Drafting Smoke-Free Legislation
International legal context

- International human rights laws and national constitutions
- WHO Framework Convention on Tobacco Control – Article 8 of the treaty
- Guidelines for the implementation of the WHO FCTC Article 8 Treaty and Article 8 implementation
WHO FCTC
Article 8 Guidelines

Core recommendation:

- Clear, simple language specifying that all indoor workplaces and public places must be smoke-free, with no exceptions:
  - ensure that legislative language reflects comprehensive and universal coverage
  - list specific types of settings for additional clarification in order not to limit the types of settings that must be smoke-free
  - avoid any allowance for smoking areas (e.g. at certain hours, where minors are not present, etc.)
Other recommendations:

- Clear definitions, particularly of “workplace”, “public place”, “indoors” and “enclosed”
- Clear signs specified
- No ashtrays allowed in smoke-free places
- Clear assignment of responsibility for enforcement
- Fair but deterrent penalties
- Efficient administration system for fining violators / charging violators with an offence"
Typical components of legislation

• Preamble/purposes and objectives
• Definitions
• Scope (application of law)
• Enforcement: duties of compliance, penalties
• Entry into force/transitional provisions
Preamble / Purpose

- Obligations under international law
  - fulfillment of WHO FCTC obligations;
  - obligations under human rights treaties
- Following international standards
  - in accordance with Article 8 implementation guidelines
- Harm caused by exposure to tobacco smoke
  - whereas scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability (WHO FCTC Art. 8.1)
- Need for universal protection of all people in all places
  - whereas all people should be protected from exposure to tobacco smoke in indoor workplaces and public places (Art. 8 Guidelines, Principle 2, para. 7)
- Any others relevant to a country (e.g. national constitution)
Definitions

Public place:

All places accessible to the general public or places for collective use, regardless of ownership or right to access

(Guidelines, para. 18)

Photo from:
http://commons.wikimedia.org/wiki/File:Supermarket_check_out.JPG
Definitions

Workplace:

Any place used by people during their employment or work, whether compensated or voluntary, including all attached or associated places commonly used by workers in the course of their employment.

(Guidelines, para. 20)

Definitions

Public transport:

Any vehicle used for the carriage of members of the public, usually for reward or commercial gain, including taxis.

(Guidelines, para. 22)

Definitions

Indoor or enclosed:

Any space temporarily or permanently covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used.

(Guidelines, para. 19)
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.

(Guidelines, para. 15)

Smoking:
Being in possession or control of a lit tobacco product

(Guidelines, para. 17)

Photo Credit: Che. Wikimedia Commons.
http://commons.wikimedia.org/wiki/File:Shisha_smoker.jpg
Scope (application of law)

Smoking should be prohibited in all:

- indoor workplaces
- indoor public places
- public transport
- as appropriate, other public places (e.g. outdoor or quasi-outdoor places such as patios, entry ways, or crowded outdoor venues such as sports stadia)

(Guidelines, paras. 23-26)
Scope
(application of law)

- Require and specify signs to mark smoke-free establishments
  - indicate what signs must say and where they must be posted, and provide a template if possible
- Prohibit ashtrays in smoke-free establishments

(Guidelines, para. 31)
Enforcement: duty of compliance

- Individual has a duty not to smoke where it is prohibited

- Owner, manager or other person in charge of the premises has a duty to:
  - post signs
  - remove ashtrays
  - supervise the observance of rules
  - take reasonable specified steps to discourage individuals from smoking on the premises (e.g. by asking the person not to smoke or to leave the premises, discontinuing service, or contacting an enforcement authority)

(Guidelines, para. 31)
Enforcement: penalties

• Penalties for violation of each type of duty (could be the same for all, or different for different types of violations)

• Type of penalties:
  – fines or other monetary penalties
  – administrative sanctions (e.g. suspension of business license)
  – criminal penalties, if appropriate within legal and cultural context

(Guidelines, paras.32-24)
Enforcement: penalties

- Penalties should be large enough to deter violations
- Proportional to type of violation and duty
  - larger penalties for businesses than for individuals
- Increased penalties for repeat violations

(Guidelines, para.32)
Enforcement: authority to enforce

- Specify authority or authorities responsible for inspection and enforcement
  - integrate monitoring into existing inspection schemes, if feasible
  - monitoring at local level, with national coordination mechanism
- Specify and elaborate inspection powers

(Guidelines, para. 35-37)
Enforcement: additional provisions

- Establish a public complaint line

- Simple enforcement mechanisms (e.g. on-the-spot fining)
Entry into force

- Set a clear date for entry into force (e.g. 120 days following publication of the law or regulation)
- Allow enough time for establishments to prepare to implement, and for government to prepare to enforce
- **BUT:** Do not allow too much time – this will allow tobacco industry to build opposition
Common pitfalls and loopholes

- Inadequate or unclear definitions
- Lists of specific types of places where smoking is prohibited
- Any provision for indoor smoking areas, even if separately ventilated
- Lack of detailed requirements for signs
- Inadequate or excessive penalties
- Insufficient enforcement mechanisms
Final advice

- Copy from those who have done it well

- Avoid the mistakes of those who have not!