JOINT BRIEFING PAPER:
PROPOSED GUIDELINES FOR THE IMPLEMENTATION OF ARTICLE 8 OF THE WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

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EXECUTIVE SUMMARY

The Framework Convention Alliance and the Global Smokefree Partnership strongly endorse the proposed guidelines for implementation of Article 8 of the WHO Framework Convention on Tobacco Control (FCTC) (Document A/FCTC/COP/2/7) and encourage the Parties to adopt them without change.

The proposed guidelines reflect current scientific evidence and global best practices. This briefing paper highlights key elements of the proposed guidelines and the reasons they should be adopted as proposed to the Conference of the Parties.

Key elements of guidelines for implementation of Article 8:

1: Acknowledge that Article 8 is grounded in fundamental human rights
Guidelines should affirm that the right to effective protection from exposure to tobacco smoke is implicit in the fundamental right of all persons to life, a healthy environment and the enjoyment of the highest attainable standard of health.

2: Legal protection, not voluntary measures
Guidelines should acknowledge that Article 8 requires affirmative legal measures, and that voluntary agreements are not acceptable alternatives.

3: Protection for all
Guidelines should emphasize the duty to protect all persons, not just "special" or "vulnerable" populations.

4: Create 100% smoke-free environments
Guidelines should underscore that effective protection of health requires the creation of 100% smoke-free environments, and that ventilation and designated smoking rooms are not acceptable approaches.

5: Ensure comprehensive coverage
Guidelines should emphasize the need for smoke-free environments in all indoor public places, all indoor workplaces, and all public transport.

6: Draft carefully
Guidelines should assist Parties in developing legislative definitions of "*smoking*", "*public places*", "*workplaces*", "*public transport*", and "*indoor*" or "*enclosed*" areas that will help avoid loopholes and minimize enforcement problems.

7: Educate and involve the public
Guidelines should explain the importance of educating opinion leaders and the general public to build support for effective legislation, and should recognize the need to engage the public in developing, implementing and enforcing legislation.

8: Involve civil society
Guidelines should accord a central role to civil society in the development, implementation, enforcement and evaluation of smoke-free measures.

9: Specify the duties of those responsible for compliance
Guidelines should emphasize that smoke-free legislation needs to specify who is responsible for ensuring compliance with the law, and to identify concrete steps these persons or entities must take to fulfil their obligations.

10: Set appropriate penalties
Guidelines should provide for monetary penalties and other sanctions sufficient to deter violations.

11: Create an effective enforcement infrastructure
Guidelines should specify appropriate enforcement responsibilities and mechanisms.

12: Enforcement should be strategic
Guidelines should explain the value of a strategic approach to enforcement and the importance of firm enforcement.

13: "Future-proof" the law
Guidelines should emphasize the importance of flexible legislation that can be strengthened and revised readily to reflect new scientific knowledge, global experience and emerging best practices.

14: Monitor and evaluate
Guidelines should encourage ongoing monitoring and evaluation to assess the impact of legislation, promote compliance with the FCTC, and build support for the most effective possible measures.

Introduction

Article 8, on protection from exposure to tobacco smoke, is among the most important provisions of the WHO Framework Convention on Tobacco Control (FCTC), yet the Article itself is brief and broadly worded. The proposed guidelines for the implementation of Article 8 (Document A/FCTC/COP/2/7) advance the effective implementation of this key treaty provision by offering thoughtful guidance and specific recommendations for applying the treaty's general language.

The proposed guidelines for the implementation of Article 8 are the result of an open and transparent process. They reflect the consensus of a diverse group of Parties and experts, with the support of civil society. Moreover, the proposed guidelines are amply supported by both the scientific evidence and the experience of Parties with legislation in this area. As broad global coalitions representing civil society, the Framework Convention Alliance and the Global Smokefree Partnership strongly endorse the proposed guidelines and urge the Parties to adopt them as recommended. This briefing paper highlights key elements of the guidelines and the reasons they should be adopted as proposed to the COP.

Background

The rationale for protection from exposure to tobacco smoke is clearly stated in Article 8.1 of the FCTC, in which Parties accept the overwhelming scientific consensus that second-hand smoke kills:

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

In the time since the Convention was negotiated, the scientific consensus that exposure to tobacco smoke causes death, disease and disability has grown ever stronger, with the publication of important new expert reports, including those by the UK Scientific Committee on Tobacco or Health,[1] the US Surgeon General,[2] the French National Assembly,[3] the California Environmental Protection Agency,[4] and others. These authorities further confirm that exposure to tobacco smoke causes a variety of illnesses, including fatal illnesses, in adults and children.

During this time, civil society has played a central role in educating opinion leaders, stakeholders and the general public in many countries about the hazards of exposure to tobacco smoke and the benefits of smoke-free legislation. Advocacy organizations, academic experts and institutions, medical associations and health professionals have all contributed to an ongoing transformation in the world's understanding of this global problem. As the proposed guidelines acknowledge, civil society has a central role to play in building support

[1] UK Scientific Committee on Tobacco or Health. *Secondhand Smoke: Review of Evidence since 1998* (November 2004). Available online at: http://www.dh.gov.uk/assetRoot/04/10/14/75/04101475.pdf.
[2] US Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (Atlanta, Georgia: June 2006). Available online at: http://www.surgeongeneral.gov/library/secondhandsmoke/.
[3] Assemblée Nationale Française. *Rapport Fait Au Nom De La Mission D'Information Sur L'Interdiction Du Tabac Dans Les Lieux Publics* (No. 3353, 4 octobre 2006). Available online at: http://www.assemblee-nationale.fr/12/pdf/rap-info/i3353.pdf.
[4] California Environmental Protection Agency: Air Resources Board. *Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant* (June 2005). Available online at: http://repositories.cdlib.org/tc/surveys/CALEPA2005.

for smoke-free measures, and must be an active partner in developing, implementing and enforcing legislation (Proposed guidelines, para 10).

Most importantly, since the negotiation of the FCTC, many national jurisdictions, including several States Parties, have adopted laws that provide almost universal protection against tobacco smoke in all indoor public places and indoor workplaces. The number of subnational jurisdictions with such laws has also grown quickly. Evidence surrounding the implementation of these laws shows a remarkably similar pattern. Smoke-free laws are effective. They are practical, workable, and economically beneficial. They are popular, enjoying exceptionally high levels of public support.

Key elements of guidelines for implementation of Article 8

1: Acknowledge that Article 8 is grounded in fundamental human rights

Article 8.2 commits States Parties to the FCTC to adopting and implementing measures that deliver "*effective*" protection:

> *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.*

The proposed guidelines properly recognize that "*[t]he duty to protect from tobacco smoke, embodied in the text of Article 8, is grounded in fundamental human rights and freedoms*" (para 4). This acknowledgement is extremely important. By emphasizing this point, the guidelines not only underscore the importance of Article 8, but also clarify its legal and conceptual underpinnings. Because breathing second-hand smoke endangers life, a duty to protect against this hazard is implicit in the right to life recognized by the Universal Declaration of Human Rights; in the fundamental right of all persons to enjoy the highest attainable standard of health, as recognized in the Constitution of the World Health Organization, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Rights of the Child, and other international legal instruments and custom; and as formally recognized in the Preamble to the FCTC itself. Parties' obligations to protect their citizens from exposure to tobacco smoke also flow from the universal right of all persons to a healthy environment, as recognized in numerous other international instruments.

2: Legal protection, not voluntary measures

The proposed guidelines emphasize that Article 8 requires affirmative legal measures, and that voluntary agreements and informal arrangements are not acceptable alternatives. Principle 3 of the proposed guidelines states that:

Legislation is necessary to protect people from exposure to tobacco smoke. Voluntary smoke free policies have repeatedly been shown to be ineffective and do not provide adequate protection.

Protection from exposure to tobacco smoke requires the full backing of the law. While voluntary action by communities and businesses may serve to build support for smoke-free places, self-regulatory measures or voluntary agreements between governments and business cannot fulfill Parties' obligations under the FCTC. The evidence shows that the objective of effective, universal protection for all requires the capacity for legal sanctions and meaningful enforcement.

Where governments have substituted voluntary agreements for meaningful legal restrictions on smoking, progress has been slow. In Scotland, for example, after four years of a voluntary agreement, not one public house was smoke-free. Just one month after new smoke-free laws were implemented, inspections found 99% compliance with the law.[5]

3: Protection for all

The proposed guidelines correctly emphasize that the duty to protect individuals from tobacco smoke "*extends to all persons, and not merely to certain populations*" (para 4). The guidelines' key principles reiterate that "*[a]ll people should be protected from exposure to tobacco smoke*" (para 7).

This principle is important. Certain jurisdictions have sought to focus on "special" or "vulnerable" populations — such as women and children — or to limit smoking in only certain venues or at certain times. However, tobacco smoke poses a real and substantial threat to the health of all, and policies must extend comprehensive protection to all. Article 8.2 must be read in the light of the FCTC's Guiding Principles: Article 4.1 explicitly states that the FCTC is meant "*to protect all persons from exposure to tobacco smoke*".

This is not to ignore the fact that some populations may be especially vulnerable to smoke exposure because they are less able to speak out or act independently, without legal norms in place. This vulnerability only reinforces the need for comprehensive and enforceable legal standards to provide protection on their behalf.

4: Create 100% smoke-free environments

Tobacco smoke has been classified by leading authorities as a human carcinogen and a cause of lung cancer in humans.[6] This is not surprising, because tobacco smoke is a potent cocktail of more than 4000 chemicals, including at least 250 known toxins – nearly 70 of

[5] Scottish Executive. *Smoke-Free Legislation – National Compliance Data: 26 March-30 April, 2006 Summary* (Glasgow: 2006). Available online at: http://www.clearingtheairscotland.com/latest/index.html.

[6] International Agency for Research on Cancer. *Tobacco Smoke and Involuntary Smoking* (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Vol 83, Lyon: 2004); US Department of Health and Human Services, Public Health Service, National Toxicology Program. *Report on Carcinogens* (Washington, DC: 11th ed, 2005). Available online at http://ntp.niehs.nih.gov/index.cfm?objectid=32BA9724-F1F6-975E-7FCE50709CB4C932.

which are carcinogens. Particles in tobacco smoke include tar, benzene, dioxins, and heavy metals. Gases and vapours include carbon monoxide, ammonia, sulphur dioxide, dimethylnitrosamine, formaldehyde, hydrogen cyanide, and acrolein.

Because of the nature of the threat to health posed by small particles and by gaseous and vapour phase toxins in tobacco smoke, strategies which permit the presence of lit tobacco in enclosed or substantially enclosed public places or workplaces, or on public transport, cannot offer protection against tobacco smoke. Understanding this key principle is the starting point for implementation of Article 8. For this reason, no element of the proposed guidelines is more important than the recognition in paragraph 6 that:

> *Effective measures to provide protection from exposure to tobacco smoke, as envisioned by Article 8 of the Framework Convention, require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100% smoke-free environment. There is no safe level of exposure to tobacco smoke, and notions such as a threshold value for toxicity from second-hand smoke should be rejected, as they are contradicted by scientific evidence. Approaches other than 100% smoke-free environments, including ventilation, air filtration and the use of designated smoking areas (whether with separate ventilation systems or not), have repeatedly been shown to be ineffective and there is conclusive evidence, scientific and otherwise, that engineering approaches do not protect against exposure to tobacco smoke.*

The guidelines reiterate these points at paragraph 25:

> *No safe levels of exposure to second-hand smoke exist, and, as previously acknowledged by the Conference of the Parties in decision FCTC/COP1(15), engineering approaches, such as ventilation, air exchange and the use of designated smoking areas, do not protect against exposure to tobacco smoke.*

As this language properly emphasizes, ventilation — the use of air cleaning or filtration technologies or mechanical air exchange, alone or in combination — is not an acceptable strategy. Recent reviews by expert bodies, including the US Surgeon General,[7] the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE),[8] and the European Respiratory Society,[9] have concluded that ventilation cannot protect against the health risks of tobacco smoke. ASHRAE concludes that "*the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity*". In many countries, including Scotland, Ireland, New Zealand, Australia, England, Uruguay, Norway, and France, expert and governmental inquiries have reached the same conclusion.[10]

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[7] US Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* (Atlanta, Georgia: 2006). Available online at: http://www.surgeongeneral.gov/library/secondhandsmoke/.

[8] ASHRAE. *Environmental tobacco smoke position document* (Atlanta, Georgia: June 2005). Available online at: http://www.ashrae.org/content/ASHRAE/ASHRAE/ArticleAltFormat/20058211239_347.pdf.

[9] D Kotzias, O Geiss, P Leva, A Bellintani, A Arvantis, and S Kephalopoulos. 'Why Ventilation Is Not an Alternative to a Complete Smoking Ban'. In *Lifting the Smokescreen: 10 Reasons for a Smokefree Europe* (European Respiratory Society, Brussels: 2006). Available online at: http://dev.ersnet.org/uploads/Document/46/WEB_CHEMIN_1554_1173100608.pdf.

[10] See generally American Nonsmokers' Rights Foundation. *Bibliography of Secondhand Smoke Ventilation Studies* (2007). Available online at: http://no-smoke.org/pdf/VentilationBibliography.pdf.

Equally important is the guidelines' recognition that the creation of designated smoking areas is not an acceptable alternative, regardless of any ventilation systems used. Several jurisdictions have enacted laws that permit the use of designated smoking rooms (DSRs) with ventilation. Such rooms do not constitute "*protection*" against exposure to second-hand smoke and cannot satisfy the requirements of Article 8 because:

- they rely on separation and ventilation to contain tobacco smoke, both of which have proven to be ineffective strategies;
- smoke is released as smokers enter and leave the room, and people elsewhere in the premises are exposed to smoke leaked from the room; and
- where workers are required or permitted to enter such rooms, they are exposed to significant health risks.

Moreover, reliance on expensive ventilation systems and DSRs creates an uneven playing field for business, putting smaller businesses at a disadvantage. Indeed, in Ottawa, Canada, small bar owners supported a ban on designated smoking rooms because they created unfair competition.[11] The high set-up and running costs of ventilation and DSRs pose particular difficulties for many businesses in poorer countries. Further, because ventilation systems and DSRs are costly to operate and maintain, significant compliance issues may arise, with businesses ignoring ventilation standards to save money. Laws allowing DSRs in three Canadian provinces (British Columbia, Quebec and Nova Scotia) proved so problematic that it was necessary to revise the laws to eliminate their use.

Finally, because of the significant capital investment required, a strategy based on ventilation can also create a barrier to the subsequent implementation of policies for 100% smoke-free environments, increasing resistance to change among business owners. The government-backed voluntary agreement in the hospitality trade in England and Wales endorsed ventilation and separate smoking areas, leading to wasted investment in ineffective systems and years of delay in protecting workers.

5: Ensure comprehensive coverage

Effective protection requires the elimination of lit tobacco from all indoor workplaces, public places and public transport. The guidelines correctly begin from this presumption, stating that "*[a]ll indoor workplaces and indoor public places should be smoke-free*" (para 7). They go on to explain that Article 8:

> *. . . creates an* ***obligation to provide universal protection*** *by ensuring that all indoor public places, all indoor workplaces, all public transport and possibly other (outdoor or quasi-outdoor) public places are free from exposure to second-hand tobacco smoke. No exemptions are justified on the basis of health or law arguments. If exemptions must be considered on the basis of other arguments, these should be minimal. In addition, if a Party is unable to achieve universal coverage immediately, Article 8 creates a continuing obligation to move as quickly as possible to remove any exemptions and make the protection universal. Each Party should strive to provide universal protection within five years of the WHO Framework Convention's entry into force for that Party* (para 24, emphasis in original).

[11] City of Ottawa Communications and Marketing Department. Press release: *Court Upholds Ban on Designated Smoking Rooms* (2002). Available online at: http://www.smokefreeottawa.com/english/article-e20.htm.

This is the correct approach. Parties have an obligation to provide for the fullest possible protection from exposure to tobacco smoke for the greatest number of people. Article 8 does not provide for exemptions in workplaces, public places or public transport.

Besides offering the fullest protection and being more equitable, experience shows that comprehensive laws are more readily understood and enforced than piecemeal measures, and have the advantage of applying equally to all businesses. For example, compliance with Norway's 2005 law making all bars and restaurants smoke-free has been significantly higher than with the partial restrictions that preceded it.[12]

Some jurisdictions have pursued piecemeal approaches, thinking these will be more acceptable than comprehensive measures, but experience teaches that partial solutions create additional problems. For example, certain jurisdictions have sought to move towards prohibiting smoking indoors by prescribing that an increasing proportion of the venue or seating area should be set aside for non-smokers by a specified date. Where such a phased approach has been tried — including in Norway —[13] it has been found impossible to enforce.

Others have proposed measures that permit smoking at certain times of the day. This approach cannot protect health. Even apart from direct exposure to tobacco smoke, harmful components of the smoke linger — in the air, on surfaces, and in furnishings — long after the lit tobacco is gone.

Still other jurisdictions have made exemptions to accommodate settings which may be perceived as semi-residential. However, experience shows that smoke-free policies can successfully be implemented in many settings that have been regarded as "challenging", including prisons, hospices, long-term care and psychiatric facilities.[14] To the extent that such settings are also public places and (especially) workplaces, they are covered by the commitments created by Article 8.2. The explicit presumption should be that public premises are smoke-free.

6: Draft carefully

The proposed guidelines correctly underscore that "*[i]n order to be effective, legislation should be simple, clear and enforceable*" (para 8). For laws to be effective, they must not only prescribe evidence-based measures that protect health, they must also provide a clear and comprehensive framework that will maximise compliance, ease enforcement, facilitate inspection and monitoring, and minimise the risk of confusion and legal challenge. It is especially important, as the proposed guidelines point out (para 13), to use care in defining key terms.

[12] K Lund. *The Introduction of Smoke-free Hospitality Venues in Norway: Impact on Revenues, Frequency of Patronage, Satisfaction and Compliance* (Norwegian Institute for Alcohol and Drug Research, Oslo: 2006).
[13] Norwegian Directorate for Health and Social Welfare. *Smoke-free Public Places – A Total Ban* (2003). Available online at: http://www.shdir.no/tobakk/english/legislation_and_history/smokefree_public_places__ndash__a_total_ban_6895.
[14] M C Willemsen et al. 'Exposure to Environmental Tobacco Smoke (ETS) and Determinants of Support for Complete Smoking Bans in Psychiatric Settings' (2004) *Tobacco Control* 13: 180-185; N el-Guebaly et al. 'Public Health and Therapeutic Aspects of Smoking Bans in Mental Health and Addiction Settings' (2002) *Psychiatric Services* 53 (12): 1617 - 1622.

Defining "*smoking*"

Appropriately, the guidelines recommend that the term "smoking" be defined to include being in possession or control of a lit tobacco product, regardless of whether the smoke is being actively inhaled or exhaled (para 17). It may also be helpful to consider defining smoking to cover non-tobacco products. Certain jurisdictions, including Scotland and New Zealand, have written smoke-free legislation to cover all smoked products. Such provisions are adopted mainly to ease compliance, inspection and enforcement by removing the difficulty of distinguishing between tobacco and non-tobacco products. In addition, there is evidence that non-tobacco products such as herbal cigarettes may produce smoke with high levels of carbon monoxide, particulate matter, and carcinogenic tar.[15]

Defining the premises covered

Clear and expansive definitions of the premises covered are required. Careful definition of "*public places*", "*workplaces*", and "*public transport*" to cover all enclosed or substantially enclosed public areas eliminates the need to list specific places where smoking is banned. The presumption should be that all public premises are smoke-free unless specifically exempt. Existing legal definitions of "*public place*," "*workplace*," and "*public transport*" in national legislation must also be carefully considered to assess whether their use can offer the universal standard of protection, in places to which workers and the public have access, required by Article 8. If this is in any doubt, then consideration must be given to developing simple terms and definitions that can deliver such protection.

Defining "*public place*"

The proposed guidelines properly recommend that "*public place*" be defined broadly, and that the definition encompass all places accessible to the general public and all places for collective use, regardless of ownership interests or rights of access (para 18).

Defining "*workplace*"

As noted above, "*workplaces*" subject to protective measures under Article 8 should be defined expansively. The presumption should be that all work-related premises are smoke-free unless specifically exempted. Appropriately, the proposed guidelines call for a definition broad enough to cover any place used by people during their work, including voluntary work of the type for which compensation is normally paid, and including corridors, lobbies, cafeterias, toilets, lounges and other areas commonly used by workers in the course of employment, even if work is not performed in those areas (para 20). Equally appropriately, the guidelines recommend that the definition specifically include enclosed vehicles used in the course of work, including taxis, ambulances and delivery vehicles (paras 20 and 26).

Defining "*public transport*"

The proposed guidelines properly recommend that "*public transport*" be defined to include any vehicle used for the carriage of members of the public, including taxis (para 22).

[15] A M Calafat. 'Determination of Tar, Nicotine, and Carbon Monoxide Yields in the Mainstream Smoke of Selected International Cigarettes' (2004) *Tobacco Control* 13: 45-51.

Defining "*enclosed*" or "*indoor*" places

It is important to define "*enclosed*" or "*indoor*" in a way that prescribes whether smoking is banned when enclosure is not complete. Pointing out the potential pitfalls in developing a definition, the proposed guidelines properly recommend that the definition chosen "*should be as inclusive and as clear as possible*" and should "*avoid creating lists that may be interpreted as excluding potentially relevant 'indoor' areas*" (para 19). As the guidelines note, experiences of various countries offer lessons for creating a definition. Laws in Ireland and Scotland, for example, impose a 50% rule for a space that is not fully enclosed: smoking is not permitted in a space that has a ceiling/roof and walls (or wall-like structures) covering at least half of the area of the perimeter.

What about other, non-enclosed places?

In certain instances, universal, effective protection from tobacco smoke may require prohibiting smoking in certain areas that are not substantially or wholly enclosed. Article 8 calls for protective measures not only in all "*indoor*" public places, but also in "*other*" (that is, outdoor or quasi-outdoor) public places where "*appropriate*". The proposed guidelines recommend that, in applying this provision:

> *. . . Parties should consider the evidence as to the possible health hazards in various settings, and should act to adopt the most effective protection against exposure wherever the evidence shows that a hazard exists* (para 27).

Evidence from a growing number of jurisdictions shows that workers in outdoors areas—such as patio waiters and door staff—can sometimes be exposed to substantially higher levels of tobacco smoke than their co-workers in smoke-free enclosed places.[16] Moreover, where enclosed areas are contiguous with outdoor areas where smoking takes place, exposure levels indoors may also climb because of smoke diffusing inside. Smoking near doorways, open windows and air conduits can also cause problems. In these instances, effective protection may mean prohibiting smoking on outdoor patios, or for a defined distance around doorways, so as to prevent tobacco smoke from contaminating indoor areas. Some jurisdictions, such as the states of Queensland and Tasmania in Australia, the provinces of Nova Scotia and Newfoundland and Labrador in Canada, and the state of Hawai'i in the USA, have banned smoking in most or all of the outdoor parts of restaurants and bars.

7: Educate and involve the public

The proposed guidelines properly emphasize the importance of educating opinion leaders, key stakeholders and the general public about the need for legislation, with a focus on the harms caused by second-hand smoke exposure (paras 28-30). Raising awareness is essential to building the necessary public support for effective legislative action, as well as to the smooth implementation and enforcement of the law. Where the public understands the health risks of tobacco smoke, smoke-free laws are popular and well respected, and are largely self-enforcing.

[16] M Mulcahy, D S Evans, S K Hammond, J L Repace, and M Byrne. 'Secondhand Smoke Exposure and Risk Following the Irish Smoking Ban: an Assessment of Salivary Cotinine Concentrations in Hotel Workers and Air Nicotine Levels in Bars' (2005) *Tobacco Control* 14: 384-8; N E Klepeis, W R Ott, and P Switzer. 'Real-Time Measurement of Outdoor Tobacco Smoke Particles' (2007) *Journal of the Air & Waste Management Association* 57: 522-534.

A recent analysis of public opinion and compliance with smoke-free laws in Europe, the USA and New Zealand shows a remarkably similar pattern.[17] Support for smoke-free policies is high, and grows after the intention to legislate is announced. Moreover, after such laws are implemented, support for them grows further, among both smokers and non-smokers. Smoke-free laws have consistently high approval ratings, enjoying support of 70-96%. Typical compliance rates range from 94-99%.

The message for Parties is clear: the planning and implementation of policies to protect from exposure to tobacco smoke must be accompanied by measures to inform the public and businesses of the health risks of exposure to tobacco smoke. Raising awareness of the need for a law, arrangements for enforcement and penalties, and the implementation date gives the best opportunity for a successful law. Engaging the community's support in the initial development and adoption of legislation, and then in the process of implementation, monitoring and enforcement, is crucial to the ultimate impact and sustainability of the law. An engaged public becomes the primary monitoring mechanism for a strong law, reducing the resources needed for enforcement and ensuring high levels of compliance (para 45).

8: Involve civil society

The proposed guidelines properly accord a central role to civil society in every phase of legislation in this area. A key principle included in the guidelines is that:

> *Civil society has a central role to play in building support for and ensuring compliance with smoke free measures, and should be included as an active partner in the process of developing, implementing and enforcing legislation* (para 10).

Experience from many jurisdictions confirms that civil society has played a crucial role in building public support for smoke-free laws, in assisting with their implementation, and in promoting compliance. Governments should recognize that successful smoke-free laws require the backing of civil society.

9: Specify the duties of those responsible for compliance

To ensure legal accountability, legislation should specify who is responsible for ensuring compliance with the law. The proposed guidelines appropriately recommend that responsibilities be prescribed for both affected businesses and individual smokers; that enforcement should focus on the business establishments; and that responsibility for compliance should be placed on the owner, manager, or other person in charge of the premises (para 31).

The guidelines also recommend that the law identify the concrete steps the business or establishment must take, including posting signs, removing ashtrays, and taking specified steps to discourage individuals from smoking. Many current smoke-free laws impose only a general duty to take reasonable precautions to prevent violation, while other laws create

[17] S Jones and T Muller. 'Public Attitudes to Smokefree Policies in Europe'. In *Lifting the Smokescreen: 10 Reasons for a Smokefree Europe* (European Respiratory Society, Brussels: 2006). Available online at: http://dev.ersnet.org/uploads/Document/46/WEB_CHEMIN_1554_1173100608.pdf.

specific duties similar to those recommended by the guidelines. For example, Bermuda's law imposes a duty on employers to inform employees that the premises are smoke-free, and prohibits retaliation against employees who report a violation.

Other jurisdictions create more specific duties. For example, because ashtrays are an invitation to smoke, eight Canadian provinces and territories prohibit ashtrays wherever smoking is disallowed. Removing ashtrays, in turn, gives owners additional incentives to ensure that people do not smoke, because of cigarette burns to carpets, furniture and tablecloths. In Victoria, Australia, the person responsible for the premises must not provide an ashtray, matches, a lighter or any other item that would facilitate smoking. Identification of such specific duties is likely to facilitate enforcement and to help business owners in understanding their duties.

Many current laws also require the posting of conspicuous signs, as recommended by the guidelines. For example, Scotland's law prescribes the dimensions and content of signs: at least one of the signs must be a minimum size of 230 mm x 160 mm, display the international no-smoking symbol at least 85 mm in diameter, and display the name of the person to whom a complaint may be made. Ireland's law also requires that signs show the name of the person in charge and the name of the person to whom a complaint can be made. In England, signs must state the fine imposed for violations. It is important that the form, content and placement of signs be determined by appropriate agencies of the government, and it is helpful to require that the signs identify a telephone number or other mechanism for the public to report violations, as well as the identity of the person at the premises to whom complaints may be made. The display of the international no-smoking symbol is also useful. The symbol is internationally recognised, and is particularly valuable wherever multilingual communities or international travellers are present.

10: Set appropriate penalties

As the proposed guidelines recommend, legislation should specify monetary penalties for violations. Penalties should increase for repeated violations (para 32). Where consistent with a country's practice and legal system, the legislation should also allow for the possibility of "sanctions of last resort", such as suspension of business licenses, to prevent wilful violations.

Penalty amounts will vary, but should be large enough to deter violations and should be consistent with the country's treatment of equally serious offenses. For example, Bermuda's law provides for imposition of a $250 fine against the smoker for the first offense, and up to $1000 for the second or subsequent offense. A $1000 fine may be imposed on employers who fail to take reasonable action to prevent smoking and for failing to post proper signs. A $1000 fine may be imposed for obstructing an inspection officer. Norway's law applies fines for both willful and negligent violations, as well as for complicity and attempted violations. After a fine for first violations, Uruguay's law imposes closure of restaurants for three days for subsequent violations. After a series of increasing financial penalties, Ireland's law imposes an ultimate sanction of loss of license.

11: Create an effective enforcement infrastructure

Lines of authority for enforcement must be clear. Where multiple ministries or agencies have inspection and enforcement authority, these must be clearly delineated, along with corresponding responsibilities. The proposed guidelines appropriately recommend that the legislation identify those responsible for enforcement and specify a system for monitoring compliance and prosecuting violations (para 35).

The guidelines also identify the factors most important for a successful enforcement process. Monitoring should include a process for inspection of establishments covered by the law (para 36). This process should use one or several mechanisms already in place, such as business licensing inspections, fire safety inspections, health and safety inspections or similar programs. Inspection officers must have the legal power to enter any premises covered by the law to ascertain compliance, and businesses must be prevented from obstructing the inspectors in their work (para 38). In Uganda, Bermuda and Sweden, for example, it is an offense to fail to cooperate with or to obstruct an inspection.

Monitoring need not be unduly costly because, in most cases, smoke-free legislation is very popular and is soon enforced informally by the public, with little need for formal prosecutions. Still, effective monitoring does require public education and well-trained inspectors, along with effective planning and coordination (para 40).

12: Enforcement should be strategic

As the proposed guidelines accurately explain (paras 41-44), effective implementation and enforcement of smoke-free legislation is aided greatly by a strategic approach.[18] The guidelines appropriately recommend an informational campaign to educate business owners about a law before it takes effect. Some experts advocate a brief period of soft enforcement when the law first enters into force; others warn that this may undercut compliance. There is agreement, however, that any brief initial period of soft enforcement must be followed by a more aggressive approach, perhaps with a concerted effort to maximize deterrence by publicizing prosecutions. Authorities must be prepared to respond firmly to any cases of outright defiance.

13: "Future-proof" the law

Scientific evidence on the health hazards of tobacco smoke exposure continues to emerge, and our knowledge of which measures offer effective protection continues to evolve. Against this dynamic background, it is important to ensure that laws can be revised and expanded as necessary — for example, through regulations to strengthen the law and close loopholes. The proposed guidelines acknowledge that legislation is this area must be flexible, and that Parties should anticipate changes to the legislation over time to reflect newly available medical and scientific evidence.

[18] Where necessary, the creation of a task force to plan and coordinate the implementation process can also greatly assist with successful implementation of smoke-free legislation. Such a task force should begin work well before the legislation enters into force, and should include representatives of the government agencies involved and of civil society.

It is therefore appropriate that the guidelines state:

> *The protection of people from exposure to tobacco smoke should be strengthened and expanded, if necessary; such action may include new or amended legislation, improved enforcement and other measures to reflect new scientific evidence and case-study experiences* (para 12).

14: Monitor and evaluate

The proposed guidelines call for continual monitoring and evaluation of smoke-free legislation, including its implementation and enforcement. Monitoring should also assess the tobacco industry's efforts to undermine implementation of smoke-free legislation (para 11). These are key recommendations, because monitoring and evaluation are needed to assess the impact of legislation, promote compliance with the FCTC and build support for the most effective measures available. Ongoing evaluation is especially important in this area, because the expected progress of medical knowledge and evolving understanding of the effects of legislation are likely to create continuing opportunities for improvement.

Conclusion

The proposed guidelines for the implementation of Article 8 offer invaluable guidance to Parties in developing the protections against exposure to tobacco smoke required by the FCTC. Firmly grounded in the best available evidence and the experience of Parties that have successfully implemented effective measures, the guidelines reflect the consensus of a diverse group of Parties, experts and representatives of civil society. They elaborate on the text of Article 8 in a manner consistent with current scientific evidence and best practice worldwide. The guidelines should be adopted as proposed.