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“ Big Tobacco can afford to hire the best lawyers and PR firms that money can buy. Big Money ... can trample even the most damning scientific evidence ... It is horrific to think that an industry known for its dirty tricks and dirty laundry could be allowed to trump what is clearly in the public's best interest. **”**

DR. MARGARET CHAN

DIRECTOR-GENERAL OF THE WORLD HEALTH ORGANIZATION



World Health
Organization

ROADMAP TO PROTECTING HEALTH FROM BIG TOBACCO

A guide for implementation of the Framework Convention
on Tobacco Control's Article 5.3



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This document contains information on policymaking options to implement Article 5.3 of the WHO Framework Convention on Tobacco Control. The document is informational only and is not intended as legal advice. Those wishing to implement Article 5.3 should obtain their own legal advice regarding how to implement it in a manner consistent with treaty and national law.

The Roadmap: Demystifying Article 5.3

Corporate Accountability International has developed an easy-to-use tool for governments, advocates, and experts to accelerate implementation of the backbone of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC): Article 5.3 and its guidelines.

Big Tobacco is the greatest obstacle to the treaty

The tobacco industry's aggressive attempts to block, weaken, and delay implementation of the FCTC are the greatest threats to the treaty's potential to save hundreds of millions of lives. This deadly industry will stop at nothing to protect its profits at the expense of people's lives. Some of its tactics include:

- ▶ Lobbying decision-makers behind closed doors.
- ▶ Drafting legislation and regulations.
- ▶ Making direct gifts to governments to gain favor with lawmakers.
- ▶ Aggressive litigation in countries around the world.
- ▶ Producing junk science.
- ▶ Entering into partnerships with governments.
- ▶ So-called "corporate social responsibility" (CSR) schemes.

Article 5.3 is the most powerful tool to protect lifesaving policies

The FCTC includes a critical provision—Article 5.3—that recognizes the tobacco industry's irreconcilable conflict of interest with public health. The article is the backbone of the treaty; the treaty cannot succeed if industry interference is not rooted out. Together with its guidelines, Article 5.3 enables countries to end each of the dirty tactics the industry uses to interfere in policymaking.

When Article 5.3 is implemented, it saves lives

Governments from the Philippines to Thailand that have implemented Article 5.3's guidelines have already started seeing results—from speeding up policymaking, approval, and enforcement of tobacco control measures to

increasing the transparency and accountability of all of the processes involved in implementing the FCTC.

Use the Roadmap to harness Article 5.3's power

No one said implementation would be easy. Article 5.3 is more than a public health measure—it is a good governance measure, an anti-corruption measure, and a transparency measure. All of these will involve authorities outside of public health. Furthermore, because implementation has been sporadic, there are few model laws to point to.

This is why Corporate Accountability International has developed a step-by-step guide that brings together technical, legal, and advocacy resources to assist public officials and advocates in translating Article 5.3 guidelines into laws, policies, and enforcement mechanisms.

WHAT DOES THE ROADMAP TOOL OFFER?

1. Step-by-step guide to assess, plan, and draft legislation.
2. All existing resources in one document.
3. Sample legislation, implementation regulations, and administrative policies.
4. Best practices and examples from around the world.

**DOWNLOAD
THE ROADMAP HERE**



WWW.CORPORATEACCOUNTABILITY.ORG/TOBACCO

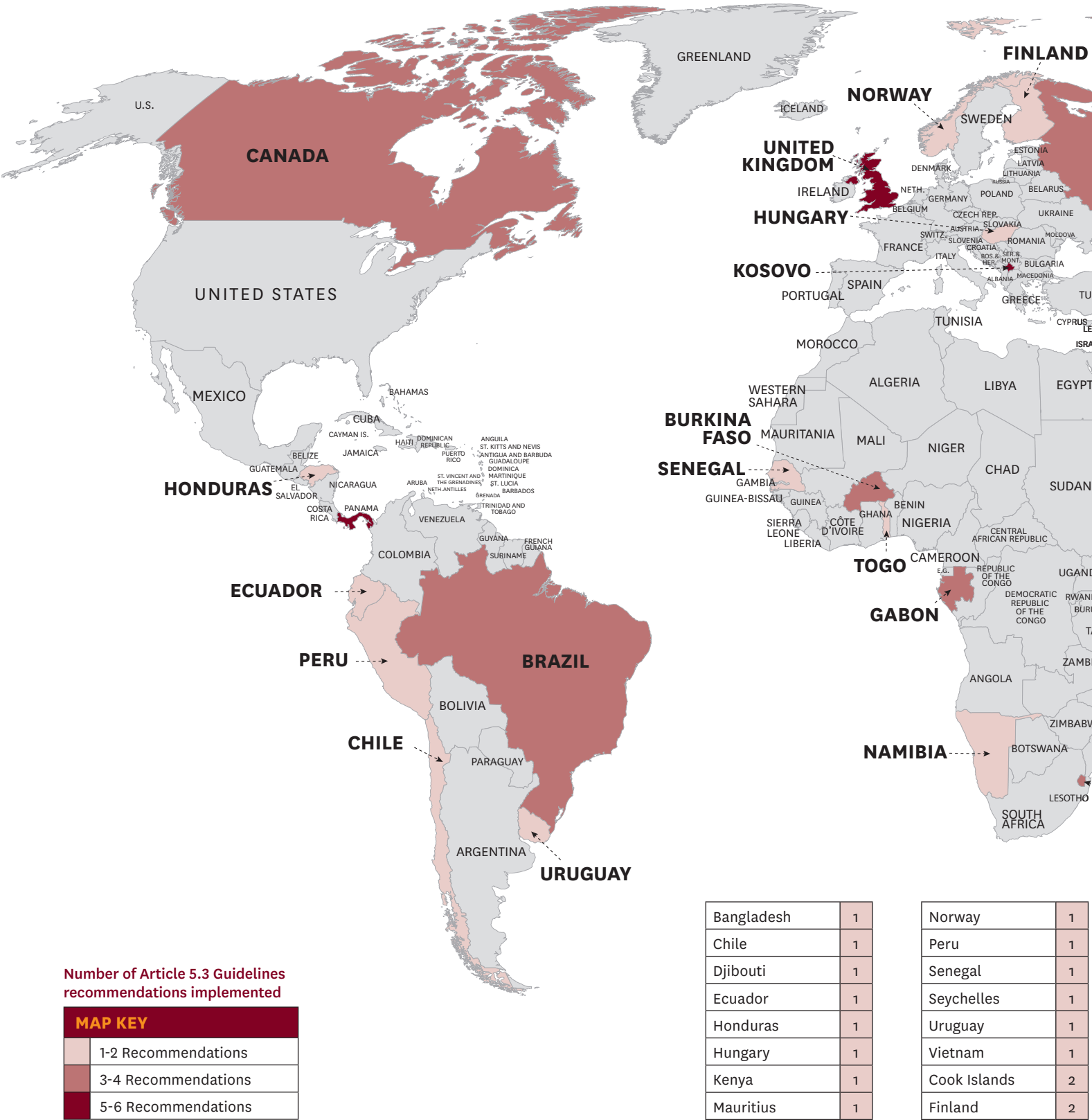
Case Studies in Article 5.3 Implementation

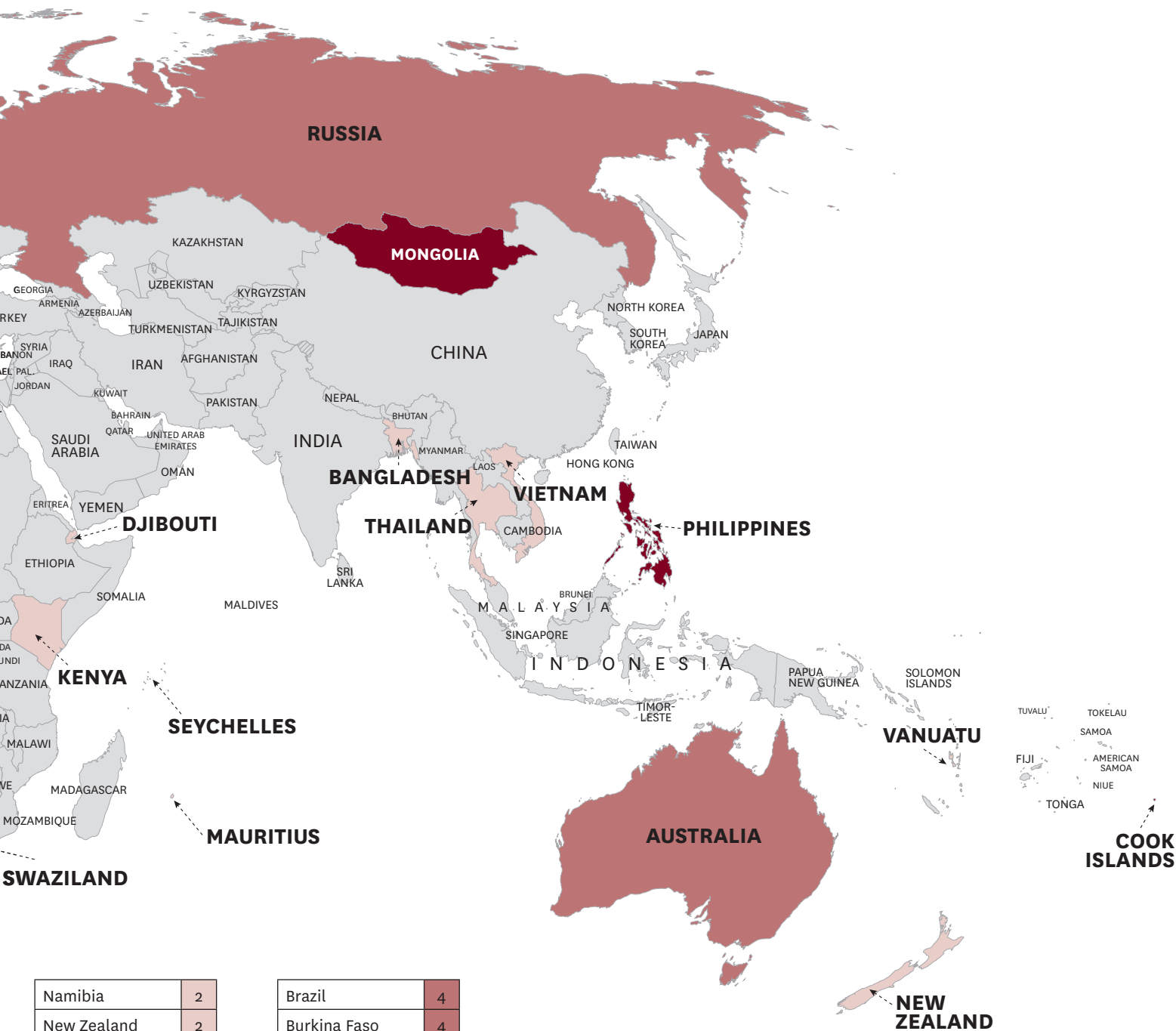
Party to the FCTC	Article 5.3 recommendations addressed*	Description
AUSTRALIA (WPRO)	▶ Limited and Transparent Interactions. ▶ Avoid Conflicts of Interest.	Australia's Future Fund, as well as the governments of New South Wales and South Australia, divested from the tobacco industry. In addition, Australia's 2008 Lobbying Code of Conduct ensures that interactions between lobbyists and government representatives are posted on a searchable online register. ¹ The Australian Public Service Code of Conduct ² requires that all government officials "take reasonable steps" to avoid conflicts of interest.
BRAZIL (AMRO)	▶ Limited and Transparent Interactions. ▶ Reject Partnerships. ▶ Avoid Conflicts of Interest. ▶ No Preferential Treatment.	Brazil ³ requires members of its multi-sectoral national committee for tobacco control, CONICQ, to avoid conflicts of interest, banning acceptance of gifts or offers of partnerships from the tobacco industry. In addition, it bans preferential treatment of the tobacco industry by CONICQ members.
BURKINA FASO (AFRO)	▶ Raise Awareness. ▶ Transparent Interactions. ▶ Transparency of Tobacco Industry Information. ▶ No Preferential Treatment.	Burkina Faso's tobacco control law ⁴ requires the government to raise awareness about the harms of tobacco, as well as the industry's activities. Also mandated by law are the disclosure of tobacco industry information and its activities, the prohibition of preferential treatment, and transparent "relations" with the tobacco industry.
COOK ISLANDS (WPRO)	▶ Raise Awareness. ▶ Transparency of Tobacco Industry Information. ▶ Reject Partnerships. ▶ Avoid Conflicts of Interest.	The Cook Islands' Tobacco Products Control Act ⁵ prohibits any contributions from the tobacco industry to public officials or candidates, whether directly or indirectly. It also requires the tobacco industry to test and report on the contents of its products.
KOSOVO (NON-PARTY)	▶ Limited and Transparent Interactions. ▶ Reject Partnerships. ▶ Avoid Conflicts of Interest. ▶ Transparency of Tobacco Industry Information. ▶ Corporate Social Responsibility (CSR) Regulation. ▶ No Preferential Treatment.	Kosovo's tobacco control law ⁶ currently provides the most extensive limits to tobacco industry interference. It requires the tobacco industry to disclose information about its activities and contains extensive provisions in line with the Article 5.3 guidelines, including requiring limited and transparent interactions with the tobacco industry, prohibiting participation in or support of partnerships with the tobacco industry, prohibiting tobacco industry donations, banning preferential treatment of the tobacco industry, and regulating conflicts of interest.

*These refer to the eight recommendations in the guidelines for implementation of Article 5.3 of the WHO FCTC.

Party to the FCTC	Article 5.3 recommendations addressed	Description
MONGOLIA (WPRO)	▶ Raise Awareness. ▶ Limited and Transparent Interactions. ▶ Reject Partnerships. ▶ Transparency of Tobacco Industry Information. ▶ CSR Regulation. ▶ No Preferential Treatment.	Notably, Mongolia's law on tobacco control ⁷ grants the FCTC authority over Mongolian law; in the event of any conflict, the FCTC prevails. The law also requires transparency of the tobacco industry and its front groups. Moreover, it regulates the government, recommending against preferential treatment of the tobacco industry, banning partnerships in drafting tobacco control policies, and raising awareness of the tobacco industry's abuses to government officials. Finally, the law bans tobacco industry CSR and requires the government to reject offers of CSR from the tobacco industry.
NAMIBIA (AFRO)	▶ Reject Partnerships. ▶ Avoid Conflicts of Interest.	Namibia's tobacco control law ⁸ contains provisions on conflicts of interest, barring individuals with connections to the tobacco industry from participating in the Tobacco Products Control Committee. It also forbids the tobacco industry from contributing financially to any organized activity, which could be interpreted to include any gift to a government official.
NORWAY (EURO)	▶ Avoid Conflicts of Interest.	A statement ⁹ from the Ministry of Finance on pension fund management divests government pension funds from the tobacco industry.
PHILIPPINES (WPRO)	▶ Raise Awareness. ▶ Limited and Transparent Interaction. ▶ Reject Partnerships. ▶ Avoid Conflicts of Interest. ▶ CSR Regulation. ▶ No Preferential Treatment.	The Philippines' Joint Memorandum: Protection of the Bureaucracy Against Tobacco Industry Interference ¹⁰ is arguably the most comprehensive Article 5.3 policy in the world for government conduct. The policy applies to all public servants, containing provisions in line with Article 5.3 guidelines on limiting interactions with the tobacco industry, rejecting partnerships, prohibiting preferential treatment, rejecting gifts from the tobacco industry, and protecting against conflicts of interest. It also creates a multi-sectoral committee to enforce the policy that includes awareness-raising activities and encourages civil society participation.
UNITED KINGDOM (EURO)	▶ Limited and Transparent Interactions. ▶ Reject Partnerships. ▶ Avoid Conflicts of Interest. ▶ CSR Regulation. ▶ No Preferential Treatment. ▶ Treatment of State-owned Tobacco Industry.	The UK's guidelines for foreign diplomats ¹¹ include extensive guidelines in line with Article 5.3, including recommendations for how to limit interaction with the tobacco industry if a government body or official is approached. It also forbids any overseas post from any contact with the tobacco industry or any organization likely to be working with it. Moreover, the guidelines ensure that posts do not treat UK-owned tobacco corporations any differently. Finally, the guidelines lay out a commitment to transparency and public disclosure, pledging to publicize notes from any meeting with the tobacco industry except for those meetings which involve operations issues.

Global Progress in Article 5.3 Implementation





NOTE: These colors represent the total *number* of recommendations implemented, not how *effectively* they have been implemented. We also acknowledge that there are examples of implementation not included in this map because they have yet to be verified.

Roadmap for Comprehensive Implementation of Article 5.3

Guide for protecting public health policies against tobacco industry interference



INTRODUCTION

This document presents a roadmap for comprehensive implementation (including compliance and enforcement)* of Article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC),¹ which requires Parties to protect to-

bacco control policies against interference from the tobacco industry. The Guidelines for Implementation of Article 5.3² establish extensive Recommendations[†] for comprehensive protection against tobacco industry interference, but do not provide best practices or step-by-step guidance for successful implementation.

In addition, Article 5.3 implementation around the world has been slower than other FCTC Articles and piecemeal. Comprehensive implementation of Article 5.3 requires an overarching legal framework that enacts all Recommendations and lays the groundwork to implement any remaining Recommendations. In countries where implementing regulations are required to supplement laws, these should be enacted as well, followed by administrative policies applicable to all levels of civil servants, at the national and subnational levels.

The intent of this document is to supplement the Guidelines and support Parties with practical steps for comprehensive implementation of Article 5.3. For this reason, we call this tool a “roadmap for comprehensive implementation.” The roadmap incorporates many existing resources on Article 5.3 implementation (see endnotes). It is not designed as an exhaustive or universal resource, but rather to provide best practices that can be adapted to a wide range of legal frameworks. It should also be noted that this roadmap should be incorporated into a broader awareness-raising and advocacy campaign to educate policymakers and the public about tobacco industry interference and the pressing need for policies in line with Article 5.3. The intended audience includes government officials, civil society organizations (CSOs), tobacco control advocates and anyone else involved in advancing Article 5.3 implementation.

COMPREHENSIVE SET OF ARTICLE 5.3 LEGAL MEASURES

PHASE 1 - ASSESSMENT

STEP 1 – REVIEW IMPLEMENTATION STATUS

1. Objectives:

* This document assumes a start-to-finish policymaking process, but it is entirely possible and in some cases preferable, to integrate this into an ongoing process, e.g. within a tobacco control or anti-corruption law currently in development.

† Capitalized Recommendations refers to the Recommendations in the Article 5.3 Guidelines.

- a. Assess government enactment of legal measures to implement each Recommendation of the Article 5.3 Guidelines, including enforcement mechanisms.
- b. Identify all Recommendations that require further action to achieve full implementation.

2. Process: Review the Article 5.3 Guidelines and cross-reference each Recommendation with all existing policies related to government conduct, tobacco control and the tobacco industry.

3. Guiding questions:

- a. Which Recommendations are already implemented and how (e.g., law, policy, documentation)?
- b. What enforcement mechanisms (if any) and oversight body are in place for each Recommendation?
- c. Which Recommendations have yet to be implemented?

4. Tools: Factsheet 5 of The Union’s Article 5.3 Toolkit – Compliance Template.³

5. Outcomes:

- a. A comprehensive assessment of the Party’s compliance with the Article 5.3 Guidelines, along with its implementation and enforcement mechanisms.
- b. A list of the Recommendations that still require implementation.

STEP 2 – ANALYZE OTHER EXISTING RELEVANT LEGAL MEASURES

1. Objectives:

- a. Identify existing legal measures on related topics that can be adapted to advance implementation of Article 5.3 and/or that could be used to partially implement Article 5.3 until comprehensive legal measures are enacted and operationalized.
- b. Identify models, best practices and mechanisms from unrelated legal measures that can be replicated in the design of Article 5.3 legal measures.

2. Process:

- a. Review current national- and subnational-level laws and policies that address issues related to the Recommendations, for example:
 1. General laws or policies for good governance:
 1. Government accountability.
 2. Transparency.
 3. Anti-corruption.
 4. Revolving doors.
 5. Conflicts of interest.
 6. Political contributions.

- II. All of these laws or policies can be adapted and brought in line with the requirements of the Recommendations. These include but are not limited to the following specific examples: corruption conventions ratified by Parties, OECD guidelines on transparency in lobbying, preventing conflicts of interest/corruption, right to know acts, lobbying registration and disclosure acts, etc.
 - III. Existing restrictions on tobacco marketing can be adapted to include the Recommendations on restricting tobacco industry “corporate social responsibility” (CSR) or promotion thereof.
 - IV. Existing tobacco control education campaigns can be adapted to raise awareness about tobacco industry interference.
- b. Survey laws and policies that may be substantively unrelated to Article 5.3 and identify models, best practices and mechanisms that can be replicated in the design of Article 5.3 legal measures.
- I. Examples of best practices include existing sustainable funding, oversight, transparency and good governance mechanisms enshrined in other public health policies.
 - II. One best practice that we highly recommend is to prepare a proposal for the inclusion of a line item for implementation of Article 5.3 into existing tobacco control, public health, or good governance budgets.

3. Guiding questions:

- a. Which Recommendations do these laws and policies relate to, and how can they be used to facilitate Article 5.3 implementation?
- b. What kind of language should be added to these policies that would effectively prevent industry interference?
- c. What practices contained in other legal measures are models for Article 5.3 implementation and could be borrowed, adapted and replicated in creating Article 5.3 legal measures?

4. Outcomes:

- a. A list of laws and policies that could be adapted or used as they are to facilitate Article 5.3 implementation, and specific direction on required changes.
- b. A list of best practices from other policy areas that can be replicated in the creation of Article 5.3 legal measures.

STEP 3 – DETERMINE OVERSIGHT MECHANISM

1. Objectives:

- a. Identify government bodies equipped with the knowledge, legal authority, political will, and resources to assume the duties of monitoring, investigating and/or enforcing Article 5.3 legal measures.
- b. Having reviewed existing measures, determine the most effective oversight mechanism(s) for Article 5.3 legal measures.
 - I. Note that while a dedicated, independent government body with broad authority specifically mandated for Article 5.3 oversight is ideal (i.e., establishment of an Article 5.3 Council), if this is not an option, a similar purpose can be served by either:
 - 1. Entrusting these duties to an existing government agency.
 - 2. Establishing a new interagency committee.
- c. Identify the high-level and specific roles and responsibilities of an oversight body.

2. Process:

- a. Review and create a list of relevant government bodies that have the capacity to or already monitor and regulate government and tobacco industry compliance and a list of CSOs that can play a contributing oversight role.
- b. Create a list of roles and responsibilities necessary for Article 5.3 monitoring, investigation and enforcement not covered under the mandates of existing government bodies, and which must be established through legislation.
 - I. Examples of relevant government bodies that could be tasked to take on Article 5.3 investigation and/or enforcement as part of an interagency committee include but are not limited to:
 - 1. Ombudsman.⁴
 - 2. Anti-corruption council or commission.⁵
 - 3. Heads of government bodies.
 - 4. Health ministry.
 - 5. Information commission.⁶
 - 6. Customs agency.
 - 7. Parliament, senate, etc.

3. Guiding questions:

- a. Which government bodies have the legal authority, resources, and relevant expertise and could be tasked with Article 5.3 oversight, investigation, and enforcement?
- b. What are the relevant sectors that must be monitored to ensure compliance, and what are their relevant oversight bodies (e.g. Ministry of Health, anti-corruption agencies)?

Roadmap for Comprehensive Implementation of Article 5.3

Guide for protecting public health policies against tobacco industry interference

- c. Do these government bodies or entities possess the authority necessary to enforce compliance and take punitive measures (injunctions, sanctions, dismissal from government office, criminal charges) for violations in their respective jurisdictions?
- d. If these powers are not concentrated within a single government body, what combination of government bodies and CSOs could cover all relevant areas, and what must be done to ensure effective coordination among government bodies and CSOs?
- e. Are there any roles and responsibilities required for Article 5.3 oversight that are not already covered by existing government bodies or CSOs? If yes, what are they and how could legislation address this?

4. Outcomes:

- a. A list of existing government bodies and CSOs that can monitor, investigate and enforce Article 5.3 legal measures.
- b. Consensus on the most effective oversight mechanism(s) for Article 5.3 legal measures.
- c. If needed, a description of high level role, and specific authority and responsibilities for an overarching government body, or government bodies, to be established for oversight of Article 5.3 implementation.

PHASE 2 – PLANNING AND DESIGN

STEP 4 – POLICY PLANNING

1. Objectives:

- a. Equipped with the knowledge above, design a plan and framework for comprehensive implementation of Article 5.3. This framework should include plans for:
 - I. New overarching Article 5.3 legislation applicable at the national and subnational levels (the law should include all Recommendations of the Guidelines and incorporate existing legal measure by reference).
 - II. Implementing regulations, where additional detail can be included.
 - III. Implementing policies and administrative measures, including directives and other instruments with legal force and effect.
- b. Short of this, design a plan for implementation of the missing measures. This plan should provide for adaptation of existing legal measures identified to include Article 5.3 until a set of comprehensive legal measures can be implemented, as outlined immediately above.

2. Process:

- a. Create a long-term plan that details the steps needed

to follow the procedures of the national policymaking process, or until that is possible,

- b. Include in that longer-term plan a shorter-term plan for the steps needed to follow the national policy amendment process.

3. Guiding questions:

- a. At what level should each Recommendation be implemented (law, implementing regulation or administrative) policy?
- b. What are potential loopholes (language, scope) to look for and avoid in these legal measures?
- c. What legal measures should be referenced in the policy?
- d. What should the structure and powers of the oversight body be?
- e. If it's an interagency committee, what are the relevant government entities that should be included? How often should it meet, etc.?
- f. How will this initiative be financed?
- g. Platform for engaging civil society/the public?
- h. Which Recommendations could be strengthened or adopted by modifying existing laws and policies?

- 4. **Outcome:** A framework that details what is needed to pass an overarching law, implementing regulations and policies for comprehensive implementation of Article 5.3, including a step-by-step plan to get there.

PHASE 3 - IMPLEMENTATION

STEP 5 – ENACT LEGAL MEASURES

- 1. **Objective:** Comprehensively implement all remaining Recommendations through legislation, regulations, and policies to ensure all government bodies and personnel at all levels of the government are protected from tobacco industry interference.
- 2. **Process:** Following the plan you have devised, initiate and follow the national policymaking process. For example:
 - a. Draft and enact (primary) legislation to implement all Article 5.3 Recommendations to the fullest extent possible (including CSO engagement, oversight and enforcement), creating an overarching legal framework under which further legal measures (subsidiary implementing regulations and policies) can be enacted.
 - b. Draft and enact regulations (also called secondary, subordinate or subsidiary legislation), where needed, to implement and administer the requirements of the (primary) legislation. These regulations include more detail than the (primary) legislation.
 - c. Draft and enact policies, administrative measures,

of the WHO Framework Convention on Tobacco Control

directives and other instruments with legal force and effect to provide detailed procedures and processes to be followed for government bodies and personnel at national and subnational levels, as well as the tobacco industry. Relevant issues to be addressed in regulations or policies include:

- I. Code of conduct for government officials.
- II. Conflict of interest disclosure forms.
- III. Recording and publicizing engagements.
- IV. Managing requests for engagement from the tobacco industry.
- V. Approval processes for interaction between the government and the tobacco industry.

3. Guiding questions:

- a. Which provisions in the overarching law require further clarification to implement successfully?
- b. What kind of details and language in these policies are necessary to avoid loopholes that could be exploited by the tobacco industry?
- c. Which policies can be implemented on the national level, applicable to all government bodies at the national and subnational levels?

4. Tools:

- a. Law:
 - I. Factsheet 6 of the Union's Article 5.3 Implementation Toolkit.

- II. Chapter IX of the Campaign for Tobacco-Free Kids' Draft Template for Omnibus Tobacco Control Legislation.⁷

b. Regulations and policies:

- I. The Union's Article 5.3 Toolkit: Factsheets 7, 8 and 9.
- II. WHO TFI's Technical Resource for implementing Article 5.3.⁸

5. Outcome: A comprehensive set of legal measures (including an overarching law as well as regulations and policies to implement the law), covering oversight and enforcement and implementing all Article 5.3 Recommendations, are enacted.

CONCLUSION

We hope that this roadmap provides policymakers and advocates with the tools necessary to fully implement and enforce Article 5.3 of the WHO FCTC. Implementation of this Article is critical to facilitating the implementation of all of the other lifesaving measures of the treaty. The sooner Article 5.3 is implemented, the sooner governments can enact policies that save lives. If you have any comments, questions, or concerns about this tool, please feel free to contact Corporate Accountability International's Challenge Big Tobacco team directly at +1.617.695.2525 or e-mail us at Info@StopCorporateAbuse.org.

Endnotes for Table: Case Studies in Article 5.3 Implementation

- ¹ Australian Government Register of Lobbyists. http://lobbyists.pmc.gov.au/who_register.cfm (accessed November 12, 2014).
- ² Australian Public Service Commission, "Code of Conduct," <http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/code-of-conduct> (accessed November 12, 2014).
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- ⁹ Government Pension Fund, "White Paper on the management of the Government Pension Fund," Norway Department of Finance, https://www.regjeringen.no/en/dokumenter/report-no.-20-to-the-starting-2008-2009/id553201/?docId=STM2008200900020000EN_EPIS&ch=1&q= (accessed November 12, 2014).

¹⁰ Country Details for the Philippines Laws, "Joint Memorandum Circular No. 2010-01 on Protection of the Bureaucracy Against Tobacco Industry Interference," Tobacco Control Laws, <http://www.tobaccocontrolaws.org/files/live/Philippines/PhilippinesJMC%202010-01%20National.pdf> (accessed November 12, 2014).

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Endnotes for 5.3 Implementation Roadmap

- ¹ World Health Organization, *Framework Convention on Tobacco Control*, May 21, 2003, <http://whqlibdoc.who.int/publications/2003/9241591013.pdf?ua=1> (accessed November 12, 2014).
- ² World Health Organization, "WHO Framework Convention on Tobacco Control: guidelines for implementation of Article 5.3," November 22, 2008, http://www.who.int/fctc/guidelines/adopted/article_5_3/en (accessed November 12, 2014).
- ³ "FCTC Article 5.3 Toolkit: Guidance for Governments on Preventing Tobacco Industry Interference," International Union Against Tuberculosis and Lung Disease, http://www.theunion.org/what-we-do/publications/english/pubtc_factsheets-set.pdf (accessed November 12, 2014).
- ⁴ For example: The European Ombudsman, <http://www.ombudsman.europa.eu/home.faces> (accessed November 12, 2014).
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