



Action on Smoking and Health, an organization with consultative ECOSOC status, and our partners at the DC Tobacco Free Coalition and the African American Tobacco Control Leadership Council (AATCLC) submit this report, co-signed by XX other organizations around the world

### **Action on Smoking and Health**

Founded in 1967, [Action on Smoking and Health](#) (ASH) is the United States' oldest organization devoted to fight the harms caused by tobacco, both in the US and globally, and is dedicated to a world with zero tobacco deaths.

### **DC Tobacco Free Coalition**

The [Coalition](#) was created in 2006 with financial support from the District of Columbia tobacco settlement funds. Our mission is to improve the health of the District of Columbia residents by decreasing the morbidity and mortality associated with tobacco use and exposure through education, public policy, and advocacy using culturally and linguistically competent approaches.

### **African American Tobacco Control Leadership Council**

Created in 2008, the [AATCLC](#) educates and engages the public about the deleterious effects of tobacco on Black American and African immigrant populations, works to prohibit the sale of menthol and all flavored tobacco products, and fights against the tobacco industry's predatory racialized marketing tactics.

**This report is co-signed by the following organizations:**

## 1) Summary

- a) Tobacco is a leading cause of preventable death and is an obstacle to the right to health.
- b) Tobacco use disproportionately affects many marginalized populations—including people in low-income communities, racial and ethnic minorities, LGBT individuals and those with mental illness—who have a long and documented history of being aggressively targeted by the tobacco industry. Tobacco use therefore directly affects the right of these groups to the equal enjoyment of the right to health.
- c) The tobacco industry and the production of tobacco products, especially those that include menthol, prevents United States citizens from enjoying the right to health.
- d) The decades of well-documented racialized and predatory tobacco industry targeting of African Americans, specifically with menthol flavoring, is a human rights issue. Given African Americans historical marginalization, status as a vulnerable population, and the failure of the U.S. government to take any protective action on their behalf merits its consideration as a human rights priority under CERD.

## 2) Relevant facts and statistics

### a) Tobacco statistics

- i) Worldwide, tobacco use causes more than 8 million deaths per year.<sup>1</sup>
- ii) Cigarette smoking is responsible for more than 480,000 deaths per year in the United States, including more than 41,000 deaths resulting from secondhand smoke exposure. This is about one in five deaths annually, or 1,300 deaths every day.<sup>2</sup>
- iii) For every person who dies because of smoking, at least 30 people live with a serious smoking-related illness.<sup>3</sup>
- iv) Smoking leads to disease and disability and harms nearly every organ of the body.<sup>1</sup> More than 16 million Americans are living with a disease caused by smoking.<sup>4</sup>
- v) In addition to the human toll, tobacco is also economically expensive.  
(1) Total annual public and private health care expenditures caused by smoking: approx. \$170 billion.

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<sup>1</sup> <https://www.who.int/news-room/fact-sheets/detail/tobacco>.

<sup>2</sup> [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm)

<sup>3</sup> [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm)

<sup>4</sup> [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm)

- (2) Productivity losses caused by smoking each year: \$151 billion.
- (3) Taxpayers yearly fed/state tax burden from smoking-caused gov't spending: \$925 per household
- (4) Smoking-caused health costs and productivity losses per pack sold in USA (low estimate): \$20.91 per pack.<sup>5</sup>

**b) Menthol cigarettes and African Americans**

- i) Nearly 9 in 10 (88.5%) African Americans ages 12 and older that smoke use menthol cigarettes.<sup>6,7</sup>
- ii) Data from nationally representative samples show that the youngest age groups use menthol at the highest rates.
- iii) In 2014, among middle and high school students, 70.5% of African American people who smoke used menthol cigarettes, compared with 52.3% of Hispanic people who smoke and 51.4% of white people who smoke.
- iv) African American youth who smoke menthol cigarettes have greater nicotine dependence and a greater desire to smoke than non-menthol users,<sup>8</sup> and therefore have a harder time quitting.
- v) Despite starting to smoke later and smoking fewer packs per day, African American menthol users successfully quit smoking at a lower rate than non-menthol smoking African Americans.
- vi) Research shows that if menthol cigarettes were banned nationally, 44.5% of African American people who smoke menthol cigarettes would try to quit.
- vii) 67% of overall health disparities in mortality in African American men are related to their high smoking prevalence.<sup>9</sup>
- viii) Tobacco companies have strategically marketed tobacco products to appeal to racial and ethnic communities for decades. Tobacco companies have also sponsored activities linked with cultural traditions. A partial list: Mexican rodeos, American Indian powwows, Chinese New Year and Cinco de Mayo festivities and events related to Black History Month, Asian/Pacific American Heritage month and Hispanic Heritage Month.<sup>10</sup>

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<sup>5</sup> <https://www.tobaccofreekids.org/problem/toll-us/california>

<sup>6</sup> <https://truthinitiative.org/sites/default/files/media/files/2019/03/truth-initiative-menthol-fact-sheet-dec2018.pdf>

<sup>7</sup> Gardiner PS. The African Americanization of menthol cigarette use in the United States. *Nicotine Tob Res.* 2004 Feb;6 Suppl 1:S55-65. doi: 10.1080/14622200310001649478. PMID: 14982709.

<sup>8</sup> <https://truthinitiative.org/research-resources/targeted-communities/tobacco-use-african-american-community>

<sup>9</sup> <https://tobacco.ucsf.edu/sites/g/files/tkssra4661/f/u9/Attachment%206-Sample%20Ban%20Menthol%20Resolution.pdf>

<sup>10</sup> <https://truthinitiative.org/research-resources/targeted-communities/tobacco-social-justice-issue-racial-and-ethnic-minorities>

- ix) Research shows that more tobacco retailers exist in areas with larger Black, Hispanic and low-income populations.
- x) Studies have shown that predominantly Black communities across the country have more advertising and cheaper prices for menthol cigarettes.<sup>11</sup>
- xi) Tobacco companies have used racialized experiential marketing — the tactic of encouraging consumers to experience or interact with a brand at recreational venues and events, such as concerts, bars or nightclubs — to specifically target certain populations, including African Americans.<sup>12</sup>
- xii) In 2011, the United States Food and Drug Administration’s (FDA), Tobacco Products Scientific Advisory Committee concluded that without the FDA’s action on menthol, by the end of 2020, the African American population will have suffered over 4,700 excess deaths caused by menthol in cigarettes and over 460,000 more African Americans will have started smoking caused by the presence of menthol in cigarettes.<sup>13</sup>

### **3) A local example- Washington D.C.**

- a) More than 16% of adults in Washington, DC smoke. Tobacco-use rates are disproportionately high among certain populations in Washington, DC, including African Americans and lesbian, gay, bisexual and transgender adults.<sup>14</sup>
- b) Smoking prevalence among black adults in DC is 20.3%.<sup>15</sup>
- c) The CDC estimates 58.2% of daily adult people who smoke in DC quit smoking for one or more days in 2018.<sup>16</sup>

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<sup>11</sup> Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res.* 2012 Jan;14(1):116-21. doi: 10.1093/ntr/ntr122. Epub 2011 Jun 24. PMID: 21705460; PMCID: PMC3592564.

<sup>12</sup> Valerie B. Yerger et al., *Racialized Geography, Corporate Activity, and Health Disparities: Tobacco Industry Targeting of Inner Cities*, 18 *J. OF HEALTH CARE FOR THE POOR & UNDERSERVED* 10, 10-38 (2007).

<sup>13</sup> <https://www.publichealthlawcenter.org/sites/default/files/resources/Supplement-to-Menthol-Citizen-Petition.pdf>.

<sup>14</sup> <https://www.dctfc.org/the-impact-of-tobacco-use-in-washington-dc-a-dc-tobacco-free-coalition-fact-sheet>.

<sup>15</sup> Centers for Disease Control and Prevention. NCCDPHP: Community Health Community Profile: Washington, DC.

<sup>16</sup> CDC, Behavioral Risk Factor Surveillance System, State Tobacco Activities Tracking and Evaluation System, 2020.

- d) Researchers in Washington, DC found that stores in predominantly Black neighborhoods were up to ten times more likely to display tobacco ads inside and outside than retailers in areas with fewer Black residents.<sup>17</sup>
- e) DC does not have a private insurance mandate provision for quitting tobacco.<sup>18</sup>
- f) The health consequences of tobacco use are especially severe now as COVID-19, which is also disproportionately affecting Black Americans, can carry a greater risk of severe illness for tobacco users.<sup>19</sup> As of November 2020, 75% of the lives lost (490 out of 657) to COVID-19 in D.C. were African American, who make up only 47% of the population.<sup>20</sup>

#### 4) Health intersections

Tobacco does not exist in a silo, and numerous other public health issues intersect with and impact tobacco control. It is important to consider tobacco, and especially menthol, in this context. These are just a few examples of cross-cutting issues that are particularly relevant to the United States.

##### a) COVID-19

- i) During the worldwide COVID-19 pandemic, addressing tobacco use is even more important, as tobacco negatively impacts the outcomes for COVID-19 patients who smoke or are exposed to tobacco smoke.
- ii) Black Americans are more likely to contract COVID and 1.9 times more likely to die from it.<sup>21</sup>

##### b) Police enforcement

- i) Law enforcement should not approach, harass, or arrest structurally marginalized communities, especially children of color, because they have a tobacco product in their possession.
- ii) To save lives, especially Black and Brown lives, local and state tobacco prevention and control partners must address where and how public health laws contribute to systemic racism and discrimination. This includes not only working to eliminate the sale of mentholated tobacco products but also addressing inequities in the enforcement of commercial tobacco control laws and policies.<sup>22</sup>

##### c) Non-communicable diseases (NCDs)

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<sup>17</sup> <https://tobaccocontrol.bmj.com/content/24/e1/e52.full>

<sup>18</sup> Campaign for Tobacco-Free Kids, Broken Promises to Our Children: a State-by-State Look at the 1998 State Tobacco Settlement 21 Years Later FY2020, 2019.

<sup>19</sup> <https://truthinitiative.org/research-resources/targeted-communities/tracing-racist-tactics-tobacco-industry>

<sup>20</sup> <https://coronavirus.dc.gov/data>

<sup>21</sup> <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>

<sup>22</sup> [https://countertobacco.org/wp-content/uploads/2021/02/TobaccoControlEnforcementforRacialEquity\\_FINAL\\_20210129-2.pdf](https://countertobacco.org/wp-content/uploads/2021/02/TobaccoControlEnforcementforRacialEquity_FINAL_20210129-2.pdf)

- i) Tobacco use is the only risk factor shared by all four main categories of NCDs- cardiovascular disease, cancer, chronic lung disease and diabetes-, and accounts for nearly one in six deaths from NCDs.
- ii) In the United States, the NCD burden weighs the most heavily on Black people and people of color.<sup>23</sup> Reducing tobacco use will help reduce this burden.

## 5) Legal obligations regarding menthol

- a) An increasing number of jurisdictions have banned menthol, including: The European Union (2020), Brazil (2012), Canada. (2017), Ethiopia (2015), Moldova (2015). and others. <sup>24</sup>
- b) In the United States, by the end of September 2020, 330 localities had placed some type of restriction on the sale of flavored tobacco products. Of those, 125 have comprehensive sales bans on menthol products, which are sometimes exempted from flavor policies even though the federal government has done nothing to restrict the sale of menthol cigarettes — which are easier to smoke and more likely to addict youth — or the sale of other tobacco products that come in fruit, cocktail and candy flavors, such as smokeless tobacco, cigars or hookah.<sup>25</sup>
- c) Menthol has been repeatedly exempted from legislation on flavored tobacco because of massive tobacco industry lobbying efforts. For decades tobacco companies have made strategic financial contributions and worked to align themselves with Black leaders, politicians, and Black focused media, mounting huge opposition campaigns against policy efforts to protect the health of African Americans, most recently those related to restricting the sale of menthol tobacco products.<sup>26</sup>
- d) The United States Food and Drug Administration has the authority to ban menthol flavorings, pursuant to the 2009 Family Smoking Prevention and Tobacco Control Act which gives the FDA the responsibility to issue product standards, which could include ending the manufacture and sale of flavored tobacco products, including menthol.
- e) In April 2022, The United States Food and Drug Administration proposed a draft rule on banning menthol as a characterizing flavor in cigarettes. The rule proposes to prohibit menthol as a “characterizing flavor” in cigarettes, but that term has not been given a legal definition. Since May 2020, cigarettes with a characterizing flavor of menthol have been banned in the European

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<sup>23</sup> <https://www.joghr.org/article/13068-the-role-of-education-and-ethnicity-on-amenable-mortality-due-to-five-leading-non-communicable-diseases-among-blacks-and-whites-in-the-united-states-1990-2015>.

<sup>24</sup> <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-global-flavored-regs-2015.pdf>

<sup>25</sup> <https://truthinitiative.org/sites/default/files/media/files/2020/12/Local-flavored-tobacco-policies-Sept-30-FINAL.pdf>

<sup>26</sup> [African American leadership groups: smoking with the enemy.](#)

Yerger VB, Malone RE. Tob Control. 2002 Dec;11(4):336-45. doi: 10.1136/tc.11.4.336.

Union (EU) owing to the European Tobacco Products Directive (EU TPD).<sup>1</sup> However, tobacco companies have exploited loopholes in the directive to continue to sell menthol products, which are still frequently being used.<sup>2</sup> These loopholes allow for flavored tobacco accessories, recessed cigarette filters, and design/brand descriptions that create the impression of menthol.<sup>3</sup> Banning menthol as an additive, instead of just as a characterizing flavor, would help to prevent the tobacco industry from circumventing the rule. The FDA has proposed that this rule would take effect one year after the final rule is issued. Given the number of lives that the rule would save, time is of the essence to get the final regulation in place.

## 6) Treaty obligations

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was created with the goal of “speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person.”<sup>27</sup> Article 5 of the treaty also recognizes the “right to public health” and requires States Parties “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of” this right.<sup>28</sup> Tobacco, and specifically menthol, is a threat to these rights.

## 7) Framework Convention on Tobacco Control (FCTC)

- a) In addition, to violating the right to health, the manufacture and selling of mentholated tobacco goes against the principles of international health treaties.
- b) The WHO Framework Convention on Tobacco Control (FCTC) provides global best practices for tobacco control.
- c) The partial guidelines for implementation of the Articles of the FCTC that address the “regulation of the contents of tobacco products and regulation of tobacco product disclosures” established that “masking tobacco smoke harshness with flavours contributes to promoting and sustaining tobacco use” and clarified that “from the perspective of public health, there is no justification for permitting the use of ingredients, such as flavouring agents.”<sup>29</sup>
- d) The FCTC has been instrumental in changing the global conversation about tobacco, and many of its articles address rights that are important to the implementation of ICERD, including:
  - i) Right to health and life – FCTC Articles 9, 10, 11, 12, 13, 14, and 16
  - ii) Right to healthy environment – FCTC Articles 8, 17, and 18
  - iii) Children’s rights – FCTC Article 8, 12, 13, 16 and 17

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<sup>27</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <https://www.refworld.org/docid/3ae6b3940.html>.

<sup>28</sup> UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: <https://www.refworld.org/docid/3ae6b3940.html>

<sup>29</sup> [https://www.who.int/fctc/treaty\\_instruments/Guideliness\\_Articles\\_9\\_10\\_rev\\_240613.pdf?ua=1](https://www.who.int/fctc/treaty_instruments/Guideliness_Articles_9_10_rev_240613.pdf?ua=1)

**iv) Women's rights – FCTC Article 8, and 13**

- e) The U.S. has not yet ratified the WHO FCTC, but it has signed it and has committed to its implementation when the U.S. endorsed the UN Sustainable Development Goals that were adopted unanimously by the UN General Assembly in September 2015.

**8) The UN Sustainable Development Goals**

- a) The negative impact of tobacco on global development was recognized by the global community in September 2015, when all United Nations Member States, including the United States, adopted the UN Sustainable Development Goals (SDGs) which include Target 3.a which calls on countries to “Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate.”
- b) Target 3.4 goes on to call on countries to “by 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment”.
- c) Tobacco is the leading risk factor for non-communicable diseases (NCDs), and racial minorities in the U.S. are particularly affected by NCDs. It is imperative that the U.S. ban mentholated tobacco products if it is to achieve this target among racial minorities in the U.S.

**9) Other treaties**

- a) The impact of tobacco products on human rights has been noted in a number of human rights fora, directly and implicitly. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 14, stated that the “failure to discourage production, marketing and consumption of tobacco” constitutes a violation of the obligation to protect under Article 12 of the International Covenant on Economic, Social and Cultural Rights, mirroring language in the FCTC Chapeau. Likewise, General Comment 15 of the Committee of the Rights of the Child noted that governments must implement and enforce the FCTC as part of their obligations under the Convention on the Rights of the Child.<sup>30</sup>
- b) There are also examples of human rights treaty bodies replying directly to countries about the impacts of tobacco products. For example, in 2010, in its concluding observations, the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) expressed concern about the negative impacts of tobacco on the women of Argentina, particularly about tobacco advertising directed at women. The Committee went on to urge Argentina to ratify and implement the FCTC.

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<sup>30</sup> UN Committee on the Rights of the Child (CRC), General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), 17 April 2013, CRC/C/GC/15, available at: <http://www.refworld.org/docid/51ef9e134.html>.



## 10) Recommendations

We respectfully request CERD to call on the United States government to take the following actions to help lessen the disproportionate toll that tobacco has on the Black community and other marginalized groups. Specifically, we request that the Committee:

- a) Call on the United States to ratify the World Health Organization Framework Convention on Tobacco Control (FCTC)
- b) Call on the United States Food and Drug Administration to act quickly, close loopholes, and not allow exemptions in its comprehensive ban on menthol, including by changing the rule from banning menthol as a characterizing flavor to banning all menthol in cigarettes.
- c) Recommend that the United States federal government ban all tobacco advertising, promotion, and sponsorship, that targets racial and minority groups. This should include advertising targeted towards specific minority and racial groups, sports event sponsorship, generic company promotions, as well as a ban on product placements in media, whether direct payments are made to media companies or indirectly to certain cultures or individuals
- d) Recommend that the government provide, through national health programs, culturally sensitive and tailored cessation approaches that address the social determinants of health and work more broadly to achieve health equity
- e) Recommend that United States federal, state and local governments provide culturally sensitive prevention approaches that strive to prevent smoking initiation and encourage medical service provision professionals to engage in conversation and treatment of tobacco use and its impact on health

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<sup>1</sup> European Union. Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the member states concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC. *Off J Eur Union* 2014;127:1–38.

<sup>2</sup> Brink A, Glahn AS, Kjaer NT Tobacco companies' exploitation of loopholes in the EU ban on menthol cigarettes: a case study from Denmark *Tobacco Control* Published Online First: 21 March 2022. doi: 10.1136/tobaccocontrol-2021-057213.

<sup>3</sup> Brink A, Glahn AS, Kjaer NT Tobacco companies' exploitation of loopholes in the EU ban on menthol cigarettes: a case study from Denmark. *Tobacco Control* Published Online First: 21 March 2022. doi: 10.1136/tobaccocontrol-2021-057213.