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## ACHIEVEMENTS, CHALLENGES, PRIORITIES AND NEEDS TO ADDRESS THE CURRENT TOBACCO EPIDEMIC IN LATIN-AMERICA

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### Abstract

Most Latin American countries have signed and ratified the FCTC, although implementation has been uneven. Countries across the region were relatively quick to adopt mandatory smoke-free workplace policies, but regional progress in other areas has been slower. In taxation, for example, Uruguay and Brazil have made considerable progress while Paraguay and Bolivia have relatively weak policies. More recently, the region is grappling with challenges regulating novel tobacco and nicotine products. Market share for flavor capsule cigarettes in Latin America is the highest in the world; electronic cigarettes and heated tobacco products are, for the most part, dissimilarly regulated; and uptake of these emerging products by adolescents and young adults is on the rise. In examining the needs and challenges in the region, we conclude that the adoption of a strong regulatory framework based on the FCTC and its Protocols is needed to accelerate a positive public health impact. In particular, countries in the region need more consistent progress in implementing FCTC provisions while strengthening regulation of flavored tobacco products, electronic cigarettes and heated tobacco products. Failing to do so threatens to undermine the progress Latin America has made in tobacco use prevention and control.

## INTRODUCTION

In Latin America, about 80% of the population is protected by at least one of the six MPOWER measures<sup>1</sup> promoted by the World Health Organization Framework Convention for Tobacco Control (FCTC).<sup>12</sup> Indeed, this region is amongst those with the highest levels of FCTC implementation: four countries have adopted at least four MPOWER measures at the highest implementation level and 16 countries have adopted between one and three measures.<sup>1</sup> Progressive, sustained, and synergistic implementation of FCTC measures has contributed to a regional reduction in smoking prevalence of more than 50% over 15 years.<sup>1</sup>

Brazil was the first Latin American country to implement all MPOWER measures, which was accompanied by a more than 75% reduction in smoking prevalence.<sup>1</sup> Countries across the region were amongst the first to implement comprehensive smoke-free policies starting in 2006,<sup>2,3</sup> with South America becoming the first WHO sub-region where all countries are covered.<sup>4</sup> The region also was relatively quick to adopt policies on prominent pictorial health warning labels (HWLs),<sup>5</sup> with 13 countries now having pictorial HWLs that cover 50% or more of the package.<sup>7</sup> Uruguay was one of the first countries in the world to require plain packaging.<sup>6</sup> In contrast, bans on advertising, promotion and sponsorship have been more unevenly adopted, with only Uruguay and Panama having comprehensive bans that include advertising at point of sale.<sup>7</sup>

With sustained commitment, most of the region should continue reducing the smoking prevalence to below 12.9% by 2025.<sup>7</sup> Despite these advances, tobacco use remains a leading preventable risk factors for disease, disability, and premature death in Latin America, accounting for 10% of all deaths.<sup>7</sup>

Smoking prevalence varies substantially across Latin America,<sup>8</sup> ranging from 38.7% in Chile to 5% in Panama<sup>9</sup>, with heterogeneity across sub-regions. Smoking prevalence is lowest in the Andean region (Colombia, Bolivia, Ecuador, and Peru) and highest in the southern cone (Argentina, Chile, and Uruguay).<sup>10</sup> It is generally more prevalent among vulnerable groups, including adolescents (particularly girls), young adults, and, increasingly, the poor<sup>7</sup>. These groups appear more sensitive to some tobacco control policies, particularly tobacco taxes, which is the most cost-effective of the MPOWER policies. Unfortunately, according to the 2021 WHO Report on the Global Tobacco Epidemic 2021,<sup>6</sup> only Argentina, Chile, and Brazil have levels of taxation that meet FCTC standards.

## REGIONAL PRIORITIES AND KEY CHALLENGES

The main priority for Latin America remains the full implementation of FCTC-recommended policies, which are based on the existing evidence of the most cost-effective tobacco control measures available.<sup>11</sup> The FCTC's grounding in the right of all people to the highest standard of health provides a legal underpinning for global cooperation in tobacco control. Furthermore, this clear connection between tobacco control and human rights treaties have facilitated implementation because many Latin American countries enshrine health as a human right in their constitutions (Cabrera and Gostin 2011).<sup>12</sup> Nevertheless, as in other parts of the world, novel nicotine products threaten to derail this progress.

In Latin America, Electronic Nicotine Delivery Systems (ENDS) first became available in 2007.<sup>13</sup> Heated tobacco products (HTPs) have emerged more recently, with Colombia,<sup>14</sup> being the first country in the region where Philip Morris's "IQOS" became available in 2017. Regulatory approaches to ENDS and HTPs differ across the region.

A few countries ban ENDS importation, sale, and distribution, including in both large (Brazil,<sup>15</sup> Argentina,<sup>16</sup> Mexico<sup>17 30</sup>) and small markets (Panama,<sup>18</sup> Uruguay,<sup>19</sup> Venezuela<sup>20</sup>). Based on the Precautionary Principle,<sup>21 22</sup> these prohibitions reflect the lack of conclusive evidence regarding ENDS harms and their effectiveness for cessation. Despite their legal prohibition, consumers in these countries are still able to access ENDS due to weak policy enforcement and the relatively large size of unregulated, informal economies. In Mexico, for example, the prevalence of ENDS use among adolescents is comparable to the US,<sup>23 24 25</sup> where e-cigarette regulations have only recently been adopted.

Bolivia, Paraguay, Costa Rica, Ecuador, and Honduras regulate ENDS as a "tobacco product".<sup>26</sup> This strategy is straightforward, although enforcement can be complex (e.g., loopholes due to technical definitions of aerosol and/or smoke). On the other hand, Colombia, Perú, Guatemala, Dominican Republic, and Nicaragua have no ENDS regulations. Chile is the only country in the region to regulate ENDS as pharmaceutical products because they contain nicotine. However, as of October 2021, no company has received authorization to sell ENDS, due to the lack of clinical data to support their approval.<sup>27</sup>

HTP marketing and sales are banned in Brazil,<sup>28</sup> Mexico,<sup>29 30</sup> and Panama.<sup>31</sup> For example, in Brazil, the National Health Surveillance Agency (ANVISA) Resolution banned "electronic smoking devices" in 2009, including both ENDS and HTPs.<sup>29</sup> Companies must submit epidemiologic and toxicologic evidence to receive authorization to import and sell any "electronic smoking device" intended for smoking cessation or as substitute for conventional cigarettes, regardless of nicotine content. The ANVISA resolution also banned advertising of both ENDS and HTPs in Brazil.

Bolivia<sup>32</sup>, Paraguay<sup>33</sup>, and Uruguay<sup>34</sup> all specifically regulate HTPs as tobacco products. However, Argentina, Chile, Costa Rica, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Peru, Venezuela, Dominican Republic and Nicaragua have no HTP-specific regulations. For instance, the Colombian Tobacco Control Law (2009)<sup>35</sup> bans advertising, promotion, and sponsorship of tobacco and includes a nationwide smoking ban in workspaces and other public areas and 30% size pictorial health warnings on tobacco products. Later legal interpretation has concluded that the wording of Tobacco Control Law encompasses HTPs since they are considered a tobacco product. However, PMI has sidestepped these regulations by using different brand names for the "heatsticks" and heating device, which it markets freely by arguing that the heating device is not a tobacco product and therefore not covered by the regulations. To date, the consumer protection authority has not taken effective actions to combat this practice.

Since the U.S. Food and Drug Administration (FDA) authorized the marketing of PMI's HTP 'IQOS' as a modified exposure tobacco product in 2019, PMI has capitalized on this

decision in its activities in Latin America. This includes mention of this decision in IQOS marketing strategies, as well as when lobbying decision makers to lift prohibitions and weaken existing HTP regulations.

A key challenge for tobacco control in Latin America concerns flavored tobacco products, including capsule cigarettes that are rapidly gaining global market share, particularly in Latin America.<sup>36</sup> Flavored cigarettes disguise the harshness of tobacco smoke, and, in the case of menthol, increase the reinforcing effects of nicotine on smoking behavior. The variety of flavors in capsules has rapidly expanded beyond traditional menthol to include fruits and cocktails flavors.<sup>37</sup> The industry has also introduced cigarettes with multiple capsules, each with different flavors, in a single stick<sup>38</sup> as well as different flavors across sticks within a single pack.<sup>39</sup> Flavor capsules appeal to adolescents,<sup>40</sup> young adults, women, and light smokers,<sup>41</sup> potentially undermining MPOWER measures, as appears to have happened in Mexico.<sup>38 42 43</sup>

In 2012, Brazil became the first country worldwide to ban the sale of all flavored tobacco<sup>44</sup>. However, industry lawsuits effectively blocked implementation by claiming, among other arguments, that scientific knowledge about negative health effects from flavors is unclear and that the ban would increase illicit sales.<sup>45</sup> Between 2012 and 2021, industry registration of flavored tobacco products for legal sale in Brazil has more than tripled.<sup>46</sup> Similarly, Chile faces political and economic challenges in its attempts to implement the 2015 law that banned menthol tobacco products.<sup>47</sup> Where flavors are not banned, FCTC parties are encouraged to ban flavor descriptors and brand imagery (e.g., graphic design, color, and fonts) to help reduce the appeal of flavored tobacco for youth. However, as of October 2021, no Latin American country has banned additives and/or flavors in tobacco products<sup>48</sup> nor has removed packaging descriptors depicting flavors.<sup>6</sup> Even where such bans have been introduced, industry has gone around them by using “concept descriptors” (e.g., Havana Nights, Fusion Blast) instead of flavor-specific descriptors.<sup>49</sup>

Another key challenge for the region is tobacco taxation – the most cost-effective policy for reducing consumption.<sup>50</sup> Yet taxes are the least implemented MPOWER measure across Latin America.<sup>51</sup> The Tobacconomics Cigarette Tax Scorecard is a composite index that aggregates four elements of cigarette taxation (price, affordability, tax share and structure) to give countries an overall score out of five.<sup>51</sup> Latin America had an average score of 2.62 in 2020, above the global average of 2.28. While many South American countries score well on the Scorecard, notable exceptions include Paraguay and Bolivia, which score 0.50 and 0.88, respectively. Further tax increases are needed to make cigarettes less affordable

Recent tax reforms have been modest, as in Peru<sup>52</sup> and Mexico<sup>53</sup>, which updated the tobacco excise tariff between 2020 and 2021 to adjust for Consumer Price Index (CPI) increases. In Brazil, despite a lack of inflationary adjustment since 2016/17, the industry pressured the Ministry of Justice to consider reducing cigarette taxes to contain smuggling.<sup>54</sup> The FCTC Protocol to Eliminate Illicit Trade in Tobacco Products aims to tackle illicit trade concerns, which are often raised when tax increases are proposed.<sup>55</sup> Brazil, Costa Rica, Ecuador, Nicaragua, Panama and Uruguay became parties to the Protocol between 2013 and 2018;<sup>56</sup> however, no Latin American parties have ratified this initiative since then.

Another key challenge concerns taxing ENDS and HTPs in countries where they are legal. As in other countries, it is unclear how to design a tariff structure that reduces smoking while also considering the potential for incentivizing use of potentially less harmful products among smokers who cannot otherwise quit, keeps youth from starting to use tobacco products, and defines a tax base that can be effectively administered across the growing diversity of products.<sup>57</sup> Colombia<sup>58</sup> and Perú<sup>54</sup>, are the only countries that levy a tax on HTPs “heatsticks”, equivalent to the excise tax for cigarettes. However, the electronic component of the HTP is not taxed and the selective tax is not levied on ENDS. Key obstacles to ENDS taxation include the lack product standardization (e.g., some products report weight instead of volume), the ease of introducing new products without regulatory approvals, and lack of institutional capacity to monitor the rapidly changing market. These problems are strongly linked to the absence of specific ENDS regulations in most Latin American countries.

Finally, providing access to and promoting the use of evidence-based smoking cessation support remains a challenge, as it depends to a great extent on the availability of human and financial resources. While some countries have dedicated resources for cessation, there is a need for comprehensive commitments by governmental and non-governmental organizations to address this critical issue. Governments urgently need to coordinate cessation strategies and develop national guidelines, ensure universal coverage of treatments that have proven to be cost-effective, and guarantee access to and affordability of nicotine replacement therapies and behavioral support. Engagement with health professionals in training and treatment, is critical, as is consideration of information technologies for delivering effective treatments that can be scaled up and disseminated widely.<sup>59 60</sup>

## CONCLUSIONS

Latin America has been relatively successful in implementing the key MPOWER measures of comprehensive smoke-free environments, prominent pictorial HWLs, and tobacco advertisement, promotion and sponsorship bans – their implementation has been accompanied by significant declines in tobacco use. Nevertheless, the region still faces a high disease and death burden attributable to tobacco, and implementation of some policies present challenges (e.g., taxes, smoke-free environments<sup>61 2</sup>).

Several regulatory approaches to ENDS and HTPs have been implemented in the region, yet the public health impact of each approach is uncertain. As around the world, new industry marketing strategies aim to differentiate these products as less harmful than combustible tobacco products, and smokers and youth alike access and use these products even where they are banned.

The tobacco industry – vector of the tobacco epidemic – is changing, and legal frameworks must evolve to anticipate and address these changes. To accelerate the FCTC’s positive public health impacts, adoption of a strong regulatory framework based on the FCTC and its Protocols is the critical starting point not only for regulating combustible tobacco, but also HTPs and ENDS.

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