paper](#) for an upcoming Special Supplement of *Tobacco Control*, which will examine the impact of the World Health Organization Framework Convention on Tobacco Control since its entry into force. Our paper examines the contribution of the WHO FCTC to the decisions of courts in resolving legal challenges to tobacco control measures.

The Special Supplement builds on the [ten-year impact assessment of the WHO FCTC](#), which was established at the 6<sup>th</sup> session of the Conference of the Parties to the WHO FCTC in October 2014 in Moscow, and presented to the 7<sup>th</sup> session of the Conference of the Parties in New Delhi in October 2016. In 2015, we prepared a review of litigation and legislation with the International Legal Consortium at the Campaign for Tobacco Free Kids as part of a global evidence review to inform the work of the expert group conducting the impact assessment. Our Special Supplement paper builds on this earlier review by focusing on one specific area of litigation linked to our knowledge hub work – the defence of legal challenges brought by the tobacco industry. Legal challenges by the tobacco industry are one of the most commonly cited barriers to the implementation of tobacco control measures, and the successful defence of legal challenges is important in ensuring that

tobacco control measures are developed and adopted. Our paper looks at whether and how the WHO FCTC influences how courts decide such challenges, and finds that the WHO FCTC is invoked in a variety of ways by courts, both as a binding legal instrument that is part of the applicable legal framework, and as a source of technical and scientific authority.

The abstract of the article is below, and early online access to the full article is available at <http://tobaccocontrol.bmj.com/content/early/2018/06/16/tobaccocontrol-2018-054329>:

## ***Abstract: The impact of the WHO Framework Convention on Tobacco Control in defending legal challenges to tobacco control measures***

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**Background** *Since the WHO Framework Convention on Tobacco Control's (FCTC) entry into force, the tobacco industry has initiated litigation challenging tobacco control measures implemented by governments around the world, or supported others to initiate such litigation on its behalf. In defending their tobacco control measures against such litigation, governments have invoked their obligations and rights under the WHO FCTC. We assess the extent to which the WHO FCTC has provided legal weight to governments' defences against legal challenge.*

**Methods** *We reviewed 96 court decisions concerning legal challenges to tobacco control measures, determining whether or not they cited the WHO FCTC and their outcomes. We then reviewed the cases where the WHO FCTC was cited, analysing how the WHO FCTC contributed to the resolution of the case.*

**Results** *The WHO FCTC was cited in 45 decisions. Decisions both citing and not citing the WHO FCTC were largely decided in favour of governments, with 80% of WHO-FCTC-citing and 67% of non-WHO-FCTC-citing cases upholding the measure in its entirety and on every ground of challenge. In cases where it was cited, the WHO FCTC contributed to the resolution of the case in favour of governments by providing a legal basis for measures, demonstrating the measure's public health purpose, demonstrating the evidence in favour of a measure, demonstrating international consensus, demonstrating that a measure promotes or protects health-related human rights and demonstrating whether or not a measure is reasonable, proportionate or justifiable.*

**Conclusions** *The way the WHO FCTC has been cited in court decisions suggests that it has made a substantial contribution to courts' reasoning in tobacco control legal challenges and has strengthened government's arguments in defending litigation.*

For more on the WHO FCTC's ten-year Impact Assessment, see:

<http://www.who.int/fctc/implementation/impact/en/>

Further papers in the WHO FCTC Impact Assessment special supplement are available at

[https://tobaccocontrol.bmj.com/content/28/Suppl\\_2](https://tobaccocontrol.bmj.com/content/28/Suppl_2)

We also have a Knowledge Hub page on how the WHO FCTC can be used to defend legal challenges, which is informed by our research for the impact assessment and this paper: see [Role of the WHO FCTC in legal challenges](#)