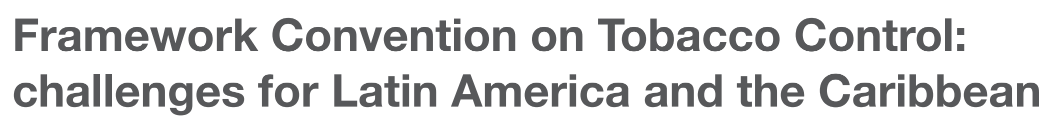

Framework Convention on Tobacco Control: challenges for Latin America and the Caribbean

Civil Society Report

2010

InterAmerican Heart Foundation
Fundación InterAmericana del Corazón
Fundação InterAmericana do Coração

About the InterAmerican Heart Foundation (IAHF)

The InterAmerican Heart Foundation (IAHF) is an international non-profit organization that works in the prevention of cardiovascular and cerebrovascular disease and in the promotion of healthy lifestyles in Latin America and the Caribbean. It has especially developed actions to promote tobacco control public policies in the region as well as education and training activities to generate positive lifestyles changes and thus reduce risk factors in the general population.

In June 2002, the (IAHF) established official relations with the Pan American Health Organization (PAHO), giving way to greater cooperation among governmental and non-governmental sectors in the prevention of non-transmissible chronic diseases (NTCD). The IAHF has over 35 member organizations, making it the only federation of heart associations and foundations in Latin America and the Caribbean. During the last years, the newly opened IAHF affiliates in Mexico, Jamaica and Argentina strengthened working at the local level.

www.interamericanheart.org

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Fundação InterAmericana do Coração

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Summary

This document is the first report developed by civil society about the implementation of the Framework Convention on Tobacco Control (FCTC) of the World Health Organization (WHO) in countries from Latin America and the Caribbean. The main objective is to provide a regional overview of the progress achieved and the obstacles encountered in the ratifying countries regarding the implementation of the FCTC measures. The information presented herein has been provided by contacts from the region and analyzed according to the FCTC standards and its guidelines.

Great progress has been achieved during the last few years in the fight against tobacco in Latin America and the Caribbean. As of October 2010, the most significant achievements in the region have been observed in the implementation of Article 11 (packaging and labelling of tobacco products) and Article 8 (protection against tobacco smoke). **Twelve** countries have already introduced health warnings with pictograms: **Brazil** (2001), **Venezuela** (2004), **Uruguay** (2005), **Chile** (2006), **Mexico** (2008), **Panama** (2008), **Peru** (2008), **Colombia** (2009), **Bolivia** (2009), **Honduras** (2010), **Paraguay** (2010) and **Nicaragua** (2010). **Nine** countries have passed national 100% smoke-free laws or decrees: **Uruguay** (2006), **Panama** (2008), **Guatemala** (2009), **Colombia** (2009), **Peru** (2010), **Trinidad & Tobago** (2010), **Honduras** (2010), **Paraguay** (2010) and **Barbados** (2010) and **three** countries have introduced similar legislation at the sub-national level: **Mexico**, **Brazil**, and **Venezuela**.

Article 13 (complete ban of advertising, promotion, and sponsorship of tobacco products) has been implemented in two countries: **Panama** (2008) and **Colombia** (2009) and other 6 countries have passed legislation including a comprehensive ban that only excludes points of sale or Internet: **Brazil** (2003), **Venezuela** (2005), **Chile** (2007), **Uruguay** (2008), **Trinidad & Tobago** (2009) and **Honduras** (2010).

However, there have been numerous countries where such measures have not yet been implemented or where the legislation introduced does not comply with the minimal FCTC standards.

Progress reported in the implementation of other high-priority policies, such as reducing the interference of the tobacco industry (Article 5.3), increasing the prices and taxes of tobacco products (Article 6), demand reduction measures concerning tobacco dependence and cessation (Article 14), policies to eliminate illicit trade (Article 15) and introducing economically viable alternatives for tobacco growth (Articles 17 and 18), is extremely dissimilar among countries. Although several countries have made progress in certain matters, in most of them such progress has not been significant.

The main obstacle for the implementation of the FCTC has been the interference of the tobacco industry (TI). The TI and its front groups have litigated against several member states with the aim of hindering progress in tobacco control policies. Despite the increasingly active participation of the civil society to monitor and denounce the TI's actions, the short- and long-term challenge is for governments to assume the responsibility of protecting their health policies from the interests of the TI and develop mechanisms of international cooperation to stop the TI interference.

Parties should accept that tobacco control policies are urgent health policies, and that simple and low-cost interventions can provide conclusive results. The lack of governmental technical capacity to approach certain matters such as tax policies on tobacco products, complete bans on tobacco advertising, promotion and sponsorship, the elimination of illicit trade and economically sustainable alternatives to tobacco growing, and the lack of official epidemiological data about the tobacco epidemic, are extended problems for the States in the region.

Introduction

The tobacco epidemic causes devastating health, social, economic and environmental consequences. It is responsible for nearly 5 million deaths per year worldwide[1] and the health and environmental costs far surpass the tobacco tax revenues that are generated. This epidemic causes more deaths than tuberculosis, HIV/AIDS and malaria combined, and deaths from tobacco are completely preventable.

The increase in tobacco use and production of tobacco products, especially in developing countries, the increase in tobacco-related morbidity and mortality observed in these countries, and the economic burden imposed on the low income population and the national health systems make tobacco-control policies a high-priority issue in the international governmental agenda. Within this context, it is important to note highlight the fast-growing increase of tobacco consumption among women during the last few years caused by the aggressive marketing strategy of the tobacco industry.

Effective tobacco-control policies have reached a global consensus in the FCTC sponsored by the WHO[2] and unanimously endorsed in the 56th World Assembly of the WHO on May 21 2003. The FCTC provides an international legal framework on tobacco control and constitutes an effective and low-cost solution to reduce disease, death, environmental and economic harm caused by tobacco use and exposure to second-hand smoke.

This legal instrument sets forth the obligations for the Parties and facilitates the implementation of the legislation necessary to protect the world population from the harmful effects of tobacco use and from exposure to second-hand smoke. The existing relationship between public health and human rights is clear, and the right to “enjoyment of the highest attainable standard of health”[3] is today a top-priority issue in the agenda of international organizations. Tobacco control policies, as recommended by the FCTC, have been endorsed by the international community and establish the minimum standards that ratifying Parties must respect to guarantee a significant impact in the reduction of smoking prevalence and exposure to second-hand smoke.

During the last 5 years, Latin America and the Caribbean -including 33 countries and a population of nearly 558 million inhabitants- has made significant progress in the application of the FCTC and has implemented important tobacco control public policies.

As of October 2010, 26 countries in Latin America and the Caribbean have ratified the FCTC. On November 2, 2009, **Bahamas** became the latest Party. **Argentina**, **Cuba**, **El Salvador**, **Haiti**, **St. Kitts and Nevis** and **St. Vincent and Grenadines** are signatories but have still not ratified the FCTC. **Dominican Republic** is the only country in the region that has not signed the treaty.

In November 2010, for the first time, the fourth session of the Conference of the Parties (COP-4) will be held in the city of Punta del Este, Uruguay. This is mainly the result of Uruguay’s leadership both at the international and domestic level to implement and enforce the FCTC.

This report is a collective work that has had the valuable support and input of regional tobacco control leaders. Its main objective is to show the FCTC implementation scenario in Latin America and the Caribbean region from the perspective of the civil

> The FCTC was designed in response to the globalization of the tobacco epidemic. Its main objective, as stated in Article 3 is to "protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke".

society using a critical analysis. Thus, this report includes progress and difficulties encountered in the implementation of several Articles and the adoption of measures that either comply with or violate the FCTC minimum standards.

It is important to note that it was not possible to obtain any information from seven ratifying countries from the Caribbean region (**Belize**, **Bahamas**, **Antigua and Barbuda**, **Dominica**, **Grenada**, **St. Lucia** and **Surinam**). No information was obtained from non-ratifying countries as this report has the objective of only examining the implementation status.

In the development of this report the MPOWER measures have been prioritized as they are considered to be most impactful in the reduction of smoking and exposure to second-hand smoke: cigarette taxes and price (Article 6), protection against tobacco smoke exposure (Article 8), packaging and labelling of tobacco products (Article 11); advertising, promotion and sponsorship of tobacco (Article 13) and smoking cessation (Article 14). On the other hand, this report also analyzes the implementation of other Articles considered relevant in the region: interference of the tobacco industry (Article 5.3), illicit trade (Article 15) and sustainable alternatives for tobacco growing and protection of the environment (Articles 17 and 18).

This report shows the valuable participation of the civil society in the promotion and monitoring of tobacco control public policies in each country and it is recognition of their commitment to the fight against the tobacco epidemic.

The FCTC strategies that generate a higher immediate impact are six and are summarized in the acronym MPOWER:

Monitor: tobacco use

Protect: people from tobacco smoke

Offer: help to quit smoking

Warn: about the dangers of tobacco

Enforce: bans on tobacco advertising and promotion

Raise: taxes on tobacco products

NOTES

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1 **10 facts on the tobacco epidemic and global tobacco control**, World Health Organization, 2008. Available at: http://www.who.int/features/factfiles/tobacco_epidemic/en/index.html

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2 **Framework Convention on Tobacco Control**, World Health Organization, 2003. Available at: http://whqlibdoc.who.int/publications/2003/9241591013.pdf

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3 Preamble of the World Health Organization Constitution. Available at: http://whqlibdoc.who.int/hist/official_records/constitution.pdf

Interference of the tobacco industry
ARTICLE 5.3

The main obstacle for the development of tobacco control policies and the implementation of the FCTC in Latin America and the Caribbean is the tobacco industry's (TI) efforts to block any effective initiative to reduce tobacco use or to protect the population from exposure to second-hand smoke. The objectives of the trasnational tobacco companies and the implementation of effective public health policies are incompatible. When a government admits the influence of the TI, it is protecting the profits of the TI at the expense of the life and the health of the population. Article 5.3 and its Guidelines demand the commitment of the Parties to protect their public health policies from the commercial and other vested interests of the TI and to recommend a set of effective measures to fulfill this commitment.

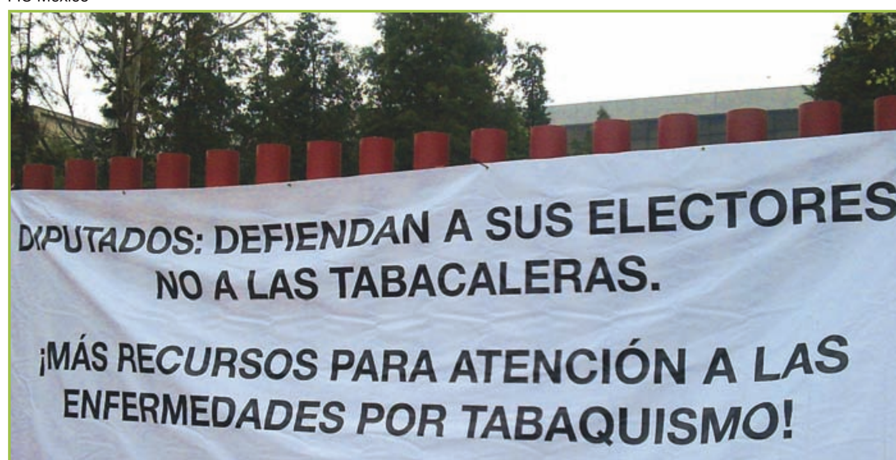
ARTICLE 5.3
"In setting and implementing their public health policies with respect to tobacco control , Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."

In the Latin American and the Caribbean region there have been different circumstances to stop or avoid the interference of the TI in the enactment of legislation or in the definition of health policies. However, only a few actions undertaken by the Parties have been focused on passing specific public policies to limit the interaction between governments and the TI and to guarantee transparency when such interaction is inevitable. In most occasions, restrictions to the participation of the TI in the design and implementation of tobacco control measures have been systematic and have been planned as a structural response to specific situations such as the discussion to introduce a new law.

As an example of application of Guidelines of Article 5.3 it is important to mention the case of **Honduras**, where the "Ley Especial para el Control de Tabaco" (Special Tobacco Control Act 2010) was passed in 2010. The National Congress in that country, according to the recommendations of the FCTC, did not allow the participation of TI representatives during the debate of the bill despite the persistent request of the Consejo Hondureño de la Empresa Privada (Honduran Council of Private Corporations) and of some national congressmen. Section 7 of the Honduran law explicitly prohibits "all interference from commercial or other vested interests of the tobacco industry".

Similarly, in **Colombia** the interference of the TI was held back during the discussion of the tobacco control law enacted in 2009, mainly as a result of the interventions by civil society. Despite pressure from the TI, Colombian policy-makers excluded the TI from the discussions based on Article 5.3 of the FCTC.[1]

FIC Mexico



In 2008, **Guatemala** was able to reduce the interference of the TI during the enactment of the national law that set forth the implementation of 100% smoke-free environments. The Supreme Court dismissed the public action for unconstitutionality filed by the TI through the Chamber of Commerce with the objective of preventing the adoption of such measure. In **Panama**, in the text of the bill enacted in 2004 establishing the ratification of the FCTC, the content of Article 5.3 was transcribed, thus assuming the commitment to stop the interference of the TI in the design and implementation of tobacco control policies. In **Peru**, the participation of TI's representatives was not allowed during discussion of the tobacco control bill at the parliamentary commissions in 2010. This was achieved thanks to the involvement of civil society.

Also, **Bolivia** reported the creation of the Tobacco Control Inter-institutional Commission formed by the Ministry of Health, the Government of the City of La Paz and several organizations from the civil society. This commission is expected to make important progress to monitor the actions of the TI and counter its interference. **Costa Rica** introduced a bill in 2009 that included measures to explicitly protect against the interference of the TI and **Ecuador** presented a bill at the National Assembly that included similar measures although its discussion is still pending.

Civil Society in the region has played a significant role at monitoring the TI actions and reducing its interference in the enactment and enforcement of public legislation.

A frequently used mechanism to hinder the implementation of effective policies are legal actions. In **Colombia** and **Brazil**, for example, the TI or its front groups have initiated legal actions with the argument of unconstitutionality of the legislation that imposes the ban on advertising, promotion and sponsorship of tobacco products. The same has been the case of the province of Santa Fe, in **Argentina**. Also, **Uruguay** has received the attack by Phillip Morris International that has sued against the 2008 legislation that requires the adoption of health warnings enacted in 2008. In **Paraguay**, the TI filed a lawsuit to cancel the Decrees that establish the implementation of 100% smoke-free environments and the implementation of health warnings in cigarette packs. As of October 1, 2010 these decrees are suspended but the lawsuit's resolution is still pending. Furthermore, the Paraguayan Parliament is debating a bill that favors the interests of the TI and violates the FCTC minimum standards.

In **Colombia**, non-governmental organizations have undertaken actions to denormalize and denounce activities described as “socially responsible” by the TI. Corporate Accountability International (CAI), from its regional office in that country, has played a major role at denouncing the TI actions in the Latin American and the Caribbean region. It has published case studies describing the TI interference in the region and worldwide in collaboration with the Network for Accountability of Tobacco Transnationals (NATT). In 2009, CAI Colombia launched the creation of a civil society monitoring group that will work in the implementation of Article 5.3 at the regional level.

In **Mexico**, the Centro de Investigación y Docencia Económicas (Center for Economic Reasearch and Education) (CIDE) began to develop a research Project about the interference of the TI in tobacco control policies. Also, in 2010, Mexican organizations published the 5th report about the implementation of the FCTC[2] describing several cases of interference of the TI.

In **Brazil**, organizations from the civil society have published annual reports about the implementation of the FCTC and reported on the actions of interference of the TI. The Aliança de Controle do Tabagismo (ACT) has denounced actions of interference of the TI in different areas including corporate social responsibility actions undertaken in that country.

Other countries, such as **Panama**, **Paraguay** and **Bolivia**, have reported numerous actions from civil society to reduce the interference of the TI, including media reports, training workshops, publication of reports that have been the result of monitoring the actions of the TI and strengthening the civil society by creating networks and coalitions.

The local experts who were contacted for the development of this report have mentioned actions of interference of the TI that show the pressing need to apply Article 5.3 and its Guidelines in the region. In **Venezuela**, the Fundación Venezolana de Cardiología (Venezuelan Foundation of Cardiology) denounced in the media the existence of a cooperation agreement that violates Article 5.3 between the government of the State of Monagas and the BIGOTT Foundation, from BIGOTT, a British American Tobacco (BAT) subsidiary.

Chile, reported the existence of at least two cases in which former government officials formed part of the Board of Directors of the “Compañía Chilena de Tabacos” (BAT Chile) after leaving office.

Although governments have not made substantial progress in the implementation of Article 5.3, there has been significant progress in the region regarding the participation and commitment of the civil society to monitor, denounce and counter the actions of the TI. This impulse from the organizations is expected to become an opportunity for governments to pass legal norms for countering the interference of the TI in tobacco control policies and establishing procedures that guarantee transparency in the interactions that may occur between the TI and public institutions and officials.

> The availability of over 11 million internal documents of the TI by the Legacy Tobacco Documents Library (LTDL) at the University of California San Francisco has made it possible to unravel the strategies the TI uses to interfere in the implementation of public health policies. Several scientific publications provide evidence of the review and analysis observed in these internal documents and highligt the insidious role of the TI in Latin America and the Caribbean.

> On September 29, 2010, the 50th Directing Council of the Pan American Health Organization formed by the Ministries of Health of the Americas, at the 62° session celebrated in Washington DC, passed a resolution in which States are encouraged to ratify and implement the FCTC and to reduce the interference of the tobacco industry that hinders the implementation of such policies. Furthermore, the resolution also shows the support for Uruguay regarding the lawsuit filed by Phillip Morris International that intends to withdraw the implementation of health warnings on tobacco products.

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1 **2010: Global Tobacco Treaty Action Guide**; Corporate Accountability International NATT; 2010. Available at: www.stopcorporateabuse.org/sites/default/files/GTTAG_english_web.pdf

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2 **Framework Convention on Tobacco Control in Mexico - 5th. Report of the Civil Society**, May 2010. Available at: http://www.interamericanheart.org/ficmexico/wp-content/uploads/2010/05/5-cmct-2010.pdf

Price and tax measures to reduce the demand for tobacco ARTICLE 6

There are few examples of public policies that represent both a health and an economic benefit. Tobacco tax increase and the subsequent price increase of tobacco products is one of them. This policy constitutes the most effective independent measure to reduce consumption of tobacco products and to prevent initiation among young people and, at the same time, increases tax revenues.

The FCTC sets forth that Parties should reach tax rates between 66.6% and 80% on the retail price of tobacco products. However, it is important to point out that taxation policies are only effective in reducing tobacco consumption when they include per-capita income variability and inflation rates. If the tax increase is lower than inflation or if income increase compensates price increase facilitating the purchase of cigarettes, then, consumption will not decrease. Therefore, for taxation policies to be effective, they must guarantee that tax increases are translated into price increases, that tax rates are applied to all products in the same manner and that tax rates are in accordance with that country's inflation rate and the purchasing power of consumers. Due to the characteristics of the tobacco market, there is a significant margin to increase cigarette taxes obtaining, at the same time, a reduction of tobacco consumption and an increase of tax revenues for governments.

To show the effectiveness of taxation policies adopted by different Parties of the FCTC, it is necessary to analyze tax increases with respect to the evolution of the real price of cigarettes and the evolution of the purchasing power in each country. The Real Price Index of Cigarettes (Índice de Precio Real de los Cigarrillos-IPRC) shows the evolution of the real price of the cigarette pack of the top-selling brand in each country (nominal price divided by the consumer price index). IPRC increase in a specific period of time indicates that cigarettes became more expensive. This indicator makes it possible to interpret cigarette price increase taking into account the inflation rate of that country.

In **Costa Rica**, **Peru** and **Guatemala** the real price of cigarettes decreased between 2007 and 2010, which means a drawback for these countries (see Table 1). In **Peru**, for example, the real price of cigarettes dropped 5% between 2007 and 2010: the IPRC decreased from 1 to 0.95, indicating that cigarettes have a lower cost in 2010 than in 2007. The opposite case is true for **Ecuador** where the real price increased 25% in the same period, or **Panama** where the real price increased 116% and cigarettes became significantly more expensive. **Venezuela** was the country with more progress in this matter as the IPRC grew 118% from 2007 to 2010 (see Table 1).

Although the IPRC cannot be compared between countries (because price indexes vary from one country to another), it is useful to show the evolution of the real price of cigarettes in each country. This analysis should be complemented with the estimation of affordability (the capacity of acquiring a product according to its price and the income of potential consumers). The Index of Cigarette Affordability (ICA) expresses the percentage of the Gross National Product (GNP) per capita required to buy 100 cigarette packs of the top selling brand in a country. The higher the ICA the more difficult it is to acquire cigarettes, and vice versa.

Again, **Costa Rica**, **Guatemala** and **Peru** showed a drawback as their index dropped between 2007 and 2010 (see Table 2). In Guatemala, for example, the ICA decreased 5.7% between 2007 and 2010, shifting from 5.66 to 5.34. This means that cigarettes became cheaper due to a higher income of consumers and a low price increase. On the other hand, **Panama** and **Venezuela** showed more progress in this regard (see Table 2).

ARTICLE 6
"Price and tax measures to reduce the demand for tobacco

1. The Parties recognize that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.

2. Without prejudice to the sovereign right of the Parties to determine and establish their taxation policies, each Party should take account of its national health objectives concerning tobacco control and adopt or maintain, as appropriate, measures which may include:

a) implementing tax policies and, where appropriate, price policies on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption; and

b) prohibiting or restricting, as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products.

(…)

TABLE 1
Real Price Index for the purchase of cigarettes in the 2007-2010 period
(IPCR normalized to 1.00 in 2007)

COUNTRY	2007	2008	2009	2010
Argentina*	1.00	1.01	0.84	0.94
Bolivia	1.00	0.98	1.04	1.20
Brazil	1.00	1.02	0.96	1.16
Chile	1.00	1.21	0.87	1.14
Colombia	1.00	1.12	0.88	1.15
Costa Rica	1.00	1.04	0.79	0.88
Dominican R.*	1.00	1.21	1.04	0.87
Ecuador	1.00	1.42	0.83	1.25
El Salvador	1.00	0.99	-	1.17
Guatemala	1.00	0.92	0.86	0.99
Honduras	-	1.00	-	1.38
Mexico	1.00	1.17	1.10	1.14
Nicaragua	1.00	0.86	-	1.00
Panama	1.00	1.23	-	2.16
Peru	1.00	1.01	1.07	0.95
Uruguay	1.00	1.09	1.00	1.22
Venezuela	1.00	2.17	1.75	2.18

TABLE 2
Affordability Index for the purchase of cigarette during the 2007-2010 period

COUNTRY	2007	2008	2009	2010
Argentina*	2.03	1.84	1.50	1.75
Bolivia	5.25	5.25	5.40	6.30
Brazil	1.76	1.69	1.51	1.83
Chile	2.11	2.51	1.88	2.41
Colombia	1.69	1.80	1.40	1.78
Costa Rica	2.46	2.45	1.88	2.06
Dominican R.*	5.87	6.86	5.44	4.62
Ecuador	4.87	6.64	3.59	5.59
El Salvador	4.11	3.95	-	4.83
Guatemala	5.66	5.10	4.74	5.34
Honduras	-	5.52	-	7.83
Mexico	2.32	2.64	2.46	2.73
Nicaragua	12.62	11.38	-	12.92
Panama	2.87	3.31	-	5.23
Peru	3.47	3.37	3.46	3.05
Uruguay	2.64	2.66	2.30	2.73
Venezuela	2.19	4.81	3.78	5.72

*Non-Party to the FCTC | Source: Indexes estimated by Martin Gonzalez Rozada[1]

For cigarette tax increase policy to be effective in reducing smoking prevalence it is necessary to:

- Increase tobacco consumption taxes to reach the level recommended by the FCTC.
- Increase tobacco-specific taxes beyond ad valorem taxes (depending on cigarette prices), as these taxes discourage price manipulation and, because they are the same for all brands, they also discourage smokers to change to another cheaper cigarette brand.
- Perform automatic adjustments on specific taxes according to the inflation rate[2]

Even when the IPRC and the ICA increase are not only attributable to tax increases, these indexes provide valuable information to assess the actual impact of tax policies.

Panama is one of the countries that has shown more progress regarding tax policies. In October 2009, there was an increase of the selective tax of tobacco products from 32.5% to 50% by Act 49. In November 2009 the increase was from 50% to 100% by Act 69. Cigarette pack prices almost doubled reaching almost $4 USD by October 1, 2010. Regarding tax revenue, there was an increase of 130% between the first semester of 2009 and the first semester of 2010. These results are shown in the fact that the real price of cigarettes in this country grew 116% from 2007 to 2010, one of the most important increases in the region. Also, the ICA increased 82.2%, thus considerably decreasing the capacity with which cigarettes can be purchased in that country.

In **Uruguay**, tax increases have been applied at the national level by different means. With the Tax Reform of July, 2007 there was an increase of the Value Added Tax (VAT) from 0 to 22%. In June 2007 Decree 232/2007 stated the increase of the Specific Internal Tax (IMESI) from 68% to 70% for cigarettes, and in pipe tobacco fromn 22% to 29%. In June 2009 there was a substantial increase in the IMESI rate for cigarettes and pipe tobacco. In February 2010, the IMESI increased to about $2 USD per 20-cigarette pack. Also, there was a substantial tax increase in pipe tobacco, which in **Uruguay** represents 25% of consumption. The current IMESI rate for all tobacco products is 70%. Tax pressure in **Uruguay** (that includes the IMESI and the VAT) is one of the highest in Latin America and the Caribbean and is within the range suggested by the FCTC: 72.3% on the price of the top selling cigarette brand. Although tax policies implemented in this country have had the objective of improving the health of the population and have achieved a 22% price increase between 2007 and 2010, the ICA only increased 3.4% in the same period due to an important per capita income growth in Uruguay.

In 2009, **Brazil** increased cigarette taxes by increasing the Tax on Industrialized Products and the rate of the PIS-Cofins tax (Social Security Financial Contribution Tax). This caused a price increase of about 27%. However, indirect taxes on cigarettes are still low in this country, which represents about 60% of the price of the top selling cigarette brand. Also, prices are still relatively low in relation to the income per capita, as it has been growing significantly during the last years and price cigarette did not correlate with this increase. In fact, the affordability index in this country grew less than 4% between 2007 and 2010.

In **Ecuador**, after the ratification of the FCTC, the main tax policy implemented was the "Tax Equity Act" in December 2007 that determined an ad valorem tax increase on tobacco products. Thus, the increase was from 98% of the value of the cigarette pack –in force until December 2007- to 150% since January 2008 and it is still maintained as of October 2010. This tax rate is applied to the sale price without VAT of the top selling cigarette brand which amounted to a tax of $0.91 USD per cigarette pack in April 2010. However, at the end of 2009 a bill that had the objective of increasing cigarette taxes by means of a specific tax of $0.07 USD per cigarette was not passed (Taxation Regime and Tax Equity Amendment Act). Measures passed in 2007 had a positive effect on tobacco control strategies that was reflected in substantial price increases and in the accessibility index (see Tables 1 and 2) from the year 2008. However, the impact began to disappear due to the lack of a sustained taxation policy. Organizatons from civil society in Ecuador reported that failure to pass the last bill was a consequence of the interference of the tobacco industry that used false arguments, such as the fact that taxes would increase illicit trade and would have a negative impact on businesses and employment.

In **Mexico**, policymakers agreed a minimum increase of 2 Mexican pesos in 2009 (about $0.17 USD) in the Special Tax on Services and Production (IEPS) in each cigarette pack which will have a gradual increase from 2010 to 2013. Organizations from civil society have publicly denounced that this measure implies an annual increase in the cigarette price of poor impact on consumption. According to the information provided by experts, in the development of this policy no studies developed by the National Institute of Public Health were considered nor the recommendations of experts who suggested a substantial and effective tax increase to reduce tobacco consumption. In **Mexico**, great effort is currently bein made to promote the implementation of Article 6. Technical capacity has been strengthened both at governement and civil society level and several organizations are leading a campaign called "Say YES to tobacco tax" (www.votoporlasalud.org) to achieve a significant and effective tax increase to reduce tobacco consumption.

FIC Mexico

In **Chile**, after the earthquake of February 2010, the government proposed a 3% tax increase specific for tobacco products plus a fixed value per cigarette pack of $0.10 USD despite the Ministry of Health recommendation to increase 7%. This increase is still pending the final decision.

In **Paraguay** there are attempts to make progress in the implementation of a taxation policy. As a consequence of these efforts, in July 2010, after passing the Amateur Sport Act, a 9% tax increase on tobacco products was included in the legislation. This will be enforced in November 1, 2010. Other taxation policies are also being developed.

Price increase of tobacco products by means of tax increases is an effective measure to promote smoking cessation, reduce consumption of tobacco products and discourage initiation by potential smokers. Elasticity-price studies developed in Latin America and the Caribbean countries show that in medium-income countries, increases in tobacco taxes that would result in a 10% tobacco price increase would produce an approximate 5% decline in smoking. This would occur if real income remained constant.

The rest of the countries did not inform about the implementation of significant taxation policies with the objective to reduce tobacco consumption.

The implementation of Article 6 has not shown significant progress in the Latin America and Caribbean. On the other hand, the historic participation of professionals mainly from the health sector in the promotion of tobacco control policies makes it difficult to have experts from civil society with qualified technical knowledge able to play an essential role in the political change in this matter.

Taxation measures adopted by the countries in the region are isolated and do not have a regular adjustment criterion that may guarantee their compliance with public health objectives.

In **Uruguay**, Phillip Morris International reduced the prices of the top selling cigarette brands to avoid competition. This resulted in the company selling one of its cigarette brands at almost the same value of the taxes it should pay per pack. The Uruguayan tobacco company, Montepaz, filed a complaint on the grounds of "dumping", that is being analyzed by the government.

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1 indexes estimated from the information obtained from the World Report of the World Health Organization for the top selling cigarette brands 2007 and 2008, and ©2010 Euromonitor International [database on the Internet]. Cigarettes: Latin America. Euromonitor International [accessed 2010 October 13] for the top selling cigarette brands, 2009 and 2010. 2010 data from El Salvador, Honduras and Nicaragua (not available in the Euromonitor) were provided by local referents and informed by Dr. Odessa Henriquez from the Anti-Tobacco Alliance of Honduras. Cigarette price corresponding to 2010 in Panama were provided by Dr. Reina Roa. For the countries that are not mentioned, no information was obtained.

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2 Waters H, Sáenz de Miera B, Ross H, Reynales Shigematsu LM. **The Economics of Tobacco and Tobacco Taxation in Mexico.** Paris: International Union against Tuberculosis and Lung Disease; 2010.

Protection from exposure to tobacco smoke
ARTICLE 8

Article 8 of the FCTC states that each Party shall protect the health of the population from exposure to tobacco smoke. The legislation that establishes the implementation of 100% smoke-free environments in all indoor public places, workplaces and public transportation, without exceptions, is the only measure that guarantees the protection from exposure to tobacco smoke of all persons.[1] Legislation that allows voluntary regulation and/or the habitation of designated smoking areas and/or ventilation systems are not effective and do not protect many workers, especially those who are more exposed.[2] The standards established in the Guidelines of Article 8 have been very useful to accelerate the enactment and enforcement process of 100% smoke-free environment legislation.

In Latin America and the Caribbean there has been substantial progress in this matter during the last 5 years, being the region that achieved greatest progress worldwide regarding the implementation of similar legislation in the last two years.

As of October 1, 2010, 8 countries have enacted 100% smoke-free environment laws or decrees nationwide: **Uruguay** (2006), **Panama** (2008), **Guatemala** (2009), **Colombia** (2009), **Peru** (2010), **Trinidad & Tobago** (2010), **Honduras** (2010) and **Barbados** (2010). In **Paraguay** a decree from the Executive Branch has established the implementation of 100% smoke-free environments (2010). However, this measure is suspended due to a precautionary measure (see Article 5.3).

In some countries, where the legislative process has been difficult at the national level, important progress at the subnational level has been observed. This is the case of **Mexico**, **Brazil** and **Venezuela**.

In 2008, **Mexico City** enacted a 100% smoke-free environment legislation that implied protection for nearly 10 million people. During the same year, similar legislation was introduced in the State of Tabasco, covering a population of about 1,550,000 inhabitants.

In **Brazil**, due to the delay in the amendment to Federal Act 9.294 of the year 1996 - that allows designated smoking areas in indoor places -, several states and cities have implemented local legislation in accordance with the FCTC. In May 2008, the city of Río de Janeiro - with over 6 million inhabitants - introduced a decree declaring Rio a 100% smoke-free city. In 2009, the states of Sao Paulo, Río de Janeiro and Paraná implemented similar legislation. The same was also achieved in the states of Amazonas, Rondonia, Roraima and Paraiba, and the cities of Cornelio Procópio, Maringa and Curitiba (Parana), Salvador and Lauro de Freitas (Bahia), Juiz de Fora (Minas Gerais), Tubarão and Criciúma (Santa Catarina), Belem (Para), Pelotas (Rio Grande do Sul) and Manaos (Amazonas). This accounts for a population of about 80 million inhabitants that are now protected from exposure tobacco smoke.

Venezuela has also implemented 100% smoke-free environment legislation in the State of Monagas, with a population of about 900,000 inhabitants. Furthermore, five cities have been declared 100% smoke-free: Libertador de Caracas (District of Caracas), Guaicaipuro in the State of Miranda and three cities in the State of Nueva Esparta.

ARTICLE 8
"Protection from exposure to tobacco smoke
1. Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability.
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."

Although this report has the objective of providing information only about ratifying countries, it is important to note that **Argentina**, despite not being a Party to the FCTC, has made significant progress in the enactment of 100% smoke-free environment legislation at the subnational level. Between 2003 and 2010, 9 provinces and over 25 cities have introduced this type of legislation in accordance with the mínimum FCTC standards. This accounts for about 14 million people, 35% of the total Argentinean population, protected from tobacco smoke exposure. The provinces with 100% smoke-free legislation include: Córdoba (2003), Santa Fe (2005), San Juan (2005), Tucumán (2005), Neuquén (2007), Mendoza (2007), Entre Ríos (2008), Santiago del Estero (2009) and San Luis (2010).

The current challenge for the region is achieving a successful implementation of the 100% smoke-free legislation in force. The level of compliance in Latin America and the Caribbean is heterogeneous. Some countries have reported a high level of compliance. Such is the case of **Uruguay**, where the level of compliance is about 97% and the smokers' acceptance of this measure is 71%. Similarly, the organizations from **Panama** reported a considerable level of compliance and great social acceptance. However, in other countries, local experts have reported certain difficulties in the implementation of the legislation. According to data recorded, one of the main reasons for such difficulty is the lack of official bodies for compliance control and surveillance.

Morguefile

In **Guatemala**, local referents have reported the lack of a telephone line to denounce violations of the 100% smoke-free legislation or a specific government body to follow-up on such complaints. On the other hand, low compliance was reported in bars and pubs due to the lack of night-time inspections.

In **Colombia**, there are reports of lack of political will to strengthen the implementation of the legislation as there are no national programs or campaigns to raise awareness and to promote the compliance of the norm. However, great social acceptance has been observed.

In **Trinidad & Tobago** a satisfactory implementation has been reported in the capital city and in several cities; however, this is not the case in rural areas where there are no qualified staff responsible for fulfilling compliance surveillance and control.

Regarding compliance of subnational legislation, **Brazil** has reported a high level of compliance in Sao Paulo (99.8% of 361,077 venues surveyed in one year), and a high level of support (97% non-smokers, 92% smokers).[3 4] Also, 49% of smokers reported having reduced smoking after the implementation of the smoke-free legislation. In Rio de Janeiro, 99.3% of the venues supervised comply with the legislation three months after entry into force of the 100% smoke-free legislation.[5] This shows a high level of acceptance of the legislation. In Curitiba (Parana) similar results were reported: only 0.6% of the venues supervised showed violations to the smoke-free legislation.[6]

Although several countries have already ratified the FCTC, they have passed legislation post-ratification that do not comply with the minimum standards defined in the Convention and its Guidelines as they allow designated smoking areas or false solutions such as ventilation systems and air purifiers. These include: **Chile** (2006), **Ecuador** (2006), **Mexico** (2008), **Bolivia** (2009) and **Nicaragua** (2010). The local referents from the civil society have stated that the tobacco industry has interfered to prevent authorities from fulfilling the commitment assumed when ratifying the FCTC.
In Caribbean countries such as **Jamaica** and **Guyana**, that ratified the FCTC in 2005, only voluntary restrictions have been reported in offices, shops, restaurants, cinemas and government buildings but, as of October 2010, no 100% smoke-free environment legislation has been enacted. In **Costa Rica**, who ratified the FCTC in 2008, there is a partial restriction legislation from the year 1995 that has not been modified.

On the other hand, the 5th civil society report about the implementation of the FCTC in **Mexico**[7] pointed out that, despite the high level of compliance in Mexico City, no appropriate sanctions or penalties have been applied in cases of violations to the legislation especially in venues that have introduced designated smoking areas post-law.

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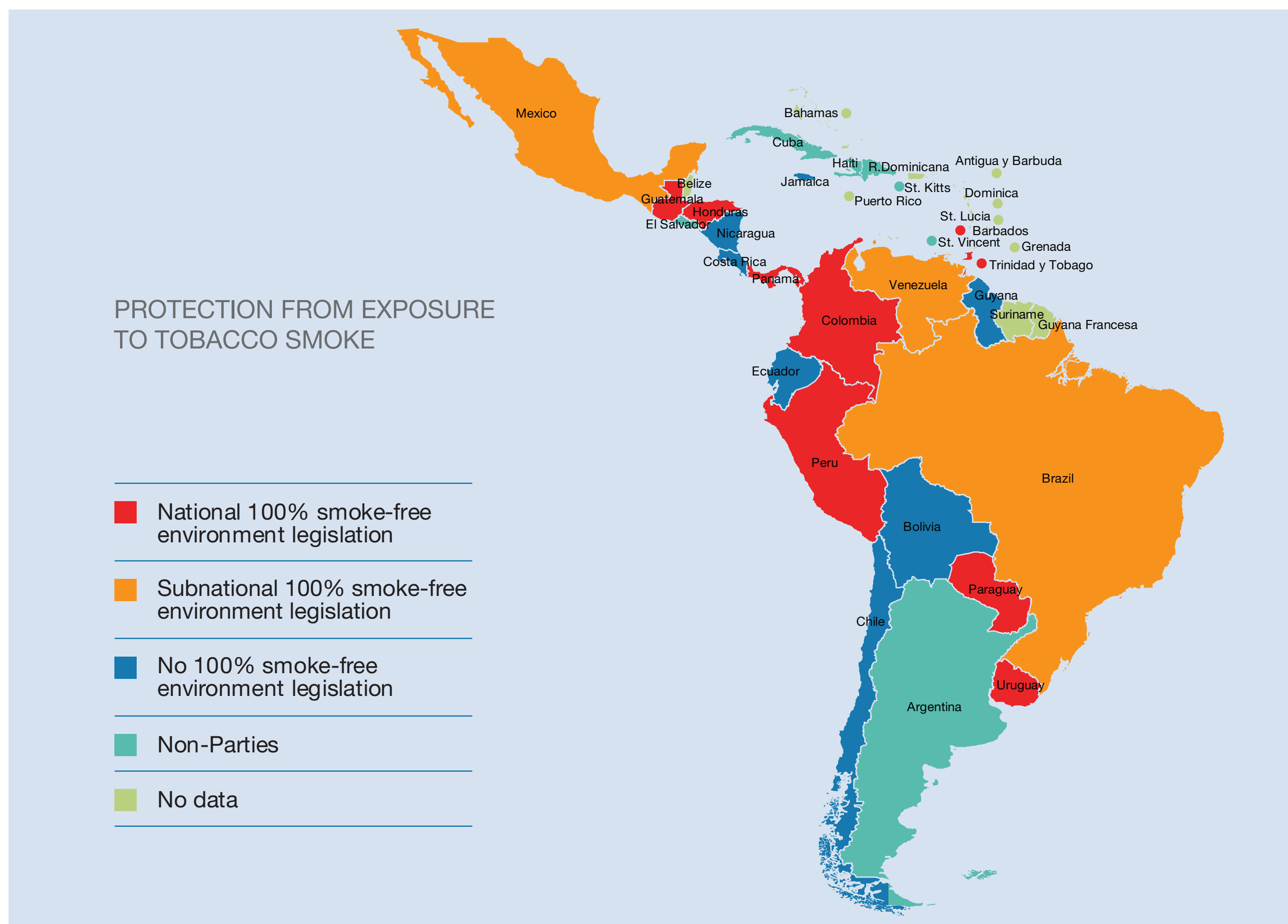
The enactment of 100% smoke-free environment legislation should be followed by an appropriate implementation and monitoring plan. Local contacts from **Guatemala**, **Colombia** and **Trinidad & Tobago** and from **Mexico City** have reported difficulties in the implementation of the legislation. To change this situation, governments shall recognize the obstacles and work towards the development of effective mechanisms that guarantee a successful implementation for the protection of the whole population from tobacco smoke.

In most countries where the implementation is still ineffective or where the enactment of 100% smoke-free legislation is still pending, the main obstacle has been the interference of the TI. One of the most significant cases is **Paraguay**, which has a Presidential 100% smoke-free environment Decree since April 7, 2010. Policymakers are currently debating the introduction of a bill that, although it has not been passed as of October 1, 2010, has already been discussed in both Houses. The bill that, although it has not been passed up to October 1, 2010, it has already been discussed in both Houses. Such bill is a clear example of the interference of the TI (see Article 5.3) as it accepts the introduction of measures that benefit the TI's interests, such as the introduction of designated smoking areas and the voluntary regulation by owners. In case this bill is passed, it will result in a drawback in the protection of the right to health for the Paraguay population. This could be considered as contrary to Observation N. 14 from Article 12 of the International Covenant on Economic, Social and Cultural Rights (General Comment No. 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 22 session, 2000, U.N., E/C.12/2000/4 (2000))that establishes that the measures adopted by the Parties to guarantee the right to health shall be progressive and not regressive.

As legislation in **Peru**, **Honduras** and **Barbados** has been recently enacted there are no data about implementation and compliance.

The implementation of 100% smoke-free environments is the policy that has shown more progress in the countries of Latin America and the Caribbean. Although the enactment of national legislation is still pending in several countries, legislation at the subnational level has provided a very effective mechanism to increase coverage of population protected from exposure to second-hand tobacco smoke. The civil society has actively participated in the promotion of these policies and has played a main role in the enactment and enforcement of legislation that complies with the minimum standards of both the FCTC and Article 8 Guidelines.



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2 **Smoke free inside**, World Health Organization, 2007. Available at: http://www.who.int/tobacco/resources/publications/wntd/2007/Smoke-free%20inside%2012pages_FINAL.pdf

3 VISA e PROCON – Sao Paulo, Fiscalization bodies

4 IBOPE survey, Octuber 2010

5 Source: http://www.riosemfumo.rj.gov.br

6 Source: http://www.curitiba.pr.gov.br

7 **Framework Convention on Tobacco Control in Mexico - 5th. Report of the Civil Society**, May 2010 Available at: http://www.interamericanheart.org/ficmexico/wp-content/uploads/2010/05/5-cmct-2010.pdf

Packaging and labelling of tobacco products
ARTICLE 11

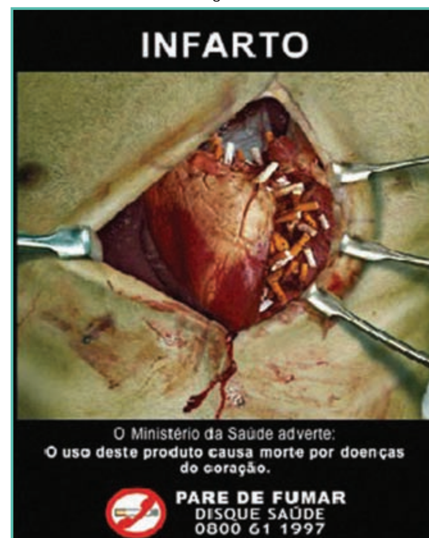
Article 11 of the FCTC requires Parties to implement measures for packaging and labelling of tobacco products that do not promote a tobacco product by any means that are misleading and that include health warnings with pictograms. Also, the FCTC calls forth the adoption of measures within a period of three years after entry into force of the Convention. The inclusion of large health warnings with pictograms is effective to raise awareness about the risks of smoking, to discourage initiation, reduce tobacco use and encourage cessation[1 2]. When this measure is implemented, smokers who smoke a package a day are exposed to health warnings 7,000 times per year.

Article 11 has been successfully implemented in the region during the last few years. According to Article 11 Guidelines, health warnings should be 50% or more of the principal display areas but shall be no less than 30% of the principal display areas. Health warnings that fulfill these requirements and the elimination of misleading terms such as “light”, “low tar” and “ultra-light”, etc. are effective and low-cost measures.

In 2002, **Brazil** became the first country in the region to eliminate misleading information from cigarette packs forbidding the use of terms that could create an erroneous impression about the health risks of tobacco use. Thus, the use of terms such as “light”, “mild” or “ultra-light” was prohibited. In recent years, nine additional countries introduced this measure: **Chile** (2006), **Mexico** (2008), **Panama** (2008), **Peru** (2008), **Uruguay** (Presidential Decree in 2005 and Law in 2008), **Colombia** (2009), **Bolivia** (2009), **Honduras** (2010) and **Nicaragua** (2010).

2009 Brazilian health warnings

2009 Brazilian health warnings



However, despite efforts from the Parties to prohibit the use of misleading or false information on cigarette packs, the tobacco industry applies strategies to substitute those forbidden terms by other graphic resources such as the use of attractive colors and thus evading the spirit of protection of the law. Parties will have the challenge to protect the population from this practice and to begin a process towards a “plain or generic” packaging of cigarette packs.

ARTICLE 11
“**Packaging and labelling of tobacco products**
1. Each Party shall, within a period of three years after entry into force of this Convention for this Party, adopt and implement, in accordance with its national law, effective measures to ensure that:
a) tobacco product packaging and labelling do not promote a tobacco prodyct by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions (…)
b) each unit packet and package of tobacco products and any outside packaging and labelling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages. (…)”

Besides the elimination of misleading information, many countries have implemented the inclusion of health warnings with pictograms on cigarette packs according to Article 11.

2009 Uruguay health warnings

Today, twelve countries have enacted legislation that sets forth the implementation of health warnings with pictograms of at least 30% of the principal display areas: **Brazil** (2001), **Venezuela** (2004), **Uruguay** (2005), **Chile** (2006), **Mexico** (2008), **Panama** (2008), **Peru** (2008), **Colombia** (2009), **Bolivia** (2009), **Honduras** (2010), **Paraguay** (2010) and **Nicaragua** (2010). It is important to note that, although other countries have implemented health warnings, they have not been included in this report as they do not fulfill the minimum standards stated in Article 11.

In **Mexico**, **Bolivia** and **Paraguay** there are obstacles or delays in the implementation of legislation that sets forth the inclusion of health warnings with pictograms in cigarette packs. The deadline for the implementation of Article 11 of the FCTC has been reached in **Guatemala**, **Barbados**, **Trinidad & Tobago** and **Guyana**. Therefore, these countries are in violation of the commitments assumed when ratifying the FCTC.

PACKAGING AND LABELLING OF TOBACCO PRODUCTS

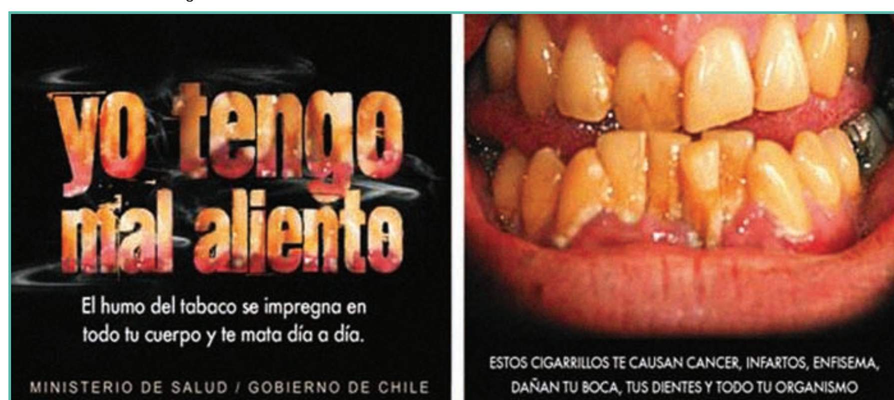
- Health warnings in accordance with the FCTC
- No health warnings in accordance with the FCTC
- Non-Parties
- No data

Mexico, Bahamas, Cuba, Haiti, R.Dominicana, Antigua y Barbuda, Jamaica, St. Kitts, Dominica, Puerto Rico, Belize, Guatemala, Honduras, El Salvador, Nicaragua, St. Lucia, Barbados, St. Vincent, Grenada, Costa Rica, Trinidad y Tobago, Panama, Venezuela, Guyana, Suriname, Guyana Francesa, Colombia, Ecuador, Peru, Brazil, Bolivia, Paraguay, Chile, Uruguay, Argentina

Although most of the countries that have enacted this type of legislation have successfully implemented health warnings, there are cases in which the application is still pending. In **Honduras** and **Nicaragua** where the legislation has been recently introduced, the implementation process is in the development stage.

In other countries, however, the period between the enactment of the legislation and the implementation of the health warnings has been longer than expected. In **Mexico** there was a delay of more than two years from the enactment of the Act in 2008. As of October 2010, the implementation of health warnings with pictograms is still pending. In **Bolivia** the legislation that requires the inclusion of health warning with pictograms is not being duly implemented as they only include text. Referents from the civil society in that country reported that the tobacco industry is organizing campaigns to weaken the measure and has included messages and promotions on the cigarette packs. One of the campaigns, called "Now you pack talks", gives away guitars, videogames, laptop computers, audio and video equipment, and cell phones.

2009 Chile health warnings



In **Paraguay**, Decree N. 1406 which requires of health warnings was passed on March 25, 2010 and should have been enforced in July 2010. However, a legal action for unconstitutionality filed by the TI has cancelled this process. In this country, the TI has played an essential role in the lobby to stop the implementation of pictorial health warnings and to reduce them to 30% in both display areas of the cigarette pack.

Ecuador, **Costa Rica**, **Guatemala** and several **Caribbean countries** that have ratified the FCTC have still not implemented this policy.

Despite local difficulties and TI interference, measures recommended in Article 11 and its Guidelines have been successfully implemented in a significant number of countries. The policy requiring the inclusion of health warnings with pictograms and the elimination of misleading information from cigarette packs is one of the most successful measures with greater progress regarding the FCTC implementation in the region.

Since 2005, **Uruguay** has health warnings according to the standards sets forth in Article 11. Decree 287/2009 recently increased the size of the health warnings to 80% of the principal display area in cigarette packs – making them the largest worldwide-. Also, each commercial brand shall have only one presentation of the tobacco product thus prohibiting the use of terms or graphic resources that may create the false impression that a particular tobacco product is less harmful than other tobacco products. This policy, originated an unprecedented lawsuit filed by Philip Morris International against the Uruguayan Governement. The lawsuit is still pending decision as the government decided to continue until the final decision is reached.

In 2008-2009, The Intergovernmental Commission on Tobacco Control of the **MERCOSUR (Common Southern Market)** made available for the countries of Latin America a database of health warnings with pictograms (www.cictmercosur.org). In the case of English-speaking Caribbean countries, efforts led by **Jamaica** will promote the inclusion of health warning labels with pictograms in the **CARICOM** countries (Caribbean community).

NOTES

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1 Hammond D, Fong GT, Borland R, Cummings KM, McNeill A, Driezen P. **Text and graphic warnings on cigarette packages: Findings from the international tobacco control four country study**. American Journal of Preventive Medicine. 2007 Mar;32(3):202-9.

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2 Shanahan P, Elliott D. **Evaluation of the Effectiveness of the Graphic Health Warnings on Tobacco Product Packaging 2008** — Executive Summary. Australian Government Department of Health and Ageing; 2009. Available at: http://www.health.gov.au/internet/main/publishing.nsf/Content/83F397C5993B9AA4CA2575880078FCF2/$File/hw-eval-exec-sum.pdf

Tobacco advertising, promotion and sponsorship
ARTICLE 13

Article 13 of the FCTC states that one of the most decisive measures to discourage consumption of tobacco products is the complete ban on advertising, promotion and sponsorship. The Convention sets forth that Parties shall adopt this measure within a period of five years after entry into force of the FCTC.

Partial restrictions on tobacco advertising, promotion and sponsorship are ineffective because the tobacco industry takes advantage of other communication channels not included in the legislation or develops innovative resources to disregard the prohibitions. Thus, partial restrictions do not reduce consumption of tobacco products and do not protect the health of the population.

The tobacco industry spends millions of dollars per year to market their products[1] by means of advertising practices whose objective is to promote consumption of tobacco products and influence the tobacco-related attitudes, especially among young people and women. Scientific evidence indicates that a complete ban on advertising, promotion and sponsorship of tobacco products reduce consumption in the population, beyond the income and education level[2 3] Guidelines for Article 13 of the CMCT, developed by the Parties, present recommendations to introduce and implement this measure.

In Latin America and the Caribbean, only **Panama** (2008) and **Colombia** (2009) have enacted legislation that includes the complete ban on advertising, promotion and sponsorship of tobacco products. Although this legislation has been successfully implemented in Panama, in **Colombia** it will enter into force in July 2011. However, in this country there an unconstitutionality demand has been filed. Although this demand has not been filed by any tobacco company, arguments against the legislation are similar to those used by the TI worldwide, such as the alleged violation of the freedom of expression and economic freedom.

There are certain countries where, although the ban is not complete, the legislation in force includes a comprehensive ban. These include: **Brazil** (2003), **Venezuela** (2005), **Chile** (2007), **Uruguay** (2008), **Trinidad & Tobago** (2009) and **Honduras** (2010). These laws include a comprehensive ban on advertising, promotion, and sponsorship, but they have specific exceptions such as points of sale, Internet or certain promotion and sponsorship initiatives.

Despite the broad scope of these bans, local referents from **Panama** and **Chile** have reported that in their countries the tobacco industry develops covert advertising strategies with famous actors that appear smoking in the movies and TV shows. In **Chile**, a significant increase of advertising in points of sales, malls and airports has also been reported.

In **Brazil** there is also an aggressive campaign from the tobacco industry, such as the expansion of points of sale nationwide and the increase of institutional advertising by means of corporate social responsibility. Brazilian referents have reported that the tobacco industry violates the existing legislation by sponsoring sport events, concerts and festivals and using different marketing strategies mainly targeted to young people such as instant messaging and limited launching of merchandising (MP5, CDs, lighters, etc).

In **Venezuela**, with a legislation that excludes ban on advertising in points of sale, there have been reports of an appropriate implementation. This is the result of an effective surveillance system and sanction mechanism.

ARTICLE 13
"Tobacco advertising, promotion and sponsorship
1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.
2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory.
(…)"

In **Uruguay**, with a law that excludes points of sale, civil society has reported a successful implementation; however, it states the existence of violations of the tobacco industry by means of indirect advertising and illegal promotions.

As of October 2010, legislation in **Honduras** has not been enforced yet.

Peru, **Mexico**, **Paraguay**, **Bolivia**, **Ecuador**, **Costa Rica**, **Guatemala**, **Nicaragua and most Caribbean countries**, have legislation that do not comply with the minimum standards of Article 13 and its Guidelines. Some of these laws have been enacted after the ratification of the FCTC which implies a violation to the commitment assumed with the international comunity. Most countries allow advertising in points of sale and Internet, actions of corporate social responsibility, advertising on audivisual media after PG rated times, the promotion and direct advertising during events and at places with exclusive acces to adults, among other. As a consequence, in these countries the tobacco industry develops an aggressive advertising strategy in points of sale, launches appealing promotions and sponsors festivals and other events. An example of this is the case of **Bolivia**, where advertising and promotion in points of sale has been strongly developed. Cigarette brands give away merchandising from calendars to cell phones, tickets to concerts, and trips. There have also been reports of sponsorship of the tobacco industry in large-scale events such as the "FEXPOCRUZ", the largest fair in the country and the region where the tobacco industry booths have even received awards. This type of strategy is similar in other countries that do not have comprehensive bans on tobacco advertising, promotion and sponsorship.

Several countries in the Latin American and the Caribbean region, after ratifying the FCTC, enacted legislation that violate the minimum standards of Article 13 and its Guidelines. Such is the case for **Bolivia** (2007), **Mexico** (2008), **Nicaragua** (2010) and **Peru** (2010) that implemented partial ban on advertising, promotion and sponsorship which are ineffective to reduce consumption of tobacco products.

It is significant that certain exceptions of the legislation are mentioned in exactly the same manner in the text of the law in different countries. This may lead to the suspicion that this is a regional strategy of interferenc of the tobacco indsutry in the legislative process.

The implementation of Article 13 in the countries of the region has been heterogenous. In those countries that have introduced complete or considerably comprehensive bans, the tobacco industry has developed innovative mechanisms to redirect their marketing strategies making the most of the exceptions included in the legislation. In other cases, the TI has directly violated the legislation, which shows the lack of appropriate control. At the same time, in certain countries the TI has filed unconstitutional demands against the governments regarding the measures that ban advertising, promotion and sponsorship of tobacco products (see Article 5.3). This makes it mandatory to strengthen capacity-building among policy-makers to guarantee the protection of these norms before the judiciary branch. Similarly, the civil society participation by means of legal mechanisms will be positive, e.g., amicus curiae briefs or other forms of proceedings.

On the other hand, there is no international cooperation mechanism in this matter (as it could be the case of a transnational surveillance system) that may guarantee the effectiveness of the legislation at the national level. Thus, certain countries that have already introduced appropriate legislation, receive cross-border advertising of tobacco products. Such is the case in **Uruguay**, who receives ads from **Argentina**.

Finally, it is important to note that countries of the region need to strengthen technical capacity for the successful implementation of complete bans on advertising, promotion and sponsorship of tobacco products in other non-traditional media sources, such as the Internet. Thus, they will be able to anticipate to the marketing strategies used by the tobacco industry to avoid the restrictions.

Parties should continue working on the implementation of measures to enforce and monitor the policies recommended by Article 13 and its Guidelines for countering the tobacco industry strategies and thus guarantee the adequate protection of the health of the population.

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Demand reduction measures concerning tobacco dependence and cessation ARTICLE 14

As well as the FCTC encourages countries to adopt public policies to discourage consumption of tobacco products (as increasing taxes, implementing 100% smoke-free environments and health warnings, among others), it also states the need to implement effective measures concerning the treatment of the tobacco addiction. Policies targeted to promote tobacco dependence and cessation are cost-effective and have a high health impact in terms of mortality reduction.

Coverage and incentives from health systems to facilitate smoking cessation have been widely analyzed.[1 2] Furthermore, scientific evidence has shown the high effectiveness of cessation treatments, not only on-site but also by telephone. Quit-lines are effective and low-cost, especially when they are proactive, i.e. when they include a telephone follow-up after the first contact of the user. One of the main strengths of the quit-lines is the fact that they guarantee access to the low-income population.[3]

Access to treatments to quit smoking is still limited in the region despite the high demand for this service. In **Brazil**, **Uruguay**, **Venezuela**, **Trinidad & Tobago** and **Panama** have made progress in the coverage and offer of smoking cessation services that guarantee universal or comprehensive access in the primary care setting. In **Mexico**, **Costa Rica**, **Honduras** and **Paraguay** training plans have been implemented for health professionals and there is also treatment coverage but only in certain subsectors within the health system. In **Mexico**, with over 500 centers specialized in smoking cessation, it is estimated that even if these centers work at their fullest capacity, they could not even cover 1% of the smoking population of that country.

ARTICLE 14
"Demand reduction measures concerning tobacco dependence and cessation
1. Each Party shall develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices, taking into account national circumstances and priorities and shall take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence. (…)"

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Local contacts from **Guatemala**, **Bolivia**, **Chile**, **Colombia**, **Peru**, **Ecuador**, **Nicaragua**, **Jamaica**, **Barbados** and **Guyana** have reported little or no development of national plans to offer smoking cessation treatments.

Brazil has a Smoking Cessation Program that provides a systematic response at the national level. The Health System networks offer treatment coverage and free medication in the primary care centers as well as continuing training workshops for

health professionals. Each state secretary is in charge of coordinating the program and training city secretaries. **Brazil** also has a free quit-line that even when it is pro-active, it answers an important number of calls. This telephone line has been widely disseminated through the health warnings in cigarette packs.

Important progress has also been recorded in **Uruguay**. The law enacted in 2008, included tobacco dependence treatment in the National Health System. Furthermore, several cessation programs offering free pharmacological treatment by agreements between the National Fund of Resources (FNR) have been implemented. These programs guarantee access for the majority of the population. Similarly, the FNR and the Honorary Commission for the Fight Against Cancer (CHLCC) have introduced tobacco cessation training workshops to health professionals.

Venezuela has training programs for health professionals, free consultation services for smokers and free medication. **Panama** has implemented cessation clinics in several provinces but these centers are now being reconditioned to be open shortly. In **Trinidad & Tobago** a comprehensive plan offering tobacco cessation services has been recently developed.

Some countries have implemented quit-lines but they do not include a large number of calls, have not been fully developed, do not have a proactive follow-up and do not include effectiveness evaluation interventions.

Contacts from civil society in Latin America and the Caribbean have reported the lack of free cessation services with universal access. Furthermore, they have highlighted the need to implement policies that may include basic mandatory treatment in the first level of care and the strengthening of tobacco-cessation capacity-building. The prompt approval of Article 14 guidelines is expected to contribute to set the basis for the adoption of comprehensive polices.

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Statistics indicate that in the next 30-50 years it will not be possible to reduce tobacco consumption-related mortality unless current smokers receive the help they need to quit smoking.[4] The success of measures promoting smoking cessation shall depend upon the synergetic implementation of other effective measures within a comprehensive tobaco control policy package.

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Illicit trade in tobacco products
ARTICLE 15

The smuggling of cigarettes is a widely extended problem worldwide. Today, illegal cigarette trade accounts for 11.6% of global tobacco sales, which implies a loss of $ 40.5 USD billion in tax revenues each year. Article 15 of the WHO FCTC establishes basic guidelines to address the illicit trade of tobacco products.

Although smuggling is hard to measure and quantify, it is estimated that 12.1% of the tobacco market in low and middle-income countries involves illicit trade, whereas in high-income countries it is 9.8%, even though the latter usually have higher tobacco taxes. This fact proves that tax increases do not provide the main incentive for tobacco smuggling, as the tobacco industry has led society to believe. Current estimations indicate that cigarettes are the most widely smuggled legal products and that illicit trade is more extensive in countries were cigarettes are least expensive.[1]

In Latin America and the Caribbean there are sharp differences in taxation and customs policies. **Brazil**, **Uruguay**, and **Argentina** are recipients of illegal cigarettes, for the most part from **Paraguay**. Paraguay produces 45 billion cigarettes every year, of which 90% are consumed in other countries. However, only 5% of these are legally exported. In **Bolivia**, illegal cigarettes account for 40% of the internal market, one of the highest levels in the region.[2]

The measures implemented to tackle illicit tobacco trade in the region have been heterogeneous. According to local civil society referents, **Brazil** is one of the countries that have developed significant capacity in this issue. Brazil has been implementing specific policies to fight against cigarette smuggling since 1999, including measures such as the issuing of licenses to authorize cigarette manufacturing, the development of an exporter's database, and the launching of a national surveillance system with digital fiscal stamps. The installation of SCORPIOS, a system to conduct fiscal monitoring and locating of cigarettes, was concluded in 2008.

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In **Mexico** there are regulations that prohibit the entrance into the country carrying foreign cigarettes and other tobacco products. Moreover, customs personnel are obliged to seize these products and refer the carriers to the police. Similarly, the legislation in force in **Uruguay** contemplates the coordination of governmental authorities in the efforts to suppress illicit tobacco trade.

ARTICLE 15
"Illicit trade of tobacco products
1. The Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control. (…)"

Some of the measures adopted by countries to tackle illicit tobacco trade refer to the labelling of tobacco products. In 2006, the Integrated Customs System of **Venezuela** created an additional label to be carried by all cigarette packs sold inside the country. A law enacted in **Panama** in 2008 dictates that cigarette packs must show information on the product's origin, the place of sale, registry data, and it also specifies that the product's bar code must not be blocked by tags or affected in any way. In **Colombia**, a law enacted in 2009 declared mandatory the inclusion of labels in imported cigarette packs with the phrase "imported for Colombia".

In the Caribbean, only **Trinidad & Tobago** reported the implementation of legislation to address tobacco smuggling, but the law has not been published yet. The estimated market share of contraband cigarettes reaches 50% in some Caribbean countries.

Illicit tobacco trade is a complex problem that requires high political commitment from the governments and strong international cooperation. The prompt implementation of an international protocol to tackle illicit tobacco trade will constitute an essential step to advance towards the eradication of tobacco smuggling.

If illicit cigarette trade were eliminated:[3]

- Global tobacco consumption would decrease by 2%.
- Average tobacco price would increase by 3,9%.
- Tax revenue in low and middle-income countries would increase $18.3 USD billion per year.
- 160,000 lives would be saved each year from 2030 on.

Contraband cigarette market share in Latin American countries-2009

COUNTRY	Market share
Bolivia	40.3 %
Brazil	27 %
Chile	1.3 %
Colombia	15.3 %
Costa Rica	8.7 %
Ecuador	9.4 %
Guatemala	14.2 %
Mexico	5.9 %
Peru	14.7 %
Uruguay	17.4 %
Venezuela	18.6 %

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Provision of support for economically viable alternative activities and protection of the environment and the health of persons
ARTICLES 17 AND 18

Ten countries produce 80% of the world's current tobacco products, most of them low- and middle-income countries. If tobacco growing continues to shift towards these countries it will also increase the situation of dependence of the tobacco growing communities, child labor, and conditions of forced labor, which are central issues related to tobacco growing and poverty. The universal human right to development and health, as well as the particular rights of children and women, are constantly and negatively affected among the families that grow tobacco.

Tobacco growing presents elevated health and social risks for small growers and their families. Occupational hazards related to tobacco growing include green tobacco sickness, pesticide poisoning, skin diseases, respiratory illness, and cancer. To this sombre scenario we must add the significant environmental cost caused by tobacco growing: soil degradation, deforestation, and water pollution. Tobacco depletes soil nutrients at a faster rate than most other crops.

Article 17 of the FCTC establishes that the Parties will promote economically viable alternatives for tobacco workers, growers and retailers. Also, the Parties agree to protect the environments and the people's health in relation to tobacco growing and production in Article 18. Although there are no working guidelines to implement these Articles, during the 4th Conference of Parties of the FCTC it was decided that a workgroup would be created to generate them. On September 2009, this working group met in India and discussed different proposals to create a methodology and design a variety of sustainable alternatives to tobacco growing.

INCA Brazil - Brochure May 31, 2004

In the Latin American and Caribbean region there are several tobacco growing countries. **Brazil** is the leading tobacco grower in the region and the second largest worldwide; **Argentina** follows Brazil in the regional ranking and is the 8th largest tobacco grower in the world. **Mexico**, **Colombia**, **Cuba**, and **Dominican Republic**, among others, also grow tobacco, albeit at a smaller scale.

After ratifying the FCTC, the Government of **Brazil** developed the National Program to Support Crop Diversification in Tobacco Growing Areas, a program implement-

ARTICLE 17
"Provision of support for economically viable alternative activities
Parties shall, in cooperation with each other and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers."

ARTICLE 18
"Protection of the environment and the health of persons
In carrying out their obligations under this Convention, the Parties agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories."

ed by the Ministry of Agriculture. This program is structured around four strategic cores: funding, access to technology, value of local production, and market guarantees. According to the information reported. As of September 2010, 60 projects have been developed that reach approximately 500 municipalities. However, during a seminar conducted in August 2010 by the Ministry of Agriculture and the National Committee for FCTC Implementation it was made clear that specific policies are still needed. Also, the tobacco industry has undermined the extent to which public policies include efforts to address Articles 17 and 18 of the FCTC. The “Tobacco Agenda”, a document approved by members of the Tobacco Chamber and officials from the Ministry of Agriculture, highlighted a number of strategies used by the tobacco industry to block FCTC implementation. Different work priorities have been reported, including the need to set medium and long-term objectives in regard to crop diversification, and the need to evaluate the effectiveness and sustainability of diversification alternatives, the health impact of tobacco growing activities, the health benefits provided by agro-ecological alternatives, impact on child labor, local and national capacity to improve illness diagnosis and accidents related to tobacco growing, among other relevant variables.

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Regarding the rest of the countries, only **Mexico** reported that there has been governmental promotion of alternative crops in the few areas that still grow tobacco, through the Secretariat of Agriculture, Cattle Farming, Fishing and Rural Development.

In **Argentina**, as well as in the **Dominican Republic**, one of the main obstacles to achieve FCTC ratification has been the false argument disseminated by the tobacco industry, who argues that FCTC ratification would affect tobacco production and negatively impact on local economies and employment. However, following the document developed by the working group on Articles 17 and 18, the scientific evidence shows that tobacco use reduction does not affect employment, and it can even have a positive effect on these areas.[1]

The recommendations established in Articles 17 and 18 are still difficult to implement in the region. This is a result of the lack of technical capacity regarding the issue in question, but also and more significantly, from tobacco industry interference that attempts to undermine any progress towards these objectives.

Parties must support the tobacco growing community in their shift to alternative crops, not only ensuring the market placement of their production but also facilitating access to necessary infrastructure. Diversification should include agricultural and non-agricultural opportunities, including substitution of one product for others. With this purpose in mind, it is indispensable to evaluate not only crop profitability and income possibilities, but also all other aspects related to the tobacco growers environment and way of life.

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Final statements and recommendations

The implementation of the FCTC policies in Latin America and the Caribbean has shown substantial progress in certain top-priority areas such as the inclusion of health warnings on cigarette packs and the implementation of 100% smoke-free environments. However, there are certain measures that have been implemented in a very unequal manner which imposes great many challenges to the work of the region in years to come.

Those countries that have shown greater achievements in the implementation of the FCTC face the counterattack of the tobacco industry and other front groups that, by means of legal actions such as public actions of unconstitutionality, appeals for legal protection and lawsuits, try to hinder the progress of tobacco control policies.

This context highlights the need to strengthen the strategies of international collaboration and to reduce the interference of the TI in the region. Although there are still few governments in the Latin American and the Caribbean region that have adopted policies to reduce such interference, an increasingly active and organized participation has been observed in the civil society regarding monitoring and denounce initiatives. This involvement has made it possible to stop the TI interference in numerous legislative processes, by revealing the conflict of interest involved in their participation in the design of public health policies. The challenge for the near future is for governments to assume the responsibility to protect their health policies from the interests of the tobacco industry and be capable of working together to build information networks that may help hinder the interference of the TI. However, it is mandatory to recognize that difficulties in the implementation of the FCTC are not only caused by the tobacco industry. In fact, there are certain matters where both governments and organizations need to build capacity and acquire technical tools (especially in matters such as tax policies and alternative crop substitution) in order to fulfill the objectives to successfully overcome the tobacco epidemic.

States should develop epidemiological indicators to evaluate the impact of the policies implemented in the region and make such information available thus facilitating civil society surveillance. In this sense, those indicators should mainly show gender differences regarding tobacco consumption and exposure to second-hand tobacco smoke as women have been the target of the tobacco industry's marketing strategies during the last few years. An effective monitoring strategy of government policies represents an essential tool to achieve greater and better results. The unavailability of such public information plus the need to further strengthen civil society to effectively monitor public policies are obstacles that may need to be overcome in order to achieve better results in the fight against the tobacco epidemic.

Despite all difficulties, tobacco control policies are taking an increasingly important place in the public agenda of the governments in the region. Also, a notorious growth has been registered in the participation and coordination of civil society by means of the creation of networks and coalitions that promote the implementation of the FCTC policies. Similarly, the development of various initiatives of international cooperation – governmental and non-governmental – that strengthen local measures, such as the health warnings database of the MERCOSUR (Southern Common Market), health warnings and smoke-free environments in the CARICOM countries (Caribbean community) and the creation of the Central American Coalition for Tobacco Control, a network of organizations that promotes tobacco control, are examples of further achievements in the region.

To strengthen the adoption of FCTC policies ratifying countries are recommended to:

- Develop and endorse the Guidelines for Articles 6, 17 and 18
- To promptly endorse the protocol to eliminate illicit trade in tobacco products
- To set up an expert committee within the WHO to be in charge of monitoring the implementation of the FCTC in the member States and thus improve report elaboration mechanisms and assistance to the Parties

During the last years, Latin America and the Caribbean has made great progress in tobacco-control matters that was unthinkable just a few years ago. Although there is still a long road ahead, progress in the fight against the tobacco epidemic is unquestionable and, despite the many obstacles encountered along the way, the number of people who will benefit from public health policies is expected to raise in the region.

Recommendations to the States:

• To promote the **prompt ratification** of the FCTC in those countries that are still not Parties

• To **fulfil the established terms** for the implementation of the FCTC measures, especially those required by Articles 11 and 13.

• To pass **legislation respectful of the minimum FCTC standards.**

• To implement in the short term **the policies defined as priority policies by MPOWER** (by legislative or administrative process), as they have shown to have a greater and immediate impact in the reduction of mortality caused by both smoking and exposure to second-hand smoke.

• To **guarantee the appropriate compliance** of the legislation after enactment and enforcement.

• To **reduce the interference of the tobacco industry** in the design and implementation of tobacco control policies and to promote the enactment of legal norms that may establish transparency procedures for those cases where interaction with the tobacco industry is unavoidable.

• To **strengthen capacity-building** in specific issues such as taxes, interference of the tobacco industry, advertising, promotion and sponsorship of tobacco products, illicit trade and sustainable alternatives to tobacco growing.

• To **strengthen international cooperation** for the adoption of transnational policies, with special focus on the complete ban of advertising, promotion and sponsorship of tobacco products, illicit trade and the interference of the tobacco industry.

• To **strengthen the epidemiological surveillance mechanisms** in order to obtain updated comparable data and thus improve access to information in the region especially from the most vulnerable groups (low-income sectors, women, children and adolescents).

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