

# **TOBACCO USE POLICYMAKING AND ADMINISTRATION IN BHUTAN**

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# Executive Summary

- Contained within Bhutan's first legal code known as the *Golden Yoke of Legal Edicts*, Bhutanese founder Shabdrung Ngawang Namgyal wrote one of the world's oldest tobacco control laws in 1651 banning tobacco use in government and religious buildings.
- A third and updated version of Bhutan's legal code written between 1744 and 1763 contains a detailed and metaphorical prohibition against tobacco use that specifically relies on the Buddhist religious teachings of Guru Rinpoche who brought Buddhism to pre-Bhutan in 747 A.D.
- By the early 20<sup>th</sup> century, the legal prohibition against tobacco use remained but uniform enforcement of the anti-tobacco law was not occurring.
- In the later part of the 20<sup>th</sup> century, British American Tobacco and Indian Tobacco Company maintained a stable commercial tobacco market in Bhutan.
- Due to the presence of tobacco sales in Bhutan, in Bhutan's 1991 and 1995 National Assembly Sessions, a debate commenced on whether to enact legislation to ban tobacco use, or instead, reduce tobacco use through anti-tobacco awareness campaigns. Buddhist religious reasons and public health concerns were given as rationales by proponents to enact a ban. Opponents of the ban agreed that tobacco use was detrimental due to religious and health reasons, but argued tobacco use was a personal choice that was most effectively curtailed through anti-tobacco awareness campaigns.
- By 2003, 18 of 20 of Bhutan's local Dzongkhags or Districts had banned tobacco sales with strong support for a ban coming from the Je Khenpo (head monk) and Buddhist monk community.
- In 2004, in Bhutan's 82<sup>nd</sup> Session of National Assembly, a national sales ban was enacted. A government regulation also prohibited smoking in all public areas. Individual consumption of tobacco was allowed along with a 100% sales tax and 100% import tax if the tobacco was imported into Bhutan for personal use. Tobacco imported from India was subject only to the 100% sales tax due to a free trade agreement with Bhutan.
- Passage of the national sales ban on tobacco was due to a powerful grassroots movement that included the Buddhist religious community and local governments. There was no significant organized opposition to the sales ban.

- Before 2004, the only agencies involved in tobacco control in Bhutan were the Ministry of Health and Bhutan's National Environmental Commission. After 2004, new agencies and organizations involved in implementation included: Ministry of Health, Thimphu Dzongdag (chief administrator), Ministry of Trade and Industry, Royal Bhutan Police, Ministry of Home and Cultural Affairs, Road Safety & Transport Authority, Office of the Attorney General, Dzongkhag Yargay Tshogdu – Thimphu (road construction authority), Thrompon Thimphu (local government authority), Kuensel Newspaper, and Bhutan Broadcasting Service.
- There has been no clear administrative coordination and no general governmental plan implementing the policy goals of Bhutan's 2004 anti-tobacco law.
- After 2004, there have been no ongoing scientific studies on tobacco use in Bhutan. There have also been no assessments of the effectiveness of efforts to counter smuggling.
- Since 2004, there have been no new direct budgetary allocations and no new personnel hired to enforce and implement the anti-tobacco law. Implementation has relied on existing operating budgets and agency personnel.
- Immediate and long term issues after the passage of Bhutan's 2004 anti-tobacco legislation have included a robust black market, significant tobacco smuggling, continued smoking in entertainment venues, which are designated public areas under Bhutan's anti-tobacco law, and continued smoking by some segments of the population, particularly young people.
- Policy and administrative recommendations in furthering Bhutan's anti-tobacco effort include: adopting general anti-tobacco plans to coordinate public and private resources to counter tobacco use, adopting a rigorous and ongoing tobacco counter-marketing effort, providing publicized tobacco cessation services, maintaining a high tobacco tax to discourage tobacco consumption without encouraging further smuggling, conducting periodic analyses of anti-smuggling and anti-black market efforts, conducting mandatory and ongoing scientific surveys on tobacco consumption trends, and conducting scientific studies on the effectiveness of health education campaigns.
- Other policy and administrative recommendations include continuing to prohibit smoking in public places with ongoing enforcement and effective penalties, involving non-governmental organizations in anti-tobacco educational efforts, specifically denoting the roles and responsibilities of agencies associated with Bhutan's anti-tobacco efforts, ensuring fiscal allocations for anti-tobacco approaches are directly tied to government legislation and plans, and requiring personnel in various government agencies involved in anti-tobacco efforts have their employment positions and descriptions directly tied to anti-tobacco government planning documents.



# Introduction

In 2004, the eastern Himalayan Kingdom of Bhutan, which is geographically about the size of Switzerland and is located between India and China, enacted a far reaching and unique law designed to eliminate or significantly reduce tobacco sales and use.<sup>1-14</sup> The Kingdom of Bhutan's landmark Penal Code of Bhutan Act of 2004 specifically prohibited all sales of tobacco products, banned the use of tobacco products in public areas, and contained anti-tobacco smuggling provisions.<sup>1-14</sup> For this monograph, I will be examining the key policy events leading to the formulation and enactment of this law.

I will also examine the administrative capacity of the Bhutanese government to implement and enforce the anti-tobacco provisions of the Penal Code of Bhutan Act subsequent to its enactment. Has this law, including its subsequent administrative implementation, resulted in a significant administrative effort to significantly reduce tobacco use? The hypothesis for this policy and administrative analysis and study is: given the enactment of the Penal Code of Bhutan Act of 2004, which nationally banned tobacco sales, prohibited the use of tobacco in prohibited public places, and contained anti-tobacco smuggling provisions, there has been an administratively sufficient administrative capacity to significantly reduce tobacco use.

## Objectives of Study

The following are the specific objectives for this monograph in answering this hypothesis:

1. Identify and analyze any major policy events, uncertainties, and controversies related to the enactment and implementation of the national anti-tobacco sale provisions, restrictions on tobacco use in designated public areas, and anti-tobacco smuggling provisions in the Penal Code of Bhutan Act. Included in this assessment will be any contending major policy actors and their concerns, interests, and motivations in

supporting or opposing the anti-tobacco provisions as well as subsequent implementation of the Penal Code of Bhutan Act;

2. Identify, assess, and compare from 2003 to 2004 and since the adoption of the anti-tobacco provisions in the Penal Code of Bhutan Act, any new national administrative tobacco control plans, new agencies or subunits of agencies involved in tobacco control, program evaluation criteria, budgetary changes, personnel changes, and non-governmental organization involvement;<sup>15, 16</sup>
3. Analyze and compare all recorded data from 2003 to 2004 with 2004 to the present with respect to the prevalence of tobacco smuggling and law enforcement efforts to counter tobacco smuggling; and
4. Use the results to provide recommendations to decision makers and public health practitioners regarding the policy and administrative efficacy of Bhutanese anti-tobacco implementation and enforcement activities as was authorized by the Penal Code of Bhutan Act with respect to reducing national tobacco consumption.

## Methodology

### Policy Analysis

The policy analysis associated with this study will be a historical, qualitative, descriptive statistical, and archival content overview from the 1980s to the present of the formulation, enactment, implementation, and policy outcomes of the anti-tobacco provisions contained in the Bhutan Penal Code Act of 2004. Specific focus in this policy analysis will include reviewing and analyzing any major policy uncertainties and controversies related to the enactment and implementation of the national anti-tobacco sale provisions, restrictions on tobacco use in

designated public areas, and anti-tobacco smuggling provisions in the Penal Code of Bhutan Act.

## Tobacco Policy Data Collection

Included in this assessment will be any contending major policy actors and their concerns, interests, and motivations in supporting or opposing the anti-tobacco provisions as well as subsequent implementation of the Penal Code of Bhutan Act. The 1980s was chosen as a starting point because this was the beginning of the modern efforts in Bhutan to control tobacco use before the enactment of the Penal Code of Bhutan Act. This will provide a suitable time frame to examine policymaking before, during, and after the adoption of the Penal Code of Bhutan Act. Data for the policy analysis will be obtained from over 50 million pages of previously secret tobacco industry documents obtained due to recent litigation, government records, newspapers, journals and magazines, personal archives and records, independent and academic reports, and elite interviews of key civil servants. All of these data sources will be cross-checked or triangulated against each other to guard against bias and validity problems.<sup>17</sup>

<sup>18</sup> Bias error in this qualitative research will be countered by an analysis of the qualitative data “...using explicit, systematic, and reproducible methods.”<sup>18</sup> In this study, the data analysis, as well as all data collected, will be made completely transparent for inspection, use, and replication by any interested party.

Archival data, from over 50 million previously secret tobacco documents obtained as a result of litigation beginning with *State of Minnesota et al., v. Philip Morris, Inc., et al.* No. C1-94-8565, 2<sup>nd</sup> District, Minneapolis and subsequent court decisions and provided by agreement through the 1998 Master Settlement Agreement signed by 46 U.S. Attorneys General and the tobacco industry, have become a key resource to understand how tobacco policymaking and

administration works.<sup>19-32</sup> Access to these tobacco documents, for this research was obtained via the Internet from the University of California, San Francisco's (UCSF) Legacy Tobacco Document Depository web site located at: <http://legacy.library.ucsf.edu/>.

The UCSF site includes a user-friendly search engine to simultaneously search all of the seven tobacco industry organizations that were defendants in the Minnesota lawsuit; the 1991 Mangini or "Joe Camel" trial documents related to marketing tobacco products to children through cartoon characters; various tobacco industry state trial Depositions and Trial Testimony Archive (DAATA) transcripts; and the 1994 UCSF Brown & Williamson documents. The seven tobacco organizations located at the UCSF site include: American Tobacco Company, Brown & Williamson, Lorillard, Philip Morris, R.J. Reynolds, Tobacco Institute, and the Council for Tobacco Research.

Collection of tobacco industry documents will occur using broad search terms in order to capture the largest set of available documents relating to key policy events regarding the anti-tobacco provisions of the Penal Code of Bhutan Act. Broad search terms in documents at a minimum will include the terms Bhutan, Gross National Happiness, Penal Code of Bhutan Act, Jigme Thinley, and Jigme Singye Wangchuck. Once all relevant documents are retrieved, universally read, and summarized a determination of other key and relevant terms located in the previously retrieved documents can be searched. This snowball research approach has been used in a variety of reports and articles with respect to tobacco control document research.<sup>17, 33,</sup>

<sup>34</sup>

Other qualitative data collected in this study will include collecting all information and documents from the 1980s to the present regarding the policy enactment and implementation of the Penal Code of Bhutan Act contained in government records, newspapers, journals and magazines, personal archives and records, and independent and academic reports. While there

have been many leading research studies on the efficacy of tobacco sale restrictions and public place smoking restrictions,<sup>19, 21-23, 25, 27-32, 35-53</sup> none of these studies have examined a country where there is a total ban on tobacco product sales and tobacco use in most public places.<sup>3, 12, 14, 54-58</sup> Again, all of these relevant documents will then be retrieved, universally read, and summarized and compared with the tobacco industry documents in order to ascertain and crosscheck the key policy events regarding the anti-tobacco provisions of the Penal Code of Bhutan Act.

## Administrative Analysis and Data Sources

In the administrative analysis of the capacity of implementation of the anti-tobacco provisions of the Penal Code of Bhutan Act, this study will focus on the existence and establishment of any administrative operating procedures occurring from 2003 to 2004 and after 2004 including: tobacco control plans, agencies and agency subunits involved with tobacco control, program evaluation criteria, budgetary changes, new personnel changes, and non-governmental organization involvement.<sup>59</sup> This general approach to assessing administrative capacity building of world tobacco control programs has also been the subject of recent and leading research conducted by The Institute for Global Tobacco Control established in 1998 in the Department of Epidemiology at the Johns Hopkins Bloomberg School for Public Health.<sup>60-63</sup>

Planning requirements include short-term and long-term comprehensive planning in the utilization of fiscal and non-fiscal resources to address anti-tobacco efforts. Agencies or subunits of agencies are those newly created public or governmental entities that significantly mobilize resources for anti-tobacco efforts. Program evaluation requirements in this study are those provisions that require the provision of non-fiscal qualitative or quantitative information assessing the efficacy of the anti-tobacco efforts. Budgetary requirements are all procedures dealing with auditing, fiscal reporting, and fiscal allocations for the implementation of anti-

tobacco efforts. Personnel requirements determine or delineate job qualifications for particular positions in an agency and personnel conduct and performance in the implementation of anti-tobacco efforts. Non-governmental organizational involvement includes the creation or establishment of civil society support with the Bhutanese government in the implementation of anti-tobacco efforts. All available written and public governmental documents from any public source based on these criteria supplemented with information from elite interviews will be utilized to ascertain what changes in capacity did or did not occur as a result of the enactment of the anti-tobacco provisions of the Penal Code of Bhutan Act.

### Elite Interviews

The format of the qualitative elite interviews of key civil servants regarding the policy and administrative analysis associated with this study will include open-ended audio recorded and written transcribed questions and answers related to the key policymaking events including uncertainties, controversies, and policy actor motivations and interests associated with the enactment and implementation of the Penal Code of Bhutan Act. Also asked will be perceptions of any administrative changes including tobacco control plans, new agencies or subunits of agencies associated with tobacco control, program evaluation criteria, budgetary changes, personnel changes, and non-governmental organization involvement due to the enactment and implementation of the Penal Code of Bhutan Act.

### Summary

When I finish the chronological analysis and crosschecking of all of the policy and administrative data, I will then integrate the data to provide a comprehensive analysis and report of the policy factors associated with the enactment and implementation of the Penal Code of Bhutan Act. The report will also include sections on the nature and scope of

administrative processes surrounding the implementation of the anti-tobacco provisions of the Penal Code of Bhutan Act including: tobacco control plans, new agencies or sub-units of agencies involved with tobacco control, program evaluation criteria, budgetary changes, personnel changes, and non-governmental organization involvement. When combined together, this policy and administrative analysis will provide a comprehensive overview of the policy goals along with the administrative capacity and effectiveness to implement the policy goals of the anti-tobacco provisions of the Penal Code of Bhutan Act.

## Historical Background

### Overview of Bhutan's Political System History

Modern Bhutan was established with the arrival in 1616 A.D. from Tibet of Shabdrung Ngawang Namgyal (Figure 1).<sup>64-68</sup> Shabdrung Ngawang Namgyal's arrival into Bhutan was prophesized by Guru Rinpoche or Padmasambhava (Figure 2) who brought Mahayana Buddhism to pre-Bhutan in 747 A.D.<sup>64, 69, 70</sup> Shabdrung Ngawang Namgyal unified Bhutan in 1651 under one governmental authority establishing a theocratic two-fold system of government known as Chhyosi Nyidhen (or dual system of government).<sup>64-66, 68</sup> Under the two-fold system of governmental rule of Chhyosi Nyidhen, Shabdrung Ngawang Namgyal who was also a Buddhist monk, assumed spiritual leadership of Bhutan as the Je Khenpo or Dharma Raja until his death later in 1651 A.D. at the Punakha Dzong (fort) (Figure 3).<sup>70</sup> The secular matters of the nation were overseen by a Druk Desi (or Deb Raja).<sup>70</sup> The first Druk Desi was Umzey Tenzin.<sup>64</sup>

While there were a set of laws established for secular rule and another set of laws established for spiritual rule, these laws in practice were complementary and interlinked with the spiritual and secular political leadership sharing power.<sup>66</sup> Thus, under the two-fold

Figure 1. Mural of Shabdrung Ngawang Namgyal on Bridge to Paro Dzong, Paro, Bhutan



Photo taken by Dr. Rebecca Ann Sherry, September 19, 2009



Figure 2. Mural of Guru Rinpoche on Bridge to Paro Dzong, Paro, Bhutan



Photo taken by Dr. Rebecca Ann Sherry, September 19, 2009

**Figure 3. Punakha Dzong, Bhutan--September 2009**



Photo taken by Dr. Rebecca Ann Sherry, September 12, 2009

government system, Mahayana Buddhism became the state religion of Bhutan. <sup>64-66, 68-70</sup> The establishment of Chhyosi Nyidhen also represented the triumph of the Drukpa branch of Buddhism over all rivals. <sup>64-70</sup>

The two-fold system of governance in Bhutan lasted for about 300 years until December 17, 1907. <sup>64-68</sup> It was at this time that the Wangchuck hereditary monarchy was established. <sup>64-68</sup> In 1903, the Shabdrung Rinpoche of Bhutan died. <sup>64-68</sup> In 1904 the Druk Desi also died. <sup>64-68</sup> This resulted in the Je Khenpo (head monk) holding both political offices from 1904 to 1907. <sup>64-68</sup> With no replacement of these political offices for three years, the British Political Officer in Sikkim, India – John Claude White offered a friendly political suggestion that Bhutan establish a hereditary monarchy. <sup>64-68, 71</sup> This suggestion to create the position of Druk Gyalpo (King of Bhutan) was eventually agreed to by the Buddhist religious hierarchy in Bhutan. <sup>64-68</sup> In 1907, the first Druk Gyalpo – Ugyen Wangchuck was installed at the Punakha Dzong. <sup>64-68</sup> This ceremony established the Wangchuck dynasty of five successive hereditary kings of Bhutan throughout the 20<sup>th</sup> and into the 21<sup>st</sup> century. <sup>64-68</sup>

The creation of the Wangchuck hereditary monarchy ended the two-fold system of government established by Shabdrung Ngawang Namgyal.<sup>64-68</sup> Under the monarchy from 1907 to the mid-twentieth century, the king exercised significant power over the executive, legislative, and judicial functions of the Bhutanese government.<sup>64-68</sup> However, the Je Khenpo continued to be an important advisor to the hereditary monarchy. In addition, one of the main functions of the government was supporting the Buddhist monastic order, primarily through recognition of Mahayana Buddhism as the state religion and with financial support.<sup>64-68</sup>

Commencing in the mid-twentieth century, the hereditary monarchy in Bhutan slowly transferred political power to a legislative National Assembly.<sup>64-68</sup> In 1953, the third hereditary king of Bhutan—Jigme Dorji Wangchuck announced the formation of the first National Assembly.<sup>64-68</sup> In July 1998, the fourth hereditary king—Jigme Singye Wangchuck relinquished part of his sovereign powers by declaring that the National Assembly would henceforth elect a Council of Ministers to administer the government.<sup>64-68</sup> The National Assembly could also remove the king with a two-thirds no confidence vote.<sup>64-68</sup>

On December 17, 2005, King Jigme Singye Wangchuck, announced that the first elections in Bhutanese history would be initiated in 2008.<sup>72</sup> King Jigme Singye Wankchuck also announced that he would abdicate the royal throne to his oldest son.<sup>72</sup> The fifth hereditary monarch, King Jigme Khesar Namgyal Wangchuck was inaugurated on December 14, 2006.<sup>72</sup> On July 18, 2008 a new Constitution of Bhutan was approved, creating a Constitutional Monarchy that provided democratic elections and civil rights.<sup>73</sup> On March 24, 2008, the Bhutanese held their first national election as a Constitutional Monarchy with the Druk Phuensum Tshogpa or Bhutan Peace and Prosperity Party taking 44 (later calculated as 45) of 47 seats in the new legislative Parliament (lower house).<sup>74</sup> The National Council (upper house) was also seated.<sup>75</sup> Under the new Constitution the National Council was given legislative and

review powers.<sup>75</sup> The National Council is also non-partisan with one member elected from each of the 20 Dzongkhags and five appointed by the king.<sup>75</sup>

## Tobacco Control before 1616

### General Consensus on How Tobacco Spread

Many scholars and historians have written that the tobacco plant was first cultivated in the New World in Central and South America as early as 6000 B.C.<sup>76-78</sup> Indigenous people in Central and South America began smoking tobacco by 1 B.C.<sup>76-78</sup> Until 1492 when Christopher Columbus discovered tobacco smoking and brought tobacco to Europe for cultivation and consumption, tobacco consumption was unknown in the Old World.<sup>76-78</sup> The genus *Nicotiana* was named after French Diplomat Jean Nicot de Villman who introduced the *Nicotiana rustica* variety of tobacco from Portugal to France in 1560.<sup>76-79</sup> According to many scholars, tobacco products were first brought to China in 1530 and India in 1600.<sup>76-78</sup>

As for tobacco use in other parts of the world, Borio has concluded:

Although small amounts of nicotine may be found in some Old World plants, including belladonna and *Nicotiana africana*, and nicotine metabolites have been found in human remains and pipes in the Near East and Africa, there is no indication of habitual tobacco use in the Ancient world, on any continent save the Americas.<sup>78</sup>

### Alternative Information on How Tobacco Spread

There are 86 known species of *Nicotiana* worldwide with most species containing nicotine including all varieties of commercial tobacco.<sup>80-82</sup> Native tobacco species appear in North and South America, southwest Africa, some Pacific Islands, and in Australia.<sup>83</sup> In Australia, for example, this includes 26 native species.<sup>80-84</sup> Tobacco species have a wide range of floral and vegetative shapes.<sup>79, 81-84</sup> Tobacco plants can vary in height at maturity from a few centimeters to over four or more meters high.<sup>79, 82-84</sup>

Possible evidence that tobacco may have been used independently of New World tobacco plants was presented in a 1993 scientifically peer reviewed article by Parsche et al. in the prestigious medical journal, *The Lancet*.<sup>85,86</sup> In this study the researchers tested for evidence of drug use in 72 Peruvian mummies dated 200-1500 A.D., 11 Egyptian mummies dated 1072 B.C.-395 A.D., skeletal material from two Sudanese corpses dated 5000-4000 B.C. and 400-1400 A.D., and ten south German corpses dated 2500 B.C.<sup>85,86</sup> The results of the study indicated that for the Egyptian mummies, there was nicotine in the hair of four, in the soft material of four, and in the bones of 11.<sup>85,86</sup> The results of this study was published without any context as to how the nicotine may have gotten there.<sup>87</sup>

Criticisms of the study were primarily centered on issues of the methodology used in the study, whether the mummies were real, contamination issues, and concerns about the evidence.<sup>85,87-90</sup> Parsche et al. vigorously responded to each of these criticisms.<sup>87,89</sup> In particular, Dr. Balbanova, one of the researchers and authors of the study who was also a highly experienced forensic chemist argued that the nicotine apparently was incorporated during post mortem embalming procedures.<sup>87,89</sup> The conclusions of this study, while vigorously debated and disputed, are possibly in contrast to the dominant historical account of how tobacco consumption spread from the New World to the Old World.

In addition, records from Captain James Cook's first voyage in 1770 to the east coast of Australia indicate that Aborigines chewed an unknown herb.<sup>87,91</sup> As noted by Captain James Cook in his journal:

Whether they are acquainted with any plant that has an intoxicating quality, we do not know; but we observed that several of them held leaves of sort constantly in their mouths, as a European does tobacco, and an East Indian betel; we never saw the plant, but when they took it from their mouths at our request; possibly it might be a species of the betel, but whatever it was, it had no effect upon the teeth or lips.<sup>92</sup>

While the consumption of the tobacco species *Nicotiana suaveolens* may or may not have occurred in the late 17<sup>th</sup> century as documented by Captain James Cook, *Nicotiana suaveolens* definitely and conclusively was identified in the early 18<sup>th</sup> century in various parts of Australia.<sup>80, 81, 93</sup> In addition, Allan Cunningham wrote a June 21, 1817 journal entry during the expedition of the early Australian explorer – John Oxley that:

*Nicotiana undulate* [= *N. suaveolens*] is very frequent on these flats, the lower leaves of which our people gathered, and when dried found them not a bad substitute for its congener *N. Tabacum*, although not so strong a narcotic.<sup>93</sup>

In Bhutan, two different schools of thought have also developed as to whether tobacco consumption existed in Bhutan prior to the arrival of Shabdrung Ngawang Namgyal in 1616 A.D.<sup>1-3</sup> One school of thought argues that there is no evidence of anti-tobacco provisions in ancient Buddhist texts in Bhutan prior to 1616 A.D.<sup>3</sup> On the other hand, some have argued that there is evidence that Guru Rinpoche in the 7<sup>th</sup> century declared that smoking was bad and that no practicing Buddhist should smoke.<sup>1, 2, 9, 94, 95</sup> However, Sangye Ngedup Minister of Health in 2003 also noted: “He (Guru Rinpoche) may have been referring to opium, but we feel comfortable extending his concerns to tobacco.”<sup>1</sup>

## Tobacco Control from 1616 to 1980s

By the early 1600s, tobacco consumption was a common occurrence in Asia including Bhutan.<sup>96</sup> Prohibition against tobacco use became an early Buddhist religious concern of the ruling authorities of Bhutan. Shabdrung Ngawang Namgyal, before his death in 1651, crafted the first legal code of Bhutan also known as “The Golden Yoke of Legal Edicts” to prescribe proper secular and spiritual conduct.<sup>97</sup> This legal code contained a specific anti-tobacco provision.<sup>97</sup> No known paper copy (is yet) available of this legal code.<sup>97</sup> However, near



Punakha Dzong stands a small house of worship. Etched in large black slates affixed to its wall is the only known copy of Shabdrung Ngawang Namgyal's original legal code (Figures 4).<sup>97</sup>

The text of the legal code of Shabdrung Ngawang Namgyal inscribed on the black stone slates was written by the 13th Druk Desi Sherab Wangchuck somewhere between 1744-1763.<sup>97</sup>

The anti-tobacco provision of Shabdrung Ngawang Namgyal's legal code states:

Functionaries and servants of whatever rank, high or low, once they have entered the Dharma door of the Choje Drukpa, may not perform deeds that violate the Dharma, such as sleeping with women, using intoxicating substances such as tobacco and alcohol, etc.<sup>98</sup>

A subsequent update of Bhutan's original legal code, known as "The Pure Mirror of the Two-Fold System," referring to religious and temporal law is mentioned in a 1720 text but so far no known copy has been found.<sup>97</sup> A third version and expanded legal code created by the 10th Druk Desi, Mipham Wangpo, is preserved in a 1928 footnote in a book on ancient Tibet as well as an appendix to a 1759 text on the history of Bhutan written by the 10th Karma Desi, Tenzin Chogyal.<sup>92, 99</sup> The revised provision against tobacco use states:

Besides these, there is one evil custom which is the forerunner of the Tempter himself. It is spreading among the general population as well as among the garrison forces and bodyguards of the Dharma (religious head) and Deb (secular head) Rajas. This is the unceasing use of the evil, stinking, poisonous weed named tobacco. The smoke from this drug defiles the sacred objects of worship, the Images, the Books, the Relics. It weakens the Gods above, causes fighting among the Spirits of the Middle Air, and injures the Serpent Spirits below. From this cause arises an endless cycle of epidemics, wars, and famines in the human world. Several prophetic injunctions on this subject have been left by the great Teacher, Padma Samabhava (Guru Rinpoche).

All State officials, Governors of districts, Secretaries, delegates, and others must make strict inquiries within their own jurisdictions as to who deals in this drug or smoke it, and must take them to task to quit. If they fail to do so, they themselves will be punished severely. Those officers who are stationed in the plains on the borders of India, must prohibit the importation of this article at its very source, to markets in the plains.<sup>92, 99</sup>

**Figure 4. Shabdrung Ngawang Namgyal's First Legal Code, Located Outside Punakha Dzong**



Photo taken by Dr. Rebecca Ann Sherry, September 12, 2009

By 1928, this legal prohibition against tobacco use continued.<sup>92</sup> However, at that time, uniform enforcement of the law in Bhutan was not occurring.<sup>92</sup>

## **Tobacco Policy From 1980s to 2004**

In the later part of the twentieth century, the British American Tobacco Company and Indian Tobacco Company maintained a stable market and sold tobacco products in Bhutan.<sup>100-</sup>

<sup>105</sup> In the mid-1980s, the Health Ministry with support from the World Health Organization conducted anti-tobacco awareness campaigns.<sup>106, 107</sup> However, due to the presence of tobacco sales in Bhutan, in the 70<sup>th</sup> National Assembly of Bhutan in 1991, debate occurred regarding



banning the sale of cigarettes in Bhutan. <sup>108</sup> As noted in the official record for the 70<sup>th</sup> National Assembly Session:

The People's Representative of Thimphu Dzongkhag (District) submitted that as Bhutan was a Buddhist Kingdom that had been blessed by Guru Rinpoche, and since smoking was not in conformity with religious faith and also injurious to health the sale of cigarettes/tobacco should be banned in the country. <sup>108</sup>

The Royal Advisory Councillors to the King also supported a tobacco ban on religious and public health grounds. <sup>108</sup> The Minister of Social Services in response to this position agreed that smoking was harmful regardless of whether viewing the issue from a health or religious point of view. <sup>108, 109</sup> He noted that Bhutan currently had an anti-tobacco educational program in which May 31<sup>st</sup> of each year was designated as a "No Smoking" day. <sup>108, 109</sup> He also indicated that a smoking ban had been initiated in specific Dzongkhags (Districts) had led to specific reduction in tobacco consumption. <sup>108</sup> In addition, on occasion since the 1980s, anti-tobacco awareness efforts have been conducted through religious bodies, health authorities, and the schools. <sup>3, 109, 110</sup>

However also in 1991 and until 2004, Bhutan did not have any legislation restricting tobacco advertising and promotion, requiring shops to possess tobacco licenses, prohibiting youth access to tobacco products, restricting or banning smoking in public areas, and requiring cigarette package health warnings and ingredient statements. <sup>5, 104, 110-117</sup> There was a 10% tax on tobacco products before 1998 and 50% tax on tobacco products after 1998. <sup>5</sup> In 1996, Bhutan banned cigarette advertising in the movies and on television. <sup>114</sup>

The Home Minister argued that the consumption of tobacco, alcohol, or betel nuts were personal habits and difficult to end in the form of a ban. <sup>108</sup> In addition according to the minutes of the 70<sup>th</sup> National Assembly of 1991:

While noting with appreciation, the proposal of the people of Thimphu for a ban on tobacco products, His Majesty the King was pleased to suggest that since

tobacco was harmful both in the context of religious faith as well as physical health, the Royal Government should make every effort to educate and promote awareness among the people about the adverse effects of smoking through the educational and health institutions so that indulgence in the habit could be minimized. His Majesty felt such a campaign would be very useful, and would not have the negative impact of regulatory measures.<sup>108</sup>

Resolution Number 8, which passed the National Assembly, called for the Dratshang (monks) and religious bodies to inform citizens of Bhutan about the negative impacts of tobacco use in league with the Health Ministry.<sup>108, 118</sup>

In the 1995 session of the National Assembly of Bhutan, significant debate resumed on the necessity to ban or control tobacco use.<sup>118</sup> By that time, Trashigang Dzongkhag in northeastern Bhutan had banned the sale and consumption of tobacco.<sup>118</sup> However:

In their experience, despite many efforts to restrict the sale of this addictive substance, many people continued to consume tobacco products, making it very difficult to implement a complete ban on tobacco. The people of Paro, therefore, requested the National Assembly to pass a resolution either banning tobacco completely or increasing the tax by 50 percent on all tobacco products in the country.<sup>118</sup>

One of the members of the Royal Advisory Council indicated that instead of banning tobacco throughout Bhutan, it was better to allow each Dzongkhag to enact a tobacco ban.<sup>118</sup>

In response to these and other comments, the Home Minister recalled that in the 70<sup>th</sup> Session of the National Assembly tobacco and its impact had been debated at length.<sup>118</sup> The Home Minister also noted that the difficulties in implementing a ban had also been discussed, in detail, in the 70<sup>th</sup> National Assembly.<sup>118</sup> He stated that His Majesty the King had indicated that anti-tobacco educational awareness campaigns were a preferable approach to reduce or end tobacco use.<sup>118</sup> One of the Royal Advisory Council members and the Bhutan Chamber of Commerce and Industry also indicated that while tobacco was a serious health problem, public awareness efforts were a primary method to reduce consumption.<sup>118</sup> Tobacco consumption, they also argued, was an individual choice.<sup>118</sup> Based on this discussion the National Assembly

in 1995 resolved to maintain Resolution Number 8 passed in 1991 that the religious bodies continue to educate the people on the ill effects of tobacco consumption with cooperation from the Health Ministry.<sup>108, 118</sup>

In May 1999, Bhutan's delegate to the World Health Assembly's Debate on the ratification of the Framework Convention on Tobacco Control announced:

...his country's support of the FCTC (Framework Convention on Tobacco Control) resolution and informed the assembly that many of Bhutan's districts have been smoke-free for some time and, on June 2, more districts will become smoke-free.<sup>115, 119</sup>

In 2003, Bhutan began to consider policies to ban tobacco use throughout the country instead of in individual Dzongkhags as had been occurring.<sup>1-4, 6-14, 54-56, 120</sup> Support for this policy particularly came from the Je Khenpo (head monk) and the monk bodies and the 18 of 20 of Bhutan's Dzongkhags that prohibited tobacco sales.<sup>2, 3, 5</sup> In particular, the tobacco sales ban is due to a popular movement that began in the early 1990s in the central region of Bumthang.<sup>121</sup> Most places of employment, religious sites, schools, health facilities, public areas, and public transport conveyances were also smoke-free.<sup>3, 5</sup> In February 2003, Bhutan also banned the sale of tobacco in its duty-free outlets.<sup>2</sup> However no scientific study had been conducted in 2003 in Bhutan to determine the mortality and morbidity rate due to tobacco use.<sup>3</sup>

The 82<sup>nd</sup> Session of the National Assembly of Bhutan, which commenced in 2004, addressed the issue of whether or not to ban tobacco sales and smoking in public places in Bhutan.<sup>5, 119</sup> The Minister of Health informed the National Assembly that Bhutan became a signatory to the World Health Organization's Framework Convention on Tobacco Control.<sup>5</sup> In response to this report, some of the members of the National Assembly indicated, "...that tobacco was contrary to Dharma besides harming and shortening human lives."<sup>5</sup> Some of the

members of the National Assembly also stated, "...that the use of tobacco was unacceptable both from a religious and social health (view) in the land blessed by Guru Rinpoche." <sup>5</sup> Further:

The Yangbi Lupon (deputy head monk) said that the concept of tobacco control did not originate today, but had been prevailing since the time of the Buddha. Even Guru Rinpoche had preached about the present and future effects of tobacco consumption. The establishment of religion and health projects by the health sector would help in controlling tobacco consumption. Moreover, the religious community continued to instruct the people on the effect of tobacco from the religious point of view. Tobacco not only caused harm to religion and health, but also caused family problems. Therefore, the people and students were constantly taught and advised to abandon the unwholesome deeds during Dharma teachings. <sup>5</sup>

The Minister of Trade and Industry also indicated that there was no national policy to prohibit the import of tobacco products into Bhutan. <sup>5</sup> The Minister also noted that it was not known whether creating a 100% tax on tobacco would control consumption although he indicated he was not opposed to a 100% tax on tobacco products. <sup>5</sup> After due consideration and discussion, the National Assembly passed on July 2004, a ban on the sale of tobacco in all 20 Dzongkhass, imposed a 100% sales tax on all imported tobacco products brought into Bhutan for personal consumption, and ratified the World Health Organization's Framework Convention on Tobacco Control. <sup>4, 5, 107, 109, 122</sup> Opposition to the ban was weak particularly since there was no organized tobacco lobby opposing the legislation. <sup>3, 54</sup> The nationwide ban on the sale of tobacco went into effect on December 17, 2004. <sup>6, 107</sup>

## Gross National Happiness and Tobacco Sales Ban

In 1972, Bhutan's fourth hereditary King Jigme Singye Wangchuck proclaimed that Gross National Happiness (GNH) was more important than Gross Domestic Product. <sup>123</sup> This proclamation, which did not focus primarily on traditional economic measures to gauge societal progress, was made in response to modernization and economic globalization changes and pressures on the relatively pastoral and isolated and primarily Buddhist Kingdom of Bhutan.

These modernization pressures could have significantly changed Bhutan's unique identity. As a result of this proclamation, GNH has become one of the primary national public policies guiding and regulating development and policy in Bhutan.

Since 1972, an ongoing process has been occurring to describe in further detail what GNH means and how to measure it. Two primary institutions in Bhutan are currently involved in this effort. They include the Centre for Bhutan Studies,<sup>124</sup> a non-governmental organization in Thimphu, and the Gross National Happiness Commission,<sup>125</sup> a government agency that was formerly called the Planning Commission.<sup>124, 125</sup>

Happiness under GNH is not defined as individual happiness such as life, liberty, and the pursuit of happiness as it is known in the U.S.<sup>124, 125</sup> Rather happiness under GNH is a holistic idea that balances the material with the spiritual for the benefit of the greater society. In more specific terms GNH has been described as having four mutually balanced general pillars including: sustainable development, maintaining cultural values, preservation of the natural environment, and good governance.<sup>124</sup> Recently, this has been further subdivided into nine realms including:

1. Psychological Well-being
2. Time Use
3. Community Vitality
4. Culture
5. Health
6. Education
7. Environmental Diversity
8. Living Standard
9. Governance<sup>126</sup>

These realms now have 72 numeric indicators.<sup>126</sup> These indicators are weighed equally together to come up with a final calculation of the general happiness of Bhutan.<sup>126</sup> The indicators are determined through national public opinion surveys.<sup>126</sup>

As noted by the Thimphu-based Centre for Bhutan Studies, happiness related to good health as defined in Bhutanese culture is a holistic goal that includes no physical illnesses and no emotional worries about illnesses.<sup>127</sup> The specific relationship of tobacco use particularly in relation to the core health dimension under Gross National Happiness in Bhutan as noted by Dr. Ugen Dophu on August 12, 2009, Director of the Bhutan Department of Public Health, Ministry of Health is:

In terms of health now with globalization, with rapid development taking place in the country; and also, all of this leads to a lot of mental stress. I believe that people who are under stress may resort to some habit forming or get addicted to the consumption of one substance or the other. And if tobacco is readily available people may resort to this. And if people resort to rampant tobacco consumption whether smoking, chewing, or snuffing. Then it is scientifically known (thousands of studies) that it has a bad effect on health.

So, with an unhealthy body it can lead to unhappiness.<sup>109</sup>

Also, on August 19, 2009, Tshewang Tandin, Director of School Education of the Bhutan Ministry of Education noted:

And human life is very, very precious because that is an opportunity for you to work yourself up to a higher realm. So there is a tremendous opportunity there and you cannot just waste the opportunity. Not by disabling yourself or through this affecting the health of other people. Do not smoke. So from that perspective that is how tobacco is seen.<sup>122</sup>

Finally, Dophu Tshering, Joint Director of the Bhutan Department of Trade, Ministry of Economic Affairs on August 19, 2009, stated:

...we do not want our many people to die from the death and disease of tobacco. On the other hand, I do understand that and do respect how our dear smokers that we are not denying their rights, we are only enforcing the sales of tobacco controlled in the shops. And we are not infringing on their rights, individual rights; we are not going into their homes.<sup>128</sup>

Hence, GNH, is linked to tobacco control and bans in Bhutan because it is contrary to Buddhist religious beliefs and is also a holistic regard for public health in which there is no illness and no emotional worries about illness.

# Tobacco Policy Debates from 2004 to 2009

The language of Chapter 27 on the prohibition of the sale of tobacco in the Penal (criminal) Code of Bhutan, 2004 reading as follows:

## **Use of tobacco or other health hazard substances**

385. A defendant shall be guilty of the offence of use of tobacco or other health hazard substances, if the defendant uses tobacco or other health hazard substances in the prohibited places.

## **Grading of Use of tobacco or other health hazard substances**

386. The offence of use of tobacco or other health hazard substances shall be a violation.

## **Illegal sale of tobacco or other health hazard substances**

387. A defendant shall be guilty of the offense of illegal sale of tobacco or other health hazard substances, if the defendant illegally sells any tobacco or other health hazard substances.

## **Grading of Illegal sale of tobacco or other health hazard substances**

388. The offence of illegal sale of tobacco other than health hazard substances shall be a violation.

389. A Court may also order the suspension or revocation of the business license. <sup>5</sup>

With respect to the 100% sales tax accompanying the importation of tobacco into Bhutan for personal consumption, the Department of Revenues and Customs within the Ministry of Finance issued the following Notification on December 8, 2004 that included an extra 100% customs duty for most imported tobacco for personal consumption:

This is to inform all concerned that in keeping with the decision of the 82<sup>nd</sup> Session of the National Assembly to ban the sale of tobacco products, imports of tobacco and tobacco products for commercial purpose will be prohibited with effect from 17 December 2004.

Further, DRC (Department of Revenues and Customs) would like to clarify that the import of tobacco and tobacco products for personal consumption shall attract 100% Sales Tax and 100% Customs Duty. The maximum allowable ceiling for personal consumption prescribed in the Rules of Sales Tax, Customs and Excise Tax of Kingdom of Bhutan 2000 is reproduced as follows:

- |                  |  |
|------------------|--|
| 1. Cigarettes:   | 1 carton containing 200 pieces of Cigarettes |
| 2. Pipe Tobacco: | 3 Tins of 50 grams each                      |

### 3. Other Tobacco Products: 50 Grams

Any import in excess of the permissible quantity shall be confiscated. <sup>129</sup>

However, due to a free trade agreement with Bhutan, tobacco products imported from India were only subject to a 100% sales tax while cigarettes imported from other countries were subject to the 100% sales tax and the 100% customs duty. <sup>11</sup>

In relation to the impending December 17, 2004 implementation of the new law the Ministry of Trade and Industry, Department of Trade also publicly warned in an official Notification dated November 8, 2004:

In the interest of the general public and to protect present and future generations from the devastating health, social, environmental and economic ill effects, the general public of the 18 Dzongkhags have put ban on tobacco and tobacco related products with much success. Also it is in keeping with the resolution of the 82<sup>nd</sup> session of the National Assembly which calls for banning of sale of all tobacco and tobacco related products in the Kingdom.

Therefore, we hereby inform all concerned that the sale of tobacco and tobacco related products are here forth to be banned with effect from the 17<sup>th</sup> of December 2004. As such, all Shops, Hotels, Restaurants and Bars dealing in tobacco and tobacco related products are requested to make necessary arrangements to dispose of existing stocks before the 17<sup>th</sup> December 2004.

Any person or firm found dealing in the sale of tobacco or tobacco related products after 17<sup>th</sup> December 2004 shall be penalized with a fine of Nu.10,000/- (Ngultrum ten thousand only) and immediate cancellation of license as per Rule No. 11 of the "Rules and Regulations for Establishment and Operation of Industrial and Commercial Activities in Bhutan 1995." All are requested to take note of this notification and cooperate in making our great Kingdom a Tobacco Free Land. <sup>130</sup>

In addition, Karma Tshering of the Department of Revenues & Customs warned that any foreigner selling tobacco to a Bhutanese national would be charged with smuggling. <sup>8, 12</sup> On December 17, 2004, Bhutan became the first country to ban the sale of tobacco products nationwide. <sup>11-14</sup>



On February 19, 2005 the Ministry of Trade and Industry also announced a ban on smoking in public places beginning March 1, 2005. <sup>131, 132</sup> Public places was defined as “all places where people gather.” <sup>131</sup> The Notification stated the following:

In order to protect the present and future generations from the devastating consequences of Tobacco use on health, social, environment and economy and in view of religious considerations, the Ministry of Trade and Industry, in keeping with the decisions of the high level Multi-sectoral Committee on Tobacco Control (as it was temporarily named in mid-December 2004) and approved by the Government, we hereby declare the following places as *smoke free zones* throughout the country with effect from 1<sup>st</sup> March 2005.

<b><u>Commercial Centres:</u></b>	All shops, shopping complexes, supermarkets, showrooms, exhibition halls, hotels, bars and restaurants;
<b><u>Recreation Centres:</u></b>	Discotheques, snooker rooms, health clubs, sports and games centres, playing fields and related offices;
<b><u>Institutions:</u></b>	All offices including those in the private sector, hospitals, schools, and training centres;
<b><u>Public gatherings:</u></b>	Public meetings, Tschechu (mask dance festivals) and festivals and national celebrations/receptions, vegetable markets, bus and taxi stands;
<b><u>Public Transportation:</u></b>	All buses and taxis.

The above places are declared as smoke free areas. Therefore, all commercial operators and heads of governments, institutions are requested to take note of this notification and cooperate to make the smoke free zone initiative a success. The Royal Bhutan Police has been empowered to monitor and enforce the rules.

<sup>133</sup>

An immediate and long term problem after the passage of the 2004 anti-tobacco legislation included a thriving black market and significant and increasing tobacco smuggling as well as continued smoking in entertainment venues. <sup>107, 109, 122, 131, 134-144</sup> Other issues included a requirement for enhanced detection of smuggled tobacco products such as “sniffer dogs” at

ports of entry, enhanced intelligence of tobacco smuggling and black marketing, and internal check points for contraband tobacco smuggling.<sup>109, 135, 140, 145, 146</sup>

## 2009 Parliamentary Session

Legislation introduced on April 24, 2009 in the Parliament in the third parliamentary session to amend and reform the Penal Code of Bhutan, 2004 Act included a provision for a coordinated agency effort to implement the ban on the sale of tobacco, public area smoking provisions, and anti-smuggling and black market efforts.<sup>142, 147, 148</sup> Included in the proposed bill was a national Tobacco Control Board with eleven implementing agencies and organizations.<sup>142, 147, 148</sup> The agencies and organizations included were the Health Ministry, Economic Affairs Ministry, Finance Ministry, Education Ministry, Home and Cultural Affairs Ministry, Royal Bhutan Police, large urban areas with a minimum population of 5,000 (Thromdes), Road Safety and Transport Authority, and civil organizations.<sup>142, 147, 148</sup> Under the proposed law, the Bhutan Narcotics Control Agency was to become the lead agency in implementing the proposed law.<sup>147, 149</sup> In particular, the proposed law called for the Executive Director of the Bhutan Narcotics Control Agency to be the head of the tobacco control efforts.<sup>147</sup> The Tobacco Control Board was authorized to promote law enforcement actions, designate smoking rooms in public areas, meet the obligations of provisions of the Framework Convention on Tobacco Control, craft rules to implement the act, provide coordination in implementation of the law, liaison with international organizations, and monitor enforcement activities.<sup>147</sup>

The proposed law defined public areas in which smoking was not permitted as commercial centers, recreation centers, institutions, public gathering places, public transportation, and all other public places designated by the Tobacco Control Board.<sup>147, 148</sup> The proposed law also prohibited, in Bhutan, the cultivation, sale, manufacture and distribution of

tobacco products.<sup>147, 148</sup> However, as was the case in the 2004 legislation, personal tobacco consumption was not banned.<sup>147, 148</sup> The proposed bill also prohibited: tobacco advertising in any medium including movies and videos, distribution of tobacco samples, tobacco promotion at events such as athletic events, advertisement of tobacco trademarks on toys and other goods, exchange of tobacco products with other goods and services, and scenes showing tobacco use in domestic videos, movies, and cultural events (except for anti-tobacco promotion for health purposes)<sup>147</sup>. Also included in the proposed law were provisions for anti-tobacco awareness campaigns, tobacco cessation efforts, and the establishment of research on tobacco consumption trends.<sup>147</sup>

Enforcement actions under the proposed law included searching for illegal tobacco products under due process of law, confiscating property used in illegal tobacco activities, and disposing of tobacco products.<sup>147</sup> Penalties imposed for violations of the proposed law included: fines for individuals and fines for individuals and businesses that illegally sold tobacco, criminal misdemeanor charges for cultivating, manufacturing or distributing tobacco, criminal offense charges for smuggling tobacco, and petty misdemeanor charges for domestic video, movie, or cultural productions depicting tobacco use except in the case of anti-tobacco health messages.<sup>147</sup>

An alternate proposed bill was sponsored by National Council member Pema Lhamo that would have lifted the ban.<sup>106</sup> Lhamo argued that in the five years since the ban was enacted the number of smokers was unknown and the ban has not reduced the number of smokers.<sup>106, 150</sup> Pema Lhamo said that while a ban cannot reduce the number of smokers, an anti-tobacco education campaign could.<sup>106, 150</sup>

In July 2009, the National Council passed legislation repealing the ban.<sup>109, 150</sup> In particular the bill removed the provision in the 2004 legislation prohibiting a person or business

from selling tobacco products. <sup>109, 150</sup> National Council Chair Namgay Penjore indicated that the impetus for lifting the ban was that tobacco products should be made more expensive through taxation and this would deter more people from smoking than the ban. <sup>109, 150</sup> However, neither the National Council resolution nor the proposed Parliamentary law to clarify and reform, but maintain the ban, was enacted into final legislation. <sup>151, 152</sup> Instead, it was deferred to a subsequent parliamentary session. <sup>109, 151, 152</sup>

## **Tobacco Use Administrative Implementation from 2004 to 2009**

On December 12, 2004, just five days before the ban was schedule to take effect, an administrative coordination meeting of stakeholders on tobacco control was held in Thimphu. <sup>153</sup> The stakeholders included the: Ministry of Trade and Industry, Department of Revenues and Customs, Thimphu Dzongdag (chief administrator), Kuensel newspaper, Bhutan Broadcasting Service, Ministry of Home and Cultural Affairs, Royal Bhutan Police, Department of Legal Affairs, Road Safety and Transport Authority, Ministry of Education, Ministry of Health, and Dzongkhag Yargay Tshogdu – Thimphu (road construction authority). The objective of the meeting was to establish roles and responsibilities in administering the new anti-tobacco law, address challenges in implementing the ban, and establish mechanisms for implementation, monitoring, and reporting. <sup>153</sup>

At the meeting, the Ministry of Health provided an overview of the new legislation and how it is linked to the Framework Convention on Tobacco Control anti-tobacco provisions. <sup>153</sup> The Ministry of Trade and Industries announced that it was providing public information about the tobacco sales ban to various media venues, notifications regarding the ban were sent to shopkeepers, letters were sent out to all Ministries regarding the ban, and letters were sent out

requesting the cooperation of the Dzongdas of all Dzongkhags.<sup>153</sup> The Road Safety and Transport Authority stated that a ban on the sales of tobacco in commercial areas near bus terminals was in place, a ban already existed on smoking in public conveyances, highway inspection teams enforced the ban, and anti-tobacco programs targeted taxi drivers.<sup>153</sup> The Department of Revenue and Customs indicated it was alerting border check posts to monitor for illegal cigarette importation.<sup>153</sup> The Department of Revenue and Customs noted that it had informed all checkpoints regarding the ban.<sup>153</sup> However, the Department of Revenues and Customs while committed to the ban, expressed the following concerns as noted in the minutes of the meeting:

Increase in taxes was foreseen to enhance the problem of smuggling due to porous border.

Difficulty in monitoring tobacco products brought in by the Armed Forces, Dantak (Indian border roads assistance project), and Imtrat (Indian Military Training Team in Bhutan). Sales of tobacco products to nationals through these sources was also raised as a concern.

The absence of clear directives on imposing penalties.<sup>153</sup>

Other issues discussed was the need to clarify to the public that the ban was on tobacco sales and not personal consumption, there was a need for clear direction on imposing penalties in smoke free areas, the need for a regular anti-tobacco public awareness campaign, concerns about a thriving black market, and clear delineation of agency responsibilities in enforcing the ban.<sup>153</sup>

The meeting adopted a resolution that the Ministry of Trade and Industries would take a lead role in implementing the ban.<sup>153</sup> In addition, a resolution for enforcement of smoke free places included that the Royal Bhutan Police issue no fines for a violation, but instead individuals would be told an area is non-smoking and asked to stop smoking.<sup>153</sup> Finally, a

resolution was enacted calling for a permanent government committee to address the tobacco law tentatively called the Multi-sectoral Committee.<sup>153</sup>

The second National Advisory Committee Meeting on Tobacco Control was held in Thimphu on February 16, 2005.<sup>154</sup> Issues discussed at this meeting included that while tobacco quota restrictions are fixed the frequency of importation of tobacco for personal use was not determined or practical.<sup>154</sup> It was also noted that there was confusion in media reporting on Bhutan's anti-tobacco law in that the ban was only on the sale of tobacco and not on tobacco consumption.<sup>154</sup>

In addition, the Department of Revenue and Customs reported to the National Advisory Committee on Tobacco Control that 17 cartons of cigarettes had been seized from tourists at the Paro International Airport.<sup>154</sup> However, the seized cigarette cartons were given back to the tourists upon exiting Bhutan.<sup>154</sup> The Ministry of Trade and Industry also reported that seized tobacco products had been burned on November 17, 2004.<sup>154</sup> In addition, six shops in Samdrup Jongkhar Dzongkhag had been found illegally selling tobacco products resulting in the cancellation of their business licenses and a 10,000 Ngultrum (about \$208 USD) fine.<sup>154</sup>

The Ministry of Trade and Industry also indicated that there was a need to develop an approach among agencies to share information.<sup>154</sup> In addition, public awareness of the tobacco law on the Bhutan Broadcasting Service had dwindled and there was a requirement to enhance the frequency of anti-tobacco messages with this media outlet.<sup>154</sup> There was also a need to establish billboards with anti-tobacco messages.<sup>154</sup>

The third meeting of the National Advisory Committee on Tobacco Control occurred in Thimphu on May 6, 2005.<sup>155</sup> At this meeting, a draft implementation

strategy by the World Health Organization consultant, Dr. Nyo Nyo Kyaing, was discussed.<sup>155, 156</sup> After receiving the National Advisory Committee on Tobacco Control's feedback, and over two years after the enactment of the sales ban, Dr. Nyo Nyo Kyaing publicly stated:

The ban has been there but only through notifications and warnings serving as deterrent but there was no specific legal backing to penalize or fine people breaking the ban.<sup>156</sup>

Dr. Kyaing noted that further legislation was necessary to prevent illegal tobacco sales and reduce tobacco consumption.<sup>156</sup> In addition, there had been no consistent and ongoing surveys measuring the rate of tobacco consumption after the ban.<sup>156</sup> Another issue presented by Dr. Kyaing was the need for enhanced cooperation by enforcement agencies to implement and enforce the ban.<sup>156</sup> By April 2009, a specific fine amount had still not been established for two time violators.<sup>142</sup> A third time violator would be fined the annual minimum wage rate, which was 36,500 Ngultrums.<sup>142</sup>

At the third meeting, a recommendation again was also made to develop a mechanism to better share information among the agencies.<sup>155</sup> Suggested strategies included creating a team for enforcement, creating a "focal point" to channel information, providing incentives for enforcement, and increasing vigilance at ports of entry.<sup>155</sup> In addition, not having a clear mandate for searching houses and unequal penalties between businesses and individuals was seen as a constraint.<sup>155</sup> A recommendation was then adopted by the Committee that the Ministry of Trade and Industry, Revenues and Customs and the Royal Bhutan Police should be the focal points for responsibility.<sup>155</sup> Also, a proposal to provide incentives for government informants was to be developed.<sup>128, 155</sup>

The fourth meeting of the National Steering Committee on Tobacco Control was held in Thimphu on October 12, 2006.<sup>157</sup> By 2005, members of the National Steering Committee on Tobacco Control included: Ministry of Health, Thimphu Dzongdag (chief administrator), Ministry of Trade and Industry, Royal Bhutan Police, Ministry of Home and Cultural Affairs, Road Safety & Transport Authority, Attorney General, DYT Thimphu, Thrompon – Thimphu, Kuensel Newspaper, and the Bhutan Broadcasting Service.<sup>157</sup>

A long discussion ensued at this meeting on how to make the anti-tobacco law more effective.<sup>157</sup> While the Royal Bhutan Police stated raising tobacco taxes 300% to 400% would deter smuggling; the Department of Revenue and Customs argued that higher taxes will not end smuggling and in fact would make it more attractive for smugglers.<sup>157</sup> The Department of Revenue and Customs also argued that higher taxes would have limited impact as tobacco sales were banned and would only apply to a small quantity of tobacco imported for personal consumption.<sup>157</sup>

The Attorney General's Office noted that there were no scientific surveys to assess whether smoking was increasing or not.<sup>157</sup> The Attorney General's Office also noted that if smokers were increasing then the punitive law enforcement approach was not working.<sup>157</sup> The Chair of the National Steering Committee on Tobacco Control also noted that demand reduction through such efforts as anti-tobacco public awareness campaigns had been "inconsistent."<sup>157</sup>

Another discussion was initiated as to which agency was the lead agency in the anti-tobacco efforts.<sup>157</sup> It was decided that the Ministry of Trade and Industry should continue to be the lead agency in the anti-tobacco efforts.<sup>157</sup> Yet, another discussion



occurred regarding the need for the local Dzongkhags to disseminate information throughout the country including the rural areas on the ill effects of tobacco.<sup>157</sup>

An additional report indicated that the primary approach to counter tobacco smugglers was through the use of paid informants.<sup>128, 157</sup> The Department of Revenue and Customs also asked for funding support to purchase x-ray machines for individuals at ports-of-entry.<sup>157</sup> Also discussed was the environmental impact of burning seized tobacco products near human settlements.<sup>157, 158</sup> The Ministry of Health indicated that there was a need to place anti-tobacco billboards and messages in strategic areas.<sup>157</sup> A further report was made that few citizens of Bhutan were aware of tobacco cessation services.<sup>157</sup> A discussion also ensued regarding difficulties in enforcing smoke free areas in clubs and discotheques.<sup>109, 157</sup>

The fifth meeting of the National Steering Committee on Tobacco Control was held in Thimphu on August 13, 2008.<sup>159</sup> The primary purpose of this meeting was to endorse proposed tobacco control legislation in the new Parliament and National Council.<sup>159</sup> In particular, the Executive Director of the Bhutan Narcotics Control Agency argued that tobacco could be added to the Bhutan Narcotic and Psychotropic Substance and Substance Abuse Act of which his agency oversees.<sup>159</sup> Also discussed was an incentive program for informants of tobacco smuggling.<sup>128, 159</sup>

In 2009, the Ministry of Health also wrote and concluded that while tobacco control efforts have been ongoing and significant in Bhutan since the 1980s:

However, scarce financial resources, difficult terrain, and scattered communities raise costs of infrastructure and health delivery in Bhutan. Limited access to the modern amenities of communication makes health promotion efforts much more expensive than elsewhere. Competing priorities in health also limit budget allocation and attention to the tobacco program. Moreover, a dearth of in-depth formative research and baseline surveys for tobacco control impede policy recommendations.<sup>110</sup>

Based on an overview of the history of administrative implementation of the anti-tobacco provisions in the Penal Code of Bhutan Act of 2004, including interviews with the Ministry of Health, Ministry of Education, and the Ministry of Economic Affairs, the following analysis is made of Bhutan's administrative efforts to implement the 2004 anti-tobacco legislation:

## Tobacco Use Plans

There was uncertainty in terms of clear delineation in coordinating and implementing the 2004 anti-tobacco law with no authorizing legislation delineating agency roles and no plans delineating the implementation of goals, objectives, and outcomes.<sup>109, 122, 128, 147, 153-155, 157, 159</sup> This uncertainty included three administrative resolutions affirming in December 12, 2004 and then reaffirming on May 6, 2005 and on October 12, 2006 that the Ministry of Trade and Industry was the lead agency overseeing and implementing the 2004 anti-tobacco law.<sup>153, 155, 157</sup>

## New Agency Involvement

Before 2004, the only agencies involved in tobacco control in Bhutan were the Ministry of Health and the Bhutan National Environmental Commission.<sup>109</sup> After the passage of the anti-tobacco law in 2004, new agencies and organizations involved with the implementation of the law included the: Ministry of Health, Thimphu Dzongdag (chief administrator), Ministry of Trade and Industry, Royal Bhutan Police, Ministry of Home and Cultural Affairs, Road Safety and Transport Authority, Office of the Attorney General, Dzongkhag Yargay Tshogdu – Thimphu (road construction authority), Thrompon Thimphu (local government authority), Kuensel Newspaper, and the Bhutan Broadcasting Service.<sup>157</sup> In addition, agency coordination in the implementation of the anti-tobacco law since 2004 has been uneven and at times uncertain.<sup>109, 122, 128, 153-155, 157, 159</sup> Also, according to Dr. Ugen Dophu of the Ministry of Health:

“For now, if the draft bill (new tobacco legislation) is passed then that bill (will) reflect the roles and responsibilities of various implementing agencies.”<sup>109</sup> Dr. Ugen believed the new bill would create more administrative efficiency in the implementation of the anti-tobacco program.

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## Program Evaluation

Before and after 2004, there have been no periodic, ongoing, consistent, and internally conducted scientific studies on tobacco consumption and use in Bhutan.<sup>109, 160-162</sup> One study was conducted by the Ministry of Health in 2006 on student tobacco consumption.<sup>163</sup> The Centre for Bhutan Studies published data for 2008 on adult and youth tobacco consumption.<sup>127</sup> The American Cancer Society and World Lung Association published a report with somewhat different findings in 2008 on tobacco consumption by youth and adults.<sup>161</sup> Annual statistics have been compiled since 2004 on tobacco smuggling arrests and illegal tobacco seizures.<sup>109</sup> No public internal assessment has been conducted of the administrative effectiveness of the anti-smuggling efforts.<sup>109, 122, 128</sup>

## Budgetary Changes

Since the passage of the 2004 anti-tobacco law, there have been no new direct budgetary allocations to enforce and implement the law.<sup>109, 122, 128</sup>

## Personnel Changes

Since the passage of the 2004 anti-tobacco law, there have been no new personnel hired to enforce and implement the law.<sup>109, 122, 128</sup>

## Non-governmental Organization Involvement

Before the passage of the 2004 anti-tobacco law, the monk bodies and local officials in many Dzongkhags were very active in educating Bhutanese citizens on the detrimental impact

of tobacco use.<sup>108, 118, 119</sup> Since the passage of the 2004 anti-tobacco law, the Bhutan Chamber of Commerce and Industry, RENEW (Respect, Educate, Nurture, and Empower Women), the Youth Development Fund, and the Buddhist monk bodies including the Je Khenpo – the head monk of Bhutan<sup>109</sup> have assisted in the anti-tobacco campaign.<sup>122, 128</sup>

## Summary

Administrative coordination in implementing Bhutan's 2004 anti-tobacco law has been, at times, uneven and uncertain. Not provided in the administrative implementation have been any new budgetary allocations or newly hired personnel. Instead, the effort has relied on existing budgetary allocations and agency personnel. There has also not been any consistent and periodic scientific measurements of levels of tobacco consumption in Bhutan to further instruct ongoing policy and administrative efforts.

## Policy Outcomes

Based on the policy requirements and administrative implementation efforts of the 2004 anti-tobacco law, some intermittent data is now available to ascertain tobacco consumption patterns after the enactment of Bhutan's 2004 anti-tobacco law.

### Tobacco Use Prevalence

The 2006 Youth Tobacco Survey of school age youths 13-15 conducted by the Ministry of Health found that 23.7% of these students had used any tobacco products (not limited to cigarettes) in the last 30 days.<sup>163</sup> Of these students, 15.6% of the students including 23.3% of the boys and 7.5% of the girls had smoked a cigarette in the last 30 days.<sup>163</sup> Over 30% of these students lived in a home where others smoked.<sup>163</sup> In 1992, the United States Environmental Protection Agency determined that exposure to secondhand tobacco smoke was carcinogenic and could lead to a variety of severe illnesses and death including: Sudden Infant Death

Syndrome, pre-term deliveries, stunted fetal growth, ear, nose, and eye irritation, nasal sinus cancer, heart disease, and lung cancer. <sup>164</sup>

According to a 2008 study conducted by the American Cancer Society and World Lung Association, adult smoking prevalence in 2008 in Bhutan, defined as current tobacco use, was 10% for men and 7% for women. <sup>110, 161</sup> Youth tobacco smoking prevalence defined as current tobacco use (for all youth under 18) in 2008 was 18.3% for boys and 6.3% for girls. <sup>110, 161</sup> Young people exposed to second hand tobacco smoke in 2008 in their homes was 32.8%. <sup>110</sup> On the other hand, a study by the Centre for Bhutan Studies for 2007-2008 indicated that 10.1% of men and 3.4% of women were current smokers. <sup>127</sup> This represented a possible but not conclusively proven decrease in smoking prevalence for young people in Bhutan when compared with the results of the 2006 Youth Tobacco Survey. <sup>110, 163</sup> Comparability is not entirely certain because the 2008 results were taken from all young people while the 2006 survey was taken from school age youths 13-15. <sup>161, 163</sup>

## Smuggling

From 2004 to 2008, 47 business licenses were cancelled and a fine of .47 million Ngultrums was collected from business license holders. <sup>128, 165</sup> In the years 2005 to 2006, .13 million Ngultrums worth of smuggled tobacco products was seized. <sup>165</sup> In 2007, .62 million Ngultrums worth of smuggled tobacco products was seized. <sup>165</sup> This total substantially increased in 2008 with 1.4 million Ngultrums worth of smuggled tobacco products seized. <sup>158, 165</sup> Table 1 also provides the number of people from 2005 to 2009 charged in tobacco related cases:

<b>TABLE 1. PERSONS ARRESTED AND CHARGED FROM 2005 TO 2009 WITH TOBACCO RELATED OFFENSES IN BHUTAN</b>					
<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>TOTAL</b>
3	8	14	18	3	46
<b>Source:</b> Information and Communication Bureau, Department of Public Health, Ministry of Health – Bhutan <sup>165</sup>					

While these results are not comparable, over time, to measure the progress or lack of progress in reducing tobacco consumption and exposure to carcinogenic secondhand smoke, they nevertheless, tentatively indicate that tobacco consumption and secondhand smoke exposure remain a significant health issue in Bhutan. In addition, the best available evidence indicates that illegal tobacco smuggling in Bhutan remains robust. <sup>106, 109, 122, 128, 134, 136-141, 143, 157</sup>

## Conclusions and Recommendations

The original hypothesis for this policy and administrative analysis and study was: given the enactment of the Penal Code of Bhutan Act of 2004, which nationally banned tobacco sales, prohibited the use of tobacco in prohibited public places, and contained anti-tobacco smuggling provisions, there has been an administratively sufficient administrative capacity to significantly reduce tobacco use. The answer to this hypothesis is at this juncture it is not entirely known whether Bhutan's anti-tobacco efforts including a ban on tobacco sales, but not consumption, and restrictions on smoking in public areas have made significant progress in reducing tobacco use. Certainly tobacco use based on what surveys have been conducted and data on illegal smuggling of tobacco products into Bhutan indicate with certainty that tobacco use has not ended or is even close to ending. Thus, at this juncture the program needs to be carefully re-examined and if necessary amended to meet the goal of ending tobacco use in Bhutan.

In this regard, proposed anti-tobacco legislation in the 2009 National Council and Parliament seeks to enhance this effort. The following are recommendations on furthering this valid and worthwhile effort to reduce tobacco consumption in Bhutan through appropriate laws, regulations, and programs.

1. Bhutan should institute a public governmental tobacco control plans including a general plan and strategic operating plans. By doing so, it will create a rationalistic approach to

coordinate and mobilize public and private resources to counter tobacco use and exposure to secondhand tobacco smoke. The plan or plans should contain requirements for agency information sharing and agency cooperation in law enforcement efforts. Government plans also typically establish long and short term goals and objectives and provide a basis to gauge programmatic progress and assess administrative program performance. Contained in this plan should be both specific criminal and non-criminal programmatic and administrative operational goals and objectives designed to counter tobacco use and smuggling.

2. A key non-criminal approach in reducing tobacco consumption should be a comprehensive and ongoing tobacco counter-marketing effort. Tobacco counter-marketing programs comprehensively placed in a variety of media such as television, movies, newspapers, and radio have been found to be an effective community prevention approach to counter tobacco use in the United States--particularly with respect to tobacco use by young people.<sup>166-170</sup> Effective models for tobacco counter-marketing programs (such as the Florida Truth Campaign) have occurred in the U.S. states of Florida, Mississippi, Massachusetts, and California.<sup>166-170</sup> While the advertising themes for these tobacco counter-marketing efforts are U.S.-oriented, research and studies should be conducted in Bhutan to see what best resonates with the culture and values of the Bhutanese people to curtail or avoid tobacco use.
3. Another key non-criminal anti-tobacco consumption approach is raising taxes on tobacco products. Currently, over 100 peer reviewed publications have shown that cigarette tax increases lead to a decrease in overall cigarette use with the effect of a 10 percent tax on cigarettes reducing cigarette use by 2.5 to 5.0 percent.<sup>169-174</sup> However, because tobacco sales in Bhutan are banned, only a very minimal amount of tobacco

products are currently taxed when an individual imports tobacco into Bhutan for personal consumption. On the other hand, if the tobacco sales ban were to be repealed, care must be taken not to introduce a tobacco tax that is substantially higher than neighboring India. As was true in the case of cigarette smuggling from the United States to Canada, the incentive to smuggle from the United States to Canada was substantially greater with higher cigarette taxes in Canada than in the United States.<sup>175</sup>

4. Bhutan should provide statutorily mandated tobacco cessation services that are widely advertised.
5. Periodic analyses of anti-smuggling and black market efforts and program effectiveness and efficiency should also be conducted. Program evaluation in Bhutan should include conducting a mandatory and ongoing annual or two year scientific survey on tobacco consumption trends including current smoking trends for adults and youth, smoking in urban and rural areas, smoking in various public areas, and exposure to secondhand tobacco smoke. Scientific studies on the effectiveness of health education campaigns should also be conducted.
6. Bhutan should maintain its current law prohibiting smoking in public places. As noted earlier, secondhand tobacco smoke is highly carcinogenic and impacts smokers and non-smokers alike. Recent research also shows that in the United States smoking prevalence was 6.0% lower for workers who worked in smoke-free workplaces compared with those who did not.<sup>36, 40</sup> Public anti-smoking laws should be implemented in tandem with effective, uniform, ongoing, and significant criminal penalties and enforcement campaigns to deter violators including in entertainment centres. Counter-marketing efforts should also address the detrimental impact of secondhand tobacco smoke.



7. Non-governmental organizations from the religious, business, and community sectors, engaged in efforts and programs of civic progress and responsibility, should actively be involved in community and governmental anti-tobacco educational awareness efforts. Government or private funding to bolster these community education efforts should be considered.
8. The roles and responsibilities of agencies associated with Bhutan's anti-tobacco efforts should be specifically denoted as was the case in the proposed 2009 anti-tobacco parliamentary legislation. Care should be taken to situate the anti-tobacco efforts in an administrative setting that is conducive and supportive of both criminal and non-criminal approaches to counter tobacco use and smuggling.
9. Fiscal allocations for criminal and non-criminal anti-tobacco approaches should be directly tied to the program goals and objectives of government planning documents to counter tobacco use and smuggling.
10. Personnel in various government agencies should have their employment positions and descriptions directly tied to program goals and objectives in government planning documents to counter tobacco use and smuggling.

Finally, based on ongoing feedback, Bhutan should stand ready on an ongoing basis to alter in part or whole its policy and administrative implementation efforts to effectively counter tobacco use and smuggling. This can only occur with scientific surveillance and evaluations occurring on an ongoing basis.

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