

SEATCA

SMOKE-FREE INDEX

Implementation of Article 8 of the
WHO Framework Convention on Tobacco Control
(*Protection from Exposure to Tobacco Smoke*)
in ASEAN Countries, 2020



Southeast Asia Tobacco Control Alliance

September 2020

SEATCA SMOKE-FREE INDEX

**Implementation of Article 8 of the
WHO Framework Convention on Tobacco Control
(Protection from Exposure to Tobacco Smoke) in ASEAN Countries, 2020**

Author:

Dr Domilyn C. Villarreiz
Smoke-free Program Manager

Suggested Citation:

Villarreiz D. SEATCA Smoke-free Index: Implementation of Article 8 of the WHO Framework Convention on Tobacco Control in ASEAN Countries, 2020, Bangkok, Thailand.

First published in November 2016

Revised in July 2017, November 2019, September 2020

Bangkok, Thailand

Published by

Southeast Asia Tobacco Control Alliance (SEATCA)

Thakolsuk Place, Room 4D, 115 Thoddamri Road, Dusit, Bangkok, Thailand

Telefax: [+66 2 668 3650](tel:+6626683650) Email: info@seatca.org

Website: www.smokefreeasean.seatca.org

Disclaimer:

The information, findings, interpretations, and conclusions expressed herein are those of the author and do not necessarily reflect the views of the funding organization, its staff, or its Board of Directors. While reasonable efforts have been taken to ensure accuracy at the time of publication, SEATCA does not guarantee the completeness and accuracy of the information in this document and shall not be liable for any damages incurred as a result of its use. Any factual errors or omissions are unintentional. For any corrections, please contact SEATCA at info@seatca.org.

© Southeast Asia Tobacco Control Alliance 2020

This document is the intellectual property of SEATCA and its author. SEATCA retains copyright on all text and graphics in this document, unless indicated otherwise. This copyright is protected by domestic copyright laws and international treaty provisions. The information in this document is made available for non-commercial use only. You may store the contents on your own computer or print copies of the information for your own non-commercial use. Commercial use or transmission in any form or by any means, including modifying or reusing the text and graphics in this document, distributing the text and graphics in this document to others, or mirroring the information in this document in other media requires prior written permission from SEATCA. All other rights reserved.

About SEATCA (www.seatca.org)

SEATCA is a multi-sectoral non-governmental alliance promoting health and saving lives by supporting ASEAN countries to accelerate and effectively implement the evidence-based tobacco control measures contained in the WHO Framework Convention on Tobacco Control. Acknowledged by governments, academic institutions, and civil society for its advancement of tobacco control in Southeast Asia, the WHO bestowed upon SEATCA the World No Tobacco Day Award in 2004 and the WHO Director-General's Special Recognition Award in 2014. SEATCA is an official NGO Observer to the WHO FCTC Conference of Parties and a co-initiator of the Global Center for Good Governance in Tobacco Control (GGTC).

Contents

4 Introduction
WHO FCTC Article 8
The Tobacco Industry's Smoke-Free Lie

6-10 Implementing the Seven Principles of the WHO
FCTC Article 8 Guidelines in the ASEAN Region

11 Definition of Terms

12 Scope of an Effective Smoke-Free Legislation

13-17 Enforcement

- Duty of Compliance
- Penalties
- Enforcement Infrastructure
- Enforcement Strategies
- Mobilize and Involve the Community

17-18 Monitoring and Evaluation of Measures

18 Conclusion

19 Acknowledgement
References

WHO FCTC ARTICLE 8

The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) is a legally-binding treaty designed to reduce deaths and diseases caused by tobacco use worldwide. It was adopted by the 56th World Health Assembly in 2003 and was open for signature until 29 June 2004. It entered into force on 27 February 2005, is deposited at the United Nations Headquarters in New York, and remains open to WHO member states of the World Health Organization, states that are not members of the WHO, but are members of the United Nations, as well as regional economic integration organizations.¹ To date, there are 182 Parties to the WHO FCTC.

Article 8 of the FCTC imposes specific obligations on all Parties to protect the entire populace from

exposure to tobacco smoke. It requires Parties to undertake appropriate legislative, executive, administrative and/or other measures that provide universal protection from tobacco smoke in all indoor workplaces, public places, and public transport including other public places. Designated smoking rooms, ventilation schemes or any engineering approaches are proven to be ineffective in protecting the populace from exposure to second-hand tobacco smoke. There are no legal or health justifications for exemptions. The Parties have approved the Article 8 Guidelines to assist them in meeting their obligations under Article 8 of the Convention which calls for full protection for all people from exposure to tobacco smoke based on best practices in protecting public health within the period of five years of the WHO FCTC's entry into force for that Party.²

SMOKE-FREE INDEX: HOW COUNTRIES IN THE ASEAN REGION PROTECT PEOPLE FROM EXPOSURE TO TOBACCO SMOKE

The primary responsibility of governments is to protect the welfare of its people including the protection and promotion of public health. The Parties to the FCTC are under legal obligation to enact smoke-free laws that effectively protect all persons from exposure to second-hand tobacco smoke. Nine out of the ten countries in the ASEAN region are Parties to the Convention and are expected to have smoke-free laws that are 100% compliant to the Article 8 Guidelines.

Indonesia is not yet a Party to the FCTC.³

This Smoke-free Index is intended to assist Parties in meeting their obligations under Article 8 of the FCTC. It contains agreed-upon statements of principles and definitions of relevant terms, and identifies measures needed to achieve effective protection from the hazards of exposure to second-hand tobacco smoke.

THE TOBACCO INDUSTRY'S SMOKE-FREE LIE

Dubious "Smoke-free" Products

Tobacco companies refer to electronic nicotine delivery systems (ENDS, such as e-cigarettes that heat a nicotine-containing e-liquid or e-juice without tobacco) and heated tobacco products (HTPs, which contain tobacco) as "smoke-free" products "because they do not generate smoke." This claim is refuted by the WHO,⁴ which states that describing ENDS and HTPs as "smoke-free" creates confusion between product categories and is a false claim, as studies have shown that emissions of these products contain many of the toxicants found in cigarette smoke.⁵ WHO has declared that e-cigarettes are "undoubtedly harmful" and

are not safer alternatives to regular cigarettes. Further, HTPs are tobacco products, and Parties to the WHO FCTC should regulate them in the same way as other tobacco products.

Clearly, the industry is undermining the WHO FCTC, which defines smoke-free air as "air in which tobacco smoke cannot be seen, smelled, sensed, or measured". Governments are not limited from expanding this definition and are cautioned of the possibility that the tobacco industry or the hospitality sector may attempt to exploit the limitations of this definition.⁶

PMI's "Smoke-free Future" – Substitution, not Cessation

In 2016, Philip Morris International (PMI) announced that it was transforming its business to achieve a "smoke-free future"⁷ by switching smokers of traditional cigarettes to its new tobacco products, in particular, its "reduced risk" heated tobacco products (HTPs). Reminiscent of the industry's promotion of "less harmful" light and mild cigarettes as an alternative to quitting smoking, PMI claims that these new products are "less harmful" than cigarettes, because there is reportedly no combustion as with traditional cigarettes, and that they complement existing tobacco control initiatives.

PMI thus launched its "Unsmoke" campaign,⁸ a marketing ploy to promote switching to "less harmful" "smoke-free" alternatives to

cigarettes (particularly, its IQOS product) as a means to end smoking.⁹ It is also a deliberate bid to rectify the firm's tarnished reputation, so it can continue to influence tobacco control policies and regulations.¹⁰ Yet, despite its claims that it wants smokers to "unsmoke" and switch to "less harmful" products, PMI is clearly not serious about achieving this goal, as it continues its massive production and aggressive worldwide marketing of Marlboro and other cigarette brands¹¹ and unabashedly continues to undermine tobacco control efforts of countries dedicated to creating 100% smoke-free environments. At the same time, e-cigarettes are creating a new generation of nicotine addicts and hindering those who want to quit smoking for good.

Tobacco industry support for a "Smoke-free World"

In 2017, PMI announced its financial support (USD 960 million or 80 million for 12 years) for the establishment of the Foundation for a Smoke-Free World (FSFW), whose purported goal is to "eliminate smoking." This wholly PMI-funded foundation presents itself as a tobacco control organization, but, unsurprisingly, its definition of "smoke-free" is fully aligned with PMI's "smoke-free future" -- not eliminating tobacco use but switching smokers to reportedly less harmful alternatives like e-cigarettes.

Since then, FSFW has been providing research grants and lobbying not only for the use of

e-cigarettes but also for the acceptance of the tobacco industry as a legitimate partner in tobacco harm reduction, eerily similar to the industry-formed-and-funded Council for Tobacco Research in the 1950s and Center for Indoor Air Research in the 1980s.

Noting clear conflicts of interest, WHO has refused to engage with FSFW and advised WHO Member States and non-State actors to follow its lead. SEATCA and many other national and international tobacco control organizations have also refused to engage with FSFW and exposed it for what it is: an industry front group.

The real "smoke-free"

The term "smoke-free" has been used for decades by the global tobacco control community and recognized by the public at large as referring to tobacco use, and most public health officials consider e-cigarettes and HTPs as new ways of smoking.¹² The blatant

theft of the term "smoke-free" by PMI and FSFW not only grossly misleads the public into believing that ENDS and HTPs are less harmful alternatives to cigarettes, but also undermines the WHO FCTC¹³ and the achievement of the tobacco endgame.

IMPLEMENTING THE SEVEN PRINCIPLES OF WHO FCTC ARTICLE 8 IN THE ASEAN REGION

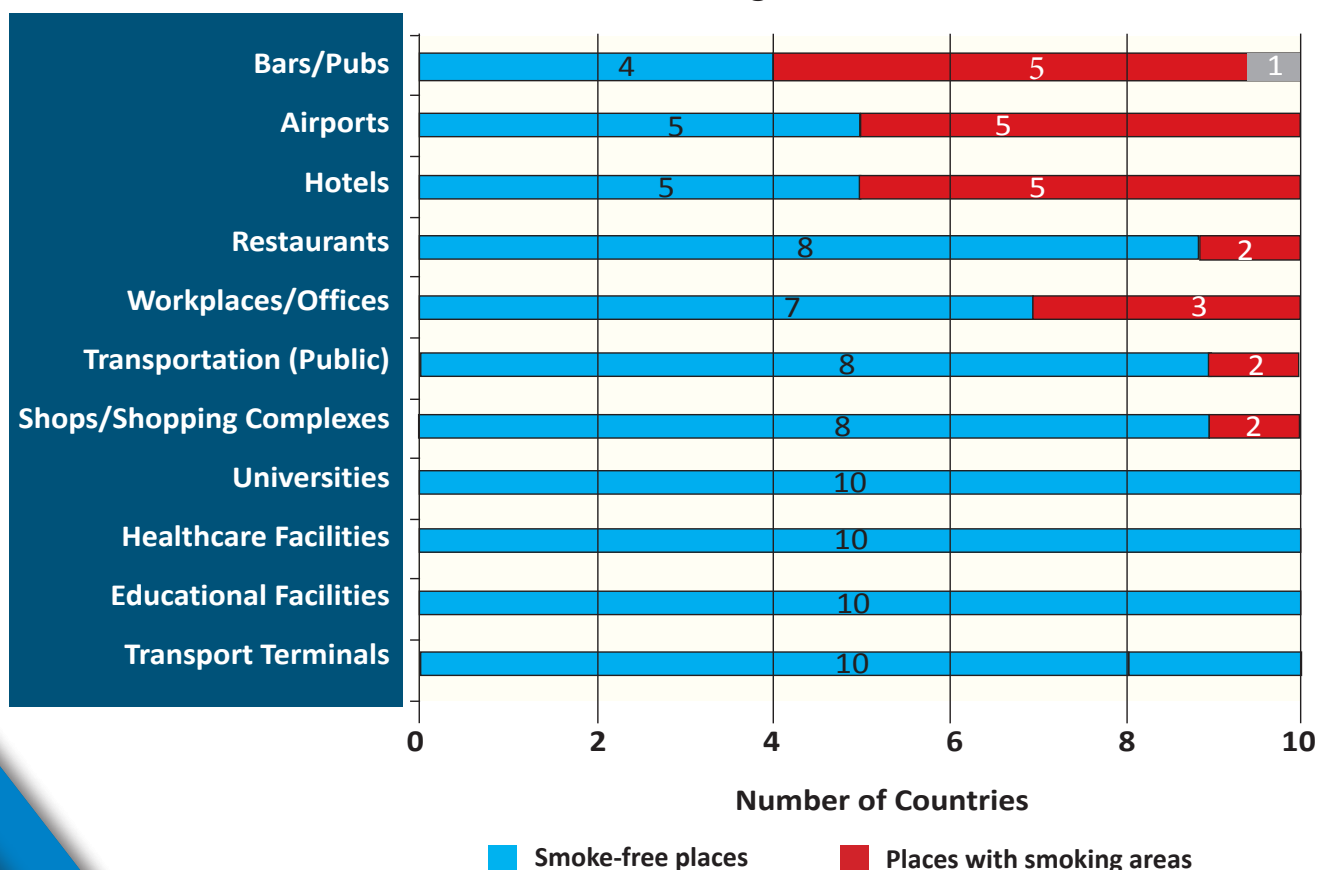
Principle 1

Effective measures to provide protection from exposure to tobacco smoke, as envisioned by Article 8 of the WHO FCTC, 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.

Most countries that are compliant with FCTC Article 8 Guidelines have laws that were enacted or amended after they became Parties to the WHO FCTC or that were passed after the approval of the Article 8 Guidelines. Several have amended their laws by adding more smoke-free places through notifications. Brunei, Cambodia, Lao PDR, Myanmar, and Thailand have laws/notifications that promote 100% smoke-free indoor workplaces, indoor public places, public transportation, and other public places where possible.

Based on national smoke-free laws and notifications/regulations of the 10 ASEAN countries, people should not be exposed to tobacco smoke inside buildings of educational facilities, healthcare facilities, and universities. Several countries still allow designated smoking rooms in bars, pubs, airports, hotels, and restaurants (Figure 1). The details on the countries which still allow smoking rooms can be seen in Table 1.

Figure 1. Number of Countries with Smoke-Free Places and Places with Smoking Rooms



Principle 2

All people should be protected from exposure to tobacco smoke. All indoor workplaces and indoor public places should be smoke-free.

Brunei, Lao PDR, and Thailand have smoke-free laws that are fully compliant with WHO FCTC Article 8. Lao PDR still needs to enforce the law nationwide. Cambodia and Myanmar have 100% smoke-free laws in most places with the exception of only one setting (airport or public transportation).

The summary of smoke-free settings (Table 1) is based primarily on each country's national law including the notifications, regulations, and amendments that should be implemented nationwide. The Philippines and Indonesia have subnational laws or ordinances that support a 100% smoke-free environment in some provinces, cities, and municipalities.

Table 1. Summary of Smoke-Free Settings (indoor) Based on the National Law

| | BRUNEI | CAMBODIA | INDONESIA | LAO PDR | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIET NAM |
|----------------------------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|---|---|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Airports | 100% Smoke-free/No smoking room | With smoking room | With smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | With smoking room |
| Bars & Pubs | * Brunei: No Bars/Pubs | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | Allows smoking anywhere/not included in the law | 100% Smoke-free/No smoking room | With smoking room | With smoking room | 100% Smoke-free/No smoking room | With smoking room |
| Educational Facilities | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |
| Healthcare Facilities | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |
| Hotels | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | With smoking room | With smoking room | 100% Smoke-free/No smoking room | With smoking room |
| Restaurants (airconditioned) | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |
| Restaurants (non-airconditioned) | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |
| Shops & Shopping Complexes | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |
| Transport Terminals | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |
| Transportation (Public) | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | * Myanmar: Designated smoking areas are allowed in public trains and public water transportation under the national tobacco control law but the Ministerial Notifications (2014) prohibits smoking in those forms of transportations. | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room |
| Universities | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |
| Workplaces/ Offices | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room | With smoking room | With smoking room | 100% Smoke-free/No smoking room | 100% Smoke-free/No smoking room |

LEGEND:

- 100% Smoke-free/No smoking room
- With smoking room
- Allows smoking anywhere/not included in the law

- * Brunei: No Bars/Pubs
- * Myanmar: Designated smoking areas are allowed in public trains and public water transportation under the national tobacco control law but the Ministerial Notifications (2014) prohibits smoking in those forms of transportations.

Principle 3

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. In order to be effective, legislation should be simple, clear, and enforceable.

All countries in the ASEAN region have national smoke-free laws, the latest of which are Thailand's Tobacco Products Control Act (2017), Cambodia's sub-decree on measures for banning smoking (2016), and Executive Order No. 26 of the Philippines (2017). The first 2 regulations are compliant with WHO FCTC Article 8 except for the designation of a smoking room in the airports of Cambodia. According to country correspondents, their smoke-free laws are simple, clear, and enforceable except for the Philippines, where grey areas are subject to different interpretations. It should be noted that its smoke-free law was approved in 2003, before the country became a Party to the FCTC in 2005.

Table 2. National Tobacco Control/Smoke-Free Laws in the ASEAN Region

| COUNTRIES | NATIONAL LAWS |
|-------------|--|
| Brunei | Tobacco Order 2005 (Approved on 13 June 2005; enforced on 1 June 2008) |
| Cambodia | Tobacco Control Law (Approved on 18 May 2015) |
| Indonesia | Health Law No. 36/2009 Articles 115 & 199 Government Regulation No. 109/2012 Articles 49-52 |
| Lao PDR | Tobacco Control Law No.07 (2009) |
| Malaysia | The Control of Tobacco Product Regulations 2004 (CTPR 2004) |
| Myanmar | The Control of Smoking and Consumption of Tobacco Product Law (The State Peace and Development Council Law No 5/2006) |
| Philippines | Republic Act 9211 (Tobacco Control Regulation Act of 2003); Executive Order No. 26, s. 2017 Executive Order No. 106, s. 2020 (Prohibiting the Manufacture, Distribution, Marketing and Sale of Unregistered and/or Adulterated Electronic Nicotine/Non-Nicotine Delivery Systems, Heated Tobacco Products and Other Novel Tobacco Products, Amending Executive Order No. 26 (s. 2017) and For Other Purposes) |
| Singapore | Smoking (Prohibition in Certain Places) Act (SPCPA) 1970 |
| Thailand | Tobacco Products Control Act B.E.2560 (2017) |
| Viet Nam | Tobacco Control Law (Approved on June 18 2012) |

Principle 4

Good planning and adequate resources are essential for successful implementation and enforcement of smoke-free legislation.

Malaysia and Singapore have been implementing their smoke-free laws for more than three decades (Table 2) and already have a functioning system for implementing their laws/notifications. Viet Nam, with its 2012 Law on Control and Prevention of Tobacco Harms, now has its own Tobacco Control Fund to be used for different tobacco control activities including smoke-free implementation. The budget will be based on their annual workplan, programs, strategies, and priorities. All the other countries may or may not have regular funding for the implementation of their programs/projects, but still need a good plan which is essential in making the smoke-free program/campaign successful and sustainable.

Principle 5

Civil society has a central role 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.

Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam have active civil society partners who participate in the development of the laws up to its implementation and monitoring. Brunei and Lao PDR have no civil society partners actively involved and their smoke-free programs are solely run by the government. The Philippines is the only country in the ASEAN with the presence of the tobacco industry in its so-called Inter-Agency Committee on Tobacco (IAC-Tobacco) which has the exclusive power and function to administer and implement the provisions of the law. The tobacco industry should not be considered a partner that will support and ensure compliance with smoke-free measures as their industry exists by selling tobacco which kills up to two thirds of its users. The Philippines' Tobacco Regulation Act of 2003 needs to be amended to make it compliant with the Convention.

Principle 6

The implementation of smoke-free legislation, its enforcement, and its impact should all be monitored and evaluated. This should include monitoring and responding to tobacco industry activities that undermine the implementation and enforcement of the legislation.

Singapore is the only country that closely monitors and evaluates the implementation of its smoke-free law through the National Environment Agency. At the national level, most countries do not monitor and evaluate their implementation regularly. For some countries, this is done at subnational levels or by local government units, which needs to be validated at the national level. Due to limited financial (and human) resources, this is not always feasible.

Table 3. Monitoring and Evaluation of the Enforcement of Smoke-Free Laws

| COUNTRY | YES | PARTIAL | NO |
|-------------|-----|---|----|
| Brunei | | ✓ | |
| Cambodia | | ✓ Done in selected provinces | |
| Indonesia | | ✓ (Might be done at subnational level) | |
| Lao PDR | | ✓ (Might be done at subnational level) | |
| Malaysia | ✓ | | |
| Myanmar | | ✓ Partial (done in project areas at least once a year) | |
| Philippines | | ✓ (Might be done at subnational level) | |
| Singapore | ✓ | | |
| Thailand | | ✓ | |
| Viet Nam | | ✓ | |

Principle 7

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.

As Parties to the WHO FCTC, Brunei, Cambodia, Lao PDR, Myanmar, and Thailand amended and passed notifications or regulations to expand their smoke-free coverage. Brunei was the first country with a law and notifications that promote a 100% smoke-free environment. Cambodia and Lao PDR have new regulations based on WHO FCTC Article 8. In the Philippines, the President signed on 16 May 2017 Executive Order No. 26, “Providing for the Establishment of Smoke-free Environments in Public and Enclosed Places”, a positive step towards making the whole country smoke-free. However, the Executive Order allows the designation of indoor smoking areas.

Table 4. Amendments to Strengthen the National Law

| COUNTRY | AMENDMENTS | OUTCOME |
|--------------------|---|---|
| Brunei | <ul style="list-style-type: none"> Tobacco Notification (Prohibition in Certain Places) 2007 Tobacco Notification (Prohibition in Certain Places) (Amendment), 2012 | All settings are 100% smoke-free based on the law/notifications. |
| Cambodia | <ul style="list-style-type: none"> Sub-decree on Measures for Banning of Smoking or Use of Tobacco Products at Workplaces and Public Places (Approved on 16 March 2016); not yet enforced nationwide. | Most settings are 100% smoke-free based on the sub-decree except for the airport. |
| Indonesia | <ul style="list-style-type: none"> Government Regulation No 109/2012 on Protection from Addictive Substances in the form of Tobacco for Health | 100% smoke-free environment not yet achieved. It needs to remove smoking rooms inside some workplaces & public places. |
| Lao PDR | <ul style="list-style-type: none"> Regulation on Tobacco Control Law Enforcement No. 1067/MOH (Approved on 23 May 2016); not yet enforced nationwide. | All settings are 100% smoke-free based on the regulation. |
| Malaysia | <ul style="list-style-type: none"> Regulation 11 or 22, Control of Tobacco Product Regulations 2004, CTPR (Amendment No.2) 2015, and CTPR (Amendment) 2018. | Shisha and e-cigarettes are not allowed to be used in enclosed places and public places as stipulated in the Control of Tobacco Product Regulations (Amendment) 2015. |
| Myanmar | <ul style="list-style-type: none"> Ministry of Health’s Notifications on no-smoking areas and designated smoking area (2014) | Most settings are 100% smoke-free based on law/notification except for trains & vessels. |
| Philippines | <ul style="list-style-type: none"> Civil Service Memorandum Circular No. 17 (2009) Land Transportation Franchising and Regulatory Board Memorandum Circular No. 2009 - 036 Department of Education Order No. 48 series of 2016 Executive Order No. 26 “Providing for the Establishment of Smoke-Free Environments in Public and Enclosed Places” New Amendments 2018-2019: Title/Date Approved: Department of Health (DOH) Administrative Order No. 2019-0007 (Revised Rules and Regulations on Electronic Nicotine and Non-Nicotine Delivery Systems (ENDS/ENNDS) Executive Order No. 106, s. 2020 (Amending Executive Order No. 26, s. 2017) signed on 26 February 2020 | Policy signed on banning the use of ENDS and ENNDS where smoking is already banned by existing laws. |
| Singapore | <ul style="list-style-type: none"> Update to “Smoking (Prohibition in Certain Places) Act” and “Smoking (Prohibition in Certain Places) Regulation 2018”. Both were updated and published on 26 December 2018. | Most indoor areas are 100% smoke-free based on the law except for airport terminals, entertainment outlets, and offices. |
| Thailand | <ul style="list-style-type: none"> Ministry of Public Health Notification Re: Identification of Types or Names of Public Places, Work Places and Vehicles, Entirely or in Part, as Non-Smoking Areas or Smoking Areas in Non-Smoking Areas B.E.2561 (2018) and Ministry of Public Health Notification Re: Criteria and Procedures for Displaying Signs of Smoking and Non-Smoking Areas B.E.2561 (2018) under Tobacco Product Control Act. B.E.2560 (2017) | Most settings are 100% smoke-free based on the law. |
| Viet Nam | <ul style="list-style-type: none"> No new notification | 100% smoke-free environment not yet achieved. It needs to remove smoking rooms inside some public places. |

DEFINITION OF TERMS

It is important to carefully define key terms when legislations are being developed to prevent confusion when enforced. Some important definitions were not included in the existing laws of some countries. The absence of key definitions

might affect enforcement especially if the law is not clear. Countries should consider including these definitions in their amendments or new legislations to make them more enforceable.

Table 5. Definition of Terms in the WHO FCTC Article 8

| KEY TERMS | DEFINITIONS |
|---------------------------|---|
| Second-hand tobacco smoke | The smoke emitted from the burning end of a cigarette or from other tobacco products usually in combination with the smoke exhaled by the smoker. |
| Smoking | Includes being in possession or control of a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled. |
| Public Places | Should cover all places accessible to the general public or places for collective use, regardless of ownership or right to access. |
| Indoor or Enclosed | Includes any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary. (The definition should be as inclusive and as clear as possible and care should be taken in the definition to avoid creating lists that may be interpreted as excluding potentially relevant “indoor” areas). |
| Workplace | Any place used by people during their employment or work (with compensation or voluntary). It also includes corridors, lifts, stairwells, lobbies, joint facilities, cafeterias, toilets, lounges and outbuildings such as sheds and huts, and vehicles used in the course of work. |
| Public Transport | Any vehicle used for the carriage of members of the public, usually for reward or commercial gain. |

Table 6. Inclusion of the Defined Terms (Table 5) in the National Law

| | BRUNEI | CAMBODIA | INDONESIA | LAO PDR | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIET NAM |
|---------------------------|--------|----------|-----------|---------|----------|---------|-------------|-----------|----------|----------|
| Second-hand Tobacco Smoke | No | Yes | No | Yes | No | No | Yes | Partial | No | No |
| Smoking | Yes | Yes | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Public Places | Yes | Yes | Yes | Yes | Yes | No | Yes | Partial | Yes | Yes |
| Indoor or Enclosed | Yes | Yes | Partial | Yes | Yes | No | No | No | Partial | Yes |
| Workplace | Yes | Yes | Partial | Yes | Yes | No | Yes | Partial | Yes | Partial |
| Public Transport | Yes | Yes | Partial | Yes | Yes | No | Yes | Yes | Yes | No |

LEGEND: ■ Yes ■ Partial ■ No

THE SCOPE OF AN EFFECTIVE SMOKE-FREE LEGISLATION

The summary of the indoor smoke-free settings (Table 1) shows indoor workplaces and public places where smoking rooms are not allowed based on countries' national laws. Further, WHO FCTC Article 8 also requires protective measures in outdoor or quasi-outdoor public places. Parties should consider the evidence as to the possible health hazards in various settings and should act to adopt the most effective protection against exposure wherever the evidence shows that a hazard exists. Based on the summary of outdoor areas of workplaces and public places, most, if not all, countries in the ASEAN region support non-smoking policies in educational and healthcare facilities including premises of universities.

Brunei is leading the region with the same no-smoking policy for outdoor areas of workplaces and public places which includes outdoor dining areas of restaurants, recreational parks, entertainment centers, outdoor sports premises, bus stops, and taxi stands. This also includes walkways of statutory no-smoking buildings and the area within the perimeter up to six meters from the building line. In the Philippines, though not done nationwide, cities with a 100% smoke-free ordinance only allow smoking in designated outdoor smoking areas which should be located 10 meters away from entrances, exits, and places where people pass.

Table 7. Summary of the Smoke-Free Settings (outdoor) Based on National Law

| | BRUNEI | CAMBODIA | INDONESIA | LAO PDR | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIET NAM |
|---|--------|----------|-----------|---------|----------|---------|-------------|-----------|----------|----------|
| Airport (Waiting areas) | Blue | Blue | Yellow | Blue | Yellow | Yellow | Yellow | Yellow | Yellow | Red |
| Bars & Pubs (Open Area Dining) | Blue | Red | Yellow | Yellow | Red | Blue | Yellow | * | Blue | Red |
| Educational Facilities (Premises) | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Blue |
| Healthcare Facilities (Premises) | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Blue |
| Hotels (Open Area Facilities) | Blue | Red | Yellow | Yellow | Yellow | Yellow | Yellow | Yellow | Yellow | Red |
| Places of Worship (Premises) | Blue | Blue | Blue | Yellow | Blue | Yellow | Yellow | Red | Blue | Red |
| Restaurants (Al Fresco Dining) | Blue | Red | Yellow | Yellow | Blue | Blue | Yellow | * | Blue | Red |
| Shops & Shopping Complexes (Open Area Market/Shops) | Blue | Red | Yellow | Yellow | Blue | Yellow | Yellow | Blue | Blue | Red |
| Transport Terminals (Waiting Areas) | Blue | Red | Yellow | Yellow | Blue | Yellow | Blue | Blue | Yellow | Red |
| Universities (Premises) | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Blue | Yellow | Blue |
| Workplaces/Offices (Open Area for Work) | Blue | Yellow | Yellow | Yellow | Yellow | Yellow | Yellow | Yellow | Yellow | Red |
| Parks & Playgrounds | Blue | Blue | Blue | Yellow | Blue | Blue | Blue | Blue | Blue | * |
| Sports Complex | Blue | Blue | Yellow | Blue | Blue | Blue | Blue | Blue | Blue | Red |

LEGEND:

- 100% smoke-free/may have designated outdoor smoking area away from public places
- With smoking area within public places
- Allows smoking anywhere/not included in the law
- * In Viet Nam, sports complex may have designated smoking areas with the exception of childcare facilities and recreational facilities for children which should be 100% smoke-free.
- * In Singapore, since 30 June 2017, new smoking areas have not been approved for bars and pubs but existing smoking areas are all allowed to remain until the business operators cease operations.

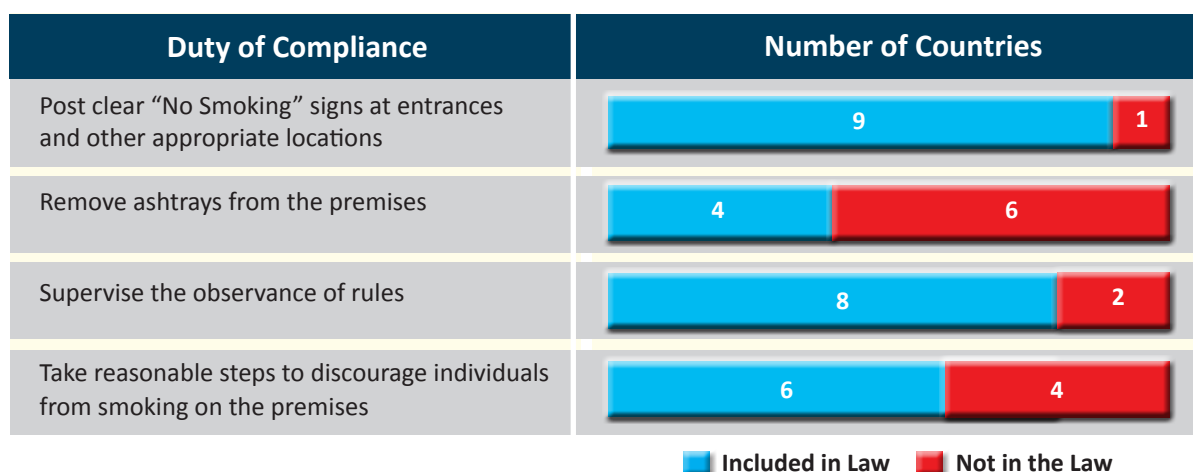
ENFORCEMENT

A. DUTY OF COMPLIANCE

Effective legislation should impose responsibilities for compliance on both affected business establishments and individual smokers. The legislation should place the responsibility for compliance on the owner, manager, or other persons-in-charge such as the duty to post clear “No Smoking” signs at entrances and other strategic areas of the business establishment; the duty to remove ashtrays from the premises; the

duty to supervise the observance of rules, and the duty to take reasonable steps to discourage smoking within the premises. It is imperative that these duties of compliance be included in the legislation as business owners and managers should be responsible for overseeing the implementation of the “No Smoking” policy within their premises.

Figure 2. Inclusion of the Duty of Compliance in the National Law



B. PENALTIES

Effective legislation should impose responsibilities for compliance on both affected business establishments and individual smokers. Penalties should be sufficiently large to deter violations or else they may be ignored by violators or treated as mere costs of doing business. Penalties should increase for repeated violations and should be consistent with a country’s treatment of other equally serious offences.

Brunei, Malaysia, and Singapore issue compounds for violators. These three countries also have higher fines compared with the rest of the seven countries in the ASEAN. Brunei and Singapore are

issuing fines for violators on a nationwide scale. A compound is an ‘on the spot’ issuance of fine but lower than the usual fine for violation stated in the legislation. Malaysia can still lower the compound if the violator will undergo smoking cessation counselling.

Malaysia, Thailand, the Philippines, and Indonesia are imposing fines for violators if the local government unit is strictly enforcing a smoke-free ordinance/regulation or the national law. Lao PDR is still awaiting the approval of the notification/regulation that they can impose fines to violators.

Table 8. Countries that Allow the Issuance of Compound Fees to Violators

| Countries with Compounds | Smokers | | Establishments | |
|--------------------------|------------------|---|----------------|---------|
| | Brunei | USD 220 | BND 300 | USD 367 |
| Malaysia | USD 24 USD 60 | MYR 100-250 plus smoking cessation counseling | USD 60 | MYR 250 |
| Singapore | USD 147 | SGD 200 | USD 147 | SGD 200 |

Table 9. Penalties for Violating the Prohibition of Smoking Based on the National Law

| COUNTRIES | PENALTIES | | | |
|-------------|--|---|---|--|
| | Smokers | | Establishments | |
| BRUNEI | USD 735 -14,704 | BND 1,000 - 20000 | USD 367 | BND 500 |
| CAMBODIA | USD 5 | KHR 20,000 | USD 12.50 | KHR 50,000 |
| INDONESIA | Maximum limit of fines: USD 3,550 | IDR 50 million | Maximum limit of fines: USD 3,550 | IDR 50 million |
| LAO PDR | USD 22.60 - 45.20 | LAK 200,000 – 400,000 | USD 113– 565 | LAK 1,000,000 – 5,000,000 |
| MALAYSIA | USD 2,408 | MYR 10,000 or imprisonment not exceeding 2 years | USD 1,204 | MYR 5,000 or imprisonment not exceeding 1 year |
| MYANMAR | USD 0.66 - 3.30 Succeeding Offenses: USD 2.49-8.30 | MMK 1,000 -5000 Succeeding Offenses: MMK 3,772-12,572 | 1st Offense USD 0.66 - 1.98 Succeeding Offenses: USD 1.98-6.60 | MMK 1,000-3,000 Succeeding Offenses: MMK 3,000 -10,000 |
| PHILIPPINES | USD 10 – 198 | Php 500 – 10,000 | USD 10 – 198 | Php 500 – 10,000 |
| SINGAPORE | USD 735 | up to SGD 1000 | USD 735 | up to SGD 1000 |
| THAILAND | USD 165 | THB 5,000 | USD 1,652 | THB 50,000 |
| VIET NAM | USD 4.30 – 13 | VND 100,000 – 300,000 | USD 0.13-2,365 | VND 3,000- 55,000,000 |

C. ENFORCEMENT INFRASTRUCTURE

The infrastructure for enforcement should be incorporated in the legislation as initiation of implementation of the law may be difficult if the process or mechanism for enforcement is not yet in place. Some countries may have a national law but the implementation may differ at the sub-national level. If there are different sub-national laws, nationwide monitoring for implementation should still be done. Countries also differ in determining who should be responsible for enforcement. The usual enforcers aside from the working group or task force are the police and

the sanitation/health inspectors. Brunei's Health Enforcement Unit and Singapore's National Environment Agency are national government offices responsible for overseeing the compliance of individuals and business establishments with the smoking ban in smoke-free places. In the Philippines and Indonesia, cities can implement the national law or their own subnational laws which may also differ in enforcement. At the national level, the leading agency may or may not have the capacity to monitor the level of implementation nationwide.

Table 10. Enforcement Infrastructure at the National Level

| Components of the enforcement infrastructure that should be included in the law | BRUNEI | CAMBODIA | INDONESIA | LAO PDR | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIET NAM |
|--|---------|----------|-----------|---------|----------|---------|-------------|-----------|----------|----------|
| Authorities responsible for enforcement | Yes | Partial | Partial | Yes | Yes | Partial | Yes | Yes | Yes | Yes |
| System for monitoring compliance and for prosecuting violations | Yes | No | Partial | Yes | Yes | Partial | Yes | Yes | Yes | Yes |
| Process for inspection of businesses for compliance | Yes | Partial | Partial | Yes | Yes | Partial | No | Yes | Yes | Yes |
| National coordinating mechanism to ensure a consistent approach on monitoring nationwide | Yes | Partial | Partial | Partial | Yes | Partial | No | Yes | Partial | Partial |
| Overall Enforcement Plan | Yes | Partial | Partial | Partial | Yes | Partial | No | Yes | Yes | Yes |
| Regular Inspections | Yes | Yes | Partial | Partial | Yes | Partial | No | Yes | Yes | No |
| Authorizes inspectors to enter the premises and to collect samples and gather evidence | Yes | Partial | Partial | Yes | Yes | Partial | Partial | Yes | Yes | Yes |
| Prohibits businesses from obstructing the inspectors in their work | Yes | Yes | Partial | Partial | Yes | Partial | Partial | Yes | Yes | Yes |
| Funding Mechanism | Partial | Yes | No | No | Yes | No | Partial | Partial | Partial | Partial |

LEGEND:

■ Yes
 ■ Partial
 ■ No

* Cambodia is in the process of developing regulations related to enforcement.

D. ENFORCEMENT STRATEGIES

In order to maximize compliance, strategic approaches to enforcement must be well-planned. Immediately upon the entry into force of a legislation, violators must be advised or warned of their violation. Intensified information drives and education campaign must be done prior to enforcement. Based on the experiences of cities in different countries, information campaigns can be done for three to six months before the law is actively enforced and enforcers can issue violation tickets. Soft enforcement must not be done for more than six months as the momentum

may wane and it might not have as strong an impact as expected.

Using the enforcement strategies in the Article 8 Guidelines, Brunei, Malaysia, and Singapore were able to apply soft enforcement where violators were warned, business establishments were informed of their duty of compliance, and violators were penalized. Other countries have not yet started enforcement or enforcement is only done at sub-national levels.

Figure 3. Phases of enforcement⁵



Table 11. Strategies for Enforcement

| | BRUNEI | CAMBODIA | INDONESIA | LAO PDR | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIET NAM |
|---|--------|----------|-----------|---------|----------|---------|-------------|-----------|----------|----------|
| Soft enforcement upon the law's entrance into force | Yes | Yes | Yes | Yes | Yes | No | Partial | Yes | Yes | Yes |
| Information drive for business establishments | Yes | Yes | Yes | Partial | Yes | No | Partial | Yes | No | Partial |
| Swift & decisive action to penalize violators | Yes | No | Yes | Partial | Yes | No | Partial | Yes | No | No |

LEGEND:

■ Yes
 ■ Partial
 ■ No

⁵ Smoke-free Toolkit: Implementing FCTC Article 8 Guidelines, SEATCA 2016

E. MOBILIZE AND INVOLVE THE COMMUNITY

The public must be involved in reporting violations in order to extend the reach of enforcement especially in far-flung areas which cannot be frequented by enforcers. Community volunteers should be encouraged to reduce the resources needed to achieve compliance. Community complaints can also be one of the means to ensure compliance, thus a telephone complaint hotline must be included in the system

or included as part of an existing hotline.

In Brunei, Lao PDR, Malaysia, the Philippines, Singapore, and Thailand, the public can initiate complaints but it is only in Lao PDR and Singapore where anyone can initiate action to compel compliance. Government toll-free telephone complaint hotlines are available in Brunei, Singapore, and Thailand.

Table 12. System for community involvement

| System for community involvement | BRUNEI | CAMBODIA | INDONESIA | LAO PDR | MALAYSIA | MYANMAR | PHILIPPINES | SINGAPORE | THAILAND | VIET NAM |
|---|---------|----------|-----------|---------|----------|---------|-------------|-----------|----------|----------|
| Public may initiate complaints | Yes | No | No | Yes | Yes | No | Yes | Yes | Yes | Partial |
| Authorize any person to initiate action to compel compliance | Partial | No | No | Yes | No | No | Partial | Yes | No | No |
| Government toll-free telephone complaint hotline or similar system to report violations | Yes | No | No | No | Partial | No | Partial | Yes | Yes | No |

LEGEND: ■ Yes ■ Partial ■ No

MONITORING AND EVALUATION OF MEASURES

The Article 8 Guidelines recommend eight key process and outcome indicators that should be considered:

Processes:

- Knowledge, attitudes, and support for smoke-free policies among the general population and possibly specific groups;
- Enforcement of and compliance with smoke-free policies;

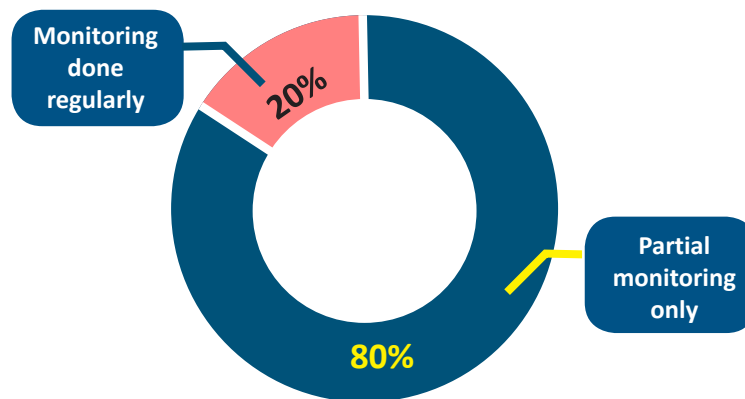
Outcomes:

- Reduction in exposure to second-hand tobacco smoke in workplaces and public places;
- Reduction in content of second-hand tobacco smoke in the air in workplaces (particularly in restaurants) and public places;
- Reduction in mortality and morbidity from exposure to second-hand tobacco smoke;
- Reduction in exposure to second-hand tobacco smoke in private homes;
- Changes in smoking prevalence and smoking-related behaviours; and
- Economic impacts.

In the actual enforcement of a legislation, the purpose of conducting monitoring and evaluation is to assess if the existing legislation is effective, enforceable, and if there is a need to expand the legislative provisions to achieve the goal of becoming 100% smoke-free. It should be conducted regularly at least once a year. Table 3 shows that there are 8 countries or 80% of the 10 ASEAN countries (Figure 4) that conduct partial monitoring and evaluation through the Global Youth Tobacco Survey (GYTS) and the Global Adult Tobacco Survey (GATS) every 5 years. Thailand conducts a national survey every 2 years. The

Philippines conducts an annual recognition/awarding through the Red Orchid Awards, but not for monitoring and evaluation purposes. Singapore, through the National Environment Agency, enforces and evaluates compliance to the Smoking Prohibition. Indonesia may have monitoring activities done at the sub-national level, but these still need to be validated at the national level. Lao PDR and Viet Nam may also have monitoring activities at sub-national levels. These 8 countries still need to standardize their monitoring and evaluation tools and conduct activities on a regular basis.

Figure 4. Monitoring and Evaluation of Measures at the National Level



CONCLUSION

The WHO FCTC Article 8 Guidelines, a useful tool for Parties and non-Parties to the FCTC, serve as a guide for developing and implementing legislation that aims to protect people from exposure to tobacco smoke.

For Parties to the WHO FCTC, Article 8 calls for the full adoption and implementation of the actual operational legislative, executive, and administrative measures that would make available all means to ensure protection from exposure to tobacco smoke in indoor workplaces, indoor public places, and public transport.

Blue is the “color” of smoke-free air that this Smoke-free Index meant to capture in its charts and tables and should be the real color of what the public should experience in the places where they live and work and when they visit other countries. With this assessment of the existing smoke-free laws and regulations in the ten countries in the ASEAN region, governments should realize that there is still more to be done to strengthen and sustain enforcement of their smoke-free laws.

“ **Duty to protect individuals from tobacco smoke corresponds to an obligation of governments to enact legislation to protect individuals against threats to their fundamental rights and freedoms.** ”

- FCTC Article 8 Guidelines

ACKNOWLEDGEMENT

We would like to express our gratitude to the country partners, coordinators, and smoke-free focal persons of the ten countries in the ASEAN Region for providing information to the SEATCA Smoke-Free Index.

CONTRIBUTORS

| | |
|--------------------|--|
| BRUNEI | Dr Siti Rosemawati Binti Hj Md Yussof (MOH) |
| CAMBODIA | Dr Mom Kong (Cambodia Movement for Health) |
| INDONESIA | Mr Tubagus Haryo Karbyanto (Jakarta Resident's Forum) Dr Widyastuti Soerojo (Indonesian Public Health Association - IAKMI) Mr Bigwanto Mouhamad (Indonesia Public Health Association) |
| LAO PDR | Dr Katthanaphone Phandouangsy (MOH) Mr Douangkeo Thochongliachi (WHO-Lao PDR) Dr Maniphanh Vongphosy (SEATCA) |
| MALAYSIA | Dr Noraryana Hassan, Ministry of Health Dr Nazlinda Abu Jazid Javis, Ministry of Health Mr Dass Kandunni (Melaka Health Department) |
| MYANMAR | Dr Mya Lay Nwe (MOHS) Dr U Than Sein (People's Health Foundation) |
| PHILIPPINES | Mr Rommel Arriola (ASH Philippines) Mr Ralph Degollacion (HealthJustice Philippines) |
| SINGAPORE | Mr Lit Fai Chan (Health Promotion Board) |
| THAILAND | Ms Sangduean Suwanarasamee and ASH Thailand Team |
| VIET NAM | Ms Le Thi Thu (HealthBridge Canada in Viet Nam) Ms Thi Viet Anh Nguyen (Viet Nam Tobacco Control Fund) |

REFERENCES

- ¹ WHO Framework Convention on Tobacco Control, (2003). Available at: <https://www.who.int/fctc/cop/about/en/>
- ^{2,6} WHO Framework Convention on Tobacco Control Article 8 Guidelines. (2007). Available at: https://www.who.int/fctc/guidelines/adopted/article_8/en/
- ³ Southeast Asia Tobacco Control Alliance. (2010). Smoke-Free Policies and Enforcement In the ASEAN
- ⁴ World Health Organization. (2019). WHO Report on the Global Tobacco Epidemic. Geneva, Switzerland. Available at: https://www.who.int/tobacco/global_report/en/
- ⁵ Southeast Asia Tobacco Control Alliance. (2019). Cigarette Smoking Kills; Vaping E-Cigarettes Kills, Too. Available at: <https://seatca.org/cigarette-smoking-kills-vaping-e-cigarettes-kills-too>
- ⁷ Lester, T. (2020). How Philip Morris Is Planning for a Smoke-Free Future. Harvard Business Review. Available at: <https://hbr.org/2020/07/how-philip-morris-is-planning-for-a-smoke-free-future>
- ⁸ The Global Center for Good Governance in Tobacco Control. (2019). Dangers of the Unsmoke Campaign: Frequently Asked Questions. Available at: <http://untobaccocontrol.org/kh/article-53/dangers-unsmoke-campaign-frequently-asked-questions/>
- ^{9,11} Stanford Research into the Impact of Tobacco Advertising. (2020). Section 12, Global Marketing of IQOS The Philip Morris Campaign to Popularize "Heat Not Burn". Stanford University School of Medicine.
- ¹⁰ The Bureau of Investigative Journalism. (2020). The 'Unsmoke' Screen: The Truth Behind PMI's Cigarette-Free Future. Available at: <https://www.thebureauinvestigates.com/stories/2020-02-24/the-unsmoke-screen-the-truth-behind-pmis-cigarette-free-future>
- ¹² Southeast Asia Tobacco Control Alliance (SEATCA). (2019). Hijacked: SEATCA's Smoke-Free Index. Available at: https://seatca.org/dmdocuments/SF%20Index%20Briefing%20Paper_FINAL.pdf
- ¹³ Stopping Tobacco Organizations and Products (STOP). (2020). Addiction At Any Cost: Philip Morris International Uncovered. Available at: <https://exposetobacco.org/pmi-uncovered/>



SEATCA

Towards a healthy, tobacco-free ASEAN