

Incorporating WHO FCTC Article 8 and its Guidelines into Domestic Smoke-free Measures



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Agenda

- 1. Main components of FCTC Article 8 and key terms**
- 2. Exercise: what problems do you see in this draft bill?**
- 3. Smoke Free Environment bills: importance and strategies**

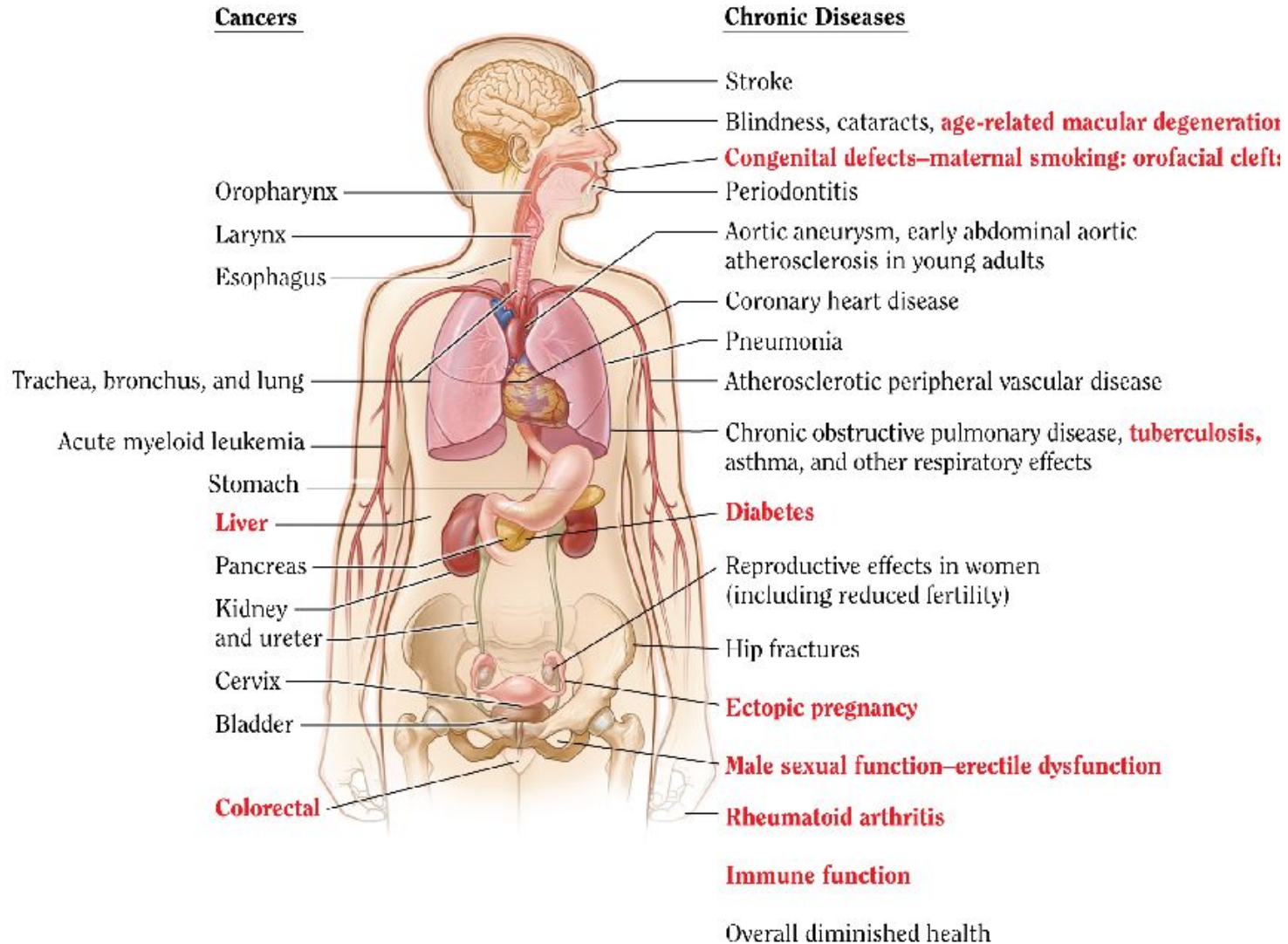
Exposure to tobacco smoke

- Tobacco smoke contains a deadly mix of more than 7,000 chemicals.
- Hundreds are toxic.
- About 70 can cause cancer.



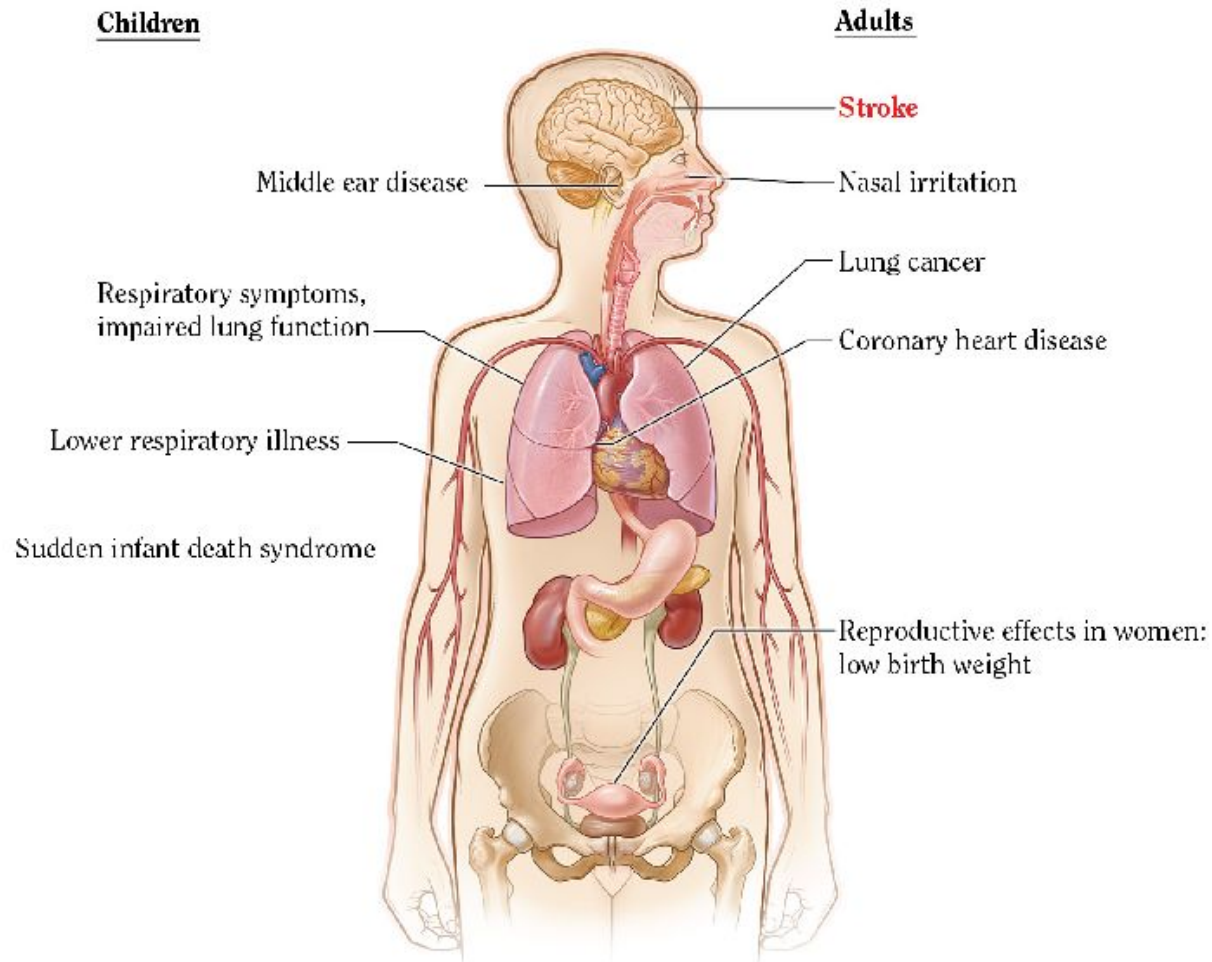
Exposure to tobacco smoke

The health consequences causally linked to smoking



Exposure to tobacco smoke

The health consequences causally linked to exposure to secondhand smoke



Importance of Article 8



“Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.”

- Article 8(1), FCTC

“The protection of people from exposure to tobacco smoke should be strengthened and expanded... to reflect new scientific evidence and case-study experiences.”

- Article 8 Guidelines

“There is no safe level of exposure to secondhand smoke, which is recognized as a public health hazard – not just as a mere discomfort for nonsmokers.”

- Harri Holkeri, UN General Assembly president in 2001

Main components of Article 8



Main components of Article 8

FCTC ARTICLE 8(1)

“Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke cause death, disease and disability.”



Main components of Article 8

FCTC ARTICLE 8(2)

“Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and as appropriate, other public places.”

Main components of Article 8

FCTC ARTICLE 8(2)



7 Essential Elements of Substantive Provisions

Main components of Article 8

FCTC ARTICLE 8(2)

Essential Element No. 1

“Each Party **shall** adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of **effective** legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and as appropriate, other public places.”

Main components of Article 8

FCTC ARTICLE 8(2)

Essential Element No. 2

“Each Party shall adopt and implement **in areas of existing national jurisdiction as determined by national law** and actively promote at other jurisdictional levels the adoption and implementation of **effective** legislative, executive, administrative and/or other **measures**, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and as appropriate, other public places.”

Main components of Article 8

FCTC ARTICLE 8(2)

Essential Element No. 3

“Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and **actively promote at other jurisdictional levels the adoption and implementation of** effective legislative, executive, administrative and/or other **measures**, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and as appropriate, other public places.”

Main components of Article 8

FCTC ARTICLE 8(2)

Essential Element No. 4

“Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective **legislative, executive, administrative and/or other measures**, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and as appropriate, other public places.”

Main components of Article 8

FCTC ARTICLE 8(2)

Essential Element No. 5

“Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of **effective** legislative, executive, administrative and/or other **measures**, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and as appropriate, other public places.”

Main components of Article 8

FCTC ARTICLE 8(2)

Essential Element No. 6

“Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of **effective** legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke **in indoor workplaces, public transport, indoor public places**, and as appropriate, other public places.”

Main components of Article 8

FCTC ARTICLE 8(2)

Essential Element No. 7

“Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of **effective** legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, **and as appropriate, other public places.**”

An “effective measure” under Article 8

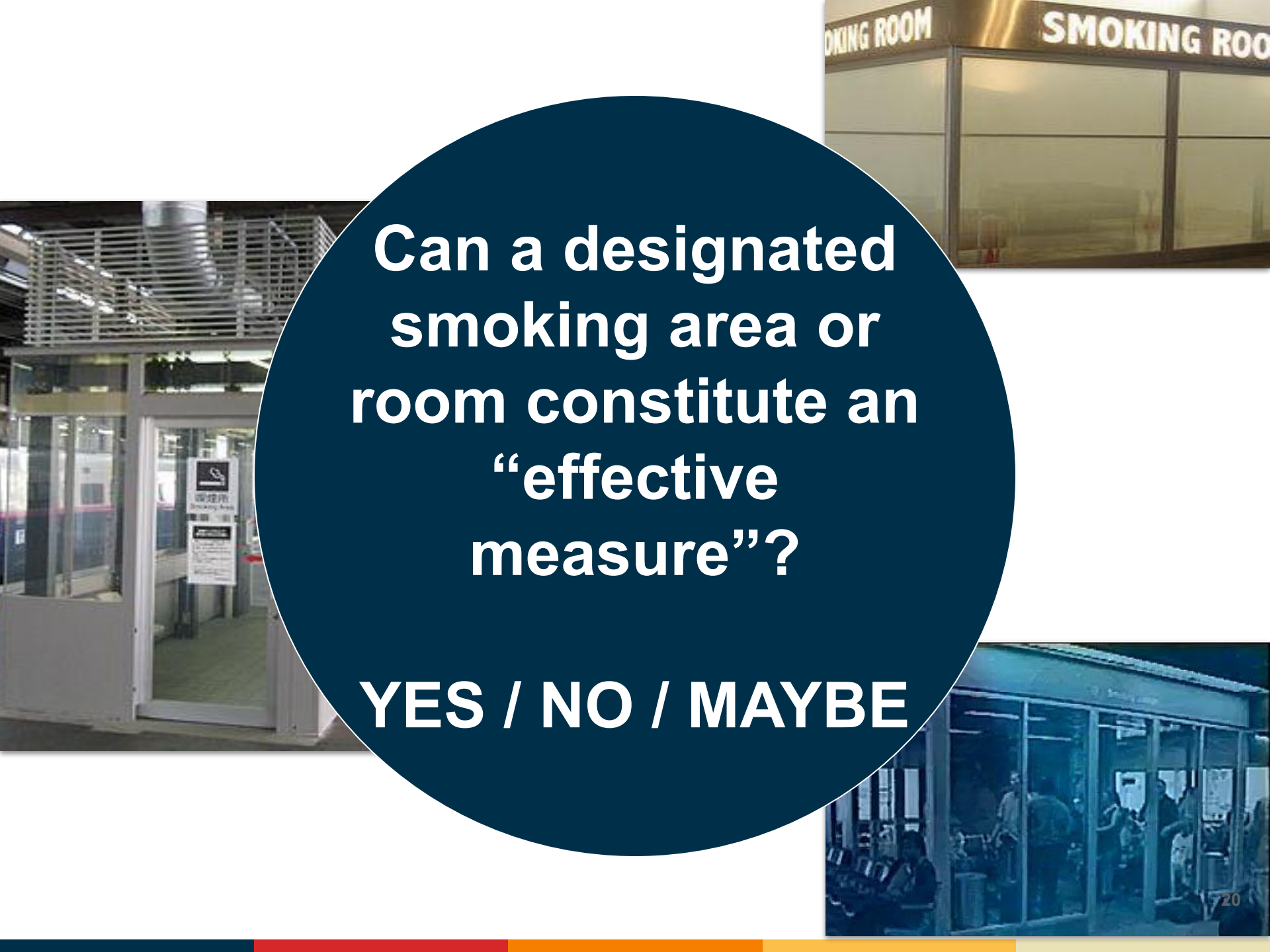


An “effective measure” under Article 8

What constitutes an “effective measure”?

Article 8 “creates an *obligation to provide universal protection* by ensuring that all indoor public places, all indoor workplaces, all public transport, and possibly other (outdoor or quasi-outdoor) public places are free from exposure to second-hand tobacco smoke.”

- **Guidelines, para. 24.**



**Can a designated
smoking area or
room constitute an
“effective
measure”?**

YES / NO / MAYBE

An “effective measure” under Article 8



**What constitutes an
“effective measure”?**

“No exemptions are justified on the basis of health or law arguments.”

- Guidelines, para. 24.

“No safe levels of exposure to second-hand tobacco smoke exist...”

- Guidelines, para. 25.

An “effective measure” under Article 8

Examine the key terms of TC legislation as they apply to smoke-free measures



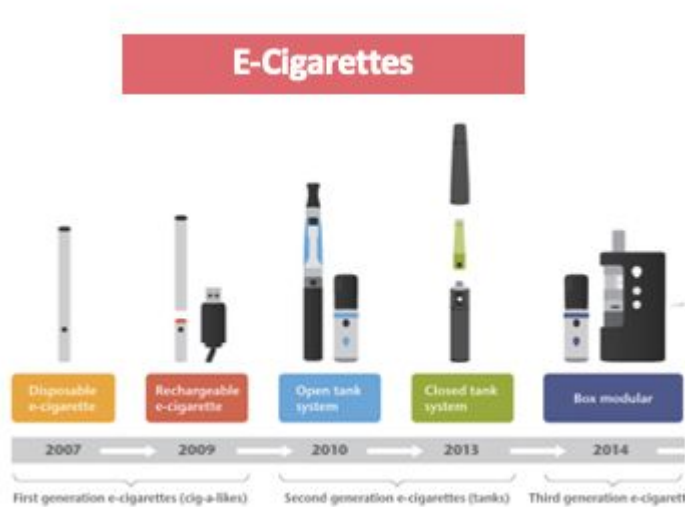
An “effective measure” under Article 8

DEFINING KEY TERMS – FCTC ARTICLE 1 & ARTICLE 8 GUIDELINES

- “tobacco products”
- “second-hand tobacco smoke”
- “smoking”
- “public places”
- “workplace”
- “public transport”
- “indoor” or “enclosed”

An “effective measure” under Article 8

! NEW PRODUCTS



An “effective measure” under Article 8

DEFINING KEY TERMS

Tobacco Products



“Products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing, or snuffing.”

INCLUDE NEW PRODUCTS!

An “effective measure” under Article 8

DEFINING KEY TERMS

Second-hand Tobacco Smoke

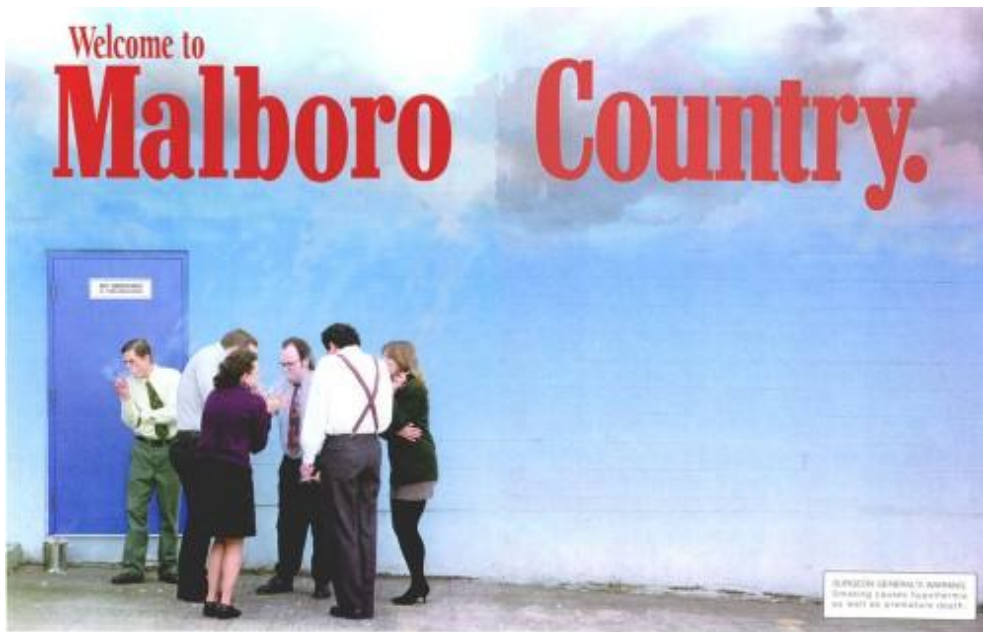
“The smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with the smoke exhaled by the smoker.”



An “effective measure” under Article 8

DEFINING KEY TERMS

Smoke or Smoking



“Being in possession or control of a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled.”



An “effective measure” under Article 8

DEFINING KEY TERMS

Public Place

“An area, permanent or temporary, that is accessible to the general public or for collective use by the general public, regardless of right of ownership or access.”



An “effective measure” under Article 8

DEFINING KEY TERMS

Workplace

“An area, permanent or temporary, in which a person performs duties of employment or work, regardless of whether the work is done for compensation or on a voluntary basis, and includes private offices, common areas and any other area which generally is used or frequented during the course of employment or work.”



**DON'T SECONDHAND SMOKE
THE MESSENGER.**

WAITRESSES ARE 50% MORE LIKELY TO DIE FROM CANCER THANKS TO SECONDHAND SMOKE.

WHERE DO YOU
DRAW THE LINE?

An “effective measure” under Article 8

DEFINING KEY TERMS

Public Transport

“Any vehicle used for the carriage of members of the public, usually for reward or commercial gain.”



An “effective measure” under Article 8

DEFINING KEY TERMS

Indoor or Enclosed

“Any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, walls or sides, and regardless of whether the structure is permanent or temporary.”



An “effective measure” under Article 8

Comprehensive application of legal measures



An “effective measure” under Article 8

Applying the Smoking Ban Universally and Equally

Smoking is prohibited in all parts of all:

1. indoor workplaces,
2. indoor public places,
3. means of public transport, and
4. appropriate outdoor (or quasi-outdoor) public places.

FCTC Art. 8 Guidelines, paras. 23, 24

An “effective measure” under Article 8

If Exemptions Are Unavoidable

If exemptions are *truly unavoidable*, you must push for the following:

1. Exemptions should be as limited as possible.
2. Provide a phase-out date.

If universal protection is impossible to achieve immediately, Article 8 creates a *continuing obligation* to remove exemptions as soon as possible and, at the most, within 5 years of the FCTC’s entry into force in the country.

FCTC Art. 8 Guidelines, para. 24

**Should the law
include a list of
places covered
by the ban?**

YES / NO

An “effective measure” under Article 8

Response: **Caution should be taken.**

- It should not be necessary to list indoor places covered by the ban if the Guidelines definitions are used.
- However, it may be necessary or customary to do so in a given jurisdiction.

If it is unavoidable to include a list of places:

The law should:

1. Clearly state that the list is:
 - a. For illustrative purposes only, and
 - b. Not exhaustive.
2. Give the Ministry of Health the authority to add to the list when needed.

An “effective measure” under Article 8

“Other” Public Places

“Parties should consider the evidence as to the possible health hazards in various settings and should act to adopt the most effective protection against exposure wherever the evidence shows that a hazard exists.”

FCTC Art. 8 Guidelines, para.
27



Resources

- **WHO FCTC. Articles 1 and 8**

[https://fctc.who.int/publications/i/item/9241591013.](https://fctc.who.int/publications/i/item/9241591013)

- **Guidelines on Protection from Exposure to Tobacco Smoke**

[https://www.who.int/fctc/cop/art%208%20guidelines_english.pdf.](https://www.who.int/fctc/cop/art%208%20guidelines_english.pdf)


 FIND BY POLICY

Tobaccocontrolaws.org

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Afghanistan	Colombia	Iceland	Moldova	Seychelles
Algeria	Congo	India	Mongolia	Singapore
Argentina	Costa Rica	Indonesia	Myanmar	Slovenia
Armenia	Cote d'Ivoire	Iraq	Namibia	Solomon Islands
Australia	Djibouti	Ireland	Nepal	South Africa
Azerbaijan	Ecuador	Israel	New Zealand	Spain
Bangladesh	El Salvador	Italy	Nigeria	Suriname
Belarus	Estonia	Jamaica	Norway	Sweden
Benin	Ethiopia	Japan	Pakistan	Taiwan
Bermuda	France	Kosovo	Palestine	Thailand
Bhutan	Gabon	Laos	Panama	Togo
Bolivia	Gambia	Latvia	Peru	Turkey
Brunei Darussalam	Ghana	Lebanon	Philippines	Turkmenistan
Burundi	Guatemala	Macau (SAR)	Poland	Turks and Caicos
Cambodia	Guinea	Malaysia	Romania	Uganda
Canada	Guyana	Maldives	Russia	Ukraine
Chad	Honduras	Mauritius	Saudi Arabia	United Arab Emirates
Chile	Hong Kong (SAR)	Mexico	Senegal	Uruguay
				Viet Nam

4. Far far away exercise



4. Far far away exercise



Far Far Away Smoke-Free Draft Bill

- 1° - The consumption of cigarettes in public indoor places is prohibited.
- 2° - The provisions of this article apply to public places totally or partially enclosed by walls, divisions, ceilings, or roofs, even if provisional, where there is permanence or movement of people.
- 3° - This provision does not apply to bars, restaurants, or nightclubs specifically designated for smokers.
- 4° - Commercial establishments up to 100m² may have a specific area for smoking, provided they have adequate and convenient ventilation.
- 5° - This law shall be immediately implemented.

4. Far far away exercise

What problems do you see in this draft bill?



What problems do you see in this draft bill? use the post its to write your thoughts!

articles 3 and 4 should be deleted.

tobacco products vs. cigarettes

immediate implementation

We should delete provision 3 because the employees would be exposed.

we can define better what products are prohibited beyond cigarettes

consider smoking area for bars outside of the main area. Prescribe how many feet

In 1) indoor public places, indoor workplaces and public transport should appear

In 4) specific smoking areas should not be allowed

Immediate implementation seems tough?

defining commercial establishments?

Define tobacco products/ cigarettes to include new tobacco products

Designation of a smoking area under clause 4 should not be allowed. Still exposure

Bars, restaurants, or nightclubs should not be exempted

the law shall be immediately implemented- did we have time to hold sensitization of the law before implementing?

Far far away exercise

Some more problems..

No definitions

Limited to
cigarettes

Allows
bar/restaurants
for smokers

Limited to
public places

Allows for
smoking
areas

Immediate
implementation

No penalties

No enforcement
infrastructure

Inadequate
public
involvement

No
monitoring or
evaluation

Others?

Why Smoke Free laws are important



Tobacco industry history

824. From at least **1953 until at least 2000**, each and every one of these Defendants repeatedly, consistently, vigorously -- and falsely -- **denied the existence of any adverse health effects from smoking**. Moreover, they mounted a **coordinated, well-financed, sophisticated public relations campaign to attack and distort the scientific evidence** demonstrating the relationship between smoking and disease, claiming that the link between the two was still an “open question.” Finally, in doing so, they ignored the massive documentation in their internal corporate files from their own scientists, executives, and public relations people that, as Philip Morris’s Vice President of Research and Development, Helmut Wakeham, admitted, **there was “little basis for disputing the findings [of the 1964 Surgeon General’s Report] at this time.”**

- Judge Kessler’s decision on United States v. Philip Morris

[tclc-verdict-is-in.pdf \(publichealthlawcenter.org\)](#)

Why Smoke Free laws are important

Protection against tobacco smoke exposure by smokers and non-smokers, workers and customers.

Reduction of social acceptability of smoking practices – denormalize consumption: affects TI strategies to increase the number of smokers – it will try to impede or weaken the law.

Increase of smoking cessation, reduction of heavy smokers and initiation by the youth.

Smoking is not only an individual problem: multi-sector involvement to change paradigms.

Awareness campaigns are not enough:

- Smoke-free law in the state of São Paulo: protection of 40 million people.

Self regulation by the tobacco industry will never be effective to protect public health.

Why Smoke Free laws are important

C U L T U R E

C A N

B E

C H A N G E D



Strategies to pass Smoke Free bills



Strategies to pass Smoke Free bills

- State commitment
- Domino effect: national and local law
- Use of data and scientific evidences
- Occupational issue
- Successful international experience
- Industry allies
- Public opinion
- Local and national coalitions

Research shows that 81% of waiters are in favor of the smoke-free law in Sao Paulo

Strategies to pass Smoke Free bills

- Industry interference: Executive, Legislative and Judiciary Branch.
- Importance of advocacy.
- Importance of being amicus curiae.
- Civil society and experts' role in providing information and evidence.

Arguments used by the Industry



**Violation of the
principle of
individual freedom**

**Violation of the
principles of free
enterprise, free
trade, and free
competition**



ACT
Promoção da **Saúde**

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