

**Needs assessment for implementation  
of the WHO Framework Convention on  
Tobacco Control  
in Colombia**

**Convention Secretariat**

**April 2013**

## Executive summary

The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) is the first international health treaty negotiated under the auspices of WHO and was adopted in 2003. It has since become one of the most widely and rapidly embraced treaties in the history of the United Nations, with 176 Parties to date. Colombia ratified the WHO FCTC on 10 April 2008. The Convention entered into force for Colombia on 9 July 2008.

A needs assessment exercise for implementation of the WHO FCTC was conducted jointly by the Government of Colombia and the Convention Secretariat, from September to November 2012, including the initial analysis of the status, challenges and potential needs deriving from the country's most recent implementation report and other sources of information, and the mission of an international team from the Convention Secretariat, WHO/PAHO, WHO Country Office, the World Bank and the United Nations Development Programme (UNDP) to Colombia on 29 October-2 November 2012. The assessment involved relevant ministries and agencies of Colombia, who also provided further updates, when relevant, during the preparation of this report following the mission. The needs assessment report includes an article-by-article analysis of the progress the country has made in implementation; the gaps that may exist; and the subsequent possible action that can be taken to fill those gaps.

The key elements that need to be put in place to enable the Government of Colombia to meet its obligations under the Convention are summarized below.

**First,** the WHO FCTC is an international treaty and therefore international law. Having ratified this treaty, Colombia is obliged to implement its provisions through national laws, regulations or other measures. It is therefore recommended to analyse the needs assessment report, identify all obligations in the substantive articles of the Convention, link them with the relevant agencies, obtain the required resources and seek support internationally where appropriate.

**Second,** Colombia adopted a national tobacco control law No 1335/2009, as well some of the relevant regulations, which address obligations under Articles 5.1 (General obligations), 8 (Protection from exposure to tobacco smoke), 10 (Regulation of tobacco product disclosures), 11 (Packaging and labelling of tobacco products), 12 (Education, communication, training and public awareness), 13 (Tobacco advertising, promotion and sponsorship), 14 (Demand reduction measures concerning tobacco dependence and cessation), 15 (Illicit trade in tobacco products), 16 (Sales to and by minors) and 20 (Research, surveillance and exchange of information) of the Convention. While this law seeks to address obligations under these articles, its provisions do not comply fully with the requirements of the treaty. In addition, it has been observed that in the provisions concerning implementation of Articles 8, 11 and 13 that are time bound, enforcement is either not effective or needs to be strengthened. It is therefore necessary that the law No 1335/2009 be revised to ensure full compliance with the requirements of the treaty and that its enforcement is strengthened, primarily through improving cooperation between Government agencies which are mandated by the law to enforce provisions therein.

**Third,** the Convention requires Parties to develop, implement, periodically update and

review comprehensive multisectoral national tobacco control strategies, plans and programmes and moreover, such requirement is recognized and exists in the 1335/2009 tobacco control act. The Ministry of Health and Social Protection (MOHSP) developed both sectoral and inter-sectoral objectives related to tobacco control in the Ten-Year Public Health Plan (2013-2023) and the Ten-Year Cancer Control Plan (2012-2021), in order to involve all stakeholders and sectors in these efforts. However, there is no multisectoral tobacco control strategy or action plan currently being implemented in Colombia. It is important therefore, for the Government to proceed immediately with the setting up of a multisectoral coordination mechanism at national level with clear terms of reference outlining roles and responsibilities of different ministries and departments in order to ensure multisectoral synergy in implementation of the Convention. In addition, given the federal structure of the Government, subnational level implementation of the Convention is equally important to establish a clear chain of communication with territorial (subnational) authorities to ensure nationwide implementation of the Convention and it may further be useful to convene a national stakeholders meeting in the early part of 2013 to bring all stakeholders on board, including the territorial authorities and relevant civil society organizations. Further, a tobacco control team is operational in the MOHSP, subordinated to the Sub-Direction of Non Communicable Diseases' Cancer Group, but it is not formalized yet as an independent entity and it does not have a separate budget line.

**Fourth,** Article 6 of the Convention recognizes that price and tax measures are an effective demand reduction measure to reduce tobacco consumption and achieve better health outcomes. Through Law No. 1393/2010 the excise tax for imported and locally produced tobacco products was unified, and this measure resulted in an increase of the overall tax burden from 34% in 2008 to 50% in 2010. In spite of this, the overall tax burden in the retail sale price of tobacco products in Colombia is low by regional and international standards. To ensure that tobacco products become less affordable, the excise tax should increase at a rate above the Consumer Price Index, specially taking into account the positive trend in household income. It is recommended that the Government of Colombia take the opportunity of the ongoing discussions about tax reforms and suitably incorporate implementation of tax and price measures under the Convention as part of its implementation obligation.

Further, it is a misconception that higher taxes would eventually lead to increases in illicit trade in tobacco products, which is not based on facts. The level of illicit trade is determined by a number of factors (money laundering, big scale organized crime, corruption), and higher tobacco prices represent a less important contributing factor, based on implementation evidence from other Parties. Notwithstanding such arguments, tobacco tax increases should be implemented in parallel with stronger control of illicit trade in tobacco products. Stronger international assistance and cooperation are needed and should be strengthened, both regionally and globally to combat illicit trade (as referred to in the Protocol to Eliminate Illicit Trade in Tobacco Products adopted at the fifth session of the Conference of the Parties in November 2012).

**Fifth,** Article 12 of the Convention requires Parties to promote and strengthen public awareness of tobacco control issues. While several mass media campaigns have been implemented in the past few years, the intensity of these campaigns and the messages used were not broad enough to reach all groups of society, including indigenous and Afro-

Colombian communities. It is therefore advisable that future campaigns target a broader range of groups and contain refreshed and targeted messages. Coordination among the sectors involved and assistance from development partners may be beneficial when designing future campaigns. In addition, to broaden the knowledge base of the younger generation on harmful effects of tobacco use and second-hand smoke, it should be ensured that such information be included in the curricula at all levels of the education system. It is recommended therefore that an arrangement be made with the National Television Authority to devote free airtime to the development of campaigns in favour of tobacco control, as established by the Law 1335/2009.

**Sixth**, the international team discussed with various stakeholders in the country matters related with tobacco growing (in relation to Article 17) which is of high interest in Colombia, and it has been observed that the contribution of tobacco as an agricultural crop to the national GDP is relatively low and that the same is true of tobacco sector's contribution to employment. Further studies such as value chain analysis of alternative crops, pilot projects on economically viable alternatives to tobacco growing as well as learning about best international practices, would enable the Government to consider such policies in Colombia and link them to other comprehensive national programmes such as illicit crop substitution, promotion of rural development, poverty reduction, food security, among others.

**Seventh**, matters related to tobacco control are referred to in the National Development Plan 2010-2014 and the Health Sector Strategic Plan 2011-2014 but there is no connection yet linking the implementation of the Convention to those plans. Further, in line with the Public Health Act No.1438/2010 "amending the social security system in health and other provisions", the MOHSP is currently developing the Ten-Year National Public Health Plan (2013-2023) and has recently adopted the Ten-Year Cancer Control Plan (2012-2021), both including effective implementation of the WHO FCTC. According to the above, it should be ensured that the implementation of the WHO FCTC be incorporated and the outcome and recommendations of the present joint needs assessment also be taken into account. Further, it is recommended that the Ministry of Health and Social Protection and the National Department of Planning (NDP) coordinate the inclusion of WHO FCTC implementation into the national development plan, with the assistance of the Ministry of Foreign Affairs. Additionally, efforts should be made through Government agencies such as the Presidential Agency for Cooperation (PAC), to actively seek resources, both technical and financial from external development partners of Colombia for implementation of the Convention.

**Eighth**, the United Nations Development Assistance Framework (UNDAF) is the strategic programme framework jointly agreed between the Colombian Government and the United Nations system outlining priorities in national development. The current UNDAF (2008–2012) has not included implementation of the WHO FCTC as a priority area. The international team met the United Nations Resident Coordinator (UNRC) in Colombia and apprised him of the recommendation of the United Nations Secretary-General's reports to the ECOSOC and the decision adopted by the latter calling for United Nations system-wide coherence on tobacco control (adopted in July 2012). It was also pointed out that one of the recommendations contained in both documents refers to implementation integration of the Convention into the UNDAFs at country level. It is therefore recommended that the MOHSP together with the Ministry of Foreign Affairs and Department of Planning follow this up with the UNRC to ensure that support to implementation of the Convention is included in the next UNDAF

(2013–2017), as and when the Colombia UNDAF is finalized. Once the implementation of the Convention is included in the UNDAF (2013-2017), the United Nations Country Team should include WHO FCTC implementation as a standing, regular agenda item in its meetings. Further, reference to the WHO FCTC can be made in the annex to the UNDAF document, which contains a listing of the country's international obligations under various treaties to which it is a Party.

**Ninth**, there is a need for a coordinated approach for information gathering used for advocacy purposes. More specifically, activities concerning tobacco use surveillance should be strengthened by using previous experience of agencies which performed such studies including the National Cancer Institute (NCI) and the National Health Institute (NHI), and by linking such work to regular data collection through the National Department of Statistics (DANE) and other competent entities.

**Tenth**, the Conference of the Parties (COP) has adopted seven guidelines to implement Articles 5.3, 8, 9 and 10, 11, 12, 13, and 14. The aim of these guidelines is to assist Parties in meeting their legal obligations under the respective articles of the Convention and they have been unanimously adopted by the COP. The guidelines draw on the best available scientific evidence and the experience of Parties. Colombia is strongly encouraged to follow these guidelines in order to fully implement the Convention through appropriate administrative means.

The needs identified in this report represent priority areas that require immediate attention. As Colombia addresses these areas, the Convention Secretariat and international development partners that joined the mission are available and committed to supporting the process including engaging other potential development partners and identifying internationally available resources for implementation of the Convention in Colombia.

The full report, which follows this summary, can also be the basis for any proposal(s) that may be presented to relevant partners to support Colombia in meeting its obligations under the Convention.

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<sup>1</sup> This document has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union.

## Introduction

The WHO FCTC is the first international health treaty negotiated under the auspices of WHO and adopted by the World Health Assembly in May 2003. It has since become one of the most widely and rapidly embraced treaties in the history of the United Nations, with 176 Parties to date.

Colombia ratified the WHO FCTC on 10 April 2008 and the Convention entered into force for Colombia on 9 July 2008.

The Convention recognizes the need for global action so that all countries are able to implement its provisions effectively. Article 21 of the Convention requires Parties to regularly submit to the COP reports on their implementation of the Convention, including any challenges they may face in this regard. Article 26 of the Convention recognizes the importance that financial resources play in achieving the objectives of the treaty.

At its first session (February 2006), the COP called upon developed country Parties to provide technical and financial support to developing country Parties and Parties with economies in transition (decision FCTC/COP1(13)).<sup>2</sup> The COP also called upon the developing country Parties and Parties with economies in transition to conduct needs assessments at country level, in order to facilitate effective implementation of all provisions of the Convention and to communicate their prioritized needs to development partners, to ensure that lower-resource Parties receive the necessary support to fully meet their obligations under the Convention. On the other hand, the COP requested the Convention Secretariat to assist Parties, upon request, to conduct needs assessments, to advise them on existing mechanisms of funding and technical assistance, and to provide information on the needs identified to development partners, as appropriate.

At its second session (July 2007), the COP requested the Convention Secretariat (in decision FCTC/COP2(10))<sup>3</sup> to actively seek extra budgetary contributions specifically for the purpose of assisting Parties in need to carry out needs assessments and develop project and programme proposals for financial assistance from all available funding sources.

The work plans and budgets adopted by the COP at its third, fourth and fifth sessions (2008, 2010 and 2012), re-emphasized the importance of assisting developing country Parties and Parties with economies in transition, strengthening coordination with international organizations, and aligning tobacco control policies at country level to promote implementation of the Convention. Needs assessments, combined with the promotion of access to available resources, the promotion of treaty tools at country level, the transfer of expertise and technology, international cooperation and South-South cooperation were outlined as major components of this work.

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<sup>2</sup> See COP/1/2006/CD, *Decisions and ancillary documents*, available at: [http://apps.who.int/gb/fctc/E/E\\_cop1.htm](http://apps.who.int/gb/fctc/E/E_cop1.htm).

<sup>3</sup> See COP/2/2007/CD, *Decisions and ancillary documents*, available at: [http://apps.who.int/gb/fctc/E/E\\_cop2.htm](http://apps.who.int/gb/fctc/E/E_cop2.htm).

The assessment of needs is necessary to identify the objectives to be accomplished under the WHO FCTC, resources available to a Party for implementation, and any gaps in that regard. Such assessment should therefore be comprehensive and based on all substantive articles of the WHO FCTC with a view to establishing a baseline of needs. The needs assessment is also expected to serve as a basis for assistance in programme and project development, particularly to lower-resource countries, as part of efforts to promote and accelerate access to relevant internationally available resources.

The needs assessments are carried out in three phases:

- (a) **analysis** of the status, challenges and potential needs deriving from the implementation reports of the Party, and other accessible sources of information;
- (b) **visit** of an international team to the country to perform a joint review with government representatives of both the health and other relevant sectors of the status of implementation of the Convention; and
- (c) **follow-up** with country representatives to obtain further details and clarifications, review additional materials jointly identified, and develop and finalize the needs assessment report in cooperation with the government focal point(s).

With the above objectives and process in view, a joint needs assessment exercise was conducted jointly by the Government of Colombia, led by the Ministry of Health and Social Protection as the national focal point for tobacco control, and the Convention Secretariat, from September to November 2012, including the initial analysis of the status, challenges and potential needs deriving from the country's implementation reports and other sources of information. The mission took place in Colombia on 29 October-2 November 2012. The international team consisted of representatives of the Convention Secretariat, WHO/PAHO, WHO Country Office, the World Bank and the United Nations Development Programme (UNDP). The assessment involved relevant ministries and agencies involved in FCTC implementation in Colombia<sup>4</sup>.

The following needs assessment report is based on the findings of the joint needs assessment exercise described above. It contains a detailed overview of the status of implementation of substantive articles of the treaty. The report identifies gaps that may exist and areas where further actions are needed to ensure full compliance with the requirements of the treaty, also taking into account the guidance provided in the implementation guidelines adopted by the COP where relevant. Specific recommendations are made concerning such particular areas.

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<sup>4</sup> See the Annex to this report.

## Status of implementation and recommendations

This core section of the report follows the structure of the Convention. It outlines the requirements of each of the substantive articles of the Convention, reviews the stage of implementation of each article, outlines achievements and identifies the gaps between the requirements of the treaty and level of implementation by Colombia. Finally, it provides recommendations on how the gaps identified could be addressed, with a view to supporting the country in meeting its obligations under the Convention.

The WHO FCTC is an international treaty and therefore international law. Having ratified this treaty, Colombia is obliged to implement its provisions through national laws, regulations or other measures. There is therefore a need to analyse the needs assessment report, identify all obligations in the substantive articles of the Convention, link them with the relevant agencies, obtain the required resources and seek support internationally where appropriate.

### **Relationship between this Convention and other agreements and legal instruments (Article 2)**

Article 2.1 of the Convention, in order to better protect human health, encourages Parties “to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law”.

Status: There is an area in this relation, which is contained in Law No. 1335 of 2009<sup>5</sup>, and is related to Article 16.1(a) of the Convention. Paragraph 1 of Article 2 of the said law requires that, in no case, the sign which must be placed by all sellers and vendors of tobacco products and its derivatives inside their premises, establishment or point of sale mentions tobacco company brand names, companies or foundations, nor employ logos, symbols or sets of colours that would allow one of them to be identified. This is an important requirement since, in some cases, such signs are being prepared or sponsored by tobacco companies as part of their “corporate social responsibility” activities, and include the names of companies or their logos.

***Colombia may actively identify other areas, in which it can implement measures beyond those required by the Convention, with special regard to the recommendations of the implementation guidelines.***

**The Convention Secretariat will coordinate assistance, including provision of experience and practice of other Parties in introducing and implementing such provisions, as and when Colombia decides to engage in this process.**

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<sup>5</sup> The full title of Law No. 1335 of 2009 is “Provisions by which Damages Caused to Minors and the Non-Smoking Population are Prevented and Public Policies Are Stipulated to Prevent Tobacco Consumption and the Cessation of the Smoker’s Dependence on Tobacco and its Derivatives in the Colombian People”.



Article 2.2 clarifies that the Convention does not affect *“the right of Parties to enter into bilateral or multilateral agreements ... on issues relevant or additional to the Convention and its protocols, provided that such agreements are compatible with their obligations under the Convention and its protocols. The Parties concerned shall communicate such agreements to the Conference of the Parties through the Secretariat”*.

Status/gap – No such information has been provided so far by Colombia.

The Ministry of Foreign Affairs, in consultation with other relevant ministries, including the Ministry of Commerce, Industry and Tourism, should identify the pertinent agreements and report them as appropriate. If there is a lack of awareness of this obligation, the Ministry of Health and Social Protection should take a proactive role to ensure that all relevant Ministries are informed and invited to report.

***It is recommended that relevant ministries and Government agencies review any agreements in their jurisdictions that may fall under the scope of Article 2.2 of the Convention and, if such agreements have been identified, that the Government communicate them to the Convention Secretariat either as part of their next WHO FCTC implementation report or independently. Furthermore, it is also recommended that when entering new agreements, the Government ensure that they are compatible with its obligations under the WHO FCTC.***

#### **Guiding Principles (Article 4)**

The Preamble of the Convention emphasizes *“the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women’s, youth, environmental and consumer groups, and academic and health care institutions, to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts”*.

Article 4.7 recognizes that *“the participation of civil society is essential in achieving the objective of the Convention and its protocols”*.

Status - There are a few nongovernmental organizations (NGOs) running tobacco control projects, such as the “Foundation for Higher Education and Social Development”, the “FES Foundation”, Corporate Accountability International (CAI), and the “Colombian Union Against Cancer”, but a national coalition or network for tobacco control, involving all such agencies and coordinating their tobacco control work, has not yet been established. In addition, a few academic and health associations (major universities, the Colombian Society of Cardiology, the National Society of Pneumology) are also involved in tobacco control projects, especially in the area of tobacco cessation.

Gap – There is no strong national tobacco control advocacy movement among the NGOs due to limited coordination among the agencies.

***It is therefore recommended that the national Government, notably the Ministry of Health and Social Protection, actively encourage coordination within civil society to strengthen its participation and role in supporting implementation of the Convention, and in providing policy guidelines to protect and demand the right to health of the population.***

#### **General obligations (Article 5)**

Article 5.1 calls upon Parties to “develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention”.

Status - Article 5 of Law No 1335 of 2009 requires the Ministry of Health and Social Protection and the Ministry of National Education to formulate, apply, periodically update and review comprehensive, multisectoral, national strategies, plans and programs for tobacco control among the minors and the general population, whether smoking or non-smoking, which correspond to the public health policy that has been stipulated, and implement strategies to aim for the cessation of tobacco consumption. Further, the MOHSP shall design and incorporate into the National Public Health Plan strategies and actions to identify and promote tobacco cessation and treatment of tobacco-related diseases.

Moreover, the Ministry of Social Welfare is required to promote the participation of the indigenous and Afro-Colombian communities in the preparation, implementation and assessment of programs to control tobacco use in the population, especially minors.

In spite of these requirements, there is still no multisectoral tobacco control strategy or action plan currently implemented in Colombia. However, matters related to tobacco control are referred to in the *Health Sector Strategic Plan 2011-2014* and the *National Development Plan 2010-2014*<sup>6</sup>, but without specific reference to the implementation of the Convention as part of those plans. Recently, in both the Ten-Year Public Health Plan (2013-2023) and the Ten-Year Cancer Control Plan (2012– 2021), the MOHSP established sectoral and inter-sectoral objectives for tobacco control, in order to involve all relevant stakeholders and sectors. A brief description of references to tobacco in the above plans is described as follows.

- In the Health Sector Strategic Plan (2011 -2014) aims at promoting wellness and healthy lifestyles through health promotion, disease prevention, control of risk factors and surveillance, including prevention of tobacco use and exposure to tobacco smoke.
- The current National Development Plan 2010-2014 ("Prosperity for All"), in its section called "Equal opportunities for social prosperity", includes strategies to promote wellness and healthy living, based on concepts of health promotion and disease prevention, particularly in the case of prevention of noncommunicable diseases and control of their risk factors (including the consumption of tobacco and exposure to tobacco smoke).

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<sup>6</sup> <http://www.dnp.gov.co/PND/PND20102014.aspx>

- The Ten Year Cancer Control Plan (2012-2021), in its strategic line number 1 (*Risk control, primary prevention*), sets goals related to the reduction of prevalence of tobacco consumption among adults and youth, by fully implementing requirements of the WHO FCTC. At the same time, it establishes actions at the political, regulatory, community and health services levels.

The mission has also been informed and met the Department of National Planning, which is responsible for the development of the National Development Plan for Colombia. Such plan is developed by and consulted with a wide range of stakeholders and sectors of the society, including governmental and UN agencies and the civil society. Subnational development instruments also exist; municipalities and regions have their own plans, which must be aligned with the national one.

The Ministry of Health and Social Protection should promote the inclusion and prioritize WHO FCTC implementation under the Development Plan. This may also pave the way towards integration of FCTC implementation in the next UNDAF (2013-2017).

Further, in line with the Public Health Law No 1438 of 2010, "amending the social security system in health and other provisions ", the Ministry of Health and Social Protection is required to develop a ten-year National Public Health Plan. This plan is already in its final phase of development, and incorporates goals and strategies for FCTC implementation. It should be ensured that the outcome and recommendations of the present joint needs assessment are also taken into account.

#### Gaps –

1. There is no multisectoral tobacco control strategy or action plan currently implemented in Colombia.
2. Implementation of WHO FCTC is not yet included in any broader health strategy, the National Development Plan or UNDAF.

***It is recommended that comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with the Convention be developed and implemented as soon as possible. Such strategies, plans and programmes can be independent entities or they can be included in broader health strategies and plans, for example, the National Public Health Plan. It is further recommended that the national health and development policies identify implementation of the Convention as a priority to effectively prevent and control noncommunicable diseases and reduce their burden on the national health care system. Further, it is recommended that Ministries of Health and Social Protection, Foreign Affairs and the Department of National Planning coordinate the inclusion of WHO FCTC implementation into the National Development Plan which sets the national development framework. Additionally, efforts should be made through Government agencies such as the Presidential Agency for Cooperation (PAC), to actively seek resources, both technical and financial, from external development partners of Colombia for implementation of the Convention.***

In support of the effort of the Government to develop a national action plan, **the Convention Secretariat stands ready to provide the necessary technical assistance, with the active involvement of other development partners.**

Article 5.2(a) calls on Parties to *“establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control”*.

Status – A tobacco control team of four members is currently operational in the Ministry of Health and Social Protection, which also serves as focal point for tobacco control. The tobacco control team is subordinated to the Sub-Direction of Non Communicable Diseases’ Cancer Group, but it is not formalized yet as a separate entity and it does not have a separate budget line. The unit comprise professionals from the different disciplines, whose contributions have enriched the multidisciplinary approach of the actions that have arisen in tobacco control on the short, medium and long term.

On the other hand, Colombia does not have yet an operational national multisectoral coordinating mechanism for tobacco control. However, the Ministry of Health and Social Protection has put in place some efforts to coordinate with some other sectors of the Government. For example:

- work is being coordinated with the Ministry of Education to carry out strategies and programmes to promote healthy lifestyles in educational establishments, aimed at assisting students to develop skills that enable sound decisions in relation to their health;
- further, the Ministry of Health and Social Protection and the Colombian Network of Institutions of Higher Education Promoting Health (REDECUPS) have included prevention of tobacco use and of exposure to tobacco smoke in the Strategy of Institutions of Higher Education Promoting Health; and
- in coordination with the Colombian Institute of Sport (Coldeportes), the governing body of the national sport system, programmes promoting physical activity have been broadened to include reference to healthy lifestyles, including avoidance of tobacco use and exposure to tobacco smoke.

The mission also learned that the Ministry of Foreign Affairs coordinates, on a regular manner, the development of the position of the country in relation to matters covered by governing body meetings under the WHO FCTC. For example, it recently called upon and organized meetings involving different sectors for the development of Colombia’s position at the fifth session of the Conference of the Parties. It has been recognized that this experience may strengthen efforts of the Ministry of Health and Social Protection by gathering support from other line ministries and ensuring coordination among the sectoral policies to strengthen implementation of the WHO FCTC.

In addition, given the federal structure of the Colombian state<sup>7</sup>, subnational level implementation of the Convention is equally important. It is therefore necessary to establish a clear chain of

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<sup>7</sup> Colombia is a unitary republic, decentralized territorially and by services.

communication with territorial authorities to ensure nationwide implementation of the Convention and it may further be useful to convene a national stakeholders meeting in early 2013 to bring all stakeholders on board, including the territorial authorities and relevant civil society organizations.

Gaps –

1. Currently there is no separate budget line in the budget of the Ministry of Health and Social Protection and other stakeholder ministries and departments for implementation of the Convention.
2. There is no national multisectoral coordinating mechanism in place yet, which could ensure full, integrated and sustained participation of various sectors of the Government and the society at large in implementation of the Convention.
3. The involvement and participation of subnational authorities in implementation of the Convention needs to be strengthened.

***It is therefore recommended that a national multisectoral mechanism coordinating the implementation of the Convention in Colombia be established as soon as possible. Once established, the functions of the secretariat of such a mechanism can be delegated to the tobacco control team of the Ministry of Health and Social Protection. It is further recommended that the Ministry of Health and Social Protection strengthen the existing tobacco control team by, inter alia, creating a separate budget line for the team to ensure that secure and sustainable resources are provided for implementation of the Convention.***

Article 5.2(b) calls on Parties to “adopt and implement effective legislative, executive, administrative and/or other measures, and cooperate, as appropriate, with other Parties in developing appropriate policies, for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke”.

Status – The first initiative of Colombia to regulate tobacco dates back to 1986 (Law No 30 of 1986 contained tobacco control measures along with measures to control other dependence-causing substances). The country’s new Constitution, adopted in 1991, provided for further opportunities for strengthened tobacco control by requiring that all laws are based on and linked to basic human rights which need to be protected, including the right to life, health and healthy environments.

Colombia ratified the WHO FCTC through Law No 1109 of 2006 and the Convention entered into force for Colombia on 9 July 2008. The time lag between the adoption of the ratification act by the Congress and the actual entry into force of the Convention was due to an automatic review by the Honourable Constitutional Court with respect to the text of the Convention in its entirety, in order to determine its consistency with the Constitution of Colombia of 1991. In its decision C-665/2007, the Constitutional Court declared the act enforceable so that the Government proceeded with the official deposition of ratification document at the UN treaty section.

On 21 July 2009, the Congress of the Republic of Colombia adopted Law No 1335 of 2009 (hereinafter called as the “Tobacco Control Law”), followed by some relevant regulations and resolutions, which address obligations under the following articles of the Convention:

- Article 5.1 (General obligations)
- Article 8 (Protection from exposure to tobacco smoke)
- Article 10 (Regulation of tobacco product disclosures)
- Article 11 (Packaging and labelling of tobacco products)
- Article 12 (Education, communication, training and public awareness)
- Article 13 (Tobacco advertising, promotion and sponsorship)
- Article 14 (Demand reduction measures concerning tobacco dependence and cessation)
- Article 15 (Illicit trade in tobacco products)
- Article 16 (Sales to and by minors) and
- Article 20 (Research, surveillance and exchange of information) of the Convention.

While the Tobacco Control Law seeks to address obligations under these articles, its provisions do not comply fully with the requirements of the treaty. In addition, it has been observed that in the provisions concerning implementation of Articles 8, 11 and 13 that are time bound, enforcement is either not effective or needs to be strengthened. It is therefore necessary that the law No 1335/2009 is revised to ensure full compliance with the requirements of the treaty and that its enforcement is strengthened, primarily through improving cooperation between Government agencies which are mandated by the law to enforce provisions therein.

Relevant regulations and resolutions developed under the Tobacco Control Law include the following:

- *The Ministry of Social Protection (now Ministry of Health and Social Protection) adopted on Resolution No 003961 of 2009 “Specifying the requirements for packaging and labelling of tobacco and tobacco products”.* This decision regulates implementation of tobacco product packaging and labeling provisions of the law. The Decision specifies the size, format, and rotation requirements for tobacco packaging health warnings, and also prohibits misleading terms and descriptors.
- *Circular No 005 of 2012 of the Superintendent of Industry and Trade (SIC) provides specific guidance on tobacco product display at points of sale.*
- Resolution No 001309 from 31 May 2012, through which the Committee of Packaging and Labelling of tobacco products and derivatives is created.
- Decree 1792 of 2012, through which fine collection for breach of Law 1335 of 2009 is incorporated into the Solidarity and Guarantee Fund’s (FOSYGA) promotion sub-account.

#### Gaps –

1. The Tobacco Control Law is not fully compliant with the Convention in a number of areas.

2. Lack of enforcement of the law 1335/2009 remains a challenge, especially in the areas of Articles 8, 11 and 13 of the Convention.

***It is therefore recommended that the Ministry of Health and Social Protection and other relevant ministries work closely to review and amend the current national tobacco control legislation to make it fully in line with the obligations under the Convention. Emphasis should also be given to strengthening enforcement of measures covered in the national legislation, especially those concerning protection from environmental tobacco smoke (Article 8 of the Convention); packaging and labelling of tobacco products (Article 11); and tobacco advertising, promotion and sponsorship (Article 13).***

In support of the Government's effort to amend national tobacco control legislation, **the Convention Secretariat is committed to support the review of the draft amendment and regulations, upon the request of the Government.**

Article 5.3 stipulates that in setting “public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry”.

Status – The mission learned about ongoing efforts of the Ministry of Health and Social Protection to develop national guidelines to protect tobacco control policies from the interference by the tobacco industry, but no policies corresponding to Article 5.3 of the Convention are yet in place.

There are two major multinational tobacco companies present in Colombia, British American Tobacco and Philip Morris International. The latter completed the purchase of the Compañía Colombiana de Tabaco (Coltabaco) in 2005, while British American Tobacco acquired Productora Tabacalera de Colombia (Protabaco) in 2011.

The influence of the tobacco industry on tobacco control policy development is apparent at both national and subnational levels. The industry succeeded, among others, to delay for more than two years the entry into force of the Convention in Colombia and continues to promote itself as a good corporate citizen. The existence of loopholes in the 2009 Tobacco Control Law and its lack of full compliance with the requirements of the Convention are due to the interference of the tobacco industry.

Another example refers to the settlement signed in June 2009 between Philip Morris Colombia, the departments and the Capital District (Bogotá), only a few weeks before the adoption by the Congress of the 2009 tobacco control legislation on 21 July 2009. This “Investment and cooperation” agreement with the Government of Colombia covers issues related to, inter alia, implementation of Articles 6 (Price and tax measures to reduce demand for tobacco), 15 (Illicit trade in tobacco products) and 17 (Economically viable alternatives to tobacco growing) of the Convention. The National Federation of Departments administers the proceeds from this agreement. More generally, representatives of the tobacco industry are still seen as normal partners by some sectors of the Government and are consulted when policies and regulations are

being developed, especially in the areas of taxation and combatting illicit trade in tobacco products and corporate social responsibility.

The guidelines for implementation of Article 5.3 recommend that partnerships and non-binding or non-enforceable agreements with the tobacco industry should be rejected. Further, the guidelines recommend that *“Parties should not accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing... any initiatives that are directly and indirectly linked to tobacco control”*. The Government of Colombia should review the above described cooperation agreements of Philip Morris Colombia, as well as other agreements that have been undertaken, and ensure that requirements under Article 5.3 prevail in any interaction with the tobacco industry.

Gaps –

1. There is a lack of awareness of Article 5.3 of the Convention and its guidelines among public officials.
2. There are no measures in place preventing tobacco industry interference with development of Government policies with respect to tobacco control.

***It is therefore recommended that the Ministry of Health and Social Protection intensify its work for the development and introduction of measures (e.g. national guidelines) to limit interactions with the tobacco industry and prevent any interference of the industry with the development of tobacco control policies. Information on the requirements of the Convention concerning implementation of Article 5.3 should be disseminated to all branches of the Government (executive, legislative and judiciary). Existing cooperation agreements with the tobacco industry should be reviewed, and terminated as appropriate, in the light of Colombia’s compliance with Article 5.3 of the Convention.***

Article 5.4 calls on Parties to *“cooperate in the formulation of measures, procedures and guidelines for the implementation of the Convention and the protocols to which they are Parties”*.

Colombia has actively participated in the work of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products and also at the sessions of the Conference of the Parties. Colombia is also member of the working group on Articles 9 and 10 of the Convention.

Colombia has therefore met the obligation under Article 5.4. Further cooperation and participation in intergovernmental processes, such as working groups established by the Conference of the Parties, and consideration for the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products adopted at the fifth session of the COP, will be highly appreciated.

Article 5.5 calls on Parties to *“cooperate, as appropriate, with competent international and regional intergovernmental organizations and other bodies to achieve the objectives of the Convention and the protocols to which they are Parties”*.

There are a number of examples of cooperation between Colombia and multilateral and bilateral organizations such as WHO, WHO/PAHO and the Johns Hopkins University. The members of the



mission met the WHO and World Bank country office, the UNRC, representatives of UNDP and FAO. Further details on international cooperation are given under Article 22.

Article 5.6 calls on Parties to *“within means and resources at their disposal, cooperate to raise financial resources for effective implementation of the Convention through bilateral and multilateral funding mechanisms”*.

Colombia has sought and received funding from bilateral and international agencies including WHO/PAHO, the World Bank, the Campaign for Tobacco Free Kids and the Bloomberg Initiative to Reduce Tobacco Use. Further opportunities for expanded support to tobacco control measures and implementation of the Convention are encouraged. Colombia has met its obligations under Article 5.6.

However, such funding remains insufficient and further funding is needed so that all the obligations under the Convention can be met and so that national tobacco-control legislation can be implemented and effectively enforced.

#### **Price and tax measures (Article 6)**

In Article 6.1, the Parties recognize that *“price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons”*.

Article 6.2(a) stipulates that each Party should take account of its national health objectives concerning tobacco control in implementing *“tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption”*.

A set of guiding principles and recommendations for implementation of Article 6 of the WHO FCTC was adopted by the COP at its fifth session (COP5) in November 2012 (as decision FCTC/COP5(7)).

#### **Status –**

##### **Taxation of tobacco products**

In general, cigarettes and manufactured tobacco are taxed by two rates, a tax on sales (VAT) at national level, and a department tax, called consumption tax, on cigarettes and manufactured tobacco at territorial (provincial) Level. The sales tax is regulated by the National Fiscal Statute and its proceeds are part of the regular revenues of the nation. According to Article 420 of the National Fiscal Statute, sale and import of cigarettes and manufactured tobacco (domestic and foreign), is taxed by the general tax rate.

Law No 223 of 1995 regulates the collection and management of consumption tax on cigarettes and manufactured tobacco. This tax is part of the regular revenues of the departments and the

Capital District (Bogota). The taxable base and the tax rate are regulated in Articles 210 and 211 of Law 223/1995, which were amended by Law 1111 of 2006 and 1393 of 2010.

According to Article 210, the tax base applicable for the definition of consumption tax rates on cigarettes and other tobacco products (local and imported), is the retail price certified by the National Administrative Department of Statistics (DANE) twice a year.

Article 5 of Law 1393 from July 12 2010, modified article 2011 of Law 223/1995, also establishes a specific tax per pack of twenty (20) units or proportional to its content. The rates established by Law 1393/2010, were as follows:

1. Cigarettes, cigars, and manufactured tobacco: \$ 570.00 Colombian pesos per pack of twenty (20) units or proportional to its content.
2. The rate for each gram of loose tobacco, chewing tobacco and tobacco paste: \$ 36.00 Colombian pesos.

The above rates are updated annually, starting in 2011, at a rate equal to the growth of the Consumer Price Index certified by DANE. The Direction of Fiscal Support of the Ministry of Finance (DAF) certifies and publishes the updated rates before January 1<sup>st</sup> every year.

According to the Certifications 05 from 2010, 03 from 2011 and 04 from 2012, issued by the DAF, the value of the applicable rate per pack of twenty cigarettes, cigars, and manufactured tobacco was \$ 570 in 2010, \$ 584.76 in 2011, \$ 607.91 in 2012 and \$ 624.75 in 2013.

As of 1 January 2012, the following types of taxes and rates are applied on tobacco products in Colombia:

- Specific tax: 607.91 Colombian pesos per pack of 20 units or proportional (this rate is updated annually based on the consumer price index) (value in 2013 is \$ 624.75);
- Ad valorem tax: this represents 10% of the sales price, using the prices certified by DANE; and
- Value added tax (VAT): 16% of baseline

With regard to VAT, the tax reform approved by Law 1607 of 26 December 2012, added Article 437-5 to the Fiscal Statute. This new Article provides that VAT derived from selling raw or unmanufactured tobacco and tobacco waste (identified with the Andean duty tax nomenclature 24.01) will be generated when these are sold to the tobacco industry by producers within the common regime. The VAT generated will be 100% retained by the tobacco industry.

Overall, around 50% of the price of a pack of cigarettes consists of taxes. According to the 2012 global progress report on implementation of the WHO FCTC, the global average of the total tax burden on cigarettes is 59.4%, although there are significant differences between the Parties and regions. The total tax burden on cigarettes in Colombia is below the global average, and is unlikely to result in the health impact as required in Article 6.2(a) of the Convention.

Other tobacco products are taxed at lower rates. In the case of loose tobacco, chewing tobacco and tobacco paste (smokeless forms) a specific tax of 38.39 pesos per gram is applied in 2012. (In 2013, the value is \$39.45).

During the mission, the Direction of Fiscal Support (DAF) of the Ministry of Finance provided information on the application, collection and use of taxes originating from the sale of tobacco products. There are several important aspects to mention:

1. Certification of retail prices by DANE to be used for the calculation of ad valorem taxes: the National Administrative Department of Statistics (DANE) collects price information from large department stores. However, only 3% of tobacco products sold in the country (around 18 billion sticks or 900000 packs of cigarettes per year) are sold in large department stores; 97% of products are sold by small shops, kiosks or street vendors. Usually, prices in department stores are lower than those applied by smaller shops. That results in tax base (and eventually tax amounts ) being estimated using prices in the lower range of sales prices applied by various retail units and vendors.
2. Consumption tax on on cigarettes and manufactured tobacco goes into the budget of departments and does not remain in the state's general budget. The consumption tax originating from importation of tobacco products are collected in a special fund administered by the National Federation of Departments. The consumption tax on cigarettes and manufactured tobacco of domestic origin (not imported) is declared and paid by manufacturers to the department that will consume it. The VAT is collected by the Directorate of National Taxes and Customs (DIAN), and remains in the general budget of the nation. All other taxes are provided to and used by the departments.
3. The tax is paid by the producer or the importer: the tax is generated when the product exits the factory (in case of locally produced brands) or at the entry into the country (for imported brands). The tax collected goes into that department's budget where the product was eventually sold. This can be determined by using a system following the moving of the goods within the country.
4. The use of taxes: by law, departments dedicate 16% of specific tax income on every packet of cigarettes into the funding of sports. The totality of the collected ad valorem tax is specifically targeted to funding health.

Overall, in 2010, according to information from the Directorate of Taxation of the Ministry of Finance around 460 billion Colombian pesos were collected from taxes related to the sale of tobacco products, around 370 billion pesos from locally produced brands and 90 billion pesos from imported brands.

Discussions are ongoing concerning the increase of tobacco tax rates, as part of the new tax reform. The Ministry of Health and Social Protection has participated extensively in the discussions to achieve further increases of tobacco taxes. The mission also contributed to raising awareness on the possible health impact of higher tobacco taxes (and eventually, of higher prices of tobacco

products) and promoted tax increases during the discussions with the Directorate of Taxation of the Ministry of Finance.

#### Prices of tobacco products

The mission has learned that a pack of 20 cigarettes of Boston costs around 2300 pesos and Marlboro Red costs around 3200 pesos (less than 2 USD; 1 USD=cca 1800 pesos). Other brands, such as Kool or Kent go slightly above 2 USD per pack.

The cheapest filtered brand, based on price data collected by DANE in late 2011, costs around 1600 pesos, or less than 1 USD.

According to the 2012 global progress report on implementation of the WHO FCTC, calculated from the information provided by 126 Parties to the Convention, the global average price per one pack of 20 cigarettes is 3.81 USD. Average prices vary widely by regional groups, with the average price in the region of the Americas being 3.20 USD.<sup>8</sup> These figures indicate that tobacco prices in Colombia are well below the global average and also below the average of countries in the Region of the Americas.

Gaps – The tax rates, as well as the total tax incidence on retail sale prices of tobacco product prices, are low in Colombia. Such rates are unlikely “to contribute to the health objectives aimed at reducing tobacco consumption”, as envisaged in Article 6.2(a) of the Convention.

Article 6.2(b) requires Parties to prohibit or restrict, “as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products”.

Gap – There is no regulation in place concerning these matters in Colombia.

Article 6.3 requires that Parties shall “provide rates of taxation for tobacco products ... in their periodic reports to the Conference of the Parties, in accordance with Article 21”.

Colombia has provided this information in its two submitted implementation reports, and has therefore met the obligations under Article 6.3.

***It is therefore recommended that the Government, under the initiative of the Ministry of Finance and Public Credit, increase tax rates of all tobacco products on a regular and progressively higher basis. Although the Government is following inflation to adjust the specific component of its consumption tax, it is recommended that a higher percentage be considered to ensure a real increase in price in order to further reduce tobacco affordability and tobacco consumption. It is also recommended that the method of determination of tax base for the ad valorem component be reviewed to ensure that prices in all retail outlets are taken into account. It is further recommended that the Ministry of Finance and Public Credit propose to the Government, for***

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<sup>8</sup> Further information on tobacco taxation and prices can be found in the 2012 global progress report on implementation of the WHO Framework Convention on Tobacco Control.  
[http://www.who.int/entity/fctc/reporting/2012\\_global\\_progress\\_report\\_en.pdf](http://www.who.int/entity/fctc/reporting/2012_global_progress_report_en.pdf)

*adoption, measures corresponding to Article 6.2(b) of the Convention to prohibit or restrict duty free sales and imports of tobacco products by returning international travellers. It is also recommended that while strengthening implementation of Article 6 of the Convention the Ministry of Health and Social Protection and the Ministry of Finance and Public Credit work closely together in implementing Article 6 and its guiding principles and recommendations.*

In support of the Government's effort to implement effective tax and price measures to reduce tobacco consumption, **the Convention Secretariat is committed to facilitating provision of expertise and technical support upon request from the Government.**

### **Protection from exposure to tobacco smoke (Article 8)**

In Article 8.1, Parties recognize that “*scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability*”. The guidelines for implementation of Article 8 further emphasize that “*there is no safe level of exposure to tobacco smoke*” and “*engineering approaches, such as ventilation, air exchange and the use of designated smoking areas, do not protect against exposure to tobacco smoke*”.

Article 8.2 requires Parties to “*adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places*”.

The Article 8 guidelines call upon each Party to “*strive to provide universal protection within five years of the WHO Framework Convention's entry into force for that Party*”. This timeline requires Colombia to ensure such universal protection from environmental tobacco smoke to all its citizens by 9 July 2013.

Status – Chapter V (Articles 18 to 21) of the Tobacco Control Act of 2009 protects the rights of citizens of Colombia to a smoke-free environment.

Article 18 summarizes the rights of non-smokers to:

- breathe air which is free from tobacco smoke;
- protest when tobacco products are lit in places where their use is banned by the law and demand that the proprietor, legal representative, manager, administrator or responsible person of any title concerning the business or establishment, warn those who use tobacco products to stop using them;
- appear before the competent authority in defence of their rights as non-smokers and to demand their protection;
- demand mass advertising on the damaging and deadly effects caused by tobacco and exposure to tobacco smoke;

- report non-compliance with the provisions of the law to the competent authority.

Article 19 of the Law lists the public places where the consumption of tobacco products is not allowed. These include:

- enclosed work places and/or public places, such as: bars, restaurants, business centers, stores, fairs, festivals, parks, stadiums, cafeterias, dance halls, cybercafés, hotels, fairs [sic], pubs, casinos, common areas and waiting areas where mass events take place, among others;
- all health establishments;
- institutions of formal and informal education at all levels;
- establishments serving minors;
- sporting and cultural spaces, including museums and libraries;
- means of transportation for public (including official, school, mixed and private service);
- public and private entities aimed at any type of industrial, commercial or service activity, including its customer service areas and waiting rooms;
- areas where the consumption of tobacco products may create a high risk of combustion due to the presence of flammable materials, such as gasoline stations, storage sites for combustibles or explosive materials and the like.

Article 19 further requires health authorities to monitor compliance with this article in coordination with the National Police and other control authorities.

Article 20 of the Law imposes the following obligations on proprietors, employers and administrators of the above mentioned public places to:

- ensure compliance with the ban of use of tobacco products with the aim to protecting people from exposure to environmental tobacco smoke;
- display visible warnings with messages alluding to smoke-free environments, pursuant to the regulations issued by the then Ministry of Social Welfare;
- adopt reasonable, specific measures to dissuade people from smoking in the place, such as asking the person not to smoke, interrupting services, asking him to leave the premises or contacting the competent authority.

Article 21 of the Law provides definitions for “enclosed area”; “second-hand tobacco smoke or environmental tobacco smoke”; “smoking”; “work place”; “public places”; “public transport”. These definitions correspond to those provided in the WHO FCTC and the guidelines for implementation of Article 8.

Having implemented this legislation, Colombia became one of the few Parties in the world with the most comprehensive smoke-free legislations<sup>9</sup>. The measures protecting citizens from exposure

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<sup>9</sup> 2012 global progress report on implementation of the Framework Convention on Tobacco Control. Convention Secretariat, WHO FCTC.

to tobacco smoke were introduced within the timeline suggested by the guidelines for implementation on Article 8 of the Convention.

Following the adoption of the Law 1335/2009, circular No. 000 038 from 9 July 2010, issued by the then Ministry of Social Welfare and targeted to a wide range of stakeholders in the business sector (including the regional administration, professional risk managers, public sector companies and private organizations from the Solidarity Economy and Cooperation sector, the National Police, non-uniformed personnel and civilian personnel of the armed forces) explains the requirements of the provisions of the smoke free Law 1335/2009.

Further efforts, including communication campaigns, are ongoing to achieve extension of coverage of smoke-free provisions of the Law to outdoor areas, such as parks and beaches. The mission also heard that the National Cancer Institute (NCI) also implements projects targeted at mobilizing communities (educational institutions, including universities) and various target groups (teachers and students) to demand and establish 100% smoke-free environments; monitoring public opinion in relation to acceptance of smoke-free policies; and evaluation of communication campaigns targeted at preventing exposure to tobacco smoke.

On one hand, the NCI reaches the network of colleges and universities. Further, the NCI moved beyond and proposed and strengthened communication strategies with broader scopes, which (for example the *"No smoking is the attitude!"* campaign), for the last 8 years, introduced the innovative use of new information technologies (social networks), in order to raise awareness against tobacco consumption. The use of new technologies and social networking in tobacco control is a major contribution, not only due to its impact, but also by pioneering in this area among the Latin American countries.

After the adoption of the 2009 Law, a circular (No 000038 of 9 July 2010) was issued by the Ministry of Social Protection, addressed to a wide range of relevant stakeholders of businesses (including regional management, professional risk managers, public sector employers and the Private Organizations' Solidarity Economy and Cooperative Sector, the National Police, the non-uniformed personnel and civilian personnel of the military), explaining the requirements of smoke-free provisions of the 2009 Law.

Still, enforcement of smoke-free measures continues to pose challenges to effective implementation due to several reasons.

First, while Article 24 of Chapter VII of the 1335/2009 Law calls for penalties for smoking in public places and requires that "elements and resources needed for application of the penalties" be set by the Ministry of Social Welfare and the National Police, and further, Article 32 states that the National Government may, within six months of the entry into force of the Law, determine and specify the penalty system, competent authorities and procedure for the application of these penalties.

The Ministry of Health and Social Protection is currently drafting a resolution to cover these elements required by the 2009 legislation regarding creation of 100% smoke free environments. Such draft has been presented to the mission. Once adopted and implemented the resolution could improve the effectiveness of implementation of smoke-free measures for tobacco control. Within the framework of this draft resolution, discussions were also held on the necessity of concluding a formal agreement between the Ministry of Health and Social Protection and the General Directorate of Police Force on how to effectively cooperate in the area of enforcement of smoke-free measures.

Second, the mission has been informed that while there is understanding that the enforcement of measures, including surveillance and control inspections, should be jointly performed by the health authorities and the police force, such collaboration ensuring effective implementation of the existing legislation is still missing. This is especially relevant and of priority in territorial jurisdictions.

Third, a mechanism to allow citizens to report any non-compliance with the existing smoke-free legislation, in conformity with Article 18 of the 1335/2009 Law, is not yet effectively implemented. However, any citizen may report the infringement of smoke free provisions to the National Police, and can also bring their complaints to the territorial health authorities. In addition, further sensitisation is needed to ensure that proprietors, employers and administrators of the public places report to competent authorities any breaches of smoking bans in conformity with Article 20 of the said Law.

In summary, while the 1335/2009 Law provides for strong measures to prevent exposure to tobacco smoke, the enforcement and monitoring of such measures needs to be strengthened to ensure effective implementation of the Law throughout the national territory.

Some research has also been implemented providing information on the extent of exposure to tobacco smoke in various sections of the society. The Global Youth Tobacco Survey was implemented twice in Bogota (in 2001 and 2007) and once in four other cities (Bucaramanga, Cali, Manizales and Valledupar in 2007). These studies, however, do not provide for comparative data from before and after the implementation of smoke-free legislation so that detection of changes related to this policy measure is not possible.

Another study to assess second-hand smoke exposure in various public places was conducted in 2009, but again, before the entry into force of the measures required under the Tobacco Control Law of 2009. This has been a joint effort between the University Sergio Arboleda and the District Department of Health of Bogota, with support from the Pan American Health Organization and the John Hopkins Bloomberg School of Public Health. The aim of the study was to determine the levels of nicotine in the air in public places like hospitals, educational institutions, Government buildings, public transport facilities, restaurants and bars in Bogota. Nicotine was detected in the air in 35% (26 of 75) of monitored areas. Large differences were found by the type of establishment. Public places with the highest number of areas in which nicotine was detected were the entertainment



venues, such as bars and restaurants, with the highest levels of nicotine concentration (0.89 mg/m<sup>3</sup>).

In bars, nicotine was detectable in 100% of monitored areas. The share of areas with detectable nicotine was lower in other public places (75% in public transport; 57% in restaurants; 50% in educational establishments (schools); 25% in Government buildings; and 11% in hospitals.

It would be worth repeating this study at national level periodically, in order to identify any change in exposure to tobacco smoke and assess the impact of legislation on the health of citizens.

#### Gaps -

1. While having advanced provisions creating 100% smoke-free environments in the 1335/2009 Law, the enforcement of these measures is insufficient. This is partly due to the delay in the development of regulations clearly defining, among others, the relevant law enforcement authorities and their roles in monitoring and enforcing of measures and applying penalties for non-compliance.
2. Further mobilization is needed among the territorial authorities for identifying the relevant stakeholders at subnational level and ensuring that the Law is effectively implemented in all regions, municipalities and cities of the country.
3. Research on the impact of smoke-free measures has not yet been implemented.

***It is recommended that Colombia strengthen implementation of smoke-free provisions of the 1335/2009 Law, not least by adopting and implementing the draft Ministry of Health and Social Protection resolution defining roles and responsibilities in relation to monitoring and enforcement of measures contained in Articles 18 to 21, 24 and 32 of the Tobacco Control Law. Efforts to extend smoke-free provisions to outdoor public areas is applaudable and should be finalised as soon as possible.***

#### **Regulation of the contents of tobacco products (Article 9) and regulation of tobacco product disclosures (Article 10)**

Article 9 requires Parties to “adopt and implement effective legislative, executive and administrative or other measures” for the testing and measuring of the contents and emissions of tobacco products “and for such regulation”.

Status – In relation to Article 9 of the Convention, the mission has been informed that the Ministry of Commerce, Industry and Tourism, together with the National Administrative Department of Statistics, is currently collecting information on national capacity for testing and measuring emissions of tobacco products.

No other measures relating to Article 9 have been reported to the mission.

It is noteworthy that the 1335/2009 Tobacco Control Law does not determine information requirements on components, contents and emissions of tobacco products or does not determine a national laboratory to perform regular testing of content and emissions of tobacco products.

Article 10 requires each Party to “*adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose **to governmental authorities** information about the contents and emissions of tobacco products. Each Party shall further adopt and implement effective measures for **public disclosure** of information about the toxic constituents of the tobacco products and the emissions that they may produce*”.

Status – Article 22 of the 2009 Tobacco Control Law requires tobacco manufacturers and importers to submit annually, whenever the Ministry of Health and Social Protection requests it and in the form it requests, a report on ingredients added to tobacco; and levels of tar, nicotine and carbon monoxide in tobacco smoke. Further, the Law acknowledges that such information “is industrial secret and all this information will be treated confidentially and with absolute secrecy”.

A draft resolution of the Ministry of Health and Social Protection regulating the supply of information by the manufacturers and importers of tobacco products to the National Government is currently under public consultation.

With respect to disclosure of information on the content and emissions of tobacco products, the formulation in the 1335/2009 Law does not allow for full compliance with Article 10 of the Convention.

Gaps –

1. Article 9 of the Convention is not covered in the 1335/2009 Law and there is no designated independent laboratory in the country to test and measure contents and emissions of tobacco products available on the Colombian market. Further, the Law does not provide for making the tobacco industry responsible for the costs of tobacco product regulation measures.
2. The regulation describing the content, form and submission timeline of reports of tobacco manufacturers and importers of tobacco products has not been developed yet.

***It is recommended that the Ministry of Health and Social Protection complete the process of development of regulations to implement Articles 9 and 10 of the Convention, in consultation with relevant key stakeholders within the Government. The Ministry of Commerce, after finalizing its review on the available country capacity for testing and measuring tobacco emissions and derivatives, should coordinate with the Ministry of Health and Social Protection, in consultation with other relevant stakeholders, as appropriate, in the identification of an independent national or international laboratory to perform regular tests and measurements on the content and emissions of tobacco products commercialized on the Colombian market. It is further recommended that the regulations make the tobacco industry responsible for the cost of***

***the testing and monitoring complaints of their products according to the financing recommendations of the guidelines on Articles 9 and 10.***

In support of the Government's efforts to develop regulations in line with Articles 9 and 10 of the Convention, **the Convention Secretariat is committed to providing technical support as requested by the Government, including experiences and advanced practices applied in other Parties to the Convention.**

#### **Packaging and labelling of tobacco products (Article 11)**

Article 11 requires each Party *"within a period of three years after entry into force of the Convention for the Party to adopt and implement... effective measures"* on packaging and labelling of tobacco products.

Status – The applicable deadline for introducing eight key measures concerning packaging and labelling of tobacco products, as described in Article 11.1 of the Convention, was 9 July 2012. Most of the measures on packaging and labelling implemented by Colombia are in line with the requirements of the Convention, and they have been introduced in time to comply with the deadline set in the treaty.

Article 13 of the 1335/2009 Law regulates packaging and labelling of tobacco products. The Law requires that all packages of tobacco products carry text and graphic health warnings occupying 30% of both front and back of package.

Further guidance and details concerning the application of the requirements of the Law is provided in the then Ministry of Welfare Decision 003961 of 2009, and the related resolutions, which are issued annually. The latter contain the six warnings which shall be rotated in the following one year, starting on 21 July 2009. (See details of the Decision and related Resolutions under description of Article 5.2(b)). The Ministry of Health and Social Protection, in cooperation with the National Institute of Cancer (NIC), develops and approves the health warnings applicable on packages of tobacco products in the next year.

## Advertencias Sanitaria Colombia

2010-2011

2011-2012



Source: Ministry of Health and Social Protection, 2012.

The MOHSP reviews and analyses the new templates of tobacco product packaging, with respect to health warnings and the ban on advertising, promotion and sponsorship of tobacco products. Such initial control (performed before the products enter the market) ensures the implementation of the provisions of Law 1335/2009 and Resolution 003961 of 2009. At present, this work of revision and approval/disapproval of the replicas of packaging and labelling is performed by the Packaging and Labelling Committee, created by Resolution 1309 of 2012 of the MOHSP.

When the products are marketed in the Colombian market Article 34 of the 1335/2009 Law mandates two national authorities to oversee the implementation of packaging and labelling measures. The National Customs and Tax Office (DIAN) perform verifications at the port pursuant to its jurisdiction, the Office of Superintendence of Industry and Commerce<sup>10</sup> (SIC) performs verification and control with respect to packaging and labelling. According to the provisions of the Law, it is up to the SIC, in addition to ensuring the compliance with the ban on advertising, promotion and sponsorship of tobacco products, verify that tobacco products:

<sup>10</sup> The functions of the Superintendence of Industry and Commerce also include the monitoring of measures on tobacco advertising, promotion and sponsorship and the sales of tobacco products to minors and other broader consumer protection matters. The agency is not involved in the work of the Ministry of Health and Social Protection determining the next round of package warnings, as neither the 1335/2009 Law or the decisions of the Ministry of Health and Social Protection (the latest one on this matter being the Resolution No 001309 of 2012 dated 31 May 2012) require their participation in the work of the Ministry or the Committee on Packaging and Labeling. The verifications done by the Superintendence do not cover rotation of the warnings since that competence is not designated by Law 1335/2009, namely if all health warnings selected for display on tobacco packaging in that particular year are eventually applied on equal number of packs.

- Are not directed to minors, or are particularly attractive for this population;
- Do not suggest that smoking contributes to athletic or sporting performance, popularity, professional or sexual performance;
- Do not contain false or misleading advertising using expressions such as "light", "soft", "mild" or "low in tar, nicotine and carbon monoxide;"
- Contain the pictograms and health warnings required by the relevant legislation.

With respect to the breach of measures on packaging and labelling established by Law, Article 25 of Law 1335/2009 establishes financial penalties. However, the entities responsible for the supervision and control of tobacco products sold in the market, cannot order the withdrawal of the product that does not meet the requirements for packaging and labelling of tobacco products and its derivatives, nor the withdrawal of the license to market tobacco products of the dealer who sells tobacco in packages that do not comply with the existing law.

The mission was informed that from 2011 and up to October 31 2012, the Superintendence initiated 15 administrative investigations (for breach of packaging and labelling measures, and full ban on, advertising, promotion, and sponsorship), made approximately 30 inspection visits throughout the country, and had 12 administrative proceedings in preliminary stage.

Increasing the number of visits is a great effort for the Superintendence, due to lack of staff required to continuously monitor the market of tobacco and its derivatives. However, controls on compliance with this provision made significant progress in 2012.

No information has been presented to the mission on the work of the National Customs and Tax Office (DIAN) concerning verification of imported tobacco products, if they comply with legal requirements or not.

A summary of compliance of Colombia's regulatory framework concerning packaging and labelling of tobacco products and the requirements of the Convention is given in **Table 1**.

**Table 1.** Comparison of the requirements of Article 11 of the Convention and the level of compliance with these requirements in Colombia.

Paragraph in Art. 11	Content	Level of compliance	Comments and identified gaps
11.1(a)	Tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark,	Obligation met.	Article 13 of Law No 1335 of 2009

	figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products. These may include terms such as “low tar”, “light”, “ultra-light”, or “mild”.		
11.1(b)	Each unit packet and package of tobacco products and any outside packaging and labelling of such products also carry health warnings describing the harmful effects of tobacco use, and may include other appropriate messages.	Obligation met	Article 13 of Law No 1335 of 2009
11.1(b)(i)	[The warning] shall be approved by the competent national authority.	Obligation met.	Warnings are designed and approved in the framework of a technical cooperation agreement with the National Cancer Institute. The newly created Committee of Packaging and Labelling of tobacco products will join this process.
11.1(b)(ii)	[The warnings] shall be rotating.	Obligation met.	Six warnings are designed and approved for each year and each of them shall appear on an equal number of packets and packages of all brands and types of package. However, further clarification may be needed on how to ensure that all warnings selected for that particular year actually appear on equal number of packs.
11.1(b)(iii)	[The warning] shall be large, clear, visible and legible.	Obligation met.	
11.1(b)(iv)	[The warning] should be 50% or more of the principal display areas but shall be no less than 30% of the principal display	Obligation met.	The size of the warning reflects the minimum requirement of the

	areas.		Convention.
11.1(b)(v)	[The warning] may be in the form of or include pictures or pictograms.	Obligation met.	Pictures appear on packages since mid-2010. However, it would increase visibility of pictorial warnings if they are placed at the top of the principal display areas rather than at the bottom and/or if it were to increase the size of health warnings.
11.2	Each unit packet and package of tobacco products and any outside packaging and labelling of such products shall contain information on relevant constituents and emissions of tobacco products as defined by national authorities.	Not yet implemented.	Decision requires that packages do not include quantitative information on constituents and emissions, but do not require that qualitative information are included as required in the treaty and the guidelines for implementation of Article 11.
3	Each Party shall require that the warnings and other textual information appear on each unit packet and package of tobacco products and any outside packaging and labelling of such products in its principal language or languages.	Obligation met.	

#### Gaps –

1. The legislation concerning packaging and labelling of tobacco products does not require the display of qualitative statements on each unit packet or package about the emissions of the tobacco products, as required by Article 11.2 of the Convention and the related implementation guidelines.
2. The size of the warnings only complies with the minimum requirement of the Convention and the pictures are placed at the bottom of the respective display area. However, in the Ten-Year Public Health Plan and the Ten-Year Cancer Control Plan, a new goal was set to increase the size of health warnings to up to 60%.
3. The number of officials of the Superintendence of Industry and Commerce (SIC) is small relative to the number of assigned responsibilities, taking into account that the process of inspection, supervision and control, must be exercised at the national level. In accordance with Law 1335/2009, the competencies of the SIC on verification of packaging and labelling of tobacco products, are limited to the control of the product when it enters the

market. The Ministry of Health and Social Protection exercises prior control of replicas of packaging and labelling of tobacco products.

4. Law 1335/2009 does not state that the Superintendence participate in the elaboration and adoption of health warnings.
5. The relevant legislation should be strengthened to allow for confiscation and withdrawal from the market of packages that do not comply with packaging and labelling regulations, as well as to instruct in relation to measures to be undertaken with the confiscated proceeds

***It is therefore recommended that the National Government strengthen national legislation concerning packaging and labelling of tobacco products and require, among others, that the size of warnings be increased to more than 60% of both main surface areas, that the pictorial health warnings be placed at the top rather than at the bottom of the front and back of packages, and that qualitative statements on tobacco packages about the emissions of tobacco products be required. Likewise, by having existing constitutional and legal provisions regarding the validity of the measures established on the ban on all advertising, promotion and sponsorship of tobacco products, Colombia could promote generic or plain-packaging, as recommended by the Guidelines for implementation of Article 11. The Government should also review and strengthen the capacities of the Superintendence of Industry and Commerce to perform inspection, as well as surveillance and control of the provisions relating to packaging and labelling of tobacco products and its derivatives.***

#### **Education, communication, training and public awareness (Article 12)**

Article 12 requires that “each Party shall adopt and implement effective legislative, executive, administrative or other measures to promote:

(a) broad access to effective and comprehensive educational and public awareness programmes on health risks including the addictive characteristics of tobacco consumption and exposure to tobacco smoke;

(b) public awareness about the health risks of tobacco consumption, exposure to tobacco smoke, and about the benefits of the cessation of tobacco use and tobacco-free lifestyles as specified in Article 14;

(c) public access, in accordance with national law, to a wide range of information on the tobacco industry as relevant to the objective of this Convention;

(d) effective and appropriate training or sensitization and awareness programmes on tobacco control addressed to persons such as health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons;



*(e) awareness and participation of public and private nongovernmental organizations not affiliated with the tobacco industry in developing and implementing intersectoral programmes and strategies for tobacco control; and*

*(f) public awareness of and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.”*

The Conference of the Parties adopted in 2010 guidelines for implementation of Article 12 of the Convention. These guidelines provide detailed advice on running effective education, communication and training programmes in line with the requirements of the Convention.

Status – The Tobacco Control Law of 2009 provides for a number of references to awareness raising strategies and information programmes to improve the knowledge of the public on matters related to tobacco use. Such legal requirements correspond to Articles 12(a), 12(b), 12(d), 12(e) and 12(f) of the Convention<sup>11</sup>. These legal provisions are as follows:

- Article 7 of the Law calls upon Health and Education Ministries to provide training programmes on the adverse consequences of tobacco use and exposure to tobacco smoke and on tobacco control measures. These training programmes will be targeted to health professionals, community and social workers, communication professionals, educators, civil servants
- Article 8 of the Law requires educational programmes targeted at minors on the health impact of active and passive smoking. It also calls upon the Ministry of Education to include tobacco consumption and exposure related topics in the curricula of students at all levels of formal and informal education.
- Article 9 of the Law states that airing preventive programmes in the mass media is a national responsibility and calls upon the National Television Commission (now the National Television Authority) to designate free and rotating spaces for anti-tobacco campaigns organized by Government and non-governmental agencies. This mandate should also apply to broadcasting of anti-tobacco messages on prevention of tobacco consumption and exposure by radio stations.
- Article 10 requires territorial entities (departmental, district and municipal health departments) to develop educational campaigns, inform and mobilize communities for complying with the national tobacco control legislation.
- Article 11 mandates the National Government to implement general information and educational campaigns on the harmful effects of tobacco use and exposure to tobacco smoke and offer advice and develop programmes to discourage the smoking habit. Specifically, Health Promotion Companies from the Contributory System and the Subsidized System, Adapted Entities and Responsible Entities from Exception Systems as dealt with in Article 279 of Law 100 of 1993 and Law 647 of 2001, must identify the risk factors in the respective population groups, inform those groups about the risks of

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<sup>11</sup> The only missing element is Article 12(c) of the Convention, since the Law does not require that the public has access to a wide range of information on the tobacco industry.

tobacco use and provide users with services of the Mandatory Health Program that will allow them manage the risk factor.

In line with the requirements of the 1335/2009 Law there are a number of communication projects implemented by various Governmental and non-governmental agencies to promote tobacco free life and tobacco cessation. Communication programmes were primarily targeted at young people in order to mobilize them in favour of healthy lifestyles. In addition, programmes targeted at adults were focused on cessation of tobacco use.

Territories and civil society organizations have also developed various communication initiatives to inform the public about the consequences of tobacco use to the individual and to the society at large. Messages of such campaigns were also aimed at the general population and young people.

The mission has been informed communication campaigns on tobacco related matters were organized annually from well before the adoption of the 1335/2009 Law. Beginning from 2004, anti-tobacco advertising on the harmful effects of tobacco consumption runs in national television and radio for 3-5 months each year. In 2013, the campaign will focus on youth and women, as well as on the environmental and economic consequences of tobacco use, messages which received less attention in past campaigns.

The Ministry also organizes annually, on the World No Tobacco Day, events and awareness raising programmes. In 2011, the "Smoke-free parks and beaches" campaign aimed at raising awareness, particularly of the young audience, about the benefits of non-smoking, and the need to protect people from exposure to tobacco smoke. In 2012, the campaign " *We mean More Without Tobacco*", also targeted to youth, was designed with the objective of transmitting positive messages in favour of non-consumption of tobacco. These campaigns were developed under the technical cooperation agreement between the Ministry of Health and Social Protection and the National Cancer Institute.

The Ministry of Health and Social Protection informed key stakeholders and the public, after the adoption of the 1335/2009 Law, about the content, aims, methods and expected results.

The Ministry has been supported by the National Cancer Institute in the development of communication campaigns, particularly in regard to emotional arousal of health warnings, held under the technical cooperation agreement that exists between the two organizations. Moreover, the National Cancer Institute operates, within its Research and Public Health Sub-directorate, a group on Policy and Social Mobilization. The functions of this group are related to generating knowledge and developing actions and activities, using public funding. Other agencies which run such projects include the Colombian Heart Foundation, as well as other non-governmental organizations.

There is an ongoing project implemented by the Ministry of Health and Social Protection held under a technical cooperation agreement with the WHO/PAHO on the development of a National Strategy for Information, Education and Communication for Promoting Healthy Lifestyles,

including prevention and treatment of noncommunicable diseases. The project addresses major risk factors, including tobacco consumption and exposure, and aims to focus primarily on the use of electronic media and social networks.

In summary, there is a quite comprehensive legislative background allowing for strong and sustained education, communication and public awareness programmes to prevent tobacco use, exposure to tobacco smoke and promote cessation of tobacco use. Education and communication programmes are implemented from time to time, by a few key agencies, usually coordinated by the Ministry of Health and Social Protection. There are, however, a few areas where additional, coordinated action is needed to ensure broad access of all members of the society to integrated communication programmes which cover all messages and areas required by the Convention.

Gaps –

1. While required by the 1335/2009 Law, no tobacco related matters were so far included in the curricula of formal and information education at any levels.
2. Communication campaigns and information programmes are primarily targeted at the general public and especially the youth. Women and especially pregnant women were not yet targeted with specific messages.
3. Messages containing information on the tobacco industry and public access to wide range of information on the tobacco industry were not addressed and are not yet promoted in a systematic way as required by Article 12(c) of the treaty and the section on “Ensuring wide access to information on the tobacco industry” of the guidelines for implementation of Article 12 of the Convention.
4. There are no routine and systematic training programmes targeted to various actors, including those involved in tobacco control, as required by Article 12(d) of the Convention.
5. An action plan for the implementation of education, communication and training activities within a comprehensive multisectoral tobacco control programme has not been established yet.

***It is therefore recommended that the Ministry of Health and Social Protection work together with other ministries and civil society organizations to mobilize more resources and further develop and implement evidence-based education, communication, public awareness and training programmes. It is also recommended that a national action plan/strategy on education, communication and training be developed in the overall national tobacco control action plan and resources allocated to its implementation. It is further recommended that the Ministry of Health and Social Protection work together with the Ministry of Education to ensure that tobacco control-related matters are included in the curricula of students at all educational levels, that health professionals obtain adequate pre-service and in-service training on tobacco control, and that such training is also provided to teachers. It is recommended that the Ministry of Health and Social Protection establish a working group with the National Television Authority and other relevant stakeholders to regularly develop media plans and the usage of free spaces dedicated for anti-tobacco consumption and exposure communication programmes in television and radio channels as provided by Articles 9 and 10 of the 1335/2009 Law.***

**In support of the country's mass media campaign efforts the Convention Secretariat is available to facilitate the sharing of international experience and campaign materials** to be adapted and broadcasted by national television and radio stations with a view to air them in the free spaces dedicated for such strategies of communication, information and education.

### **Tobacco advertising, promotion and sponsorship (Article 13)**

Article 13.1 requires recognition by Parties that a *"comprehensive ban on advertising, promoting and sponsorship would reduce the consumption of tobacco products"*.

Article 13.2 of the Convention requires each Party to: *"in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. This shall include, subject to the legal environment and technical means available to that Party, a comprehensive ban on cross-border advertising, promotion and sponsorship originating from its territory. In this respect, within the period of five years after entry into force of this Convention for that Party, each Party shall undertake appropriate legislative, executive, administrative and/or other measures and report accordingly in conformity with Article 21"*.

All direct and indirect tobacco product advertising, promotion and sponsorship have been banned in Colombia according to Articles 14 to 17 of the Tobacco Control Law of 2009 and the ban entered into force on and is enforced since 21 July 2011. Article 26 of the Law provides for penalties for non-compliance.

An obvious example of the ban is that in 2010, before the entry into force of the measure, the professional Colombian football cup, which was called "Copa Mustang". Upon enactment of the ban, its main sponsor was replaced and the most important football tournament in Colombia was renamed "Liga Postobon" after a soft drink brand.

Regarding surveillance and control competences, the Superintendence of Industry and Commerce (SIC; see in section on Article 11 of the Convention) is the agency responsible for the enforcement of the ban on advertising, promotion and sponsorship. By Circulars No 5 and 11 (of 27 January and 23 March 2012, respectively), this institution issued instructions regarding the display of tobacco products in commercial establishments.

With these instruments, the SIC verifies that these products are not easily accessible to the consumer, ie "self-service" is prohibited. Similarly the display of packs, boxes and cartons of cigarettes and in general of all packages of tobacco and its derivatives in display windows or display cases and at the point of sale in commercial establishments, must be conducted in such a way that all of the main surface of the pack, where the health warnings are located, must be completely visible to the public permanently, without being obstructed, disguised, hidden or capable of being removed.

The display of the product in the display case or shelf intended for such purpose must be implemented in such a manner that the packs of tobacco and its derivatives and the various boxes of cigarettes are organized in rows, one behind the other, arranged by reference brand, without two repeated references to the same product brand in sight (reference brand, meaning presentations of 10 and 20 units).

This institution reported similarly, that there should be no exclusive space for any of the brands marketed in the establishment. The display of boxes of cigarettes and packs of tobacco or its derivatives in outside display windows of commercial establishments is prohibited. Any repetition of exhibition brand references in the same business establishment shall be construed as promotion.

Gaps – A few exemptions still exist. Cross-border advertising (international newspapers and magazines and international internet communications) and point-of-sale advertising and display of tobacco products at the point-of-sale are not specifically referred in the Law. However, the Judgment C - 830/2010 of the Honourable Constitutional Court of Colombia, fully endorses the definitions for advertising, promotion, and sponsorship as defined in the FCTC and in the Guidelines.

More problematic are the activities of corporate social responsibility of the tobacco industry, particularly involving civil society organizations, trade organizations, and even Government organizations. However, in the case of advertising or sponsorship by any organization regardless of their economic activity, the Superintendence would come to exercise its control and surveillance, based on Articles 16 and 17 of Law 1335/2009.

***It is therefore recommended that Colombia further regulate tobacco advertising, promotion and sponsorship to address the gaps identified above, with special regard to strengthening the regulation of sponsorship by the tobacco industry and including a ban on “socially responsible” activities of the tobacco industry. It is also recommended that the country advance its regulation of cross-border advertising originating from and entering its territory. Further, it is recommended that, in accordance with the provisions related to packaging and labelling of tobacco products, and considering that Colombia has a total ban on advertising, promotion and sponsorship of tobacco products, the country advance in the regulation of generic packaging.***

#### **Measures concerning tobacco dependence and cessation (Article 14)**

Status – The 1335/2009 Law requires the Ministry of Health and Social Protection and the Ministry of Education to formulate, apply, periodically update and review comprehensive, multi-sector, national strategies, plans and programs for tobacco control targeted to minors and the general population, whether smoking or non-smoking, and implement strategies to aim for the cessation of tobacco consumption. Further the Ministry of Health and Social Protection shall design and incorporate into the National Public Health Plan strategies and actions to identify and promote the

care and demand for rehabilitation, cessation and cure services for the smoking public who has been sickened by causes associated with smoking.

The mission has been informed that the process of development of the ten-year National Public Health Plan has already been started and matters of tobacco cessation are included in that Plan.

Article 14.1 requires each Party to *“develop and disseminate appropriate, comprehensive and integrated guidelines [concerning tobacco dependence and cessation] based on scientific evidence and best practices... [and] take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence”*.

There is not yet a clinical guidelines on tobacco dependence treatment developed and approved in Colombia.

However, the mission has been informed that the process of development of a Comprehensive Guide for Cessation of Tobacco Consumption (in adults) was initiated under the technical cooperation agreement between the Ministry of Health and Social Protection and the National Cancer Institute. This process, under the coordination of the National Cancer Institute, involves relevant medical and scientific societies, and leading universities in the country. The process of development of the Cessation Guidelines includes, among others, a review of the scientific evidence on the matter, review of similar guidelines from other Parties to the Convention and an economic impact study of the cessation interventions. The draft guidelines may be available for adoption in 2013.

Article 14.2 stipulates that *“towards this end, each Party shall endeavour to:*

*(a) design and implement effective programmes aimed at promoting the cessation of tobacco use, in such locations as educational institutions, health care facilities, workplaces and sporting environments;*

*(b) include diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use in national health and education programmes, plans and strategies, with the participation of health workers, community workers and social workers as appropriate;*

*(c) establish in health care facilities and rehabilitation centres programmes for diagnosing, counselling, preventing and treating tobacco dependence; and*

*(d) collaborate with other Parties to facilitate accessibility and affordability for treatment of tobacco dependence including pharmaceutical products pursuant to Article 22. Such products and their constituents may include medicines, products used to administer medicines and diagnostics when appropriate”*.

With respect to Articles 14.2(a) to (c) few actions have taken place in Colombia so far, although some isolated initiatives can be identified. An online course on prevention of non-communicable diseases was developed by the University of Antioquia, with support from the Ministry of Health

and Social Protection, and one of the modules covers tobacco control, including tobacco cessation. The course is aimed at health professionals, and attempts to strengthen the capacity of the health system in the area of tobacco and drug cessation, particularly among the young people.

National quitline is not yet operational.

With respect to Article 14.2(d) the mission has been informed that while pharmaceutical products for treatment of tobacco dependence are available in pharmacies, their price is prohibitive.

Gaps –

1. There is no adopted comprehensive and integrated strategy or programme concerning tobacco dependence and cessation in Colombia. No cessation services are integrated in the national health system.
2. The development of national clinical guidelines on tobacco dependence treatment is ongoing, but the process has not yet been completed.
3. The national quit line is not yet operational.
4. Pharmaceutical products for treatment of tobacco dependence in the public health service are expensive and not affordable.

***It is therefore recommended that tobacco dependence treatment and cessation be included in the comprehensive tobacco control strategy and programme or the Ten-Year National Public Health Plan, as appropriate. Further, the development of the clinical guidelines for tobacco cessation should be completed as soon as possible. It is also recommended that national programmes and services on diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use be established, and that a national quit line be made operational as soon as possible. All health care workers should be trained to identify, record and manage the risk associated with tobacco use, give brief advice and encourage quit attempts. These services should be integrated into the national health and education systems, especially in primary health care centres.***

In support of the Government's efforts to further promote tobacco dependence treatment and cessation of tobacco use, **the Convention Secretariat is committed to providing technical support in this area as and when it is requested by the Government.**

**Illicit trade in tobacco products (Article 15)**

In Article 15 of the Convention the “Parties recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting, and the development and implementation of related national law, in addition to subregional, regional and global agreements, are essential components of tobacco control”.

Status – Colombia considers smuggling of tobacco products that in its jurisdiction a major problem. According to the Directorate of National Taxes and Customs, there is large scale illicit

trade of tobacco in the country, run by organized criminal networks, supported by individuals operating in several departments having sea borders.

Tobacco industry uses the argument of the blossoming illicit market to explain its stand and firm opposition towards tobacco tax increases. Moreover, Protabaco (British American Tobacco) decreased its prices in mid-2012 as a step of maintaining its market share even in the presence of contraband cigarettes on the Colombian market, thus jeopardizing the health impact of the country's tobacco taxation policies.

Information available from different sources on the volume of share of smuggled tobacco products on the national tobacco market is conflicting. The 2012 implementation report of Colombia indicates a share of 3.1% of such products for the year 2011, up from 1.5% in 2010.

During the mission, DIAN informed that 12-14% of the national tobacco market consists of contraband cigarettes. The mission has been informed that illicit tobacco transports into Colombia are coordinated from Curacao (the Netherlands). Currently, DIAN is seeking to develop a study on illicit trade in tobacco in Colombia, with support from the World Bank, in order to have updated figures on the dynamics of this phenomenon in the country.

On the other hand, the quantity of seized and confiscated illicitly traded tobacco products, according to the latest implementation report of Colombia, reached 87 million sticks in 2011, up from 39 million sticks in 2010. The increase of such figures has been confirmed during the mission and they were attributed to the increase in DIAN's capacities.

With regard to the above, Article 27 of Law 1335/2009 provides that an elite group to combat illicit trade contraband of cigarettes, tobacco products or derivatives, will be created and that it will receive resources from DIAN for operation. This elite group has not yet been created since it is not only the DIAN that has competency over contraband control: the Attorney General of the Nation, and territorial authorities (departments and municipalities), also fulfil functions of surveillance and control of illicit trade in tobacco products. Despite this, the departments, for example, have created interagency groups to counteract illicit trade (Barranquilla has been a leader in this process). The National Federation of Departments has allocated resources for the operation of these groups through interagency cooperation agreements. To encourage these initiatives, it is necessary to create and implement more effective measures, involving the diverse authorities with competencies in the control of illicit trade in tobacco products.

It is noteworthy that actions to combat illicit trade in tobacco products have also been strengthened by the Government of Colombia. A few measures to combat illicit trade in tobacco products are referred to in the comprehensive Tobacco Control Law of 1335/2009 (see Table 2). The most recently adopted measure, which will be implemented in 2013, is the creation of a unique system for tracking and tracing of excisable goods, introduced by paragraph 4 of Article 227 of Law 1450 of 2011, as part of the National Development Plan 2010-2014.

According to Article 227 of the Law the country's departments and the Capital District (Bogotá) will



be required to join the Unique National Information and Tracing System (SUNIR), which makes possible the identification and tracking of products taking into account their specific characteristics. The system was established to collect information relating to the importation, production, distribution, consumption and export of goods subject to excise tax on spirits, wine, snacks and the like, beer, siphons, petticoats and blends and cigarette and manufactured tobacco. The National Single System Information and Tracking will be managed by a Special Administrative Unit of the Directorate of National Taxes and Customs (DIAN) and will enter operation within 2013. The implementation decree of the Law 1450/2011 will be enforced shortly. Implementation of such a data collection system is also in line with the requirements of Article 20.4(c) of the Convention, requiring Parties to cooperate with each other's *"to progressively establish and maintain a global system to regularly collect and disseminate information on tobacco production, manufacture and the activities of the tobacco industry which have an impact on the Convention and national tobacco control activities"*.

A policy document of the National Council of Economic and Social Policies (CONPES Document No 3719) of the National Planning Department was issued in January 2012, establishing an action plan for implementation of the Unique National Information and Tracing System, with actions planned for the years 2012 to 2014.

The mission has also been informed that there is a strategic alliance between the Customs and the two major tobacco companies present on the Colombian market (British American Tobacco and Philip Morris). The latter perform training activities and provide costs of travel to meetings for enforcement staff. Accepting such programmes and funding from the tobacco industry contradicts the spirit of Article 5.3 of the Convention and the recommendations of the guidelines for implementation of Article 5.3. The latter, in recommendation 3.2, calls upon Parties not to accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, any initiatives that are directly and indirectly related to tobacco control.

The Protocol to Eliminate Illicit Trade in Tobacco Products which has been open for signature by Parties to the WHO FCTC since 10 January 2013 provides, in its Article 36.7, that a Party "may require the tobacco industry to bear any costs associated with a Party's obligations to achieve the objectives of this Protocol, in compliance with Article 5.3 of the WHO Framework Convention on Tobacco Control". This provision would be relevant in the event that Colombia also becomes a Party to the Protocol.

An overview of other measures taken against illicit trade in tobacco products, with identified needs, is given in **Table 2**.

**Table 2.** Overview of measures taken to combat illicit trade in tobacco products in Colombia.

Paragraph in Art. 15	Content	Level of compliance	Comments and identified gaps
15.2	Each Party shall adopt and implement effective legislative, executive, administrative or other measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products.	Obligation partially met (for imported tobacco products only).	Article 13 para.2 of the 1335/2009 Law contributes to assisting in the determination of the origin of products.
15.2(a) and 15.3	Each Party shall require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: <i>“Sales only allowed in (insert name of the country, subnational, regional or federal unit)”</i> or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market.	Obligation partially met (for imported tobacco products only).	Article 13 para.2 of the 1335/2009 Law requires that each unit package of imported tobacco products bear the wording: <i>“Imported for Colombia”</i> .
15.2(b) and 15.3	Each Party shall consider, as appropriate, developing a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.	Obligation met (awaiting implementation).	Article 227 of Law 1450 of 2011 and CONPES Document No 3719.
15.4(a)	Each Party shall monitor and collect data on cross-border trade in tobacco products, including illicit trade, and exchange information among customs, tax and other authorities, as appropriate, and in accordance with national law and relevant applicable bilateral or multilateral agreements.	Obligation met (awaiting implementation).	Article 227 of Law 1450 of 2011 and CONPES Document No 3719.

15.4(b)	Each Party shall enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes.	Obligation met.	Article 27 of the 1335/2009 Law regulates seizures, confiscation and destruction of seized tobacco products. Individuals or legal entities involved in tobacco smuggling are subject to penalties set forth in the country's Criminal Code. The Law also requires the Government to create an elite group to combat illicit trade in tobacco products, to be funded by DIAN and report quarterly on its activities.
15.4(c)	Each Party shall take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law.	Obligations partially met	<p>The Customs Statute issued in 1999, includes regulations for the destruction of seized cigarettes. Under this statute, Law 1335/2009 states in its Article 27 that "tobacco products that are subject to confiscation or declared in abandonment by the competent authority, will be reported and destroyed in accordance with the laws and administrative measures regulating this matter". Manufacturing equipment is not specifically referred to in the Law.</p> <p>The DIAN contracts the destruction of seized goods with specialized companies, under compliance with environmental standards.</p>
15.4(d)	Each Party shall adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction.	Obligation not met.	The DIAN has instruments for the treatment of confiscated products. However, this process is costly.

15.4(e)	Each Party shall adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.	Obligation met.	<p>The DIAN , under the Customs Statute, has competence to confiscate and seize goods which have not complied with legal import procedures, in coordination with the Fiscal and Customs Police (POLFA) whom exercise functions in this area.</p> <p>Likewise, each governor of the departments controls the jurisdiction in relation to confiscation of illicit products and licensing of retail units. 32 departments have been reported as having such regulation on confiscation of illicit goods.</p>
15.5	Information collected pursuant to subparagraphs 4(a) and 4(d) of this Article shall, as appropriate, be provided in aggregate form by the Parties in their periodic reports to the COP, in accordance with Article 21.	Obligation met.	
15.6	The Parties shall promote cooperation between national agencies, as well as relevant regional and international intergovernmental organizations as it relates to investigations, prosecutions and proceedings, with a view to eliminating illicit trade in tobacco products. Special emphasis shall be placed on cooperation at regional and subregional levels to combat illicit trade of tobacco products.	Obligation partially met.	Colombia participated in the negotiations of the Protocol to Eliminate Illicit Trade in Tobacco Products. Cooperation with regional and subregional entities are also maintained, but lacking the development of the regional study on tobacco smuggling.
15.7	Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and	Obligation partially met.	Licensing is regulated at the level of departments. 32 departments have been reported as having implemented measures such

	distribution of tobacco products in order to prevent illicit trade.		as licensing to prevent illicit trade in tobacco products.  If Colombia signs the Protocol to eliminate illicit trade in tobacco products, it should proceed with creating regulations that are in line with the requirements of the Protocol.
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Colombia actively participated in the sessions of the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products, including the fifth session, which was held in Geneva (Switzerland) from 28 March to 4 April 2012. The meeting was attended by delegates from the Ministry of Health and Social Protection, the Ministry of Foreign Affairs, the Ministry of Industry, Trade and Tourism and the Tax and Customs Administration (DIAN). Previously, on the working table prior to the fifth session, and for the purpose of articulating national interests, the Ministry of Agriculture and Rural Development and the Ministry of Justice, also actively participated in sessions. Colombia signed the Protocol to Eliminate Illicit Trade in Tobacco Products on 21 February 2013, one of the 20 States globally to do so. This act, pending future ratification, demonstrates Colombia's commitment to the principles and measures outlined in the Protocol.

Gaps – Areas where the requirements of the Convention were only partially met include the following:

1. Only imported tobacco products need to include, on their packs, the words "Imported for Colombia". Similar wording should be included on all packages, to indicate that "Sales are only allowed in Colombia".
2. Destruction of illicit manufacturing equipment is not covered by law.
3. Confiscation and licensing should conform to the requirements of the Protocol to Eliminate Illicit Trade in Tobacco Products.

***It is therefore recommended that measures to prevent illicit trade in tobacco products be brought in line with the requirements of the Convention and the Protocol as soon as possible, such as the formation of a cross-sectoral working group to control illicit trade in tobacco products. It is also recommended that the Directorate of National Taxes, along with relevant agencies, adopt environmentally friendly methods to destroy confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products derived from illicit trade.***

***It is also recommended that the Government considers ratifying the Protocol to Eliminate Illicit Trade in Tobacco Products as soon as possible, as it is an instrument that will enable more effective measures to control illicit trade, while at the same time favouring international cooperation alliances to strengthen the country's ability to combat illicit in tobacco products.***

**In the meantime the Convention Secretariat is available to facilitate the sharing of international experience and coordinate assistance needed to take practical steps in combatting illicit trade in tobacco products.**

### **Sales to and by minors (Article 16)**

Article 16 requires “*measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen*”.

Status – Chapter I of the Law No 1335 of 2009 covers the majority of requirements under Article 16 of the Convention, as follows:

- Bans the sale of tobacco products to minors (under the age of 18)
- Sellers must display a clear sign within their premises, establishment or the point of sale on the prohibition of sales to minors. Such signs cannot include any tobacco company brand names, nor employ logos, symbols or sets of colours that would allow them to be identified.
- Tobacco products cannot be accessible from public stands without control.
- The use of vending machines is prohibited in places at points of sale where they are accessible to minors.
- Ban on distribution of free samples of tobacco products.
- The manufacture and marketing of sweets, snacks, toys and other objects in the shape of tobacco products and which may be attractive to minors is forbidden.
- The manufacture and importation of cigarettes containing fewer than 10 units is prohibited.

The prohibition of sales of tobacco products by minors is banned by Article 3 of Law 1335/2009, and came into force on 22 July 2011.

According to Article 28 of the 1335/2009 Law the police authorities will perform random inspection procedures, oversight and control of points of sale, with the purpose of guaranteeing compliance with this provision of the Law. Breach of these provisions will give rise to the same penalties set forth in the National Police Code, the Minors Statute and prevailing laws that regulate penalties on this topic. In addition, penalties for non-compliance with these provisions are included in Article 29 of the 1335/2009 Law.

The Circular n° 5 of the Superintendence of Industry and Commerce dated 27 January 2012 further regulates some aspects of placement of tobacco products at the point-of-sale, as explained in the section on Article 13 of the Convention (see above). It also stipulates that the so-called “self-service” is prohibited for the purchase of tobacco products, whereby the consumer selects, takes and pays for the product at the cash register. However, the power to monitor compliance with these measures lies on the National Police.

The mission has been informed that the enforcement of measures concerning sales to and by minors poses challenges to the police authorities. Enforcement procedures and mechanisms for enforcement of these measures are still to be developed, and the involvement of sanitary authorities, who perform other types of monitoring activities in the same settings where tobacco products are being sold, may be advisable. In addition, the tobacco industry interferes with the implementation of measures concerning sales to minors by offering programmes targeted at shop owners and sellers on this matter, which are in contradiction with the spirit of Article 5.3 of the Convention and the recommendations of the guidelines for implementation of Article 5.3. The latter, in recommendation 3.2, calls upon Parties not to accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly and indirectly related to tobacco control.

Gaps – The sale of tobacco products is allowed in packs of 10 cigarettes.

***It is therefore recommended that the Government include the ban on “kiddie packs” in its national tobacco control legislation. It is further recommended that enforcement efforts be strengthened in this area, not least by establishing strategic collaboration between sanitary and police authorities and, as appropriate, other stakeholders who may have the interest and capacity in participating in the enforcement of measures concerning sales to and by minors.***

#### **Provision of support for economically viable alternative activities (Article 17)**

Article 17 calls on Parties to promote, as appropriate, “in cooperation with each other and with competent international and regional intergovernmental organizations... economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers”.

Status – There is a long-standing tradition of tobacco growing in Colombia, although the weight of tobacco growing in the overall agricultural production is low; in the last three years the cultivation of tobacco has participated with 0.12% to the national agricultural production.

Since tobacco growing brings an important contribution to the economic growth of the producing regions, thus tobacco growing should be dealt with in the context of overall national development. Tobacco growing areas are unevenly spread across national territory. The most important regions which grow tobacco are as follows: Santander (53% of total area where tobacco is grown), Huila (10%), Boyaca (8%), Bolivar (7%) and other departments (22%). In 70 municipalities of eight departments in Colombia, the cultivation of tobacco is the biggest contributor to the local economy.

In addition to large scale tobacco growing, there are a number of small farms (of cca 0.5 ha) in municipalities which also depend on tobacco cultivation, especially in the violence-hit areas such as Montes de Maria in the Atlantic Coast.

The total area where tobacco is planted has increased from 9803 hectares in 2008 to 11375 hectares in 2011 (an increase of 16%). It is worth pointing out that the total area where tobacco is cultivated will increase progressively, given the existence of a special development program in place, as part of the National Development Plan, to advance tobacco growing; this program aims at adding about 15000 additional hectares to the area where tobacco is cultivated in the next 15 years.

The volume of harvested tobacco also increased, although at a slower pace, from 21300 tons in 2008 to 22800 tons in 2011 (cca 4% increase). The consistent trend in yields observed since 2008 are mainly due to the better use of better farming practices, often guided by the tobacco industry through technical assistance and infrastructure financing.

In 2011, 5200 tons of tobacco (raw tobacco and manufactured tobacco combined) was later exported (in a value of around 30.5 million US dollars). In parallel, with the increase in local production, the imports of tobacco (raw tobacco and manufactured tobacco combined) have decreased significantly, from 7500 tons in 2008 to 3000 tons in 2011. However, in 2012 imports increased by 77% compared to 2011.

According to the information received from the Ministry of Agriculture and Rural Development, the employment generated by tobacco growing has also increased from 24500 full-time jobs in 2008 to 27500 jobs in 2011. In average, an increase of one hectare in the cultivation area generated an additional 2.5 full-time jobs.

It should be noted that, like other agricultural sectors of the country, tobacco farmers have access to subsidized loans and technical assistance. In 2011, 30% of the investment in the tobacco growing sector has been secured from the National Tobacco Fund<sup>12</sup>, and 29% from the Government itself.

Currently there is no Government policy in place to identify alternative activities to tobacco growing; such policy only exists for the replacement of illicit crops. Farmers shifting from illicit crops can also shift to tobacco and use subsidized loans. However, tobacco sowings rotate with other crops such as corn and beans, in order to increase the income of farmers and conserve the environment and improve the food supply.

During the mission, the international team met personnel of FAO, which is actively working to sensitise national stakeholders, including the Ministry of Agriculture and Rural Development, on finding alternatives to tobacco growing and thus freeing lands for ministerial policies on land restitution and food security, within the frame of the implementation of relevant millennium development goals. In other countries, FAO has already gathered experience in engaging with national governments to promote alternatives to tobacco growing. Such initiatives may be

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<sup>12</sup> Contributors to the National Tobacco Fund include the National Government, departmental governorates, municipalities, beneficiaries, the tobacco industry and the National Tobacco Federation. The Fund co-financed life micro-insurance projects, crop insurance, water storage infrastructure, irrigation, dry snuff and rural housing adequacy.



established in Colombia as well; such contribution from FAO is envisaged in the report of the Secretary General to the UN Economic and Social Council dated July 2012.<sup>13</sup>

Gap – So far, no policies have been developed or activities implemented by the Government to comply with requirements of Article 17 of the Convention.

***It is therefore recommended that the Ministry of Agriculture and Rural Development follow up with the FAO country office for possible cooperation alliances in supporting the country in meeting the obligations under Article 17 of the Convention.***

In support of the Government's efforts in this area, **the Convention Secretariat is committed to facilitating the provision of technical support upon request by the Government in the area of crop diversification, including through analysis of the value chain of tobacco.**

#### **Protection of the environment and the health of persons (Articles 18)**

In Article 18, Parties agreed “to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture”.

Status – The Ministry of Agriculture and Rural Development, in an attempt to improve the quality of life of the producer in the agricultural sector, has recently introduced a life micro-insurance. It insures agricultural producers for the case of death from any cause, disability and also provides funeral grants. In the case of tobacco growers, the insurance premium is subsidized by the National Tobacco Fund (60-80%) and by the tobacco industry (20-40%).

According to the latest data from the Ministry of Agriculture and Rural Development, 1370 tobacco growers and their families are insured (around 10% of all growers).

Further, in relation to the protection of the environment, in tobacco growing areas there are ongoing projects of reforestation, soil and water management and conservation of the environment among others.

***It is recommended that the Ministry of Agriculture and Rural Development, the Ministry of Environment and Sustainable Development, and the Ministry of Health and Social Protection work together to strengthen and develop policies for the implementation Article 18 of the Convention.***

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<sup>13</sup> Document E/2012/70. Ad Hoc Inter-Agency Task Force on Tobacco Control, Report of the Secretary-General. See Paragraph 61. FAO is required to “provide technical support in tobacco growing areas for sustainable crop production intensification with the goal to diversify production, reduce environmental and health impact and reduce the risks of tobacco growers in depending on one single product”.

### **Liability (Article 19)**

Article 19 requires Parties to consider, for the purpose of tobacco control, *“taking legislative action or promoting their existing laws, where necessary, to deal with criminal and civil liability, including compensation where appropriate”*.

**Status** – No activities have been implemented recently in relation to this Article of the Convention. There is also no policy or legislative measure in place related to this Article. The mission was not informed of any court cases in which compensation is being sought in relation to any adverse health effects caused by tobacco use or exposure to tobacco smoke, including any action against the tobacco importers for full or partial reimbursement of medical, social and other relevant costs related to tobacco use.

The mission was presented one precedent for indemnity in relation to illicit trade in tobacco products. In the case, filed at the end of the 1990s, the National Federation of Departments sued Philip Morris before a court in the United States of America for allegedly coordinating illicit trade of its own products. The process concluded with an extrajudicial agreement with compensation payments to the departments.

**Gap** – No recent actions have been implemented by the Government in relation to Article 19 of the Convention.

***It is therefore recommended that Colombia, taking account of its national context, review and promote options for implementing Article 19 of the Convention and subsequently develop policies, as appropriate. As an initial step, the Ministry of Health and Social Protection should liaise with the Ministry of Justice to identify options for such policies.***

Article 19 of the Convention has been discussed by the Parties at the fifth session of the Conference of the Parties. An expert group was established to study the matter and propose recommendations to the sixth session of the Conference of the Parties. Colombia requested to participate in this group.

### **Research, surveillance and exchange of information (Article 20)**

Article 20 requires Parties to *“develop and promote national research and to coordinate research programmes at the regional and international levels in the field of tobacco control”*.

A number of research activities have been implemented in the past few years in Colombia. The main projects, by topics, are summarized as follows:

#### **Studies on tobacco use prevalence:**

- Global Survey of Youth Tobacco in Bogotá (2001)
- Global Survey of Youth Tobacco applied in 5 cities (Bogota, Cali, Manizales, Bucaramanga, Valledupar; 2007).

- Study of Psychoactive Substance Use in the School Population (2004; repeated in 2011)
- National Study of Psychoactive Substance Use in General Population, 2008.

#### Exposure to tobacco smoke:

- Study to estimate air quality and nicotine levels in various public places in Bogotá (2009, as a joint effort between the University Sergio Arboleda, the Secretary of Health of Bogota, with support from the Pan American Health Organization and the School of Public Health at Johns Hopkins University).

#### Tobacco related mortality:

- Deaths attributable to tobacco use (calculations made by the National Cancer Institute from data collected by the National Administrative Department of Statistics (DANE); 2008)

#### Tobacco related social costs:

- Nicholas Perez, Raul Murillo, Carlos Pinzón, Gustavo Hernandez. Medical care costs of lung cancer, chronic obstructive pulmonary diseases and myocardial infarction attributable to tobacco consumption in Colombia (multicentre project of the Pan American Health Organization). Calculations were made by using 2004 data.

#### Tobacco growing:

- National Agricultural Survey (Ministry of Agriculture and Rural Development in collaboration with the National Administrative Department of Statistics (DANE); 2011).

#### Tobacco taxation and pricing:

- Technical document on the structure of cigarette taxes in Colombia (Llorente, White; University Sergio Arboleda; 2012).

A number of other research activities have been implemented by the tobacco team of the Ministry of Health and Social Protection, including desk research concerning the monitoring of already adopted and substantiating future tobacco control policies.

In addition, strategic alliances have already been established by the Ministry of Health and Social Protection with various national (National Administrative Department of Statistics (DANE); National Cancer Institute; universities) and international partners (the World Bank; The Union Against Tuberculosis and Lung Disease, a Tobacco Research Centres in Uruguay) to promote, among others: national data collection; strengthening the national surveillance system in matters related to comprehensive tobacco control; strengthening the focus on policy analysis; and establishment of a tobacco research network in Colombia.

Other research activities for the near future have already been planned. These include a repetition of the National Study of Psychoactive Substance Use in the General Population, the completion of the Global School-based Student Health Survey (which will include questions from the Global

Youth Tobacco Survey), the possibility of implementing the Global Adult Tobacco Survey, and the development of and an economic study concerning risk factors of non-communicable diseases and economic impact of public intervention on those areas to be performed in cooperation with the World Bank.

Article 20.3(a) of the Convention calls upon Parties to *“establish progressively a national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators”*.

With respect to surveillance of tobacco consumption, Colombia has regularly implemented studies in both the school and adult populations on psychoactive substance use, and these studies also included tobacco. The regularity, the maintenance of a standard methodology and questionnaire for the study ensures that such data are regularly collected and they are comparable and can be used for advising future comprehensive tobacco control policies or assessing their impact.

To also ensure that health, economic and social indicators are also regularly referred to in national surveys the Ministry of Health and Social Protection should assess, in cooperation with the National Administrative Department of Statistics (DANE), the possibility of strengthening data collection by the indicators used in the reporting instrument of the WHO Framework Convention on Tobacco Control and using the definitions promoted by the Convention and its implementation guidelines for such indicators. The possibility of including indicators (social, economic, environmental, etc.) in household surveys in order to collect current, regular and comparable data to measure the impact of the implementation of tobacco control policies nationwide, should be considered. This will enrich the preparation of the Party report on the implementation of the WHO FCTC, which Colombia should present to the Conference of the Parties every second year.

All ongoing and future research activities should be aligned with the requirements of Article 20 of the Convention and the country’s obligation to report on the implementation of the Convention as per Article 21 of the treaty.

Article 20.4(a) of the Convention calls upon Parties *“to progressively establish and maintain an updated database of laws and regulations on tobacco control and, as appropriate, information about their enforcement, as well as pertinent jurisprudence”*.

Elements ensuring compliance with this requirement of the treaty are available in Colombia. For example, the laws and regulations on tobacco control are available on the web page of the Ministry of Health and Social Protection. Brief data on enforcement of measures required under the Tobacco Control Law are presented on the web page of the Superintendence of Industry and Commerce. Information on tobacco production, exports and imports are available on the web page of the National Administrative Department of Statistics (DANE). Similarly, the developed jurisprudence is available on the website of the Constitutional Court.

#### Gaps –

1. Further cooperation among the agencies collecting and managing tobacco-related data is necessary to ensure the proper functioning of the national system of surveillance of tobacco consumption, as well as the inclusion in periodic systems of data collection of health, economic and social indicators related to tobacco use.
2. Studies and indicators on tobacco mortality, tobacco-related costs and exposure to tobacco smoke should be included in the national surveillance system.
3. Publicly available scientific, technical, commercial and legal information, as well as information on the practices of the tobacco industry and the cultivation of tobacco is not available in one compilation, in one public web page.

#### ***It is therefore recommended that:***

1. ***the Ministry of Health and Social Protection coordinate with relevant stakeholders, especially the National Administrative Department of Statistics (DANE), to strengthen surveillance of tobacco consumption and related social, economic and health indicators;***
2. ***the Ministry of Health and Social Protection promotes creation of a comprehensive web page containing information and links to information, as relevant, to ensure full compliance with requirements of Article 20.4 of the Convention;***
3. ***the Ministry of Health and Social Protection, as the Government department coordinating tobacco-related research activities in Colombia, and the National Cancer Institute, as the advisory body for research and cancer control, ensure that all ongoing and future research activities are aligned with the requirements of Article 20 of the Convention and the country's obligation to report on the implementation of the Convention as per Article 21 of the treaty;***
4. ***when implementing research activities, the responsible agencies take into account the definitions and indicators contained in the Convention or promoted by its instruments (guidelines, the reporting instrument and its step-by-step instructions, etc.). Further, standardized indicators used in the reporting instrument of the WHO FCTC should be incorporated in national surveillance systems.***

#### **Reporting and exchange of information (Article 21)**

Article 21 requires each Party to “submit to the Conference of the Parties, through the Secretariat, periodic reports on its implementation of this Convention”.

Status – Colombia has submitted all reports due on time to the Conference of the Parties, via the Convention Secretariat. The first report was submitted in September 2010 and the second in April 2012.

The reports of Colombia and all supporting documents are available on a dedicated web page of the Secretariat.<sup>14</sup>

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<sup>14</sup> [http://www.who.int/fctc/reporting/party\\_reports/col/en/index.html](http://www.who.int/fctc/reporting/party_reports/col/en/index.html)

The next implementation report of Colombia will be due in the 2014 reporting period, and should be submitted to the Convention Secretariat between 1 January and 30 April 2014.

Therefore, Colombia has met the obligation under Article 21 of the Convention.

Gap – None.

***The Conference of the Parties, at its fourth session in 2010, established a new, two-year cycle for Parties' implementation reports starting from 2012, with a deadline of submission six months prior to each regular COP session. The next report of Colombia is due in the 2014 reporting cycle.***

***It is therefore recommended that the Government start the preparation of the next implementation report well in advance, in order to meet the deadline in 2014. It is also recommended that all relevant Government agencies contribute proactively to the Party reporting process under the coordination of the Ministry of Health and Social Protection.***

#### **Cooperation in the scientific, technical, and legal fields and provision of related expertise (Article 22)**

Article 22 requires that Parties “shall cooperate directly or through competent international bodies to strengthen their capacity to fulfil the obligations arising from this Convention, taking into account the needs of developing country Parties and Parties with economies in transition. Such cooperation shall promote the transfer of technical, scientific and legal expertise and technology, as mutually agreed, to establish and strengthen national tobacco control strategies, plans and

In its implementation report, Colombia indicated receiving legal advice from Australia, Canada and Uruguay, with the aim of strengthening its strategies, plans and programs for tobacco control.

In addition, two international projects have been or are being implemented under the grant program of the Bloomberg Initiative to Reduce Tobacco Use. These are focused on enforcement of the tobacco advertising, promotion and sponsorship regulations and on providing support for tax increase policies and enforcement of policies concerning smoke-free environments, respectively.

The international team was also informed about projects of the Ministry of Health and Social Protection which are jointly implemented with or supported by the WHO country office and the Pan American Health Organization. Such joint projects included development support of the 2009 Tobacco Control Act, technical advice on economic aspects related to tobacco, and information and communication strategies for the prevention of tobacco consumption.

The mission has also met representatives of some other UN agencies present in the country, including the Food and Agriculture Organization, the United Nations Development Programme, the World Bank and the World Health Organization.

When meeting the UN Resident Coordinator (UNRC) the international team apprised him of the recommendations of the United Nations Secretary General's report to the UN Economic and Social Council (ECOSOC)<sup>15</sup> and the resolution<sup>16</sup> adopted by the latter in July 2012 calling for United Nations system wide coherence on tobacco control. It was also pointed out that one the recommendations contained in both documents refers to implementation integration of the Convention into the United Nations Development Assistance Framework (UNDAF) in Colombia.

The UNDAF is the strategic programme framework jointly agreed between governments and the UN system outlining priorities in national development. At its fourth and fifth sessions, in decisions FCTC/COP4(17)<sup>17</sup> and FCTC/COP5(14)<sup>18</sup>, the Conference of the Parties fully acknowledged the importance of implementation of the Convention under the UNDAF as a strategic approach to ensure long-term and sustainable implementation, monitoring and evaluation of progress for developing countries. In these decisions the Conference of the Parties encourages developing countries to utilize the opportunities for assistance under the UNDAF and requests the Convention Secretariat to actively work with the UN agencies responsible for implementation of the UNDAF and coordination of the delivery of assistance, in order to strengthen implementation of the Convention at country level. The current UNDAF (2008–2012) in Colombia does not include implementation of the Convention as a priority area. The next UNDAF (2013–2017) is being finalized, thus being a valuable opportunity to position the implementation of the WHO FCTC as a priority in the country's development agenda.

To achieve inclusion of WHO FCTC implementation into the UNDAF, implementation of the Convention should be made a priority in national health and development plans. This will strengthen the position of the Ministry of Health and Social Protection, since other Government departments will be sensitized and mobilized for the implementation of the WHO FCTC thus the latter becomes a responsibility shared among the different Government portfolios, as envisaged in the treaty itself. Further, once WHO FCTC implementation finds its way into national health and development plans, the country team negotiating the content of the UNDAF with the UN system will be able to indicate the Government's strong commitment for the implementation of the treaty and achieve support of the UN system for this endeavour. The role of the WHO country office is crucial in both promoting inclusion of treaty implementation in national plans and strategies as well as during the negotiations of the UNDAF.

Gap – Supporting implementation of the Convention has not yet been included as a priority in the next UNDAF (2013–2017).

***It is recommended that the Government actively seek opportunities to expand cooperation with other Parties, competent international organizations and development partners present in the country. It is also recommended that the Ministry of Health and Social Protection together with***

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<sup>15</sup> E/2012/70

<sup>16</sup> E/2012/L.18

<sup>17</sup> See FCTC/COP4/REC/1, Decisions and ancillary documents, available at: [http://apps.who.int/gb/fctc/E/E\\_cop4.htm](http://apps.who.int/gb/fctc/E/E_cop4.htm).

<sup>18</sup> All COP5 decisions are available at: [http://apps.who.int/gb/fctc/E/E\\_cop5.htm](http://apps.who.int/gb/fctc/E/E_cop5.htm)

***Ministry of Foreign Affairs and Department of Planning follow this up with the UNRC to ensure that support to implementation of the Convention is included in the next UNDAF (2013–2017), as and when the Colombia UNDAF is finalized, or alternatively, during its mid-term review. Once the implementation of the Convention is included into the UNDAF (2013-2017), the United Nations Country Team should include WHO FCTC implementation as a standing, regular agenda item in its meetings. Further, reference to the WHO FCTC can be made in the annex to the UNDAF document, which contains a listing of the country's international obligations under various treaties to which it is a Party.***

#### **Financial resources (Article 26)**

*In Article 26, Parties recognize “the important role that financial resources play in achieving the objective of this Convention”. Furthermore, Article 26.2 calls on each Party to “provide financial support in respect of its national activities intended to achieve the objective of the Convention, in accordance with its national plans, priorities and programmes”. These resources should be availed by the responsible ministries and Government agencies.*

Currently the funding of tobacco control activities (in the absence of a national tobacco control action plan/strategy with its separated budget or a specific budget line for the tobacco control team within the budget of the Ministry of Health and Social Protection) is provided by the Ministry of Health through the budget of the Direction of Health Promotion and Prevention and Subdirection of Non-communicable Diseases, respectively. Such funding reached around USD 50000 in 2012 for all tobacco control activities. In addition, a technical cooperation agreement was developed with the WHO / PAHO country office including, among other, activities related to strengthening of tobacco control management, and the implementation of the provisions in the WHO FCTC.

Further, the fines collected for the breach of the provisions of Law 1335/2009 are distributed as follows: 60% for cancer prevention campaigns and 40% for preventive education programs to prevent cigarette smoking.

International funding of tobacco control activities in Colombia was also provided through the Bloomberg Initiative to Reduce Tobacco Use grants.

#### **Gaps –**

1. Currently, there is no budget allocation line in the national budget for activities concerning the implementation of the WHO FCTC.
2. Other relevant ministries that have obligations to implement the Convention have not allocated budget to implementation of the Convention.

***It is therefore recommended that the Ministry of Health and Social Protection:***



- ***establish within its budget a dedicated line for implementation of the Convention and, concomitantly, formalize within its organigram the tobacco control team as an advisory committee, and rename the team to reflect its responsibilities and coordinating role in the implementation of the WHO FCTC by Colombia;***
- ***urge the other relevant ministries to provide, in their budgets, human and financial resources to support implementation of the relevant provisions of the Convention as their responsibility towards meeting obligations of the treaty;***
- ***collate the sums in the various ministry budgets to estimate the total Government financing of implementation of the Convention;***
- ***consider the establishment of a specific fund for tobacco control, using a determined part of the collected tobacco tax (earmarking) or seeking other financing sources.***

Article 26.3 requires Parties to “*promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for the development and strengthening of multisectoral comprehensive tobacco control programmes of developing country Parties and Parties with economies in transition*”.

Some international organizations and development partners are active in Colombia. PAHO, the WHO country office and the World Bank have provided support for research activities and technical assistance for various projects. In addition, other development partners present in Colombia have a potential role to play in supporting the country to meet its obligations under the Convention.

Gaps – Colombia has not yet fully utilized the bilateral, regional, subregional and other multilateral channels available to provide funding for the development and strengthening of multisectoral comprehensive tobacco control programmes.

***It is therefore recommended that the Government seek assistance from development partners and promote the inclusion of implementation of the Convention in bilateral and multilateral agreements and action plans developed with these agencies.***

Article 26.3 specifically points out those projects promoting “*economically viable alternatives to tobacco production, including crop diversification should be addressed and supported in the context of nationally developed strategies of sustainable development*”.

Colombia grows tobacco and there is also local manufacturing of tobacco products. The Ministry of Agriculture and Rural Development promotes food security and has information on how tobacco sowings rotate with other crops such as corn and beans, in order to increase the income of farmers, conserve the environment and improve the food supply.

***It is therefore recommended that the Ministry of Agriculture and Rural Development work with the FAO or other multilateral agencies in implementing obligations under Articles 17 and 18 of the Convention.***

Article 26.4 stipulates that “Parties represented in relevant regional and international intergovernmental organizations and financial and development institutions shall encourage these entities to provide financial assistance for developing country Parties and for Parties with economies in transition to assist them in meeting their obligations under the Convention, without limiting the rights of participation within these organizations”.

The Ministry of Health and Social Protection and the Ministry of Foreign Affairs are committed to ensuring that Colombia promotes implementation of the Convention in the relevant bilateral and multilateral forums.

So far, Colombia has been successful in mobilizing financial assistance from several other Parties and intergovernmental organizations, such as WHO, the World Bank as well as the Bloomberg Initiative to Reduce Tobacco Use, for its efforts to meet its obligations under the Convention.

***It is recommended that Colombia make additional efforts to utilize the potential of Article 26.4 and advocate for moving the Convention higher up in the regional and international development agendas. It is also recommended that when other ministries – such as the Ministry of Foreign Affairs, Ministry of Finance and Public Credit, Ministry of Commerce, Industry and Tourism, the Directorate of National Taxes and Customs, and other Government agencies – represent Colombia in other regional and global forums addressing health or tobacco consumption-related matters, they also proactively urge regional and international organizations and financial institutions to provide financial assistance to developing countries in implementation of the Convention.***

## ANNEX

### List of Government agencies, members of the international team, development partners and nongovernmental organizations participating in the joint needs assessment

#### Agencies from Colombia participating in the needs assessment mission

##### 1. Government agencies

Ministry of Health and Social Protection

- Honourable Dr Alejandro Gaviria, Minister of Health and Social Protection
- Dr Lenis Urquijo, Director of Promotion and Prevention
- Dr Fernando Ramirez, Subdirector of Non-communicable Diseases
- Ms Lorena Calderón, Tobacco Control Team
- Ms Andrea Lara, Tobacco Control Team
- Dr Alex Araque, Tobacco Control Team

Ministry of Agriculture and Rural Development

Ministry of Foreign Affairs

Ministry of Finance and Public Credit

Directorate of National Tax and Customs

Ministry of Commerce, Industry and Tourism

Ministry of Culture

Superintendence of Industry and Commerce

Department of National Planning

National Cancer Institute

##### 2. Congress of the Republic of Colombia

Dr Jorge Eliécer Ballesteros Bernier, Senator

Dr Simón Gaviria Muñoz, House Representative

Dr Rafael Romero Piñeros, House Representative

##### 3. International Organizations

*WHO Country Office in Colombia*

Dr Teofilo Monteiro, Acting Head

*The World Bank office in Colombia*

Dr Fernando Montenegro, Health Focal Point

*Food and Agriculture Organization*

Santiago Mazo Echeverri

*United Nations Development Programme*  
Dr Bruno Moro, UN Resident Coordinator

4. Universities

University Sergio Arboleda

**Members of the international team**

*Convention Secretariat*

Mr Vijay Trivedi

Dr Tibor Szilagyi

*Pan American Health Organization*

Dr Rosa Sandoval

*International organizations and development partners*

Dr Roberto Iglesias, the World Bank

Dr Brian Lutz, United Nations Development Programme