

# Article 8 of the World Health Organization Framework Convention on Tobacco Control from the Perspective of the Right to Health and Workers' Protection

*O Artigo 8o da Convenção-Quadro para o Controle do Tabaco da Organização Mundial da Saúde sob a Perspectiva do Direito à Saúde e Proteção do Trabalhador*  
*El Artículo 8º del Convenio Marco de la Organización Mundial de la Salud para el Control del Tabaco bajo la Perspectiva del Derecho a la Salud y Protección al Trabajador*

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## Abstract

**Introduction:** This article addresses the WHO Framework Convention on Tobacco Control and details Article 8 of the international treaty that provides protection from exposure to tobacco smoke and requires that States Parties shall adopt executive, administrative, legislative and other measures to protect their populations from the risks of second-hand tobacco smoke. **Objective:** To explore some of the challenges related to the implementation of smoke free environments in Brazil and to discuss the perspective of achieving this right. **Method:** A study based on documents researched in the Brazilian Congress, in the SciELO library databank, in academic documents and in the media. **Results:** From the analysis of the selected material on Brazilian tobacco control legislation, projects of law and lawsuits, some of the challenges related to the implementation of smoke free environments in Brazil under the framework of the Brazilian legal system from the perspective of the Occupational Health and Protection Right are explored. **Conclusion:** As Brazil has ratified the treaty, it is mandatory that smoke free environments be implemented, since an adequate framework of legal instruments sets up the ideal scenario to welcome an effective protection of Brazilian population's health to the harms caused by second-hand tobacco smoke.

**Key words:** Smoking/legislation & jurisprudence; Tobacco Smoke Pollution; Smoking Areas

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## INTRODUCTION

Tobacco smoking is recognized as a Public Health problem worldwide. Thousands of studies demonstrate that the use of tobacco is a causal factor of almost 50 different diseases, especially cardiovascular diseases, cancer and chronic obstructive respiratory diseases<sup>1</sup>. According to the World Health Organization (WHO), smoking is the leading cause of avoidable death in the world<sup>2</sup>.

At national level, the main policy adopted regarding this subject by the National Program for Tobacco Control, developed by the Brazilian National Institute of Cancer (INCA) as from 1989<sup>3</sup>, and at international level, the first international treaty of Public Health was negotiated under the auspices of WHO – the Framework Convention on Tobacco Control (FCTC). The idea of having an international instrument for tobacco control arose with the Resolution of the World Health Assembly n° 48.11 in 1995, and has become a fact eight years later with the adoption, unanimously, of the WHA Resolution n° 56.1 during the 56<sup>th</sup> WHA<sup>4</sup>. The treaty entered in force in February 2003 after its 40<sup>th</sup> ratification, becoming history as one of the United Nations treaties that could faster get adhesions, entered into force and is being implemented.

The FCTC has legally binding character and do not predict reserves, which means that States are obliged to act in accordance with the provisions of the treaty, and there may be legal consequences if not complied with and it is not possible to modify in any way the obligations assumed by them under the treaty. It articulates a set of intersectorial actions based on scientific evidence to respond to the globalization of tobacco epidemic and to reaffirm the right of all people to the highest standards of health, which is clearly assumed in the first paragraph of its preamble: "The Parties to this Convention (are) determined to give priority to protect the rights of Public Health [...]"<sup>4</sup>.

Also in the preamble<sup>4</sup>, regarding secondhand smoking, paragraphs 6 and 7 are highlighted:

Recognizing that science has unequivocally shown that the use and exposure to tobacco smoke are causes of mortality, morbidity and disability and that diseases related to tobacco do not appear immediately after initiation of tobacco smoke exposure and use of any tobacco-derived product; Recognizing, even further, that cigarettes and other tobacco products are prepared in a sophisticated manner to create and maintain dependence, and that many of their compounds and the smoke they produce are pharmacologically active, toxic, mutagenic, and carcinogenic, and that tobacco dependence is separately classified as a disease by the main international diseases classifications systems.

The FCTC expresses concern about the unfair practices from the tobacco industry, in the sense of "undermining or misrepresenting the activities of tobacco control", and adds, among their general obligations (Article 5.3), as follows:

By establishing and implementing their policies for Public Health on tobacco control, Parties shall act to protect these policies from commercial or other secured interests for the tobacco industry, in accordance with the national legislation<sup>4</sup>.

Brazil became the 100<sup>th</sup> Country to ratify the treaty, with the promulgation of Decree # 5,658, of January 2 2006<sup>5</sup>, and is forced thereby to comply with the obligations established by the treaty, many of which were already been implemented in Brazil since their adoption in 2003, since national and comprehensive actions for tobacco control were already being articulated by the government since 1989. However, a juridical and political clash with direct repercussions on health has been taking shape in the country regarding to the compliance of Article 8 from FCTC, which provides for the protection from exposure to tobacco smoke, determining that the countries that are States Parties adopt administrative and legislative measures to protect their population from the risks of secondhand smoking.

In July 2007, the Conference of the Parties (COP), a FCTC body formed by the States Parties to the treaty, approved, at its second session, guidelines<sup>6</sup> that, despite not binding, aim to guide countries for the implementation of Article 8. Such proposal recommends banning smoking in closed environments as the only way to protect the population of secondhand smoking risks. The principles established in the guidelines are the following:

**Principle 1** - Effective measures to promote protection against exposure to environmental tobacco smoke (ETS) require the total elimination of smoking in certain places in order to achieve a 100% tobacco free environment; there are no safe levels of exposure to tobacco smoke; different initiatives for total tobacco smoke elimination, such as ventilation systems, air filtration and the use of exclusive smoking areas (whether or not separated by ventilation systems), have repeatedly shown its inefficiency and there is conclusive evidence that no engineering instrument can protect people against ETS exposure and therefore must be rejected.

**Principle 2** - All people shall be protected against exposure to tobacco smoke. All closed environments, wheter or not for work, must be tobacco free.

**Principle 3** - a legislation that protects people's exposure to ETS is necessary. Voluntary policies for smoke-free environments have repeatedly shown their inefficiency

and that do not provide proper protection. To be effective, legislation must be simple, clear and enforceable.

**Principle 4** - Good planning and adequate resources are essential for the successful implementation and oversight of the legislation on smoke-free environments.

**Principle 5** - Civil society has a central role to support and ensure compliance to measures of tobacco free environments and must be included as an active partner in the process development, implementation and enforcement of such legislation.

**Principle 6** - The implementation of the smoke-free environment legislation, its enforcement and impact must be monitored and evaluated. This must include monitoring and responding to the tobacco industry activities to undermine the implementation and legislation compliance, as specified in Article 20.4 of the FCTC.

**Principle 7** - Protecting people from exposure to tobacco smoke must be strengthened and, if necessary, expanded. These actions must include new or amended laws, adjustments and improvements in order to fulfill them and other measures that reflect new scientific evidence and case study experiences.

The text guidelines warn about the fact that the duty to protect the population against ETS risks originate from human rights principles and fundamental freedoms. In view of the dangers related to the breathing of tobacco smoke, the respective protection duty is implied to the right to life and right to health, as well as of a healthy environment, as quoted in many international legal instruments \*(WHO Constitution, Convention on the Childrens Rights, Elimination of all Forms of Discrimination against Women Convention and International Covenant on Economic, Social and Cultural Rights) and formally embedded in FCTC preamble and envisaged in the Federal Constitution from many countries, including ours, as seen Articles 196 and 225 from our Federal Constitution (FC).

This study aims to explore some of the challenges related to the implementation of tobacco smoke-free environments in Brazil, and finally, discuss the prospects of achieving the right in question.

## METHOD

Regarding the methodology, this study is a qualitative, based on archival and historical research. The present study examined, in 2010, documental sources related to the FCTC in Brazil, to the existing federal and state legislations about the subject, Law Projects (LP) related

to smoking bans in collective places and workers' health protection and Direct Unconstitutionality Actions (ADIN) in the period between 2006 and 2010. The documents were available in websites from the Presidency of the Republic <http://www.presidencia.gov.br>, the Senate in <http://www.senado.gov.br> and the Supreme Court (STF) at <http://www.stf.jus.br>. Normative instruments were selected containing the following keywords: "Convenção-Quadro para o Controle do Tabaco, proibição de fumar em ambientes fechados e proteção à saúde do trabalhador" [Framework Convention on Tobacco Control, smoking indoors bans and protecting the workers' health].

The review was expanded by virtual search using the same key words reported, from SciELO database (Scientific Electronic Library Online). The procedure was also using snowball sampling to collect information on this topic from monographs, thesis and dissertations available at the INCA library documents published by experts in Law, technical documents and material for diffusion, whether or edited, available on INCA/MS webpages on <http://www.inca.gov.br>, from NGO Government Alliance for Tobacco Control on <http://www.actbr.org.br>, from WHO on <http://www.who.int/tobacco>, and COP FCTC on <http://www.who.int/FCTC/n>, as well as the national media coverage.

The study uses the definitions of terms provided in the guidelines<sup>6</sup> from Article 8, such as: "environmental tobacco smoke"- smoke emanated by a cigarette burning or other tobacco product usually combined with the smoke exhaled by the smoker"; tobacco smoke-free air -" is the air that is 100% free of tobacco smoke. This definition includes, but is not limited to the air in which tobacco smoke may not be seen, smelled, felt or measured"; "closed environment" – every place covered by a roof or enclosed by one or more walls or sides, whatever material is used for the ceiling, walls or sides, regardless of its permanent or temporary structure.

## RESULTS AND DISCUSSION

The enshrining of health as a human right and as a fundamental right in the constitutions of several countries occurred at a time in history when the so called state of welfare was being defended.

In our country, the Federal Constitution of 1988 inaugurated a new political and institutional moment in Brazil when reaffirming a democratic State and establishing a comprehensive social protection policy. Health was recognized as a citizenship social right, this inscribing it in a list of integrated initiative actions set of Public Authorities and society, whose prime objectives are

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\* For further study on other international instruments in human rights, reading the following publication is recommended: *Exposicion al humo tabacco ajeno en las Americas: one derechos human perspective*. Washington (DC): PAHO, 2006.

welfare and social justice. From the FC point of view, the State is legally obliged to exert actions and health services, aiming at the construction of the new social order<sup>7</sup>.

The right to health is related to the right to life, a basic and fundamental right. In this understanding, as a fundamental right, the right to health, including the workers' health, is subsumed in the concept of "human dignity", a basic principle of the Republic, provided for in item 3, Article 1 of the Federal Constitution, because it is not possible to talk about dignity if there is no any guarantee for the minimal health conditions for the individual. Likewise, the protection of the right to health is manifested in a caput from Federal Constitution, Article 5, which preconizes the inviolability of the right to life, the most fundamental among the rights. Irreconcilable, likewise, to protect life, without acting similarly with health<sup>8</sup> and work.

In addition, Article 196 of the Constitution provides that "health is a universal right and obligation of the State, guaranteed by social and economic policies aiming at a reduction of disease risks and other ailments, and universal egalitarian access to actions and services for its promotion, protection and recovery", and Article 225 says that a ecologically and balanced environment is a right of all people, imposing to the Public Authorities and the community the duty to defend it and preserve it for present and future generations.

By integrating the multilateral process that resulted in the adoption of FCTC from WHO, Brazil reaffirmed its commitment with the Brazilian Public Health and at international level, with sustainable development and social justice. Recognition that tobacco control has become a State Program was the creation of the Interministerial Commission for Implementation of the Framework for Tobacco Control (CONICQ), by a decree on August 1st 2003, in order to define strategies to internalize the guidelines contained in the international treaty. The main objective of FCTC is human welfare as provided in its Article 3:

protect present and future generations of devastating health, social, environmental and economic consequences generated by the use and exposure to tobacco smoke, providing reference for measures on tobacco control, to be implemented by the Parties at national, regional and international levels in order to continuously and substantially reduce the use prevalence of tobacco use and tobacco smoke exposure<sup>4</sup>.

#### **ARTICLE 8 FROM FCTC: EFFECTIVE PROTECTION AGAINST SECONDHAND SMOKING**

Secondhand smoking causes severe and fatal diseases in adults, such as lung cancer, cardiovascular diseases and acute and chronic respiratory diseases; in children,

it causes sudden death syndrome, and and in newborns, low birthweight.

It is estimated that secondhand smoking causes more than 600,000 premature deaths per year in the world<sup>9</sup>. The number of deaths of non-smokers due to secondhand smoking is alarming. In Brazil, according to a study performed by INCA in partnership with the Rio de Janeiro Federal University (UFRJ), every day, at least seven Brazilians die from diseases caused by exposure to second hand smoke. The study showed that at least 2,655 non-smokers die each year in Brazil due to diseases attributable to secondhand smoking<sup>10</sup>.

However, the cost of ETS exposure is not limited by the impact on illness and life expectation. ETS exposure also imposes economic costs to people, businesses and society in general. These sums do not include only medical direct and indirect costs, but also productivity losses. A study conducted by the Post-Graduation Program in Engineering from UFRJ showed that secondhand smoking costs to government coffers at least 37 million dollars every year. The Brazilian Unified Health System (SUS) spends R\$ 19.15 million per year for diagnosis and treatment of diseases caused by secondhand smoking and the National Institute of Social Security (INSS) pays, per year, more than R\$ 18 million to due pensions and benefits related to secondhand smoking<sup>11</sup>.

The International Agency for Research on Cancer-IARC concluded that tobacco smoke that pollutes indoor environments is genotoxic and carcinogen for humans, and that non-smokers exposed to it inhale the same toxic active elements inhaled by active smokers<sup>12</sup>. When breathing ETS, people are exposed to over four thousand chemical substances<sup>13</sup>. In virtue of this and many other scientific evidences attesting the harm caused by secondhand smoking, the Framework Convention, in Article 8, provided for protection against tobacco smoke exposure, and requires that countries which are States Parties on the treaty adopt administrative and legislative measures to protect their populations from the risks of secondhand smoking<sup>4</sup>.

According to the publication *Evaluating the Effectiveness of Smoke-free Policies*, also published by IARC in 2009, the global situation regarding the promulgation of laws that protect people against secondhand smoking started to change after the approval of the FCTC in 2003 and was leveraged after the approval of guidelines for the application of Article 8 in 2007. In alphabetical order, according to the referenced publication, they highlight the countries that have enacted laws that completely bans indoor smoking: Bhutan, Botswana, Estonia, France, Guinea, Iran, Ireland, Italy, Malta, Nigeria, Norway, New Zealand, Sweden, Uganda, Uruguay and the United Kingdom<sup>14</sup>.

However, the WHO Report on Tobacco Epidemic<sup>9</sup> points a huge challenge faced in this area: of the 100 largest cities in the world, only 22 are completely free of ETS.

## BRAZILIAN LEGISLATION DEALING ABOUT THIS SUBJECT

In Brazil, this matter is addressed nationally by the Law 9294, of July 15 1996, which provides restrictions to the use and advertising of tobacco products, alcoholic beverages, medicines, pesticides, pursuant to § 4 of Article 220 of the Federal Constitution.

Despite the possible influence of the tobacco industry in its formulation and approval, the Federal Law N° 9,294/96 was, at that time, an important advancement step on tobacco control in Brazil, when among other providences, banned the use of tobacco derived products in public premises, whether private or public, except in areas exclusively dedicated to this objective, duly insulated and with proper aeration (Article 2).

By analyzing the provisions from Article 2 of the Law, it is noted that the definition of the terms "public venue", "area solely intended for that purpose, duly insulated and proper aeration" was essentially important to apply that to a legal command. However, these definitions were not written in the law, and the promulgation of Decree 2018 on October 1 1996 was needed, which regulates the Federal Law. In the way it was written, the Brazilian legislation allowed the cigarette industry to develop, in Brazil, as they had done in other countries, programs to keep tobacco as socially acceptable and permissible in all environments, encouraging coexistence between smokers and non-smokers. Motivation from this industry showed evidence that 100% ETS-free areas would decrease cigarette consumption and, consequently, industry profits.

The strategy from cigarette industry, implemented worldwide, to make partnerships with bars, restaurants and hotels is also well documented. An example of this partnership is a program called Coexistence in Harmony, in partnership with the International Hotel and Restaurant Association, IHRA, whose goal is to ensure that public spaces are to be divided in areas for smokers and non-smokers, instead of being 100% free of ETS<sup>15</sup>.

The interpretation of the referred law enables the statement that smoking is tolerated only in "areas solely designed for that purpose, properly insulated with proper aeration". But what happens in practice is that these places are not exclusively to smoking. In most of these places there is effective service rendering, such as bars and restaurants, which exposes workers from these environments to the toxic effects of tobacco smoke on a daily basis. This interpretation of the law, favorable to the tobacco industry, was well documented in the article by Bialous et al.: the answer of the tobacco industry was the creation of smoke-free spaces in Brazil/ They researched internal documents of the tobacco companies, and one of these documents about this matter says<sup>15</sup>:

A federal law adopted in the two instances of National Congress will restrict smoking in public

places, including work environments, to isolated and properly ventilated areas. It is likely that the law will be signed by the President. As the terms for specific restriction must be regulated within the next 60 days, the industry is jointly working to try to ensure a language allowing reasonable adaptation.

The domestic legislation on smoking in closed environments is outdated regarding the best practices recommended by the FCTC as it allows areas reserved for smoking. Scientific evidence<sup>16</sup> shows that the implementation of policies for an environment 100% free of tobacco smoke is the only effective solution to eliminate ETS exposure in workplaces, and that separating smokers and non-smokers, cleaning the air and ventilation of buildings are not sufficient to eliminate non-smokers exposure to ETS.

A survey on smoking, conducted by the Institute of Brazilian Geographic and Statistics in 2008 showed that although this Law has been in force since 1996, 27% of the population above 15 years old is still exposed to ETS, especially in work environments<sup>17</sup>, which proves that the federal law is not effective for the protection of people against tobacco smoke exposure.

To perfect the law, the Ministry of Health developed an LP proposing an amendment to Article 2 of Law 9,294/96 to ban smoking completely from public or private collective places. This LL has been, apparently, at least for 2 years under analysis at the Civil Office<sup>18</sup>. However, other 2 LPs are pending in the Senate, they are: LP No 315/08, introduced by Senator Tiao Viana and LP 316/08 authored by Senator Romero Jucá. An analysis of the texts of these LPs identifies the LP authored by Senator Tiao Viana as the legislative initiative that meets the FCTC requirements, while LP of Senator Romero Juca allows fumódromos [places exclusively designed for smoking] with services provided in these areas, so more people, especially workers, will be exposed to second hand smoke. However, even though the project laws – LPs were submitted in 2008, although there has been no decision regarding approval or rejection of these LPs in the Senate because of intense activity of legislative referral for analysis in several Committees of the Office, this delay is attributed to the intense lobby from tobacco companies<sup>19</sup>.

With the gap left by current Federal Law, laws creating indoor environments that are 100% smoke-free were enacted in seven states, such as Amazon, Paraíba, Paraná, Rio de Janeiro, Rondonia, Roraima and São Paulo; and in municipalities such as Salvador, Juiz de Fora, Goiânia, Maringá, Curitiba, Cornelio Procopio, Belem and Tubarão.

State standards, legislating on the subject already laid down by federal law, led to questions about their constitutionality by segments representing the interests of the tobacco industry at the Supreme Federal Court - STF.

## ADIN EMERGES BEFORE THE SUPREME COURT

In the Supreme Court, three ADIN \*\* are in progress in virtue of the laws enacted in the states banning smoking indoors. The first ADIN, n° 4,249, was presented by the National Confederation of Tourism and requires the unconstitutionality of Sao Paulo State Law n° 13,541/09. The second ADIN (N° 4306), from the National Confederation of Goods Trade, Services and Tourism, is against the Rio de Janeiro State Law n° 5,517/2009. Finally, the ADIN n° 4,351 questions the constitutionality of Parana State Law n° 16,239/2009, and was required in conjunction by the other two ADIN applicants.

It should be noted that all laws questioned are in compliance with WHO recommendations, effectively protecting the health of the population as they do not allow indoor smoking. The arguments of ADIN applicants are that there was interference against the federal legislative competence to establish general standards about consumption and protection to health, because there is a federal law on the subject and that state laws are violating it, since they do not allow the fumódromos.

The proceedings have not been tried yet, but there's an opinion from General Attorney Office<sup>20</sup> in favor of declaring the law's constitutionality based on the understanding that with the advent of FCTC, an international treaty ratified by Brazil in 2006, due it is later and upper hierarchy, in addition to discipline in a different way the fight against tobacco smoke exposure, the Federal Law n° 9,294/96 would have been revoked. Although the opinion does not take binding effect, it will be considered at occasion of the actions' trial.

## WORKERS' RIGHT TO HEALTH

The International Labour Organization (ILO) estimates that at least 200,000 workers die each year due to exposure to environmental ETS at work environments<sup>21</sup> and recognizes that tobacco smoke exposure in these environments is a threat to health and safety at work because it causes cancer and other serious diseases, besides bringing risk of fires and explosions<sup>22</sup>.

In addition, in workplaces, secondhand smoking is considered an occupational hazard. In bars and restaurants, for example, waiters that are non smokers and are exposed to ETS are, on average, two times more likely to develop lung cancer than those who are not exposed to environmental tobacco smoke<sup>19</sup>.

For Adriana Pereira de Carvalho<sup>23</sup>,

in the case of exposure to tobacco smoke in the workplace, banning indoor smoking is a preventive measure of occupational character that must be guaranteed to all workers by the contractor for their services, by the state and society.

According Celso Antonio Pacheco Fiorillo<sup>24</sup>, among the aspects that include the environment, the working environment is found, and it is not restricted to employee work relations, but a place where human labor is provided, being protected by the Constitution, Article 7, item 12, Article 200, item 8 and Article 225, also recognize that the most important aspect of the constitutional subject in the juridical protection is related to health of the human being in harmony with the already mentioned Article 1, 3 of the Constitution.

Therefore, the promotion of environments 100% free of tobacco smoke is in consonance with the right guaranteed to an appropriate, healthy and wholesome work environment, as predicted in Article 225 of the Constitution, and the right of all employees to the reduction of risks inherent to the work, as provided in Article 7, item 12, recognizing that the possibility of smoking in workplaces violates these articles.

In this sense, between the prospects of achieving the right of workers to implement environments free of tobacco smoke in Brazil, the Public Ministry action in some localities in the country can be highlighted, in the implementation of the current legislation in accordance with the terms of the FCTC and the FC, while a federal law that bans smoking in enclosed environments is not approved.

As to the matter regarding work environment, it continues to be governed by the Consolidation of Labor Laws (CLT), which, in Article 157, assigns company the responsibility to comply with the standards and practice safety and occupational medicine regulations, in addition to instructing employees about the precautions to be taken to avoid work accidents or occupational diseases. The Norm for Safety and Health at Work<sup>\*\*\*</sup>, NR 09, establishes that the design and and implementation, by all employers and institutions which hire employees, of a Program for Prevention of Environmental Risks

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\*\* direct action of unconstitutionality (ADIN), provided in Article 102, I, "a" of the Federal CONstitution (FC) is an action that aims to declare that a Law or a federal or state normative act, or part of them is unconstitutional, that is, contradicts the FC. Article 103 has extensive writing as to the legitimation of ADIN proposition and, if upheld, will be declared unconstitutional, which produces effects against all and excludes the law of the legal. Against the decision that declares a unconstitutionality, no appeal is allowed, except for declared embargoes.

is mandatory, aiming at the preservation of health and integrity of workers, by anticipation, recognition, evaluation and subsequent control of occurrence of existing or future environmental hazards at the working environment, taking into account environment and natural resources protection.

According to NR 09, physical, chemical and biological agents existing in the workplace are considered environmental risks, which due to their nature, concentration or intensity and time of exposure, are capable of causing damage to the workers' health (NR 9.1.5).

In the international scenario of work environment protection, Brazil joined the two international treaties related to this subject of study. They are Conventions # 148 and # 155 from ILO. The following provisions are highlighted:

Article 4 of the Convention N° 148

1. National legislation shall provide adoption of measures in the workplace to prevent and limit occupational hazards due to air contamination, noise and vibrations and to protect workers against such risks (emphasis added).

Article 4 of the Convention N° 155

1. Each Member must, after consultation with the most representative organizations of employers and workers concerned, and taking into account the national conditions and practice, formulate, put into practice and periodically review a national policy coherent as to occupational security and health and work environment (emphasis added).

2. This policy will have the objective of preventing accidents and damage to health that are consequence of the work, related to the work activity or supervene at work, minimizing, to the extent that is reasonably practicable, the causes of hazards inherent to the work environment (emphasis added).

It is noteworthy that this scope perfectly fits ETS in the workplace, considered to be carcinogenic and genotoxic to man, and for which there are no safe levels of exposure or ventilation system for indoor environments that are able to eliminate exposure to and risks of secondhand smoking.

According Cavalcante<sup>25</sup>, secondhand smoke violates the worker's fundamental right to full health, guaranteed by the Federal Constitution, and indemnification for

individual and collective moral damages (in a typical lawsuit of the Public Ministry of Labor) based on Articles 186 and 927 *caput* and sole paragraph, both from the Civil Code, combined with Articles 8 and 769 of the CLT is due, when companies allow their employees to inhale tobacco smoke at work, exhaled by other workers or clients, thus exposing the worker to a situation of severe risk to health.

## CONCLUSION

It can be concluded that Science has unambiguously already and unambiguously demonstrated the harms caused by exposure to the toxic substances present in tobacco smoke. This text has tried to show that there is a legal framework of national and international legal instruments that conforms a legal background prepared to welcome an effective protection to the health of the Brazilian population, including workers, as to the harms caused by ETS.

The current scenario where antagonistic law projects are simultaneously underway in the Senate on the matter, which is object of this study, whose guidelines have already been approved in Brazil, seems to show a drop arm between the interests of the Public Health and the tobacco industry. This confront is similar to the barriers that Brazil faced in the process for the treaty ratification. In this scenario, the omission of our legislators to approve a law that takes into account the provisions of the FCTC, will keep causing serious consequences to peoples' health.

The FC was a milestone for the Brazilian Public Health by recognizing the fundamental right to citizens and a duty of the State, to be provided through social and economic policies aiming at reducing the risk of diseases or other health problems and by ensuring universal and equally access to Public Health actions and services. Regarding the matter of smoke-free environments, the right to health for all, smokers and non-smokers, must be preserved, whether they are regular visitors to indoor places, or workers who render services there, as well as the right to a healthy environment ETS-free.

Anyway, it is important to remember that the international obligations assumed by Brazil impose, to all public authorities in the country, whether executive,

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\*\*\* The regulating norms, also called NR, were published by the Ministry of Work and EMPloyment, through Ordinance # 3214/78, to establish the technical and legal requisites regarding the minimum occupational health and safety aspects. They are mandatory for any company or institution who hires workers under CLT, including private and public enterprises, government bodies, wether under direct or indirect administration, as well as bodies from Legislative and Judicial Powers.

legislative or judicial, the duty to promote the effective internalization of the FCTC in our country.

## CONTRIBUTIONS

Cristiane G. F. Vianna and Maria Helena B. Olveira worked on the conception, participated in the survey, data analysis and design of the final text of this article. Other authors have worked in design and review of the article.

**Declaration of Conflicting Interests: Nothing to Declare**

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## Resumo

**Introdução:** O Artigo descreve em linhas gerais a Convenção-Quadro para o Controle do Tabaco e trata de forma mais detalhada o Artigo 8º do tratado internacional, que dispõe sobre a proteção da exposição à fumaça do tabaco, determinando que os países que são Estados Partes da Convenção-Quadro para o Controle do Tabaco adotem medidas executivas, administrativas, legislativas e outras, para proteção das suas populações dos riscos do tabagismo passivo. **Objetivo:** Explorar alguns dos desafios relacionados à implementação de ambientes livres da fumaça do tabaco no Brasil e discutir as perspectivas de concretizar o direito em questão. **Método:** Estudo baseado em pesquisa documental nos arquivos do Congresso Nacional, no banco de informações SciELO, em documentos acadêmicos e na mídia. **Resultados:** A partir da análise do material selecionado sobre a legislação brasileira relacionada ao tema, os Projetos de Leis relacionados ao assunto em trâmite e as ações judiciais, exploraram-se alguns dos desafios relacionados à implementação de ambientes livres da fumaça do tabaco no Brasil com sua efetiva internalização no ordenamento jurídico brasileiro sob a perspectiva do Direito à Saúde e Proteção do Trabalhador. **Conclusão:** Concluiu-se que, como o Brasil ratificou o tratado, é mandatório implementação de ambientes 100% livres da fumaça do tabaco, já que existe no ordenamento jurídico um arcabouço de instrumentos legais que conformam um cenário preparado para receber uma efetiva proteção à saúde da população brasileira com relação aos malefícios causados pela fumaça ambiental do tabaco.

**Palavras-chave:** Tabagismo/legislação & jurisprudência; Poluição por Fumaça de Tabaco; Áreas Destinadas ao Tabagismo

## Resumen

**Introducción:** Ese artículo trata del Convenio Marco de la Organización Mundial de la salud para el Control del Tabaco, con el punto de partida del análisis en la premisa establecida en el artículo 8º del tratado internacional que dispone sobre la protección en contra la exposición al humo del tabaco, y determina que los países que son Estados Parte adopten medidas ejecutivas, administrativas, legislativas y otras para la protección de sus poblaciones de los riesgos del tabaquismo pasivo. **Objetivo:** Explorar algunos de los desafíos relacionados a la implementación de ambientes libres del humo del tabaco en Brasil y discutir las perspectivas de lograr el derecho en cuestión. **Método:** Este estudio se basa en la investigación de archivos en el Congreso Nacional, en la base de datos SciELO, en trabajos académicos y en los medios de comunicación. **Resultados:** A partir del análisis del material seleccionado en la legislación brasileña sobre el tema, proyectos de leyes y acciones judiciales se exploraron algunos de los desafíos relacionados a la implementación de ambientes libres del humo del tabaco en Brasil y su efectiva incorporación en el ordenamiento jurídico brasileño bajo la perspectiva del Derecho a la Salud y Protección al Trabajador. **Conclusión:** Llega-se a la conclusión de que, como el Brasil ha ratificado el tratado es obligatorio implementar ambientes 100% libre de humo de tabaco, ya que existe un marco legal de instrumentos jurídicos que conforman un escenario preparado para acoger una efectiva protección de la salud de la población brasileña acerca de los daños causados por el humo de segunda mano.

**Palabras clave:** Tabaquismo/legislación & jurisprudencia; Contaminación por Humo de Tabaco; Áreas Destinadas a Fumadores