WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

Best practices in implementation of Article 8 of the WHO FCTC
Case study: South Africa

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BEST PRACTICES ON IMPLEMENTATION OF ARTICLE 8 OF THE WHO FCTC
CASE STUDY: SOUTH AFRICA

Patricia Lambert and Kaitlin Donley
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I. Scientific evidence

Scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease, and disability, a fact recognized by the Parties to the World Health Organization Framework Convention on Tobacco Control ("WHO FCTC").[1] Tobacco smoke contains more than 7000 chemicals and compounds, approximately 70 of which are known or suspected human carcinogens.[2, 3, 4] There is no safe level of exposure to tobacco smoke and even brief periods of exposure to low levels of tobacco smoke are harmful.[56] As a result, only the creation of 100% smoke-free environments provides effective protection from the health risks of exposure to tobacco smoke.

Measures restricting smoking to designated smoking areas or rooms do not provide adequate protection, despite being portrayed by the tobacco industry as suitable alternatives to a smoking ban. The evidence behind the ineffectiveness of designated smoking areas or rooms is robust. An Australian study demonstrated that providing separate areas for smokers and non-smokers provided "little to no protection" from environmental tobacco smoke.[7] Restricting smoking to physically separate designated smoking "rooms" was only marginally better than restricting smoking to separate "areas" within the premises. An engineering study commissioned in 2009 by the Government of Hong Kong to test the feasibility of smoking rooms concluded that tobacco smoke inevitably leaks out of designated smoking rooms despite stringent design and ventilation standards.[8] Similarly, a 2012 study of restaurants in Pretoria, South Africa, found high levels of smoke pollution in non-smoking areas of restaurants.[9] The median air quality measurement in the non-smoking areas was "at least seven times higher than the WHO standard … set for good air quality," with the data suggesting that such smoke pollution was coming from designated smoking rooms. Under current South African law, separate designated smoking rooms must meet certain design requirements, including having separate ventilation. The results from this study of Pretoria restaurants add to the body of scientific evidence demonstrating that designated smoking rooms are ineffective. Moreover, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, an association of over 50 000 business design professionals, has examined the science behind designated smoking rooms and has concluded that "[a]t present, the only means of eliminating health risks associated with indoor exposure [to second-hand smoke] is to ban all smoking activity".10

There is strong evidence to support the fact that smoke-free policies provide a wide range of public health benefits, including a decrease in tobacco consumption and in youth smoking initiation as well as an overall reduction in heart attacks among other physiological benefits.11 A recent study in Uruguay showed a significant decrease in the incidence of acute heart attacks after the implementation of 100% smoke-free places.12 Restrictions on smoking in public places can decrease consumption by between 4% and 10% and induce some smokers to quit, according to a World Bank analysis.[13] Studies have also shown a decrease in smoking in the home following implementation of a smoking ban; contrary to assertions that smoking in the home would increase.[14] And a recent study from India confirmed that such results extend to low- and middle-income countries with growing tobacco-induced disease burdens.[15] The study found that implementation of smoke-free legislation was associated with a higher proportion of adults reporting living in smoke-free homes.

Arguments against smoke-free air are frequently inserted into the public debate by the tobacco industry, which seeks to promote tobacco consumption by ensuring that it will be easy for people to use its product in as many places as possible. It uses allies and front groups, particularly within the hospitality sector, to speak out publicly against smoke-free policies; to demand that smoking rooms or

smoking areas be set up as a courtesy to smokers; and to advocate for costly and complex ventilation systems even though these have been proven to be ineffective.

A persistent argument against smoking bans is that they will have a negative economic impact, particularly on the hospitality industry, as smokers would patronize restaurants and bars less frequently and profits and jobs would be lost as a result. However, evidence from across the globe, including South Africa, shows that such legislation has not harmed business, and has in some cases had a positive economic impact. The WHO International Agency for Research on Cancer (IARC) reviewed 47 peer-reviewed studies that were based on survey data and found that all 47 studies concluded that "smoke-free policies have either no economic impact or a positive economic impact on the businesses affected by them".[16] Similarly, in a survey of over 1000 South African restaurants, economists concluded that, overall, the results indicated, "restaurants have not been systematically harmed by the clean indoor air legislation".[17]

II. Article 8 of the WHO FCTC: Parties' obligations and evidence-based implementing guidelines

Article 8 of the WHO FCTC requires Parties to adopt and implement effective measures "providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places".[18] The Guidelines on Protection from Exposure to Tobacco Smoke ("the Guidelines") were adopted by consensus in 2007 at the second session of the Conference of the Parties to assist Parties in meeting their obligations under Article 8.[19, 20] They are based on the best available scientific evidence and draw from Parties' experiences in implementing measures to provide protection from exposure to tobacco smoke.[21]

Smoke-free provisions. The Guidelines establish that for Parties to meet their obligations under Article 8 of the WHO FCTC, they must require 100% smoke-free environments.[22] Any measures that fall short of creating 100% smoke-free environments – including measures allowing for designated smoking rooms with separate ventilation, air exchange, and other engineering features – do not provide protection against exposure to tobacco smoke.[23]

Under the Article 8 Guidelines, no exemptions to a 100% smoke-free law "are justified on the basis of health or law arguments".[24] If exemptions must be considered, Parties have a continuing obligation under Article 8 to remove any exemption as quickly as possible and should strive to provide *universal* protection within five years of the treaty entering into force for that Party.[25]

Article 8 of the WHO FCTC requires the adoption of effective measures to protect people from exposure to tobacco smoke in four categories of places:

- indoor workplaces;
- indoor public places;
- public transport; and
- outdoor and quasi-outdoor places, where appropriate.[26, 27]

In determining which outdoor or quasi-outdoor places are appropriate subjects of smoke-free legislation, Parties must consider evidence as to the possible health hazards in various places.[28]

Definitions. The Guidelines define several key terms to help shape the scope of protection to be provided. These definitions make clear that protection should extend to all indoor workplaces, including motor vehicles used as places of work such as taxis and ambulances, [29] and to all parts of indoor workplaces and public places, including corridors, stairwells, lobbies, etc.[30]

Duties and penalties. Effective legislation should place legal responsibilities on both affected business establishments (i.e. the owner, manager, or other person in charge of the premises) and individual smokers.[31] The Guidelines identify four duties that should be placed on the person in charge of the premises:

- a duty to post clear signs indicating that smoking is prohibited;
- a duty to remove any ashtrays from the premises;
- a duty to supervise the observance of rules; and
- a duty to take reasonable specified steps to discourage individuals from smoking in the premises.

The duty placed on the individual smoker is to comply strictly with prohibitions on smoking. For breach of these duties, the Guidelines recommend monetary penalties for business establishments and leave open to Parties whether to impose monetary penalties on individual smokers.[32] Fines must be sufficiently large to deter violations, with higher fines for businesses than for individual smokers given the resources available to each, and should increase for repeat offences.[33] The Guidelines also leave open the possibility of administrative sanctions and criminal sanctions in addition to monetary penalties, depending on what would be appropriate given each Party's general practice and legal system.[34] Administrative sanctions may include business licensure suspension or revocation and would be "sanctions of last resort".

Inspections and enforcement. The Guidelines urge Parties to consider utilizing an inspections mechanism already in place, if possible, to monitor compliance with and enforce the provisions of smoke-free legislation.[35] Use of a pre-existing mechanism reduces costs associated with enforcement by eliminating the need to hire and train large numbers of new personnel.[36] Possible pre-existing inspections mechanisms may include: business licensing inspections; health and sanitation inspections; inspections for workplace health and safety; and fire safety inspections. The Guidelines also highlight the ways in which smoke-free legislation is "self-enforcing," or enforced by the public, noting that in many jurisdictions, citizen complaints are the "primary means of ensuring compliance".[37] To facilitate enforcement by the public, the Guidelines recommend establishing a toll-free telephone number that members of the public can call to report a violation.[38]

Protecting against industry interference. The Article 8 Guidelines also recognize the dangers of tobacco industry interference in smoke-free laws and policies and include important recommendations for Parties on how to counter tobacco industry tactics. These should include "monitoring and responding to tobacco industry activities that undermine the implementation and enforcement of smoke-free legislation, as specified in Article 20.4 of the WHO FCTC" (Principle 6).[39]

Reflecting Principle 6 of the Article 8 Guidelines, Recommendation 1.2 of the Guidelines for implementation of Article 5.3 urges Parties to "raise awareness about the tobacco industry's practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry".[40] There is clear evidence that the tobacco industry has worked through front groups, particularly in the hospitality sector, to dilute or delay the implementation and enforcement of smoke-free places. The industry has used front groups to

influence legislation at all levels, beginning with, for example, a local restaurant association in Beverly Hills, California (USA), in 1987 and moving up to collaboration with existing international hospitality organizations at both the national and international levels, including the International Association of Hotels, Restaurants, and Cafés (HORECA) and the International Hotel Association (IHA).[41]

III. SOUTH AFRICA

South Africa's history in tobacco control predates its ratification of the WHO FCTC by more than 10 years and the country's success in reducing the consumption of tobacco products provides an example to many other low- and middle-income countries where the tobacco epidemic is still on the rise. Recently, the Government and the tobacco control civil society community won a significant victory in ensuring that the 2010 FIFA World Cup had smoke-free spectator venues.

Inside a stadium in South Africa during the 2010 FIFA World Cup.

The Tobacco Products Control Act is the primary legislation governing tobacco products in South Africa.[42] The Act was passed in June 1993 and was followed by a series of amendments to the Act and several regulations issued pursuant to authority granted in the Act.[43] The law and implementing regulations address many aspects of tobacco control – tax; advertising, promotion and sponsorship, including display of tobacco products; restrictions on smoking in public places; sales to minors; and graphic health warnings on tobacco product packaging, among others. The effects of these progressive tobacco policies have already translated into measurable results. Between 1993 and 2005, per capita cigarette consumption fell by nearly 50%.[44] However, prevalence rates remain high, particularly among certain demographic groups.[45]

As a leader in tobacco control, South Africa played a key role in the negotiation of the WHO FCTC.[46] South Africa signed the WHO FCTC on 16 June 2003, and the treaty entered into force for the country on 18 July 2005.[47] In many respects, South Africa's policies were WHO FCTC-compliant even before it signed and ratified the treaty.

A. Current and future smoke-free places

Under the present law, smoking is prohibited in public places, which by definition include workplaces and public transport; however, the Minister of Health has the power to issue regulations specifying public places as "permissible smoking areas".[48] Currently, designated smoking areas are permitted in bars, pubs, and taverns, restaurants, hotels, airports, and workplaces, among other places.[49] Any smoking area must meet the following conditions:

- it may not exceed 25% of the total floor area of the public place;
- it must be separated from the non-smoking area by a solid partition;
- the ventilation must send air from the smoking room directly outside and the air must not be re-circulated to any other area within the public place; and
- the room must comply with three signage requirements.[50]

Smoking is also permitted in designated areas of passenger ships and designated carriages of passenger trains.[51] However, the owner of a public place or workplace has the authority to declare his/her premises as 100% smoke-free.[52] Smoking is also prohibited in motor vehicles carrying minors under the age of 12 years. [53] In addition, the Minister has the authority to prohibit smoking in certain outdoor public places "where persons are likely to congregate within close proximity of one another or where smoking may pose a fire or other hazard" and areas within a certain distance of an entrance, doorway, ventilation intake, or window of a public place.[54]

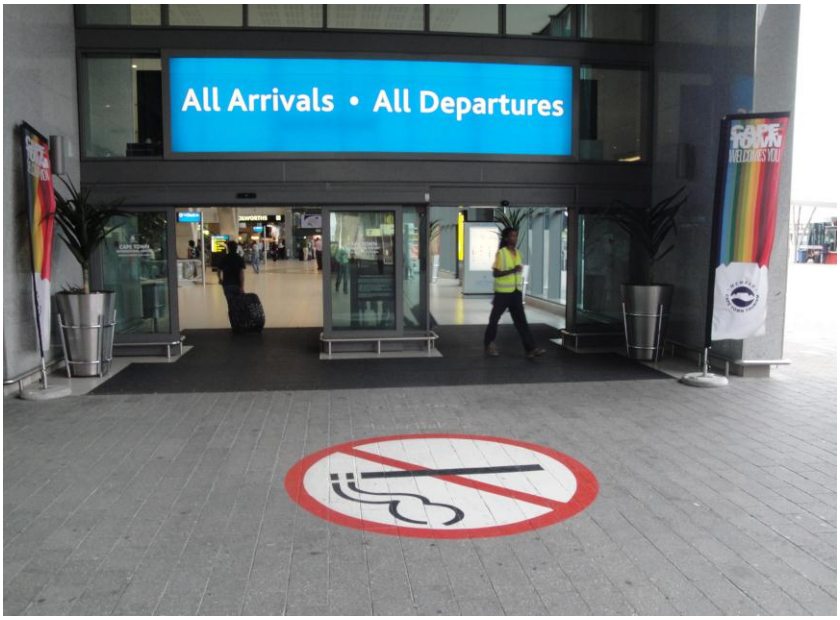
Further amendment of smoke-free provisions is under way. Draft regulations were gazetted on 30 March 2012 and the public was invited to submit comments.[55] Final regulations have yet to be issued. Under the draft regulations, smoking would be prohibited in all indoor public places and certain outdoor public places; designated smoking rooms would no longer be allowed.[56] Additionally, the draft regulations set the distance from an entrance, doorway, ventilation intake, or window within which smoking is prohibited at five metres, with an exception for airport entrances to be 10 metres.[57] The draft regulations also specify several outdoor public places where smoking would be prohibited, including:

- sports facilities and playgrounds;
- outdoor areas of educational, childcare, and health facilities;
- outdoor eating or drinking areas;
- covered walkways and covered parking areas; and
- on beaches where public bathing is permitted, not less than 50 metres away from the closest person swimming in the demarcated area, among others.[58]

B. Duties and penalties

South Africa's legislation includes a duty to post clear no smoking signs and a duty to ensure that no person smokes in the premises, which can be interpreted as including both the duty to supervise the observance of rules and the duty to take reasonable steps to require a person to stop smoking.[59] In addition, the person in charge has a duty to ensure that no person under 18 years of age is present

anywhere in the premises where smoking is permitted.[60] The law, however, lacks a duty to remove ashtrays, although this requirement has been proposed in the draft regulations gazetted for public comment in March 2012.[61] A legal duty is also placed on the individual not to smoke in places where smoking is prohibited.[62]



Clear signage at Cape Town International Airport in South Africa.

Violation of any of these legal duties results in a fine. As advised by the Article 8 Guidelines, [63] the fines placed on business violators (up to R50 000) (exchange rate: 1 US$ = 10 rand) are larger than those placed on individual smokers (up to R500).[64] This is an improvement over the previously mandated fines where the fine for non-compliance was R200 for both business violators and individual smokers. The Guidelines recommend that fines increase for repeat offences,[65] which may be possible, although is not required, under the South African law because it establishes a maximum fine value. The law does not, however, include any sort of administrative sanctions against business establishments, such as suspension of licences, as is advised by the Guidelines as "sanctions of last resort".[66]

C. Enforcement

The Tobacco Products Control Act uses the enforcement scheme established by the National Health Act (No. 61 of 2003), combining enforcement of the Tobacco Products Control Act with health inspections conducted by Environmental Health Officers and eliminating the need to create a new inspection system.[67,68] Under the National Health Act, health officers are required to conduct routine inspections to monitor compliance and have the authority to conduct environmental health investigations for suspected violations under reasonable grounds.[69] The investigation powers of health officers surrounding entry or search of premises are already spelled out under the National Health Act.[70] Complaints can be filed with national and provincial departments of health and local municipalities and/or reported to the National Council Against Smoking, a nongovernmental organization that also operates South Africa's Quit Line. Although the toll-free number for the Quit Line is not required to be listed on no-smoking signs, the number is listed on all packs of cigarettes.

D. Implementation experience – public education

Tobacco prevention and control is one of the pillars of the Healthy Lifestyles Programme, which was initiated in 2006. To date, the Healthy Lifestyles Programme is implemented nationally, provincially, and locally in collaboration with other Government departments, the private sector, and nongovernmental organizations. Information, education, and communication (IEC) campaigns and events include the commemoration of World No Tobacco Day and other health days that promote the prevention of tobacco use and healthy lifestyle practice. Health literacy programmes also include infomercials, public service announcements, and talk shows via electronic media.

Advocacy and lobbying efforts are ongoing within and outside the health sector to promote a greater understanding of the need for collaborative action in the implementation of the WHO FCTC in South Africa and the WHO African Region.

E. Recommendations for improvement

Although South Africa has very strong legislation governing smoke-free places, the following improvements are recommended to strengthen the law and bring it into alignment with Article 8 of the WHO FCTC and the Guidelines for its implementation:

1. *Prohibit smoking in all indoor public places, indoor workplaces, and public transport, without exception.* The present law does not provide for 100% protection from exposure to tobacco smoke in indoor public places, indoor workplaces, and public transport as required by Article 8 of the WHO FCTC and the Guidelines for its implementation. Instead, the law permits designated smoking rooms to be established in a wide range of indoor public places and certain forms of public transport. Although the restriction of smoking to designated smoking rooms created a shift in social norms around second-hand smoke, it did not eliminate exposure to second-hand smoke. Exposure still remains a problem with almost one in five non-smokers reporting exposure to second-hand smoke at work, and one in three non-smokers reporting exposure to second-hand smoke other public places.[71] This exposure is likely due both to the ineffectiveness of designated smoking rooms and poor compliance in certain sectors of industry.

2. *Expand the list of outdoor and quasi-outdoor places where smoking is prohibited.* Article 8 of the WHO FCTC and the Guidelines for its implementation also require that Parties prohibit smoking in outdoor or quasi-outdoor places, where appropriate based on evidence as to the possible health hazards.[72] The current law provides enabling language to prohibit smoking in prescribed outdoor places and within a prescribed distance from entrances, doorways, ventilation intakes, and windows of public places.[73] However, the implementing regulations establishing those outdoor places and the distance within which smoking is prohibited have yet to be finalized.

3. *Place a duty to remove ashtrays from smoke-free premises on the person in charge of the business establishment.* This improvement has been proposed in the most recent draft regulations.

4. *Consider including administrative sanctions*, such as business licensure suspension or revocation, among the possible penalties for establishments that repeatedly violate the law governing smoke-free places.

5. *Monitor compliance and strengthen enforcement.* Monitoring compliance with the law can help identify weaknesses in the enforcement system in place. Once identified, resources can be shifted and additional training can be provided to inspectors to help boost enforcement and overall compliance.

IV. CONCLUSION

Scientific evidence indicates overwhelmingly that smoke-free policies, and in particular the creation of 100% smoke-free environments, positively influence attitudes, behaviour and health. They assist greatly in the process of denormalizing smoking in society, of encouraging adults to quit smoking and of preventing young people from acquiring the addiction to cigarettes and other tobacco products.

South Africa and Seychelles (see the Seychelles case study, also available at: http://www.who.int/fctc/implementation/en/) both have a rich history of tobacco control, almost unique in the low- and middle-income countries of Africa. It is clear that both countries have exhibited the necessary political will not only to draft legislation for smoke-free environments but also to exert that will through proper implementation and enforcement of their laws. In so doing, both governments demonstrate clearly to their own citizens and to the governments and peoples of Africa, their knowledge and acceptance of the dangers associated with tobacco smoke as well as their acknowledgement that there is an increasing desire for clean air on the part of the general public. They lead by example and their example can, and should, be followed.

Not only have both countries provided smoke-free indoor public places, a general norm in tobacco control, but they have extended the prohibition on smoking to certain private places, like motor vehicles where young children are present, and to an increasing number of outdoor places as well, in line with Article 8 of the WHO FCTC and the Article 8 Guidelines. Unfortunately, however, neither country has, to date, managed to achieve the desired international and WHO FCTC standard of 100% smoke-free environments in all indoor public places, indoor workplaces, and public transport. Seychelles continues to provide an exemption for hotel rooms, and this is of particular concern as tourism is a significant part of the economy of Seychelles. South Africa's 2007 legislation mandates the Minister to create 100% smoke-free environments and regulations were gazetted in March 2012, but final regulations that would translate the policy into action have yet to be issued.

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[21] Article 8 Guidelines, para. 1.
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[27] Article 8 Guidelines, paras. 23-27.
[28] Article 8 Guidelines, para. 27.
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[30] Article 8 Guidelines, para. 20.
[31] Article 8 Guidelines, para. 31.
[32] Article 8 Guidelines, paras. 31, 32.
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[34] Article 8 Guidelines, paras. 33, 34.
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[36] Article 8 Guidelines, para. 38.
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[38] Article 8 Guidelines, para. 45.
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[51] Notice No. R. 975, Sections 4, 5.
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[53] Tobacco Products Control Amendment Act, 2007, Section 2
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[55] Government Notice No. R. 264, Regulations Relating to Smoking in Public Places and Certain Outdoor Public Places (hereinafter "Draft Regulations"), 30 March 2012, http://www.info.gov.za/view/DownloadFileAction?id=162806.
[56] Draft Regulations, Section 2(1).
[57] Draft Regulations, Section 2(4)(a).
[58] Draft Regulations, Section 2(2).
[59] Tobacco Products Control Act, Sections 2, 4.
[60] Tobacco Products Control Act, Section 6.
[61] Draft Regulations, Section 3(2).
[62] Tobacco Products Control Act, Section 2(1).
[63] Article 8 Guidelines, para. 32.
[64] Tobacco Products Control Act, Sections 7(1), 7(4).
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