



IMPLEMENTATION OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL IN ANTIGUA AND BARBUDA

A CASE STUDY

May 2022



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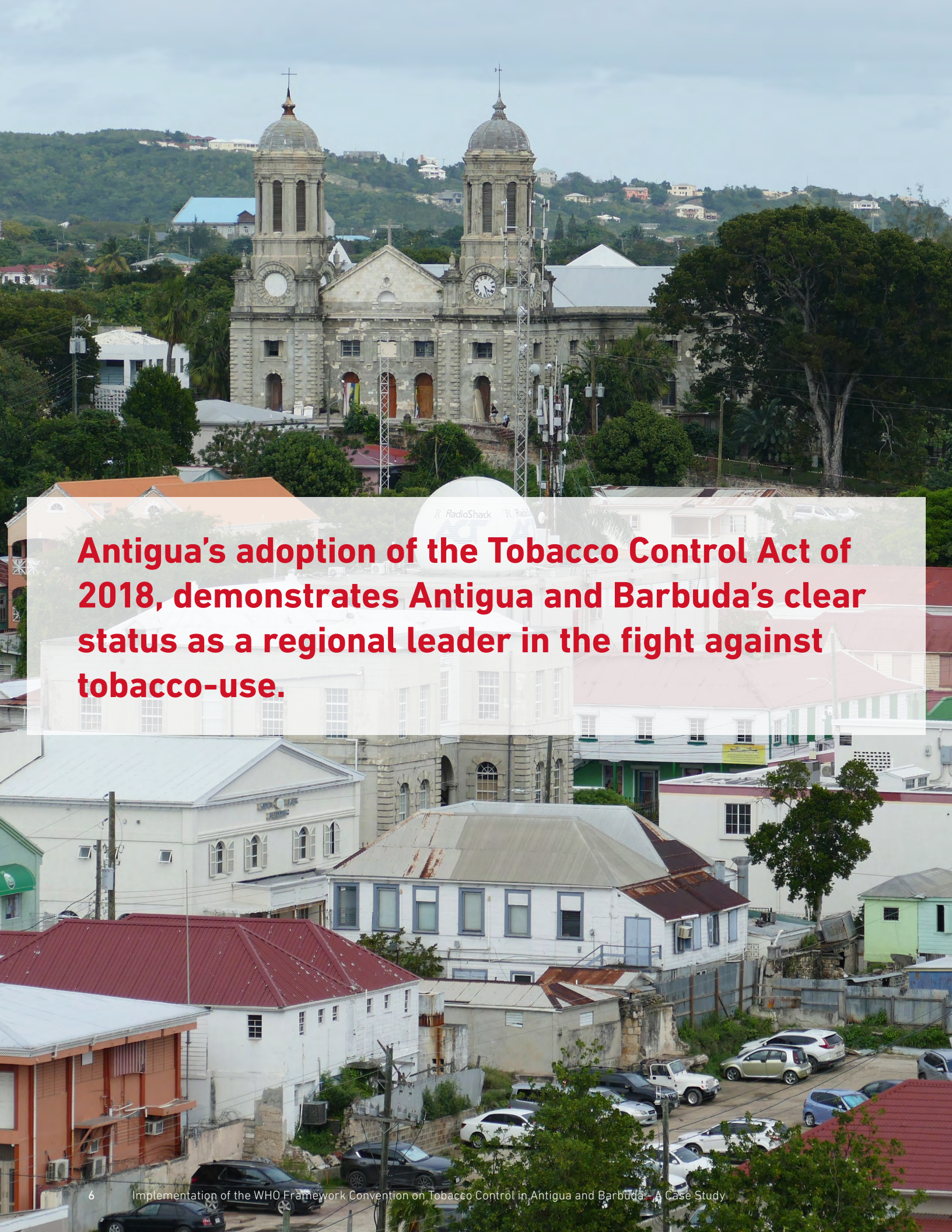
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List of Abbreviations

ABTFI	Antigua & Barbuda Tobacco Free Initiative
CTFK	Campaign for Tobacco Free Kids
CARICOM	Caribbean Community
CPC	Chief Parliamentary Counsel
ECS	Eastern Caribbean States
FCTC	WHO Framework Convention on Tobacco Control
GATS	Global Adult Tobacco Survey
GG	Governor General
GSHS	Global School-based Student Health Survey
GYTS	Global Youth Tobacco Survey
MOHWE	Ministry of Health, Wellness and the Environment
NCDs	Non-communicable diseases
PAHO	Pan American Health Organization
SDG	Sustainable Development Goals
UN	United Nations
WHO	World Health Organization



Antigua's adoption of the Tobacco Control Act of 2018, demonstrates Antigua and Barbuda's clear status as a regional leader in the fight against tobacco-use.

Executive Summary

All CARICOM countries have ratified the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) (with the exception of Haiti) but considerably fewer have implemented its provisions. Tobacco-related morbidity and mortality in the Caribbean is unacceptably high, with higher concentrations in vulnerable groups such as the poor and youth.

As part of efforts to accelerate the Americas' tobacco control response, the Pan American Health Organization's (PAHO) Plan of Action and Strategy to Strengthen Tobacco Control in the Region of the Americas 2018 - 2022 identified implementation of smoke-free environments and adoption of effective measures on tobacco labelling and packaging as one of its strategic lines of action. To date, only 7 of the 14 CARICOM PAHO Member States that ratified the FCTC have smoke-free environments and strong health warnings on tobacco product packaging. Fewer countries have implemented other MPOWER policies.

Antigua and Barbuda signed the convention in 2004 and ratified it in 2006, adopting an incremental approach to its international law obligations over a decade. These incremental measures were adopted by the State in partnership with civil society, ultimately resulting in the development of a comprehensive law in the form of the Tobacco Control Act of 2018. Through this single comprehensive legislation, Antigua and Barbuda established a ban on smoking in indoor public places and workplaces; mandatory graphic health warnings on tobacco products; and a ban on tobacco advertising, promotion and sponsorship. In developing their tobacco control policies, Antigua and Barbuda resisted tobacco industry interference while utilizing a combination of collaborative efforts between the State, strong civil society actors and international partners. Extreme caution and care should be exercised to ensure that industry interference does not weaken the legislation once in force. As of early 2022, the legislation was not yet in force. Inadequate technical support and challenges related to the Covid-19 pandemic have resulted in delays in the implementation of the legislation. The current focus of legislative efforts is on the development of Draft Regulations which are needed to operationalize the legislation.

This report is one of two case studies (other being Saint Lucia) commissioned by PAHO and executed by the HCC, to document the Caribbean region's experience with implementation of tobacco legislation such as smoke-free environments and graphic health warnings. This case study assesses the development of comprehensive tobacco control legislation in Antigua and Barbuda as an exemplar, with a view to identifying best practices and lessons learned which may be utilized by other CARICOM Member States seeking to achieve the same.

About this case study

Objectives

Despite the early ratification of the WHO Framework Convention on Tobacco Control (FCTC) by several CARICOM PAHO Member States, their pace of FCTC implementation to date has been slow, with much work remaining to be done. Antigua and Barbuda's development of comprehensive legislation in the form of the Tobacco Control Act, 2018 (No. 17 of 2018) represents a significant exemplar. The Act seeks "to fulfil the government's international legal obligations under the WHO Framework Convention on Tobacco Control and to protect present and future generations from the devastating health, social, economic, and environmental consequences of tobacco use and exposure to tobacco smoke."

This case study draws on Antigua and Barbuda's experience with the passage of its Tobacco Control Act, 2018 to identify the challenges and opportunities for tobacco control through legislation in the region. It is hoped that Antigua and Barbuda's experience will provide guidance and insights for other CARICOM States that are yet to implement the FCTC, and assist them with accelerating the pace of their implementation.

The specific objectives of this case study are to:

- review the efforts to adopt the comprehensive tobacco control legislation in Antigua and Barbuda;
- highlight the factors that were significant impediments to the adoption of such legislation;
- highlight the enabling factors which made the adoption of such legislation possible.

Methodology

The case study analysis was carried out in accordance with a qualitative research design. Individual instances of a phenomenon in its natural environment are investigated using in-depth in case studies. The evolution of Tobacco Control Legislation in Antigua and Barbuda is the focal point. The methodology integrated two primary sources of data. The first was a document review of grey literature, academic articles and technical reports published on Antigua and Barbuda, and, more generally, Caribbean countries and their regulation of tobacco control. The second was semi-structured interviews with key stakeholders. Participants were drawn from principal sectors relevant to tobacco control: the government, civil society and international development partners.

Desk Review

Document reviews provided the background and historical context and were used to identify social actors who were critical to the process. The relevant legislation and related background information were sourced from government websites, while technical reports and data on the nature and extent of the tobacco epidemic in the Americas were sourced primarily from the PAHO and WHO websites and related databases. These reports were complemented by information from other reputable public health organisations such as the US Centers for Disease Control and Prevention and the US National Cancer Institute. Broader grey literature and some peer-reviewed articles were also examined to gather additional insights into country implementation experiences and processes. Peer-reviewed literature was

identified using PubMed Central (U.S. National Library of Medicine, Bethesda, Maryland, United States) and Science Direct (Elsevier, New York, New York, United States) as well as the *Revista Panamericana de Salud Pública*. Grey literature was identified by searching targeted websites of WHO, PAHO, the World Bank, the FCTC Secretariat, Campaign for Tobacco Free Kids (CTFK) and the Caribbean Public Health Agency (CARPHA).

Stakeholder Interviews

Key informant interview participants were selected based on their role in the development and implementation of the legislative frameworks. Participants were selected using snowball sampling, spanning both government and non-government actors. Key informants who were familiar with the broad network of actors, given the small size of the policy space in Antigua and Barbuda, were asked to refer the researcher to others within the network who could contribute to the comprehensive assessment. These semi-structured interviews were conducted in October 2021 and were based on an interview guide, a copy of which is included in Appendix I.

The information captured in the key informant interview guide included tobacco policy

development, the context of the policies, the content of the policies, the actors involved in policy development, policy implementation, the barriers and facilitators to policy formulation and implementation, and recommendations or suggestions on how to improve the formulation and implementation process. These interviews were intended to gain deeper insights into the process for implementation of comprehensive tobacco control legislation.

Coding and Analysis

The research was guided by the framework of policy analysis which has been developed by Walt and Gilson. This framework rejects the idea of linearity of policymaking processes and highlights the incremental development of policy over time, and the number of variables or factors which influence that development. Walt and Gilson's framework focuses on four factors: policy (a) content, (b) actors, (c) processes, and (d) context. Manual thematic coding and analysis was ultimately conducted.

Limitations

The major limitation of this case study was the inability to reach and/or interview all the key stakeholders in the process due to their unavailability and/or time constraints.

Tobacco is one of the world's largest preventable causes of premature death responsible for 8 million deaths annually

Tobacco use is a risk factor for 6 of the 8 leading causes of death worldwide

Tobacco use is a risk factor for the 4 most prevalent NCDs (cardiovascular disease, cancer, chronic respiratory disease and diabetes)

Introduction

The Tobacco Epidemic in the Americas/Caribbean Sub-region

Tobacco use is one of the world's largest preventable causes of premature death and is responsible for 8 million deaths annually. Tobacco use is a risk factor for 6 of the 8 leading causes of death worldwide, as well as for the 4 most prevalent noncommunicable diseases (NCDs) cardiovascular disease, cancer, chronic respiratory disease and diabetes.¹ Although recent years have seen important progress on the global tobacco control front, with the number of tobacco users declining for the first time in 2018 despite population growth, the fact remains that "the tobacco epidemic is far from over."² The Americas, including the Caribbean sub-region, is one region where tobacco control progress is less than desired, with tobacco consumption and exposure remaining a serious regional public health threat. Mortality attributed specifically to tobacco is 16% in the Americas³ and the Caribbean sub-region has the second highest prevalence of current tobacco use among adolescents in the Americas (21.3% vs regional estimate of 13.5%).

This alarming situation continues, despite the existence of binding obligations by States in the area of tobacco control. These obligations were established in 2003 when members of the WHO concluded the historic FCTC in recognition of the fact that the tobacco epidemic is "one of the biggest public health threats the world has ever faced".⁵ The FCTC came into force 2 years later in February 2005 and obligates State Parties to implement comprehensive tobacco control measures from both a demand and a supply perspective. These include obligations to protect public health policies with respect

to tobacco control from commercial and other vested interests of the tobacco industry, to adopt measures to reduce the demand for tobacco, to provide effective protection from public and workplace exposure to tobacco smoke, and to regulate the content and disclosure of the contents of tobacco, amongst others which are reviewed in this case study.

The Role of International Treaties within the Caribbean Domestic Sphere

Bearing in mind that the FCTC is an international treaty, it is useful to explain how treaties such as this operate at the domestic level. Antigua and Barbuda, like the other members of the English-speaking Caribbean, follows a dualist tradition. As such, treaties are seen as part of a separate legal sphere, unconnected to the domestic sphere. Accordingly, the provisions of the FCTC, or any other treaty, cannot have the force of law until such time as it is 'transformed' into domestic law through a legislative process of some sort. The justification for this approach is found in section 46 of Antigua and Barbuda's Constitution, which reserves to Parliament the exclusive power to 'make laws for the peace, order and good government of Antigua and Barbuda'.⁶ Accordingly, although the FCTC became fully legally binding on Antigua and Barbuda *as a matter of international law*, from the date of its ratification of the same on June 5, 2006, its provisions can only be enforced domestically once the legislation comes into force in Antigua and Barbuda. As such, an understanding of the mechanisms for enacting legislation in Antigua and Barbuda is necessary, as is explored in the following sections.

¹ WHO, 10 Facts on the Global Tobacco Epidemic; World Health Organization. WHO report on the global tobacco epidemic, 2008 - The MPOWER package. Geneva: World Health Organization; 2008.

² WHO global report on trends in prevalence of tobacco use 2000 – 2025, third edition. Geneva: World Health Organization; 2019.

³ Pan American Health Organization. Report on Tobacco Control in the Region of the Americas, 2018. Washington, D.C.: PAHO; 2018

⁴ Report on Tobacco Control for the Region of the Americas. WHO Framework Convention on Tobacco Control: 10 Years Later. Washington, DC: PAHO, 2016



⁵ WHO Tobacco Fact Sheet: <https://www.who.int/news-room/fact-sheets/detail/tobacco>

⁶ Antigua and Barbuda Constitution s. 46

Institutions and Processes

Overview

Antigua and Barbuda is a constitutional monarchy and a British-style parliamentary system of government with an entrenched Bill of Rights. The reigning British monarch is represented in Antigua and Barbuda by an appointed Governor General as the Head of State. The government has three branches: legislative, executive, and judicial. In 2018, the Antigua and Barbuda Labour Party was re-elected to the office with 15 of 17 seats which constitute the House of Assembly.

 <p>LEGISLATIVE Makes Laws PARLIAMENT Unicameral House/Legislative Council) Bicameral (House + Senate)</p>	 <p>EXECUTIVE Administers Laws HEAD OF STATE President/Monarch (Governor-General, Governor) HEAD OF GOVERNMENT Prime Minister/Premier /Chief Minister CABINET Cabinet/Executive Council</p>
Includes legislators or members of houses of parliament	Includes public servants organised into ministries and departments

There is therefore very weak political opposition in the House of Assembly. This is the second term of the Hon. Gaston Browne Administration. The United Progressive Party, the main opposition party, was in office from 2004-2009, when the smoke-free legislation policy process began in Antigua and Barbuda.

The Executive and the Policy Making Process

Executive Branch

Executive authority is vested in the Prime Minister and Cabinet, who are accountable to the legislative branch of government. The leader of the majority party in the legislative branch, called the House of Representatives, serves as Prime Minister and head of government. The Prime Minister appoints other members of Parliament to be Cabinet ministers. The Executive guides policy development.

Policymaking

Policies are essentially guidelines about what the Government intends to do. There are normally national or international triggers for the development of a given policy or a combination of the two. National triggers may be manifesto promises or a national crisis or event that the government needs to respond to. International triggers, on the other hand, may be the assumption of new international obligations or an international crisis or event that prompts a national response. In the case of the development of tobacco control in Antigua and Barbuda, there were both national (NCD prevalence rate) and international (FCTC obligations) triggers. Policy is a prerequisite for the drafting of legislation, as it will inform and guide the drafter as to what is to be achieved and how best to do so. Policy is normally developed by a lead Ministry for a particular issue, and in the case of tobacco control that would be the Ministry with substantive responsibility for health. The key elements of the policy process are set out in **Figure 1**. It is, however, important to bear in mind that these different stages may overlap or may not be followed rigidly in different situations.

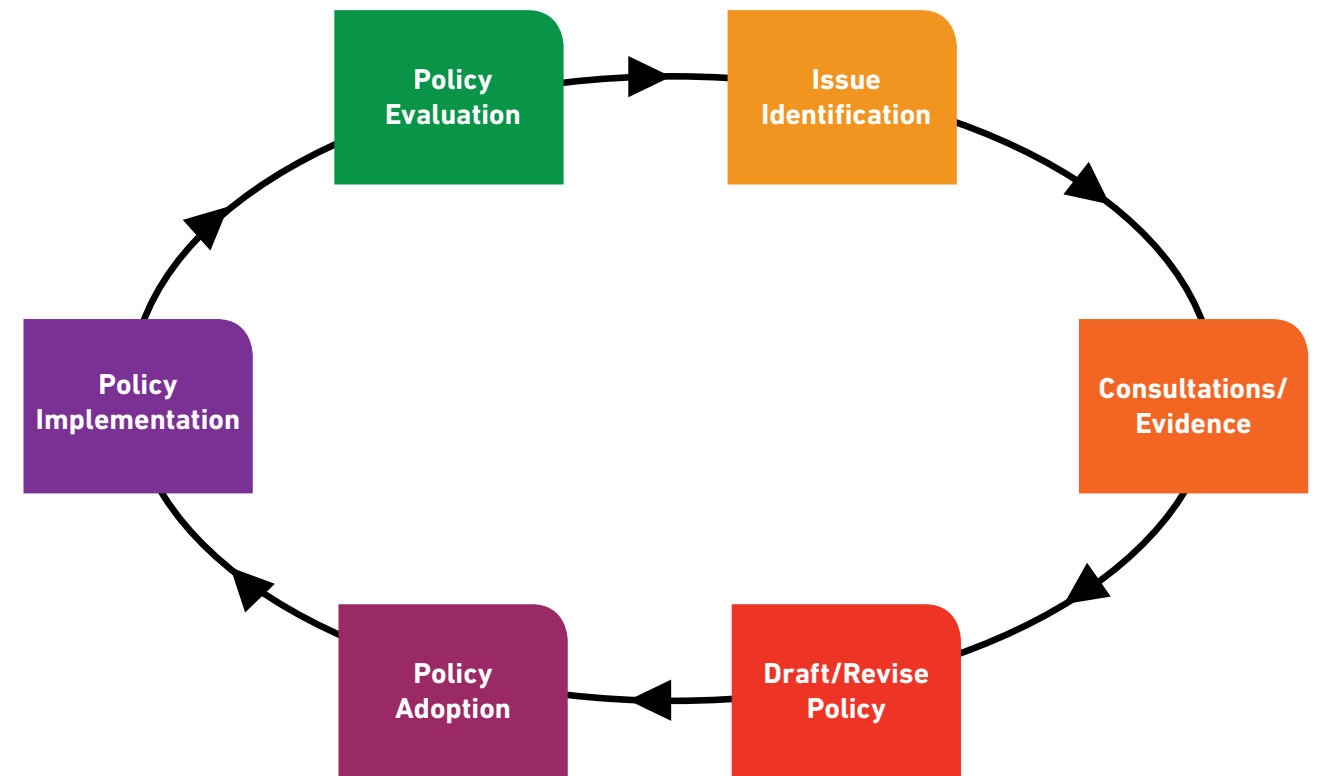


Figure 1: The Policy Process

The Legislature and the Law-making Process

Legislative Branch

The bicameral Parliament consists of the 19-member House of Representatives (17 members elected for a five-year term in single-seat constituencies, 1 ex-officio member and 1 Speaker), responsible for introducing legislation, and the 17-member Senate, which reviews and gives assent to proposed legislation. Representatives are elected by popular vote in general elections that are constitutionally mandated every five years, but may be called earlier. Senators are appointed by the Governor General. The major figures in Parliament and the government come from the House of Representatives. The Prime Minister is the leader of the party that holds the majority of seats in the House; the Opposition Leader is the representative, appointed by the Governor General, who appears to have the

greatest support of those members opposed to the majority government. The Prime Minister creates an executive government and advises the Governor General on the appointments to thirteen of the seventeen seats in the Senate. The leader of the Opposition, recognized constitutionally, is responsible for advising the Governor General on the appointment of the remaining four senators to represent the Opposition in the Senate. The Legislature guides the legislative process.

Legislation is the means by which policies are transformed into binding, written law. Section 46 of Antigua's Constitution grants to Parliament (the House of Assembly + Senate), the exclusive power to 'make laws for the peace, order and good government of Antigua and Barbuda.' **Figure 2** sets out the main elements of the law-making process for principal legislation (i.e. Acts of Parliament or Statutes).

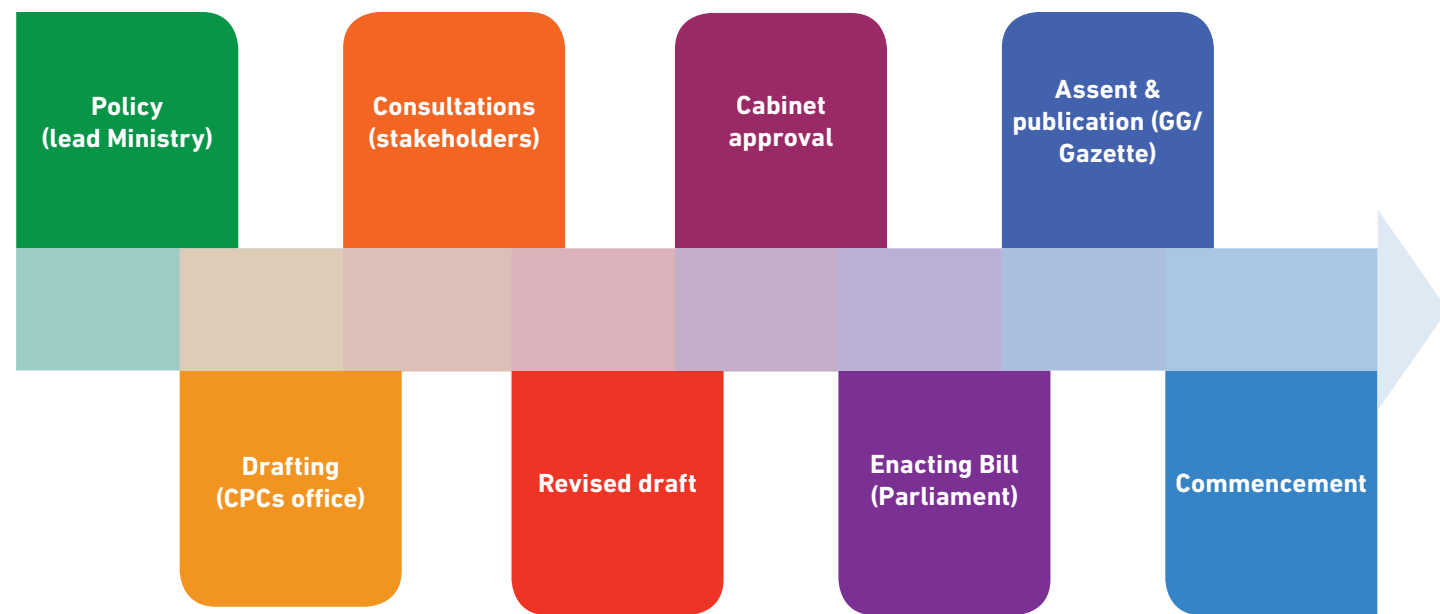


Figure 2: The Legislative Process

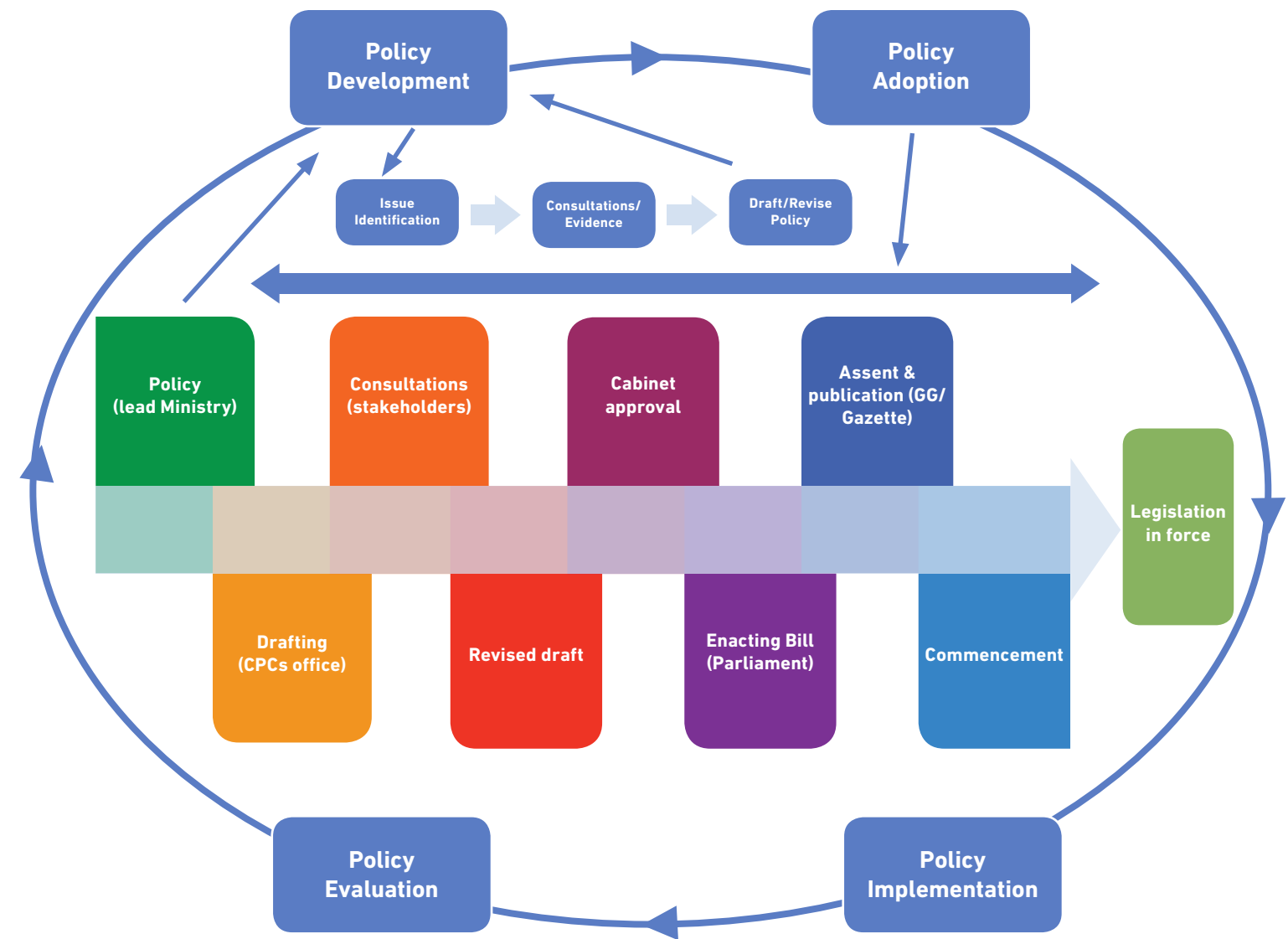
The Integrated Policy and Legislative Process

Given the close interrelationship between the policy and the legislative processes, the next section describes the processes and their integration. The process in Antigua and Barbuda, as described in the following section, includes divergences from the standard process, which are briefly explained. Divergences from the standard policy process was in part due to the operations of the Antigua and Barbuda Tobacco Free Initiative (ABTFI), an informally constituted group of State actors (working outside of their roles as public officers in a non-remunerated capacity) and non-State actors including civil society, which enabled the strategic deployment of resources beyond and within the State.

Policy Making Process

A policy is drafted by the Ministry with responsibility for the subject with which the legislation is concerned. In the case of Antigua and Barbuda, the frameworks were largely developed outside the Ministry of Health, Wellness and the Environment (MOHWE) by the ABTFI (or its predecessors) with the tacit blessing of the Minister. After development of the frameworks by the ABTFI, the policy returned to the MOHWE for sign off and onward submission through the usual channels.

- Issue Identification**
 This first stage involves narrowing down the problem to be addressed. Comprehensive tobacco control legislation was identified as a priority by the ABTFI based on Antigua and Barbuda's FCTC obligations and



considering the evolving health concerns linked to chronic noncommunicable diseases. This was considered relatively 'low hanging fruit' given the perceived low levels of opposition in Antigua and Barbuda and the reality that smoking is not generally an ingrained part of the culture.

- Policy Formulation/Development**
 Having outlined the issue and the need for legislation to fully address it, the next step is to gather the relevant evidence to support policy creation. This entails desk research and consultations with key governmental

and non-governmental stakeholders, who may be directly affected by the policy or have a role to play in its implementation and/or enforcement.

- Policy Adoption**
 Policy adoption involves determining whether to go forward based on the draft arrived at or whether to amend or reject the draft. Adoption typically involves some level of further consultation with stakeholders such as other relevant government Ministries, affected civil

society organizations and individuals to solicit feedback and support.

Policy adoption leading to legislation is reflected in a Circulation Note encapsulating the policy, which is prepared by the relevant Ministry and submitted to the Cabinet for approval. This paper would conclude with recommendations to enact the legislation reflective of the policy and that instructions be issued to the Chief Parliamentary Counsel to draft. The Cabinet approves the policy, and a formal Cabinet decision is prepared and returned to the Ministry with responsibility for the subject with which the legislation is concerned, as well as to the Chief Parliamentary Counsel within the Ministry of Legal Affairs.

As explored below, the processes of policy formulation and adoption varied in Antigua and Barbuda, due to the collaboration between the ABTFI, international partners and the State. Since Antigua and Barbuda was one of the first CARICOM territories to work on comprehensive tobacco control legislative policy, work was largely directed by the FCTC itself, and with time, by comparative experiences from other jurisdictions.

The Legislative Drafting Process

- **Drafting**

The Drafting Office within the Ministry of Legal Affairs commences drafting the relevant legislation, in consultation with any identified lead party in the Ministry with responsibility for the subject. Once the draft legislation is completed to the satisfaction of the Ministry with responsibility for the subject with which the legislation is concerned, this Ministry will request that

the legislation be certified by the Attorney-General as being fit for submission to Cabinet. PAHO provided drafting support through one of its consultants. The technical support provided helped to strengthen the draft Bill's alignment with the FCTC. The first draft Bill was documented in 2011 and subsequent additions were made to address emerging and novel products.

- **Consultation/ Re-drafting**

The lead Ministry should engage in consultations with key stakeholders, including other Ministries and external stakeholders, such as NGOs and CSOs, for example. Any required changes to the Bill should be submitted to the legislative drafter(s) for the Bill to be revised based on the relevant feedback. This process of consultation may occur at different stages.

- **Certification by the Attorney-General**

Once the draft legislation is completed to the satisfaction of the Ministry with responsibility for the subject with which the legislation is concerned, this Ministry will request that the legislation be certified by the Attorney-General as being fit for submission to Cabinet.

- **Cabinet Approval**

After certification by the Attorney-General, the draft is submitted to the Cabinet for approval. It can be approved as is, or with amendments.

- **Enacting the Bill**

After certification by the Cabinet, the Bill is placed on the Order Paper and introduced into Parliament for 3 readings in each chamber. The legislative stages the bill must go through are as follows:

- Introduction and publication:* The Bill is published in the Gazette as a Bill and placed on the Order Paper of the legislature in the name of the responsible Minister. The Bill will usually have attached to it an Explanatory Note or Memorandum setting out the purpose and policy (or objects and reasons) of the Bill.
- First reading:* The first reading of the Bill involves the reading of the short title of the Bill. There is no debate on the Bill at this stage which is sometimes combined with the Introduction.
- Second reading and debate:* The Minister responsible for the Bill moves the second reading of the Bill. A debate follows in which the focus is on the overall aims and policy of the Bill. Amendments are not usually permitted at this stage, but legislators have a chance to be heard (often over the radio) by their constituents, and the debate can become very wide-ranging.
- Committee stage:* The Bill is debated clause by clause and amendments can be moved at this stage. This might be in a committee of the whole House for a minor or uncontroversial Bill. A major or controversial Bill will usually be referred to a select committee, either a standing committee of the House or one set up for the purpose. At this stage, interested persons may make submissions stating objections or suggestions in relation to the Bill.
- Report stage:* The Bill, as amended during Committee Stage, is reported to the House and the Minister responsible

for the Bill moves that it be read a third time. Usually, the Clerk prepares a report summarising the deliberations and providing a clause-by-clause statement of any amendments proposed by the Committee.

- Third reading and passing of the Bill:* Amendments are usually not permitted at this stage. The Minister moves that the Bill be read a third time and passed. The motion is seconded, put to the vote and passed or, possibly, rejected. If it is passed, the Clerk reads out the title of the Bill and refers to it as an Act. (This process is repeated in the Senate).

- **Assent and Publication, Commencement**

Once the Bill is passed, it is assented to by the Governor General, published in the Gazette and takes effect from the date of publication, unless a different commencement method or date is specified in the legislation. In the instant case, the Tobacco Control Act, 2018 has not yet come into force. Draft Regulations are currently being developed in order to operationalize the legislation, after which it is expected the law will come into force.

- **Implementation**

It is the responsibility of the sponsoring Ministry to ensure that the Act is implemented. In Antigua and Barbuda, implementation in the form of the development of subsidiary legislation is currently being finalized. The development of these regulations has been supported by PAHO and the Campaign for Tobacco Free Kids (CTFK) with an implementation plan of the Act and its supporting Regulations having been provided by PAHO.



The Experience in Antigua and Barbuda

An understanding of the efforts at tobacco control legislative reform in Antigua requires an examination of the ABTFI which represents an exemplar of the role civil society and hybrid formulations of civil society, can play in advancing tobacco control legislation in resource-constrained jurisdictions. This unique formulation would require special forms of support if it were to be replicated elsewhere.

The Antigua and Barbuda Tobacco Free Initiative

The Origins

ABTFI is an inter-departmental group chaired by a Focal Point, There have been two focal points over the period of its existence, the group has been responsible for planning and conducting anti-tobacco initiatives since it was established in the year 2000. Prior to the formalization of the group as the ABTFI, a small group within the MOHWE was commissioned to undertake health promotion activities by then Permanent Secretary. The Medical Officer with responsibility for tobacco control at the time, identified several civil servants to work on this issue and undertook sensitizing and training of these public officers, many of whom were new to tobacco control. When the Medical Officer who was instrumental in identifying early members left the Ministry, a structure was in place which enabled a new crop of officers to continue the work of the grouping. It is important to note that the establishment of this group was not based on a Cabinet decision, rather, it developed organically at the Ministry level with the support of the Minister and the Chief Medical Officer.

The ABTFI spans a number of departments across the MOHWE and includes individuals from a variety of Ministries including sports,

education, and youth as well as civil society actors. It is important to highlight the ABTFI's hybrid formulation as a group of actors (brought together in part because of their roles as public officers) and yet working in a non-remunerated capacity. Beyond these officers, other traditional non-state actors including civil society members also belong to the grouping. The breakdown of the ABTFI's membership is as follows:

- Chairman
- Media and Communications Officers (2)
- Health Education and Promotion officers (2)
- Medical Doctor
- Technological Support Officer
- Counselling Officer
- Substance Abuse Officer
- NGO Partner and President of Breast Friends
- Administrative Officers (2)
- Physical Educator and representative of the Education Department

The ABTFI's Contribution

Advocacy and Awareness

The ABTFI undertook a range of advocacy and awareness efforts, engaging a broad array of stakeholders including the media, politicians from all political parties, and more general mass public engagement through campaigns, drives, marches, village engagement, and the use of traditional and digital media. This included anti-tobacco marches and engagement with schools as a constant activity. A variety of strategies including broad-based political engagement and use of local cultural icons, ensured that tobacco control was an issue which was widely

known to the public and became ingrained in public discourse.

International Engagement

Beyond its local advocacy work, the ABTFI worked closely with a number of international actors such as PAHO/WHO, and the US Centers for Disease Control and Prevention that were involved in shaping domestic and international tobacco control policy frameworks. In addition, a small delegation from the ABTFI also participated in the FCTC negotiations in Switzerland. Based on this participation, the ABTFI realised that FCTC implementation would require significant financial and human resources and felt that it would be best to implement it incrementally.

Incremental Wins

The ABTFI served as an effective tobacco control pressure group securing a number of small, incremental wins, ultimately leading to the passage of the Tobacco Control Act, 2018. For example, in 2010, the Government adopted measures banning smoking in government buildings, which was a useful indication of the State's willingness to implement its international obligations. The ABTFI was also able to maintain pressure on the state to adopt further measures based on its international obligations and to encourage a sense of ownership of these obligations. This incremental approach meant that support across the political spectrum was needed, and an issue-based coalition was formed which ensured that there was continuity even in the face of changes in Government.

The Development of the Legislation

The process for the development of Antigua and Barbuda's legislation was protracted and can be divided into three principal phases; a first draft with support from international partners, a second draft to address novel and emerging tobacco products, and the final Act. It is also important to highlight that this was a bottom-up approach, based on broad-stakeholder engagement.

Phase 1: The Early Draft

The ABTFI started work on the Tobacco Control Act in 2008, with the process of issue identification and policy being driven by ABTFI. Due to lack of similar legislation in the region at the time, guidance was sought from non-CARICOM States and PAHO. Within 4 years, a national meeting was convened which included PAHO, Regional Focal Points, and local participants such as the police, health, private sector actors, doctors, members of the Legal Affairs Department as well as the Minister of Health. The purpose of this meeting was to review a comprehensive draft Act which would then be submitted to Cabinet. This process was somewhat unique as, although in principle there was support from the MOHWE, it was being driven externally by the ABTFI. The ABTFI engaged in exchanges with the Senior Legal Drafter, and once they were satisfied with the draft legislation, it was submitted to the relevant functionaries in the MOHWE including the Minister of Health, the Permanent Secretary and the Chief Medical Officer.

Phase 2: Addressing Novel and Emerging Products

Although the draft Act was already relatively comprehensive, participants became concerned about the threat of novel and emerging nicotine and tobacco products and paused the legislative drafting process to seek guidance from international organizations to ensure that the legislation addressed these novel threats. International support was provided by PAHO and others. Having settled on an underlying policy approach, there was further engagement with the Senior Legal Drafter and novel threats were included in the draft Bill. Given the limited human resources, this was a protracted process spanning 3-4 years. It is important to note contextually, that a whole-of-government approach allowed linkages to be made within the country's NCD Policy and Action Plan 2015-2019, which included an outcome addressing policies to reduce the prevalence of risk factors and strengthen protective factors.

Phase 3: The Final Act - Passage, Interference and Changes

There was significant interference by the tobacco industry throughout the process of developing the draft legislation. This interference took several forms including meetings with Government Ministers and efforts to contact public servants. Several delays were also experienced from within the private and public sectors, ranging from wholesalers' concern about the "cumbersome" size of the cigarette package labels, the cost of increasing the size, and their support for a tobacco industry consultant to make a presentation to

the Parliament, to parliamentarians concerns about the effects on tourism and the tobacco business, as well as the political impact of the proposed measures. In addition, some parliamentarians expressed concern about impingement on people's right to smoke if they so wished.

Although the Act was finally passed in August 2018, some aspects of the final Act differ from the original draft namely:

- The ABTFI can include a legal manufacturer or representative from the private sector. This clearly contravenes FCTC Article 5.3 and the guidelines for its implementation.
- The definition of the tobacco industry was adjusted to exclude wholesalers and distributors and refer only to tobacco manufacturers in circumstances where there are no manufacturers in Antigua and Barbuda. It therefore implies a limitation for the implementation of this measure.
- The Act does not cover heated tobacco products and devices, making it difficult to legislate against these aspects of tobacco use.

Commencement

As mentioned above, although the Tobacco Control Act was passed in 2018, it is not yet in force. Subsidiary legislation, in the form of regulations, are currently being developed to allow for full implementation of the Act once it comes into force.

Elements Influencing/Impacting the Legislative Process

Over the course of the 10 years of development, various factors enabled and challenged the development of the legislation and affected its content, as well as the length of time it took to complete the legislative process.

Drivers

- **Passionate and committed advocates and resource personnel including strong civil society actors**

The ABTFI was highlighted as a singular and effective determinant of the success of the legislative development process. A cross-sectoral 13-member initiative was established in 2000 with the mandate of working towards tobacco control legislation for Antigua and Barbuda. The efforts key leaders supported by a strong team, saw them lobbying the MOHWE for almost 10 years beginning in 2011. They were champions for the cause, who with others pursued awareness and advocacy initiatives and was able to see the legislation through development despite roadblocks.

- **Strong Cross-Sectoral Coordination**

Careful planning and coordination played an important role in ensuring that this coordinating mechanism was multi-sectoral and protected from any external influences. With its diverse membership spanning varied ministries and professions, the group was influential in advocating for the passage of the Tobacco Control Act. There was an attentiveness to organizational implementation processes which ensured that regular meetings did not appear onerous to participants with multiple roles in other spaces. There was a high level of interest, amongst technicians

beyond the Ministry of Education, the Youth Department and the MOHWE. The ABTFI met almost weekly on Friday mornings at the Health Information Unit, to go through the draft legislation, make corrections and pool ideas.

- **Strategic Allies and Champions**

Connections were made with other stakeholders who could contribute to and help drive the goal of comprehensive tobacco control legislation. This cross-sectoral interest and involvement came from several sources. For example, medical personnel, religious groups with a focus on a health message, and the NCD Coordinator were significant partners. Identification of mutually reinforcing approaches and interests such as partnering with cancer awareness organizations, all assisted with the legislation. Given the overlap of interest in reducing the risk-factors of developing cancer, posed by smoking, civil society organizations were interested, engaged and technically competent to provide support.

- **Favourable Political Environment and Political Will**

Political Environment

Given the weakness of the Opposition in Parliament, there was limited treatment of this as a matter which was ripe for politicization. An overwhelming Government majority, while often assessed as a threat to democratic bona fides, can also be a strong indicator of an opportune point for intervention towards developing FCTC-compliant legislation.

The political environment was also cultivated by the ABTFI by engaging political actors across the spectrum such that there was no substantial delay with changes in governments. There was however a need across administrations. Equally, there was less public resistance to the message and work toward the Tobacco Control Legislation. Interviewees attributed this to the low levels of smoking amongst the population.

Political Will

Within the legislature, there was strong support, with the ability to mobilize personal narratives and scientific data as a counterpoint to individual objections by political actors. This combination enabled the development of adequate consensus for the need to pass legislation. More generally, the legislation was framed as part of a whole-of-government and whole-of-society approach to the management of NCDs.

- **Grounding in scientific evidence**

Having strong evidence base facilitates effective policy development as it provides a basis for informed decision making. In the case of implementation of smoke-free environments, Antigua and Barbuda was able to benefit from the large body of international evidence regarding smoke-free environments and their economic and health effects, but also from data collected as part of already established national surveillance systems such as the WHO STEPS reporting, the Global School-based Student Health Survey (GSHS) Global Adult Tobacco Survey (GATS) and Global Youth Tobacco Survey (GYTS). This

strong scientific base allowed the MOHWE, including the Minister Molwyn Joseph, to refute dangerous unscientific claims which sought to distort the science on second-hand smoke.

- **International support in the form of funding and technical support**

In the context of limited technical resources, international technical and financial support were critical to the process of development of tobacco control legislation in Antigua and Barbuda. PAHO, in collaboration with CTFK, provided the drafting support by way of a CTFK consultant and the Advisor for NCDs at PAHO at the time. Strong advocacy came from the PAHO Advisor who met with the Prime Minister and was instrumental in getting the Bill submitted to the Parliament. Funding for consultants and experts was provided by PAHO, as well as funding for educational and mass media campaigns. During the efforts to pass the legislation, PAHO provided media support with consultants addressing some of the arguments which were being raised by opponents to the law. Key messages in this regard included economic arguments which demonstrated that implementing tobacco control laws would not result in billions in tax loss or fall back in business. Relying on the example of other CARICOM states such as Barbados, which has had tobacco laws enacted since 2010, and highlighting the current governmental expenditure on treating NCDs, several of which are linked to tobacco usage were effective messages. Given the focus on broader NCDs, the whole-of-government, whole-of-society approach was useful with the State framing the issue as part of

embracing a healthy lifestyle consisting of low fat and sugar consumption, exercise and a focus on wellness, as the “cure” to many of the NDCs which are killing people in Antigua and Barbuda. In framing the passage of the Bill as contributing to halting preventable deaths by cancer linked to tobacco usage, it was better understood as a comprehensive approach.

- **Experiences of other countries**

The implementation of smoke-free environments and other tobacco legislation in a few other CARICOM territories also was a driver as it provided useful local experiences to learn from. These regional experiences can also be leveraged to counter resistance that may be encountered nationally.

- **Incremental Approaches**

As highlighted above, this was a protracted process with incremental wins. A sample timeline demonstrates the slow and evolving approach to the development of legislation in Antigua and Barbuda.

- 2008 - Antigua and Barbuda started work on the Tobacco Control Act
- 2010 - March 16 - Cabinet decision to prohibit use of tobacco within the public service effective May 31, 2010
- 2011 - First draft bill documented
- 2013 - Development of draft legislation to address novel and emerging products
- 2018 - Aug 1st - Tobacco Control Act successfully tabled by the House of Representatives
- Legislation is not in force

- 2020-2021 - draft Regulations needed to operationalize the Bill are in development.

Numerous public tobacco campaigns were launched in schools and local media to bring awareness to the negative impacts of tobacco use on health and the economy. The ABTFI organized and launched the annual “No Tobacco Day March” as an activity to promote continued education and awareness in the promotion of a smoke-free environment and the effects of tobacco use. Work was done along with government and other stakeholders which led to Antigua and Barbuda’s award from the WHO on ‘World No Tobacco Day 2019’ for outstanding contributions to advancing the fight against the harmful effects of tobacco smoke.

- **Consultative Process**

There was a very robust consultative process with cabinet, a strong approach to sensitization of the stakeholders, public awareness building and public consultations which allowed for the development of buy-in by a variety of actors.

Barriers

- **The Lack of Experience (The Early Days)**
When the legislation was first conceptualized in 2008, due to lack of similar legislation in the region, Antigua and Barbuda sought guidance from other Member States and guidance from PAHO. This barrier no longer exists as forums such as the Caribbean Public Health Law Forum and the collective experience of actors in the region have removed the need to start from scratch.

Overview of the Tobacco Control Act 2018

- Industry interference**
 Members of the private sector weighed in on the policy coming from the main backdrop of private economic interest. This interference came during the drafting phase and after the Act was passed. During two special parliamentary consultations that were held to garner the views of key stakeholders, local distributors of one of the largest tobacco distributors in the region, presented in Parliament with hopes of thwarting the advancement of the Act. Although these efforts did not block the passage of the legislation, it did result in changes to the primary legislation. In some instances, elements of the draft Bill were removed, including provisions on novel tobacco products. This has caused a difficulty in trying to find loopholes and ways to address such products in the Regulations presently being drafted. In other instances, the interference resulted in amendments when suggestions were forthcoming that the distance between a person and smoker could be reduced although there was little rationale for such. Thus, Part 3.9 of the Bill which would have placed a 30-metre restriction on how close smokers could sit to any public air intake mechanism was contested as being excessive given the example of a hotel. A recommendation and a compromise were made to amend the tabled 30 metres to 15 metres after involving the opposition leader. The tobacco industry also sent representatives from Jamaica to present and lobby at the level of the Cabinet of Antigua and Barbuda. After passage of the Tobacco Control Act, representatives from the industry also contacted the focal point to request amendments to the Act such as the removal of low filter cigarettes.
- Proximity between political actors, or sympathies of legislators who are smokers and the mobilization of human rights politics against the right to health**
 Several Parliamentarians, including those who use tobacco, expressed dissatisfaction with the provisions of the legislation. They raised a rights-framed challenge about the appropriateness of the government regulating how hotels and private entities govern where smokers can and cannot smoke. For example, an avid smoker and Member of Parliament, argued the government has no right to tell residents where they can “take a puff” as recreation, arguing that “where your rights end, mine begins and I have a right just like how you the non-smoker have a right.” One Member of Parliament shared his own experience with addiction and the consequences of smoking to neutralize these types of arguments.
- New developments**
 At the stage of the legislative process where there was a draft Bill formulated, the tobacco industry and legislators saw the emergence of e-cigarettes. This caused the draft bill to be placed on a temporary hold for several years. Given the eventual removal of the provisions which would have comprehensively addressed the novel and emerging products, some actors questioned the strategy in retrospect, wondering instead whether an incremental approach would have been preferable.



Key Elements

Section 2: Definitions

- “advertising and promotion” with respect to tobacco products means, any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product tobacco use either directly or indirectly;
- “sponsorship”, with respect to tobacco products means any form of contribution to any event, activity, organization, or individual that has the aim, effect or likely effect of promoting a tobacco product, tobacco use either directly or indirectly;
- “tobacco control” means a range of supply, demand, and harm reduction strategies that aim to improve the health of the population by eliminating or reducing the consumption of tobacco and tobacco products and exposure to secondhand smoke;
- “tobacco industry” or “entity in the tobacco industry” means tobacco manufacturers;
- “tobacco product” means any product entirely or partly made from the leaf of the tobacco as raw material which is manufactured to be used for smoking, sucking, chewing or snuffing;

Section 5: Designation and function of authorized officers

- Officers authorized to carry out compliance inspections and investigations under the Act include police officers, public health inspectors and authorized staff of ABTFI.

Section 9: Areas where smoking is prohibited

- It is an offence to smoke a tobacco product within 15 metres of any enclosed public place, enclosed workplace, or on a public conveyance. This includes any air intake, waiting area or queue, the premises of any child care, educational or health care facility or any public recreation areas. Persons responsible for these spaces have a continuous duty to prominently post no-smoking signs following the prescribed formatting and location details.

Section 23: Protecting tobacco control policies

- Government authorities and persons with responsibility for tobacco control shall protect tobacco control policy development and implementation from the interests of the tobacco industry. Interactions and support of the tobacco industry shall be limited.

Section 30: Penalties and liabilities

- Fines and penalties for violations of various provisions of the Act for establishments and patrons.

Strengths

- **Strong Statutory Roles**

The diversified professional and statutory roles of the members (Health, Bureau of Standards, Customs, Police, Legal Affairs, civil society) ensure that the provisions within the Act are implemented accordingly.

- **Complete indoor smoke-free environment** in enclosed public places, enclosed workplaces, or on a public conveyance. This includes any air intake, waiting area or queue, the premises of any childcare, educational or health care facility or any public recreation areas.

- To be fully in compliance with the requirements of Article 8 of the FCTC guidelines for “Protection from Exposure to Tobacco Smoke”, a country meets these guidelines where smoking is not allowed at any time, in any indoor area and under any circumstances. In Antigua and Barbuda smoking has been prohibited broadly across public places, workplaces and public conveyances. With legislative provision for all establishments within the below categories to meet these requirements, Antigua and Barbuda has a completely smoke-free environment.

- **Imposes penalties** on patrons and business owners (and therefore increased probability of compliance).

- **Comprehensive Ban on Advertising**

- Under WHO FCTC Article 13 and its Guidelines, Parties recognize that a comprehensive ban on advertising, promotion, and sponsorship would reduce the consumption of tobacco products. All Parties shall undertake a complete ban on tobacco advertising, promotion and sponsorship within the period of five years after entry into force of the treaty for the Party. A Party that is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles shall apply the following restrictions: prohibit false or misleading tobacco advertisements; require that health warnings accompany all tobacco advertising; restrict the use of incentives that encourage tobacco product purchases by the public; and ban or restrict tobacco advertising, promotion, and sponsorship in as many forms of media as possible, among others. Parties without comprehensive bans should also require the tobacco industry to disclose its expenditures on advertising, promotion, and sponsorship.
- Antigua and Barbuda legislation prohibits any forms of tobacco advertising, promotion and sponsorship as set out in the Third Schedule (Section 16) of the Act. These indicators are the forms of direct and indirect advertising used to evaluate a country's implementation status:

- **Provision for citizen complaints and investigations in s. 34**
- **Dedicated fund for compliance.**

- **Protection of public health policies**

- Under WHO FCTC Article 5.3 and its Guidelines, each Party shall act to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Parties should establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
- In Antigua and Barbuda, provision is made for this under section 23. At a minimum, it includes limiting interactions with the tobacco industry and refusing participation, support and endorsing.

Weaknesses

- **The legislation does not address tobacco taxation**, and this is not at the recommended minimum of the FCTC.

In accordance with WHO FCTC Article 6, Parties recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons. Each Party is obligated to adopt tax and pricing policies on tobacco products, including prohibiting or restricting, as appropriate, duty-free tobacco sales, so as to contribute to the health objectives aimed at reducing tobacco consumption. In this regard, the Antigua and Barbuda legislation does not address tobacco taxation which is not at the recommended minimum of the FCTC and are duty-free on most of the ports.

- **The ABTFI can include a legal manufacturer or representative from the private sector.** This is a breach of FCTC Article 5.3 and guidelines for its implementation.

- **Wholesalers and distributors are excluded from the definition of the tobacco industry** which refers only to tobacco manufacturers. As there are no manufacturers based in Antigua and Barbuda, this limits the scope of the Act's application.

- Since the **Act excludes heated tobacco products and devices**, it is difficult to pass legislation prohibiting these forms of tobacco usage. Efforts are being made to alleviate the changes and gaps through the regulations that are currently being developed to implement the Act.

Conclusion

An in-depth examination of Antigua and Barbuda's development of the Tobacco Control Act 2018 provides useful lessons and cautionary tales for other CARICOM States seeking to implement robust FCTC-compliant legislation. Antigua and Barbuda's unique supporting mechanism in the form of the ABTFI points to the importance of strong cross-sectoral coordination, passionate and committed advocates and resource personnel especially where there is no dedicated state funding. Undoubtedly, comprehensive tobacco control legislation is resource-intensive, which includes the financial, human resource and technical dimensions. International support is therefore critical to support bottom-up approaches and technical support should be strategically mapped and mobilized along the policy and legislative continuum in order to counter the resource constraints of this model. Equally, incremental policy developments and advocacy can be useful in building momentum towards comprehensive legislation.

Astute engagement with the political environment to identify champions, to build cross-party support within the Westminster two-party model, and to counter opposing arguments from within Government were key in Antigua and Barbuda's experience. This allowed the legislation to capitalize on a generally supportive environment, or alternatively framed, an environment that was not overtly hostile. This environment notwithstanding, it was necessary to guard against interference by the tobacco industry in the political process. This interference was exemplified in the dilution of the strength of legislation, particularly concerning novel and emerging nicotine and tobacco products. This setback occurred despite specific and lengthy efforts to ensure these products were comprehensively addressed in the legislation. The final lesson which emerges is the importance of identifying counterpoints or spaces of resilience in the face of such setbacks. In the case of the Tobacco Control Act, the secondary regulations provide a further opportunity to counter these efforts of industry.



Minister of Health, Wellness and the Environment Hon. Sir Molwyn Joseph receives award from PAHO/WHO Representative for Barbados and Eastern Caribbean Countries Dr Godfrey Xuereb

All considered, the model provides a key case-study as to the possibilities for advancing tobacco control when there is effective collaboration between strong civil society actors, the State and international partners. As Antigua and Barbuda advances towards implementation of the legislation, continued study of its experience will be necessary to gain full insight into the implementation processes and catalysts for success. With 2022 being the last year of the current Strategy and Action Plan to Strengthen Tobacco Control in the Region of the Americas 2018 - 2022, it is hoped that more CARICOM territories will urgently take the necessary steps to implement their binding and time-bound FCTC obligations. In so doing they will be taking an important step towards securing the health and human rights of their respective populations, young and old alike as well as contributing towards the sustainable development of their territories.

Appendix 1: Interview Guide

The aim of this interview is to gain an understanding of the development, implementation and monitoring and evaluation processes involved in the passage of the Tobacco Control Act 2019 and to gain some insights into the process used to devise comprehensive tobacco control legislation.

This understanding will facilitate an accurate mapping of the existing policy landscape in the Caribbean Community (“CARICOM”) and assist in the development of policy and legislative guidance for implementing effective tobacco control measures across CARICOM.

This interview comprises six (6) sections. However, only the section(s) most applicable to you will be applied. The sections are:

- i. Introductory Questions
- ii. Policy Environment Questions
- iii. Policy Development Process Questions
- iv. Legislative Process Questions
- v. Implementation Process Questions
- vi. Monitoring and Evaluation Process Questions
- vii. Concluding Questions

The entire interview is expected to take approximately 60 minutes. Please do indicate if you require a break at any time or if clarification of any question is required.

INTRODUCTORY QUESTIONS:

1. How would you describe your role in bringing the Tobacco Control Act, 2018 and its associated draft regulations into existence?
2. What was most enlightening and or challenging about your role in bringing that legislation into existence?
3. What is the legislation’s objective?

POLICY ENVIRONMENT QUESTIONS:

4. What were the challenges or barriers encountered in the development of the policy which informed this legislation?
5. What were the facilitators in the introduction of the policy which informed this legislation?
6. Was there opposition from the tobacco industry to the introduction of this policy/legislation? If so, how was this managed and/or overcome?

LEGISLATIVE DEVELOPMENT PROCESS QUESTIONS:

7. What was the legislative development process?
8. What international, regional and or national policy/policies were considered in the development of the legislation?
9. Who were the key informants for the legislation?
10. What resources were required for development of the legislation?
11. What are some key lessons learnt from the legislative development process?
12. What, if anything, was done to protect the legislative space from conflict of interest?
13. What are the key features/elements of the legislation? Does the legislation cover new and emerging tobacco products?

LEGISLATIVE IMPLEMENTATION PROCESS QUESTIONS:

14. What was the legislative implementation process?
15. What resources were required for implementation of the legislation?
16. What aspects of the legislation were challenging to implement or have not been implemented as yet?
17. What were the challenges or barriers experienced in the implementation of the legislation?
18. What were the facilitators to the implementation of the legislation?
19. What are some key lessons learnt from implementation of the legislation to date?
20. What, if anything, had to be done to protect the legislative implementation space from conflict of interest?

POLICY MONITORING AND EVALUATION QUESTIONS:

21. What is the legislative monitoring and evaluation process?
22. What resources are required for monitoring and evaluating the legislation?
23. What are the challenges or barriers faced in monitoring and evaluating the legislation?
24. What are the facilitators to the monitoring and evaluation of the legislation?
25. What are some key lessons learnt from monitoring and evaluation of the legislation to date?

CONCLUDING QUESTIONS:

26. What are some of the overall strengths and weaknesses of the legislation?
27. What would be your advice to any entity seeking to create a model legislation for CARICOM?
28. Is there anything else that you would like to add that we have not already discussed?

Appendix 2: Interview Guide

Ministry of Health and Wellness

Samantha Moitt - Dietitian - Lead Tobacco Focal Point, Ministry of Health and Wellness

Colin O'Keefe - Former Focal Point, Antigua Tobacco Free Initiative

Attorney General's Chambers

Jeniece St. Romain - Crown Counsel

Civil Society

Eunetta Bird - President, Antigua And Barbuda Breast Friends

Juanita James - President, Antigua and Barbuda Diabetes Association

Appendix 3: Overview of the Legislation

In order to fulfil its international legal obligations under the WHO Framework Convention on Tobacco Control (FCTC) Antigua and Barbuda passed the Tobacco Control Act 2018.

Part III

The Act in Part III outlaws smoking indoor public spaces and certain outdoor spaces as well as prohibits the advertising promotion or sponsorship by tobacco products. Businesses, including bars, restaurants, casinos, clubs and tourist establishments, could establish clearly designated outdoor smoking areas. These areas must be open sided and separated from the structure where smoking is prohibited. Those owners have a duty to ensure compliance with the law.

It prohibits the sale of tobacco to persons under the legal age, by remote means or at certain locations and the sale, advertising or promotion of non-tobacco items that imitate or resemble tobacco products. The sale and display of tobacco for sale is restricted to one packet and limited to certain parts of the store and not visible from outside.

Part IV

Part IV sets out the packaging and labelling requirements for the sale of tobacco. It requires the display of front of packaging warnings which takes up 50% of the display area. It requires the display of product content on the side of the packaging. It also prohibits misleading labelling that would indicate that the product is any less harmful than any other tobacco product. Packaging should be of no less than 10 sticks which cannot be sold separately and prohibits the use of additives for flavouring or properties associated with vitality, health benefits or reduced health risk.

Part V

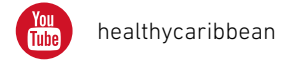
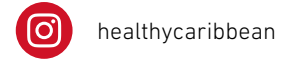
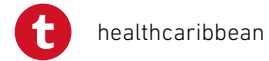
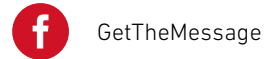
In an effort to protect tobacco policies, Part V seeks to limit the influence of the tobacco industry by limiting interaction with the industry by government officials responsible for tobacco control and prohibiting the participation support or accepting anything from the industry. It also prohibits incentives or favourable financial or tax treatment being given to the industry or any campaign financing.

The Act also tasks the executive legislature and judiciary with adopting instituting and monitoring policies, procedures and guidelines to ensure proper implementation and administration of Part V of the Act and the obligations under 5.3 of the FCTC.

Part VI

There should be effective regulations for the prevention and control of the illicit trade in tobacco products.

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