

Briefing-paper

Human Rights denied

The responsibility of tobacco
companies and the Swiss
government in the tobacco epidemic

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Contents

Introduction **03**

01. How Tobacco Companies
Violate Human Rights **06**

02. How the Swiss State is Failing
in its Duty to Protect its Citizens **11**

03. Conclusion **14**

References **15**

Introduction

The rights to life and health, as well as other fundamental rights, are firmly anchored in global human rights standards set out in international treaties, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Convention on Human Rights (ECHR), and the Convention on the Rights of the Child (CRC). Switzerland has ratified all these treaties.¹

Tobacco prevention also means defending human rights, particularly the right to health, the right to a healthy environment, and the rights of children. While this connection is not widely known, it is gaining increasing importance in public debate. It offers a new approach to the fight against the tobacco epidemic, driven by an influential tobacco industry, particularly in Switzerland. The “human rights perspective” makes it possible to “extend the fight against tobacco beyond its purely health-related dimension”.²

While multinational tobacco companies attempt to use human rights arguments to gain legitimacy, international bodies have been very clear in stating that “tobacco is deeply harmful to human health, and there can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health”.³ As we show in this analysis, the tobacco industry goes to great lengths to undermine tobacco prevention policies in Switzerland and internationally and is targeting children and young people in its marketing strategies. Moreover, the tobacco industry’s activities and products are also harmful to the environment.

By ratifying the international treaties mentioned above, the Swiss Confederation has committed itself to defending human rights and ensuring that they are respected. However, by failing to implement effective tobacco prevention policies, the State is failing in its duty to protect human rights of the Swiss population, and is thus violating these treaties. Furthermore, by hosting tobacco multinationals on Swiss territory and granting them favourable conditions, the Confederation is complicit in the human rights violations committed by these companies, not only against its own population, but also on a global scale, particularly in low-income countries already facing serious challenges, notably related to poverty and access to basic services.

According to the “Guiding Principles on Business and Human Rights” (also known as the “Ruggie Principles”), adopted by the United Nations in 2011,³ companies

¹ Danish Institute for Human Rights. Human Rights assessment in Philip Morris International, 4 May 2017. Available at: <https://www.humanrights.dk/news/human-rights-assessment-philip-morris-international>. Accessed on September 5, 2024.

have a responsibility to respect human rights in all their business activities and relationships.^b States, for their part, have a duty to protect human rights against violations that may be committed by third parties, including companies.^c

➤ Human Rights and the Tobacco Industry: An Inherent Contradiction

In a bid to restore their tarnished public image, tobacco companies are stepping up efforts to present themselves as socially responsible companies. They regularly use the rhetoric of human rights to portray themselves as benevolent and even philanthropic. They publish reports in which they advertise their exemplary human rights record, highlighting their efforts to comply with international standards.^{4,5}

**The United Nations
has recognized
that the activities of
tobacco companies are
incompatible with human
rights principles.**



^b "The corporate responsibility to respect human rights (...) Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_fr.pdf, p. 15

^c "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication." Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_fr.pdf, p. 3.

Philip Morris International submitted two reports to the UN Global Compact (UNGC)^d in 2015 and 2016, boasting the “progress” it had made in defending human rights. However, analysis of these reports revealed a major contradiction. The UNGC concluded that the activities of tobacco companies were fundamentally incompatible with human rights principles and could not be reconciled with the UN sustainable development goals (SDGs). As a result, in 2017, it decided to exclude tobacco companies from its membership:⁶ “This decision recognizes that tobacco products are in direct conflict with UN goals, particularly with the right to public health”.⁷



^d The United Nations Global Compact is an initiative launched in 2000 by the United Nations (UN) to encourage companies and organisations around the world to adopt sustainable and socially responsible business practices.

01. How Tobacco Companies Violate Human Rights

➤ Producing and Marketing an Addictive and Deadly Product

Tobacco causes serious diseases, including cancer, cardiovascular disease, and respiratory conditions, all of which seriously compromise health and lead to premature death. In Switzerland, it is estimated that more than 400,000 people suffer from a chronic disease linked to tobacco, including 200,000 to 300,000 with chronic obstructive pulmonary disease (COPD).⁸ Every year, tobacco causes at least 9,500 deaths in Switzerland, and 8 million worldwide.⁹ The tobacco epidemic is no accident: it is the result of a commercial strategy pursued by tobacco companies for over a century.¹⁰ Unlike other industries whose products cause diseases, such as the food and beverage industries, which could theoretically find common ground with public health concerns, there is a “fundamental conflict of interest between the tobacco industry and public health”.^{11e} **The manufacture and marketing of tobacco are incompatible with human rights, in particular the right to health, the right to a healthy environment, and the rights of children.**

➤ Weakening Tobacco Prevention

Lobbying in Switzerland

In Switzerland, to protect its commercial interests, the tobacco industry employs a multitude of strategies aimed at obstructing, delaying, and weakening tobacco prevention policies. In particular, the tobacco industry has won the support of sympathetic members of parliament, such as Gregor Rutz, Chairman of Swiss Tobacco. It mobilises its lobbyists directly within parliament, funds political parties,¹² uses front groups to promote its interests,¹³ and financially supports various social and cultural organisations to project the image of a socially responsible corporate citizen.

⁸ Political declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases. General Assembly, United Nations, A/66/L1, 16 September 2011. Available at: <https://documents.un.org/doc/undoc/tld/n11/497/78/pdf/n1149778.pdf>. Accessed on September 5, 2024.

During the drafting of the new Tobacco Products Act (LPTab), the industry's intense lobbying paid off. As a result, the adopted text does not introduce effective tobacco prevention measures, such as tax increases or comprehensive advertising bans.¹⁴ **By obstructing tobacco prevention efforts in this way, the tobacco industry is not only violating the Swiss population's right to health, but also its right to a healthy environment.**

Using Trade Agreements to Challenge Legislation

Philip Morris International, which has its global headquarters in Lausanne, used a bilateral investment treaty between Switzerland and Uruguay to challenge the country's tobacco prevention legislation.¹⁵ In 2011, the company



filed a lawsuit against the country in response to its decision to strictly regulate the packaging of cigarettes, with graphic health warnings covering 80% of cigarette packs.^f Although Uruguay ultimately won this legal battle, the proceedings cost its government approximately \$10 million. Philip Morris, on the other hand, spent nearly \$17 million, demonstrating its determination to oppose tobacco control initiatives.^g

Philip Morris has also used Switzerland's bilateral investment treaty to pressure Togo, one of the world's poorest countries, to abandon its plan to introduce plain packaging, providing another example of how these agreements can be used to undermine public health measures. The multinational threatened Togo with trade sanctions equivalent to its GDP.^{16,17} Unable to defend itself against these threats, Togo withdrew its plans. This case illustrates how Philip Morris exploits trade law to exert pressure on governments. The "chilling effect" caused by the threat of costly litigation and massive sanctions was aimed at, and most likely succeeded in, dissuading many countries from adopting effective tobacco prevention measures.

By cynically initiating commercial disputes without any valid grounds, particularly by invoking bilateral investment treaties with Switzerland (which has signed over 110 of them¹⁸), the tobacco industry is undermining the willingness of low-income countries to adopt effective and structured health measures, thereby violating the right to health of already disadvantaged populations with limited access to healthcare.

➔ Targeting Children and Young People in Their Marketing Strategies

The tobacco industry does not only manufacture and sell cigarettes: it implements aggressive marketing strategies specifically aimed at children and adolescents to replace those who quit tobacco or die.^{19,20} The aim of these strategies is to encourage minors to start smoking, given that the majority of adult smokers began smoking during their childhood or adolescence.²¹

The "Tobacco-Free Kids" initiative, approved by the Swiss people in 2022, aims to ban tobacco advertising visible to minors.²² Its enactment into law is threatened by the introduction of numerous exceptions, voiding the initiative of most of its substance as a way of protecting the economic interests of the

^f Plain packaging is a smoking prevention measure that prohibits the use of logos, colours, brand images, or promotional information on tobacco product packaging, with the exception of brand and product names displayed in a standard font and colour.

^g It should be noted that the court ruled that PMI's claim as unfounded, and as a result, ordered the company to pay Uruguay US\$7 million to cover part of its expenses.

tobacco industry. Yet the need to protect young people is clear: according to a recent survey, around a third of 15-year-olds had used at least one tobacco or nicotine product in the last 30 days, with significant consequences for their health.²³ **By targeting children and young people, the tobacco industry is violating their right to health and exploiting their vulnerability to ensure its continued profits.**

Damaging the Environment

The tobacco production cycle is a major contributor to environmental degradation, causing the loss of 600 million trees, the use of 200,000 hectares of land, 22 billion tons of water, and the emission of 84 million tons of CO₂ every year. This activity leads to deforestation, loss of biodiversity, soil erosion, and soil and water pollution. Chemical-intensive tobacco growing contributes to soil depletion and food insecurity, particularly in low-income countries.²⁴ The production and distribution of tobacco products generate millions of tons of toxic waste, including cigarette filters, which are the most discarded item in the world and a major source of microplastic pollution, seriously harming marine life.²⁵ Electronic cigarettes also pose environmental risks due to their plastic components and lithium batteries.²⁶ **The tobacco industry is therefore largely responsible for environmental degradation, which threatens the right to a healthy environment.**

Making Children Work on Tobacco Plantations

The tobacco industry exploits child labour on its plantations, both in Switzerland and in low-income countries. In Switzerland, it is common for 15-year-olds to work in harvesting tobacco leaves.²⁷ In Malawi, the country most dependent on tobacco cultivation in the world,²⁸ a 2013 report estimated that 78,000 children were exploited in the tobacco harvest.²⁹ In 2015, another report estimated that 50% of these children are not paid for the work they do with their families.³⁰ In 2020, a lawsuit was filed in England against the multinationals British American Tobacco (BAT, which has a well-established subsidiary in Switzerland) and Imperial Brands by lawyers of 3,000 children and 7,000 Malawian farmers for forced labour and child labour.^{31,32} Attempts by BAT and Imperial Brands to have the case dismissed have been rejected, and the trial is scheduled for 2025.³³ While child labour is in itself a serious violation of children's rights as

defined in the Convention on the Rights of the Child.³⁴ In addition children working on tobacco plantations are exposed to serious health problems due to “green tobacco sickness”, which is an acute nicotine poisoning due to skin contact with mature tobacco leaves during harvesting.³⁵

Owing to the highly addictive nature of tobacco, in Switzerland, approximately 13% of pregnant women smoke, giving birth to more than 11,000 infants per year who are exposed to tobacco and nicotine in utero. While this percentage has been consistent since the 2000s, the proportion of use of new tobacco and nicotine intake methods (electronic cigarettes, inhalation of heated tobacco, snuff or sucking tobacco) is increasing among pregnant women.³⁶ **The rights of the children to grow in a healthy environment is violated from the earliest stage, the perinatal stage.**



02. How the Swiss State is Failing in its Duty to Protect its Citizens

➔ Switzerland Has Never Ratified the WHO FCTC

Switzerland signed the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC)^h in 2004,³⁷ but has still not ratified it. Under Article 18 of the Vienna Convention on the Law of Treaties, signatories have an “obligation not to defeat the object and purpose of a treaty prior to its entry into force”. The act of signing also indicates an intention to ratify the treaty, and this obligation persists “[...] until it shall have made its intention clearly not to become a party to the treaty”³⁸.

The ratification and implementation of the FCTC would commit Switzerland to adopting more rigorous tobacco prevention measures, whose effectiveness has been scientifically demonstrated, to protect the right to health, such as increasing taxes, banning tobacco advertising and protecting public health policies from interference from the tobacco industry. **The failure to ratify and implement the FCTC constitutes a breach of the Confederation’s obligation to protect its citizens’ right to health.**

➔ Switzerland Has No Effective Tobacco Prevention Policy

In 2000, the Committee that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Switzerland joined in 1992, established that countries must “discourage [...] the use of tobacco” in the context of the implementation of its article 12, which addresses “the right to the highest attainable standard of health”.³⁹

Despite this, Switzerland has failed to implement effective tobacco prevention policies, exposing its population to a greater risk of becoming addicted to

^h This treaty, which was adopted in 2003 and entered into force in 2005, has become one of the most rapidly and widely adopted treaties in the history of the United Nations, with 183 parties representing over 90% of the world’s population. Designed in response to the globalisation of tobacco use, it is evidence-based and reaffirms the right of all people to enjoy the highest attainable standard of health.

tobacco and thus suffering from tobacco-related illnesses and even death. **By failing to effectively protect children from tobacco advertising and passive smoking, Switzerland is failing to respect the right for children to grow up in a healthy environment and to have a healthy future.**

Authorising the marketing of toxic and addictive products with attractive packaging and without fully disclosing the components of cigarettes prevents objective and transparent information being provided to consumers, thereby violating their right to information.

Inaction on tobacco prevention also contributes to reinforcing health, social and economic inequalities. Studies show that lower social classes in Switzerland have much higher smoking rates than others.⁴⁰

➔ **Switzerland Fails to Protect Itself from Political Interference by the Tobacco Industry**

The Swiss political system is highly susceptible to the influence of the tobacco industry, as demonstrated by its low score in the Global Tobacco Index, where Switzerland is ranked 89th out of 90, just ahead of the Dominican Republic.⁴¹ The lack of transparency surrounding lobbying activities allows the tobacco industry to influence national policy in an opaque manner, using considerable financial resources.

Switzerland fails to comply with Article 5.3 of the FCTC, which aims to protect public health policies on tobacco from the influence of the tobacco industry. Whilst this type of influence is not tolerated in other countries, the tobacco industry is able to assert its commercial interests when health legislation is being drafted in Switzerland, and its interests almost always take precedence over tobacco prevention measures in parliamentary and government debates. Despite acknowledging the public health benefits of the “Tobacco-Free Kids” initiative, which was proposed in 2020 to protect children and young people from tobacco advertising, the Federal Council nevertheless decided to reject it, stating in a parliamentary note that it was important to maintain “a certain balance between the interests of health and those of the economy”.⁴² In the same note, the Federal Council also reiterated “its desire to restrict advertising to an extent acceptable to the tobacco industry”. This illustrates the extent to which political decisions in Switzerland are influenced by the interests of the tobacco industry, to the detriment of the measures needed to protect the health rights of its citizens.⁴³

➤ Switzerland Places the Interests of Tobacco Companies Above Human Rights

By failing to regulate more strictly the activities of multinational companies operating within its borders, Switzerland is complicit in the human rights abuse perpetrated by tobacco companies in other countries, particularly low-income countries.

This is particularly evident in the fact that tobacco manufacturers based in Switzerland are allowed to produce cigarettes that are much stronger and more addictive than what is allowed in Europe, and to export them to other countries, generally low-income countries, particularly in Africa.⁴⁴ The export of these deadly products violates the right to health of the inhabitants of these countries.

Furthermore, the Confederation does not contest the use of trade agreements to defend the interests of tobacco companies, as demonstrated in the Philip Morris-Uruguay affair. In response to a direct request from the President of Uruguay and a parliamentary question to put pressure on Philip Morris and amend the relevant trade agreement, the Confederation refused to enter into the matter.⁴⁵



03. Conclusion

Tobacco companies violate human rights in many ways and the Swiss state is not fulfilling its duty to protect these rights by maintaining a lax policy on tobacco prevention. Governments not only have the opportunity to regulate the tobacco trade, but they also have a duty to do so, based on human rights principles. The rights to life and health, as well as other fundamental rights, are firmly anchored in global human rights standards set out in treaties ratified by Switzerland.⁴⁶

By systematically favouring the private interests of the tobacco industry at the expense of human rights, Switzerland is failing to honour its commitments made when it ratified these treaties. Faced with companies for whom profit takes priority over any other consideration, the State must assume its responsibilities and commitments to protect the right to health, the right to a healthy environment, and the rights of children, by putting in place effective tobacco prevention policies.



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Briefing-paper

Human Rights denied

The responsibility of tobacco companies and the Swiss government in the tobacco epidemic

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