

**Needs Assessment
for implementation of the
WHO Framework Convention on
Tobacco Control in Guatemala**

**Convention Secretariat
September 2010**

Executive Summary

The WHO Framework Convention on Tobacco Control (WHO FCTC) is the first international health treaty negotiated under the auspices of the World Health Organization (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 and it currently has 171¹ Parties. Guatemala ratified the WHO FCTC on 16 November 2005 and the Convention entered into force for Guatemala on 14 February 2006.

A needs assessment exercise for implementation of the WHO FCTC was conducted jointly by the Government of Guatemala and the Convention Secretariat in May to June 2010, including the mission of an international team to Guatemala on 11-14 May 2010. The detailed assessment involved relevant ministries and agencies of the Government of Guatemala with support from the WHO's Tobacco-Free Initiative (WHO-TFI), PAHO/WHO and the PAHO/WHO Country Office in Guatemala (Annex I). This needs assessment report therefore presents an article by article analysis of the obligations that Guatemala has to the Convention; the progress the country has made in implementation; the gaps that may exist and the subsequent possible actions that can be taken to fill those gaps.

The key elements which need to be put in place to enable the government of Guatemala to meet its obligations to the Convention are summarized below and further details are found herein in the needs assessment report.

First, the WHO FCTC is an international treaty and therefore international law. Having ratified this treaty, Guatemala is obliged to implement its provisions through national law, regulation or other measures. There is therefore need to identify all obligations in the substantive articles of the Convention, link them with the relevant agencies, avail the required resources and seek support internationally where appropriate.

Second, there are two tobacco control related Commissions established in the Ministry of Public Health and Social Assistance (MSPAS) i.e. the Tobacco Control Commission and the Technical Commission on Tobacco Advertising. Members of these Commissions operate on a part time basis. Different directorates of MSPAS are also involved in various tobacco control activities. However, communication between these directorates is not sufficiently effective and therefore overall coordination remains weak. There is an urgent need to set up a dedicated tobacco control programme with the mandate to coordinate the implementation of the WHO FCTC within the MSPAS and other governmental agencies. Some efforts have been made to establish a national multisectoral coordination committee for the implementation of the Convention and a proposal for a Governmental Decree is currently being reviewed. However, the national coordination mechanism has not yet been formally set up since Guatemala ratified the Convention in 2005. Therefore establishment of such a mechanism with a formal mandate from the government to coordinate the implementation of the Convention is urgently needed. The tobacco control programme in MSPAS would serve as the secretariat of the national coordinating mechanism. This mechanism will also offer a platform for increased understanding of treaty obligations within the whole of government.

¹ September 2010

Third, the WHO FCTC is a comprehensive treaty whose implementation requires the involvement of many sectors for formulation of comprehensive national legislation, regulation and other measures including setting up an infrastructure for enforcement and identifying regulatory authorities with clear mandates. Particular attention needs to be given to the obligations with a clear deadline after the entry into force of the Convention for Guatemala. Guatemala has successfully passed the smoke-free law in 2008 which entered into force in 2009. Guatemala has missed the 3 year deadline of Article 11 (Packaging and labelling of tobacco products) which was 14 February 2009. The 5 year deadline of Article 13 (Tobacco advertising, promotion and sponsorship) is approaching in February 2011. The legislative process on packaging and labelling (Article 11) and tobacco advertising, promotion and sponsorship (Article 13) should therefore aim at meeting the deadlines as set out in the Convention. Regulation of the contents of tobacco products (Article 9) and tobacco products disclosures (Article 10) also need to be developed.

Fourth, while the smoke-free law is very close to meet the obligations under the Convention and its guidelines, enforcement still remains a challenge particularly monitoring of compliance in the population. Raising public awareness about both the existence and the rationale for these laws, in collaboration with civil society, would support enforcement. It is also crucial for the MSPAS to mobilize and utilize environmental sanitation inspectors from the MSPAS and inspectors of the Multisectoral Commission as well as those in other government agencies such as Ministry of Employment and Guatemala Social Security Institute so as to enhance the capacity of monitoring and enforcement of the smoke-free law.

Fifth, since the government has not increased tobacco taxation in many years, the price of tobacco products has actually gone down with the inflation, which makes tobacco products more affordable over time. The government revenue from tobacco taxation has also gone down over time. Increasing the price of tobacco through higher taxes is the single most effective way to decrease consumption. While addressing the alleged unconstitutionality of further raising tobacco taxes, the government may take into account the whole Constitution, particularly the commitment to protect health as a fundamental human right.

Sixth, the Convention also calls on Parties to provide in their budgets, financial resources for implementation of the Convention. These resources should be availed through the relevant ministries and government agencies. The information on allocation of budgets of the concerned government ministries and agencies that contribute to the implementation of the Convention should be identified and activities coordinated so as to ensure optimal use of these funds. Guatemala is therefore urged to set up a funding mechanism for implementing the Convention which would ensure sustainable financing of activities aimed at meeting the obligations.

Seventh, there is potential for international cooperation with development partners including UN agencies regarding implementation of the Convention. The United Nations Country Team has developed the five year United Nations Development Assistance Framework (UNDAF) for 2010-2014. Supporting the country in meeting obligations under the Convention is currently not directly mentioned in the UNDAF and it would be important to advocate for the inclusion of implementation of the WHO FCTC.

Eighth, addressing the issues raised in this report will make a substantial contribution to meeting obligations to the WHO FCTC and improvement of the health status and quality of life in Guatemala. The full report of this joint needs assessment, which follows this summary, can also be the basis for any proposal(s) that may be presented to relevant partners to support Guatemala to meet its obligations to the Convention.

Introduction

WHO FCTC is the first international treaty negotiated under the auspices of the World Health Organization. Guatemala ratified the WHO FCTC on 16 November 2005. The Convention therefore entered into force for the country on 14 February 2006.

The Convention recognizes the need to generate global action so that all countries are able to respond effectively in the implementation of the provisions of the Convention. Article 21 of the WHO FCTC calls on Parties to periodically submit to the Conference of Parties (COP) implementation reports, including any challenges they may face during implementation of the treaty. Article 26 of the Convention recognizes the importance that financial resources play in achieving the objectives of the treaty. The COP further directed that detailed needs assessment be done at country level, especially in developing countries and countries with economies in transition, to ensure that lower resource Parties are supported to fully meet their obligations under the treaty.

The first session of the COP (February 2006) 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)). The COP also called upon the developing country Parties and Parties with economies in transition to conduct needs assessment in light of their total obligations related to the implementation of all provisions of the Convention and communicate their prioritized needs to development partners. The Convention Secretariat was further requested to assist Parties upon request, with the conduct of needs assessments, to advise them on existing mechanisms of funding and technical assistance, and to provide information to development partners on the needs identified.

At its second session (July 2007), the COP asked the Convention Secretariat (decision FCTC/COP2(10)) to actively seek extrabudgetary 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.

At its third session (November 2008), the COP adopted the workplan and budget for the biennium of 2010–11. The workplan, inter alia, stressed 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 the 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, and south-to-south cooperation were outlined as major components of this work.

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

To be comprehensive, the needs assessment is carried out in three phases: (a) initial analysis of the status, challenges and potential needs deriving from the latest implementation report of the Party and other available sources of information; (b) visit of an international team to the country for a joint review with government representatives representing both the health and other relevant sectors; and (c) follow up with country representatives for further details and clarifications, review of additional materials jointly identified, and the development and finalization of the needs assessment report in cooperation with the government focal point(s).

With the above objectives and process in view, a joint assessment of the needs concerning the implementation of the WHO FCTC was conducted by the Government of Guatemala and the Convention Secretariat, with the participation of the WHO Tobacco-Free Initiative (WHO-TFI), WHO/PAHO and WHO/PAHO Representative in Guatemala, in May to June 2010, including the mission of an international team to Guatemala from 11 to 14 May 2010. The detailed assessment involved various relevant ministries and agencies of the Government of Guatemala. The following report is, therefore, based on the findings of the joint needs assessment exercise.

This report contains a detailed overview of the status of implementation of substantive articles of the treaty and also identifies gaps therein and areas where further actions are needed to ensure full compliance with the requirements of the treaty and implementation of guidelines adopted by COP when relevant. This is followed by specific recommendations concerning that particular area. The Executive Summary above provides an overview of the joint needs assessment exercise, and an outline of key findings and recommendations.

Status of implementation, gaps and recommendations

This core section of the report follows the structure of the WHO FCTC. It outlines the requirements of each of the treaty's substantive articles, reviews the stage of implementation of each particular article, outlines achievements and identifies the gaps between the requirements of the treaty and actual level of implementation by Guatemala. Recommendations of guidelines adopted by COP are also referred to when relevant. Finally, it provides recommendations on how to address the gap(s) so identified during the joint needs assessment mission with a view to support the country to meet its obligations under the Convention.

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

Article 2.1 of the Convention encourages Parties to implement “*measures beyond those required by the Convention and its protocols and that are in conformity with international law.*”

Guatemala does not currently have measures which go beyond those provided for by the Convention.

It is therefore recommended that the Government while working on meeting the obligations under the Convention could also identify areas in which it can implement measures beyond the minimum required by the Convention.

Article 2.2 clarifies that “*the Convention does not affect the right of Parties to enter into bilateral or multi-lateral agreements on issues relevant or additional to the Convention, provided that such agreements are compatible with the Party's obligations under the Convention. Such agreements shall be communicated to the Conference of the Parties (COP) through the Convention Secretariat.*”

No such information has been provided so far by Guatemala. The Ministry of Foreign Affairs, in consultation with the relevant line ministries, will identify these agreements and report as necessary.

Gap - lack of awareness of the obligation under this Article and the proactive role that all relevant Ministries need to play in the reporting process.

It is therefore recommended that the Government of Guatemala reports on any previous agreements it entered into as required by Article 2.2 of the treaty. Such agreements concluded after entering into force of the Convention for Guatemala should also be reported retrospectively. It is also recommended that the Ministry of Foreign Affairs take a more proactive role in the reporting process.

Guiding Principles (Article 4)

The Preamble of the WHO FCTC emphasized *"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."*

A number of Non-governmental Organizations (NGOs) have been instrumental in advancing the tobacco control agenda including legislation in Guatemala. These NGOs are active in promoting the implementation of protecting the public from exposure to tobacco smoke (Article 8), advocacy for passing a decree related to packaging and labelling of tobacco products (Article 11) and education and communication of the population, training of personnel, and public awareness (Article 12).

The Guatemalan Tobacco Control Coalition has 19 members and 7 associate members which cover various health associations, universities, media groups, some government agencies and the PAHO/WHO country office. The Coalition has organized World No Tobacco Day Marathons for fifteen years. It has also trained 75 university professors from the University of San Carlos on tobacco control in a three month course. The Coalition is working with some experts to address the alleged unconstitutionality of increased tobacco taxation in the country.

Voice against Cancer (an NGO) has been promoting the initiative of the legislation process to address packaging and labeling of tobacco products (Article 11) and the draft bill is currently with the Congress. This NGO is not currently part of the Tobacco Control Coalition.

Universities and academia are also active in tobacco control. They are mainly involved in building smoke free campuses, conducting research and advocating for policy change for implementation of the Convention.

In general, the NGOs have good working relations with the MSPAS and other relevant government agencies. They have supported the formulation and adoption of legislation by the Congress as well as the defense of smoke-free law in the unconstitutionality action presented by the Chamber of Commerce. They maintain a close relationship with the media.

Gaps - lack of coordination, synergy and complementarity of action among the NGOs. Currently not all main players are under the Tobacco Control Coalition.

It is recommended that the NGOs should work together and more closely by coordinating their work. It is further recommended that Government continues to work with civil society in advocating for the urgent need to pass the legislations. Women, youth, environmental, consumers and faith based groups and the general population could also be mobilized to support further implementation of the Convention.

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.”

Several government agencies are individually involved in various obligations under the Convention. However, their activities and programmes are not coordinated and are not part of a single plan.

Gaps - currently there is no national tobacco control strategy, plans and even no national tobacco control programme in Guatemala. Meeting the treaty obligations is mainly seen as the task of the MSPAS rather than the whole government's responsibility. While MSPAS must take the lead in coordinating the country's efforts to comply with the obligations under the Convention, every relevant government agency should be responsible.

It is therefore recommended that a multisectoral strategy and plan of action to implement the WHO FCTC should be developed and adopted by the Government. It is also recommended that a tobacco control programme with sufficient dedicated staff and budget should be established and coordinated by the MSPAS.

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

1. National coordinating mechanism

The WHO FCTC is a comprehensive treaty whose implementation requires the involvement of many sectors and key stakeholders. Currently the MSPAS has two Commissions (Annex II) directly working on tobacco control. One is Tobacco Control Commission whose mandate is to coordinate the Ministry's effort in implementing the WHO FCTC. The Commission recently started to coordinate with other ministries and stakeholders in preparation for the joint needs assessment. There is also the Technical Commission on Tobacco Advertising with the mandate to review and approve the tobacco advertisement in the country that is allowed by law. MSPAS's Multisectoral Commission works in coordination with many government agencies and its main mandate is to inspect alcohol and other drug abuse activities. The Multisectoral Commission supports the surveillance of the enforcement of the smoke-free law.

Gap - a national coordination mechanism on implementation of the WHO FCTC has not yet been established and financed.

It is therefore recommended that a multi-sectoral national coordination mechanism is formally established by the Government with membership that is as broad as possible to include all major government agencies, local authorities, academia, and as appropriate civil society and media representatives. A specific budget line needs to be allocated to support the work of the national coordination mechanism with dedicated staff in place.

2. National tobacco control programme and focal point

Currently there is no tobacco control programme in the MSPAS. Members of the two Commissions work on part time basis with no specific budget lines. The Chair of the Tobacco Control Commission serves as the tobacco control focal point, and in addition provides technical assistance to other duties of the Department of Health Services of MSPAS, which is already a full-time commitment.

Gap - lack of dedicated budget line to finance the focal point for tobacco control in the MSPAS:

It is recommended that a tobacco control programme should be established in the MSPAS to work full-time on the implementation and monitoring of the Convention. This programme can then better coordinate with all relevant programs, units and directorates in the Ministry to integrate efforts for implementation of the WHO FCTC as well as to coordinate with other sectors. Other staff from within the Ministry at the national and decentralized services could support tobacco control on a part-time basis. More staff time shall be allocated from other ministries, secretariats, and agencies of government who have a role in the implementation of the Convention. A dedicated budget line should be allocated to finance focal points for tobacco control.

Article 5.2 (b) calls on Parties to “adopt and implement legislative, executive, administrative and other effective measures, and to cooperate with other parties in developing the appropriate policies, for the prevention and reduction in tobacco consumption, addiction to nicotine and exposure to tobacco smoke”

There are laws and regulations related to tobacco control in Guatemala (Annex III). Decree 61-77 regulates tobacco growing, cultivation, storage, classification, manufacturing, taxation, sale and combating illicit trade in tobacco products. Decree 90-97 and its amendments, the Governmental Agreement No. 426-2001 and Ministerial Agreement No. SP-M-1480-2009 set rules and mechanisms for reviewing tobacco advertisements. These laws and regulations need to be reviewed so as to be compliant with the obligations under the Convention.

The Congress of Guatemala approved a comprehensive smoke-free law Decree 74-2008 in 2008 which entered into force in March 2009 through a Government Agreement No. 137-2009. This smoke-free law met almost all the obligations under Article 8 with the exception of allowing up to 20% of guest rooms in hotels and motels as smoking rooms. The smoke-free law is a big achievement for Guatemala as it is the first significant step for the country's meeting its obligations under the Convention.

Draft bills on packaging and labelling of tobacco products (Article 11) and tobacco advertising, promotion and sponsorship (Article 13) are either submitted to the Parliament or at the final stage of consultation. When enacted, they will help Guatemala to meet more obligations to the Convention.

Gap – Limited national tobacco control legislation to domesticate provisions of the WHO FCTC other than the smoke-free law. Regulations of the contents of tobacco products and tobacco product disclosure are also not yet in place in Guatemala.

It is therefore recommended that the Congress should take immediate action to review the draft bill on packaging and labelling of tobacco products, and help the country to advance in meeting its obligations under the Convention. It also recommended that the existing legislations be revised in line with the Convention at a later stage. It is further recommended that regulations of the contents of tobacco products and tobacco product disclosure should be developed and enforced in a timely manner.

Article 5.3 and related guidelines “call for and provide guidance on how to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry in accordance with national law.”

There is currently very small scale local tobacco growing and manufacture of cigarettes in Guatemala. However the tobacco industry has been strongly involved in lobbying in the country and a law suit has been filed with the Constitutional Court to challenge the smoke-free law and allege it unconstitutional. The Court ruled against the industry’s claim and in favour of the Government. The industry is also engaged in lobbying government so as not to increase tobacco taxation. There is however no clear procedures on how government agencies can relate to the tobacco industry and other vested interests.

Gap - Limited awareness about the Article 5.3 and its guidelines among government officials. There is also no clear guidance within the government on implementing Article 5.3 and its guidelines.

It is recommended that the Government ensures, in line with the treaty obligations, that the tobacco industry does not participate in the development of any tobacco control policy. The Government should ensure that it only interacts with the tobacco industry when strictly necessary to enable the effective regulation of the tobacco industry and tobacco products. The Code of Conduct of civil servants should be revisited in line with Article 5.3 and its guidelines.

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 and implement tax policies and, where appropriate, price policies, on tobacco products so as to contribute to the health objectives aimed at reducing tobacco consumption.*”

The level of taxation on cigarettes is 46% of the retail price, initially imposed in 1977 at 44% and increased to 46% in 2001. All tobacco taxes collected go to the budget of MSPAS but are not earmarked for funding of tobacco control. In fact, there is no budget line for tobacco control in the MSPAS.

The Ministry of Public Finance has expressed concern that increasing tobacco taxation may encounter constitutional challenges. Article 243 of the constitution on taxes sets out the Principle of "ability to pay" where the tax system must be fair and equitable. To this end the tax laws must be structured according to this principle of "ability to pay". Double or multiple internal taxation is banned by the constitution. The same tax payers should not be taxed more than once on the same item at the same time. Presently the consumer is paying the 46% tobacco tax, 100% above suggested price and 12% value added tax (VAT).

However, Article 93 of the Constitution emphasizes that the enjoyment of health and well being is a fundamental human right, without discrimination. Article 94 obligates the State to ensure the health and welfare of all inhabitants. The State should develop, through its institutions, prevention measures, promotion, recovery, rehabilitation, coordination and appropriate complementary actions to procure the most complete physical, mental and social well-being. Article 95 recognizes the health of the inhabitants of the Nation is a public good. All persons and institutions are required to ensure its conservation and restoration. Article 96 states that the State conducts quality control of foods, pharmaceuticals, chemicals and all products that can affect the health and welfare of the inhabitants.

In addition to this, the WHO FCTC starts with the commitment that the Parties are determined to give priority to their right to protect public health. Increasing the price of tobacco through higher taxes is a very effective way to decrease consumption and encourage smokers to quit.

Gaps - The government has not increased tobacco taxation since 2001 which has resulted in the price of tobacco products actually going down as a result of inflation and this makes tobacco products more affordable over time. The government revenue from tobacco taxation also goes down over time.

It is recommended that the government takes all provisions of the Constitution into account, particularly the commitment to protect health as a human right, while addressing the issue of alleged unconstitutionality of raising tobacco taxation and meeting its obligations under the Convention to increase excise taxes on tobacco products. Furthermore, the increase should not only cover cigarettes but all tobacco products in order to avoid substitution of consumption to other tobacco products.

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.”

The quantity limit for importation of tobacco products by international travellers is not clearly regulated and is therefore left at the discretion of individual customs officers to judge the amount for personal usage.

Gap - lack of an objective guidance for the quantity limit which makes it difficult to control the amount brought into the country through duty free channel.

It is recommended that Customs clearly sets the limit for the sale and/or importation of tobacco products by international travellers leaving and entering the country.

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

This information has been provided in the first report Guatemala has submitted. Guatemala therefore met the obligations under Article 6.3 of the Convention.

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*”.

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.*”

Article 8 guidelines emphasizes that “*there is no safe level of exposure to second-hand smoke*” and calls on “*each Party to strive to provide universal protection within five years of the WHO Framework Convention’s entry into force for that Party*”.

The corresponding date for Guatemala was 14 February 2009.

The Congress of Guatemala approved a comprehensive smoke-free law in 2008 that entered into force in March 2009. The law bans smoking in:

- all enclosed public spaces
- all workplaces
- all public transport

The only exception is 20% of guest's rooms of hotels and motels.

The law also establishes:

- Appropriate definitions of public space, workplace and enclosed space, among others.
- The need to post visible signs
- Sanctions
 - to smokers that violate the ban
 - to business owners and managers that violate any provision of the law
 - with a regimen for repeated violations

The responsibilities of the MSPAS under this law include:

- implementation and monitoring of the law,
- development of appropriate regulations and

- exclusive use of collected funds from sanctions for tobacco control and health promotion

In May 2009, the government approved by presidential decree the regulation of the law which establishes:

- The specific design and posting of signage as approved by the law,
- The Department of Regulation of Environmental Health Programme of the General Directorate of Regulation, Surveillance and Control of the MSPAS as responsible for the implementation of the law, including monitoring its compliance through inspections, and
- The obligation of business owners to facilitate the work of inspectors.

The MSPAS has also established the following compliance mechanisms:

- The use of an existing national toll free line and a new web-site for citizens' complaints related to violations of the law.
- Inspections

Citizen's complaints:

The general population has several mechanisms for querying or reporting any breaches of the Act. These include:

- a) Line 1507, a toll-free number to a call centre financed by the MSPAS and reporting to the Department of Regulation of Health and Environment Programs
- b) 2334-8262, a hotline, run directly by the Department of Regulation of Health and Environment Programs
- c) Email mspambiente@itelgua.com, run by the Department of Regulation of Health and Environment Programs
- d) Verbal or written complaints to the local units of MSPAS (Headquarters or Municipal Health Districts.)

Monitoring of complaints:

When the complaint or query is made through the mechanisms described in a), b) or c), it is referred to the local unit of MSPAS to conduct an investigation at the alleged site. If evidence of an infringement is found, a hearing will take place with the alleged offender. If required, a trial could be initiated and the complete and original dossier will be passed to the Department of Regulation of Health and Environment Programs for resolution in accordance with the law.

When the complaint or query is made through the mechanism described in clause d), the technical staff of the Health District should perform the inspection in question. If the commission finds evidence of an infringement, a hearing will take place with the alleged offender, and the process will continue as previously described for clauses a) through c)

e) The MSPAS has records of complaints received, although the amount is lower than would be expected. In addition, the MSPAS recognized that there was a need for further dissemination mechanisms available for citizens to file complaints.

Inspections without complaint:

There are two mechanisms by which inspections may occur in the absence of a complaint:

1. Municipal Health Districts (Area Health Directorate, Directorate of the Integrated Health Care) by Environmental Health Inspectors
2. The Multisectoral Commission of MSPAS has the authority to carry out inspections. It is a central mechanism with four inspectors and four other people. Inspections are made only in the hospitality sector on Friday and Saturday evenings. In 2009, they carried out 381 inspections and in 2010 so far they have performed 149. These inspections found a total of four violations. Three of them are following the due administrative process to applying the sanction and the other one was immediately resolved since the violators paid the fine without requiring due process.

Other actions in support of the implementation of the Act:

1. The Ministry of Employment is responsible for workplace safety. It has 1597 inspectors who go to all work places to check occupational hygiene. They usually give recommendations about smoking in workplaces rather than direct sanctions.
2. The Guatemala Social Security Institute is actively involved in promoting the participation of workers and employers in preventive measures including reducing the consumption of tobacco and other addictions. Inspectors in this institute could also be utilized to support inspecting compliance of the smoke-free law.

Gaps - the exemption for allowing 20% smoking guest's rooms in hotels and motels makes the country unfortunately not fully compliant with the Article 8 and its guidelines. There is potential for the MSPAS to mobilize all available inspectors from relevant sectors to help with enforcing smoke-free law. With its limited human resources, enforcement and sanction remain a challenging task for the MSPAS.

It is therefore recommended that awareness be raised about the need for total ban of smoking in the hotels and motels in order to fully comply with the Article 8 of the Convention and its guidelines. It is also recommended that the Government should mobilize all available inspectors from relevant sectors to enhance the enforcement of the smoke-free law. Relevant enforcement mechanisms will need to be revised or amended to enable the inspectors to participate in monitoring compliance with the smoke-free law.

Regulation of the contents of tobacco products (Article 9)

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

The Department of Regulation and Control of Pharmaceutical Products of MSPAS has the mandate to regulate drugs, cosmetics and chemicals. Tobacco products are not regulated at this time. MSPAS has a well equipped National Laboratory capable of conducting most bio-medical testing. As there is no regulation to test the tobacco products, the National Laboratory has not yet explored the possibility of tobacco product testing.

Gaps - lack of legislation to meet the obligation under the Convention for regulation of the contents of tobacco products.

It is recommended that the MSPAS should designate a regulatory body to regulate the contents of tobacco products. Relevant regulations should be developed which include testing and measurement of the contents and emissions of tobacco products. The next step is to assess and review the testing and laboratory capacity among the existing facilities in the country. This will help to later decide whether Guatemala should develop its own testing capacity or utilize capable laboratories in the region through bilateral arrangement.

Regulation of tobacco product disclosures (Article 10)

Article 10 requires Parties to “adopt and implement effective measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products.”

Guatemala currently does not require manufactures and importers to disclose to government authorities information about the contents and emissions of tobacco products.

Gap - lack of legislation to regulate disclosure to government authorities information about the contents and emissions of tobacco products and the obligation under the Convention.

It is therefore recommended that the MSPAS should take action to promote the development and adoption of legislation or regulation that requires manufacturers and importers to disclose to government authorities information about the contents and emissions of tobacco products.

Article 10 also requires a Party to “further adopt and implement effective measures for public disclosure of information about toxic constituents of the tobacco products and the emissions they may produce.”

Currently there are no measures in place on public disclosure of information about toxic constituents and emissions of tobacco products.

Gap - no measures are in place to meet this obligation.

It is recommended that the MSPAS should put in place effective measures for public disclosure of information about toxic constituents of the tobacco products and the emissions they may produce.

Packaging and labeling of tobacco products (Article 11)

Article 11 requires that “ *each party shall, within a period of three years after entry into force of this Convention for that Party, adopt and implement, in accordance with its national law, effective measures to meet the obligations of this article.* ”

A draft bill initiated by the NGO Voice against Cancer on packaging and labeling of tobacco products has been submitted to the Congress by the Health Commission. The Tobacco Control Commission has given inputs to the draft.

Article 11.1(a) requires that “ *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, 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”* ”

Article 11.1(b) requires that “*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.*”

In addition, the Article 11 guidelines recommend that Parties implement pictorial health warnings and give specific recommendations on message contents and the design elements such as location, size and color.

There are five sets of textual health warnings (Annex IV) required by law. The health warnings need to cover 25% of the main display area in the front. Another health warning “*The consumption of this product causes serious damage to your health*” should appear on one of the smaller sides of the package. The font should be Arial size 12. It is a requirement that the health warnings are rotated every month in at least 50% of the monthly production.

Article 11.2 requires that “*Each unit packet and package of tobacco products and any outside packaging and labelling of such products shall, in addition to the warnings specified in paragraph 1(b) of this Article, contain information on relevant constituents and emissions of tobacco products as defined by national authorities.*”

In Article 11.3, each Party shall require that “*the warnings and other textual information which will 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.*”

The health warnings are in the official language - Spanish. This obligation has been met.

Gaps identified are:

1. The current size of the health warnings does not meet the obligation in Article 11 of the Convention and its guidelines.
2. No pictorial health warnings have been implemented as recommended by the Article 11 guidelines.
3. Misleading descriptors are not banned and information on relevant constituents and emissions of tobacco products on the labeling and packaging is not required.
4. The deadline for Guatemala to meet the obligations under Article 11 was 14 February 2009 which has not been met.

It is recommended that the Congress should take decisive action to approve the draft bill on packaging and labeling of tobacco products in order to ensure that Guatemala meets its obligations under the Convention.

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 also about the benefits of 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 intersectorial 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.

With the support of the PAHO/WHO country office and UNFPA, a multi-media public awareness campaign was conducted for three months before the smoke-free law entered into force in 2009. However, there are no routine and systematic education, training, communication and public awareness on tobacco control activities. Public awareness campaigns are conducted on an ad hoc basis in conjunction with the observation of the annual World No Tobacco Day on 31 May. Tobacco Control Coalition, MSPAS, the Executive Secretariat of Commission against Illicit Trade for Drug and Addition

(SECCATID), academia and other relevant agencies have been organizing a marathon on World No Tobacco Day for the past 15 years to promote a smoke-free lifestyle.

The Ministry of Education carries out a tobacco control education programme and advocacy campaigns in schools with the support from SECCATID, MSPAS and Ministry of Interior.

The NGOs and academia are playing a key role in educating the public, students, legislators, hospitality industry and other possible role models about the harmful effect of tobacco use and exposure to tobacco smoke. The NGOs have also raised awareness about the smoke-free law by organizing workshops and meetings.

The University of San Carlos has developed a tobacco control curriculum and trained more than 70 university professors over a three month period. Some NGOs have been active in providing training to the owners of restaurants and bars on the implementation of the smoke-free law.

Gaps identified include:

1. Absence of comprehensive and systematic educational and public awareness programmes on health risks including the addictive characteristics of tobacco consumption and harmful effects of exposure to tobacco smoke.
2. Public access to wide range of information on the tobacco industry has not promoted in a systematic way yet.
3. There is no clear strategy on improving public awareness of and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.
4. There is no regular training, sensitization and awareness programmes on tobacco control in the population at large and especially in key target groups, such as health, community and social workers, media professionals, educators, decision-makers, administrators.
5. There is no government financial support to carry on the demanding activities in meeting the obligations under Article 12.

It is therefore recommended that the MSPAS and other relevant government agencies such as Ministry of Education, Ministry of Interior, Ministry of Employment and the Guatemalan Institute of Social Security should work together to educate and raise awareness of the harmful effect of tobacco consumption and exposure to tobacco smoke. It is also necessary to develop training programs in tobacco control.

Tobacco advertising, promotion and sponsorship (Article 13)

Article 13.1 requires recognition by the Party of “*the necessity of a ban on advertising, promoting and sponsorship to reduce the consumption of tobacco products*”

Article 13.2 requires Parties “*to undertake, in accordance with its constitution or constitutional principles, a comprehensive ban of all tobacco advertising, promotion and sponsoring. This shall include a comprehensive ban or applying restrictions on cross-border effect advertising, promotion and sponsorship originating from its territory.*”

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."

Decree 90-97 approved by the Congress, Health Code, regulates advertising of tobacco and alcohol. Government Agreement 426-2001 further addresses the tobacco product advertising. According to the law and regulation:

1. All advertising needs to include two health warnings: one of them, rotating warnings used in the front of cigarette packs (Annex IV). This should take 5% of total advertisement space. The second should cover the legend "The consumption of this product causes serious damage to health" and must occupy another 5% of the advertisement material.
2. Suggestion that tobacco is used by people, cartoons, sports athletes and politicians is not allowed.
3. It is prohibited to distribute or promote cigarettes in packages or individual sticks for free.
4. It is prohibited to promote tobacco products.
5. It is prohibited to distribute or promote items with logos or brand of tobacco products for free.

The MSPAS created a Technical Commission on Tobacco Advertising on 6 June 2009 composed of seven members from its various departments (Annex IV). The mandate of this Commission is to review and advise on whether to approve the tobacco advertising applications in Guatemala. Once approved, tobacco advertising could be used in all kinds of media.

The 5 year deadline for Guatemala is 14 February 2011.

Article 13.4 requires that “ *As a minimum, and in accordance with its constitution or constitutional principles, each Party shall:*

(b) require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship;

Guatemala has met this obligation by implementing the Decree 90-97.

Article 13.5 encourages Parties to: “ *implement measures beyond the obligations set out in paragraph 4. ”*

Currently Guatemala has not implemented any measures beyond the obligations set out in Article 13.4.

Article 13.7 reaffirms *Parties' sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law.*

Currently Guatemala has not implemented any measures to ban cross-border advertising, promotion and sponsorship entering into its territory.

Gaps identified include:

1. Guatemala still allows tobacco advertising, promotion and sponsorship as long as the requirements stipulated in the law and regulation are met. This is not in line with Article 13 and its guidelines which call for 100% ban of tobacco advertising, promotion and sponsorship.
2. Lack of regulation to ban cross boarder advertising, promotion and sponsorship originating from and entering into its territory.

It is recommended that a new legislation to ensure 100% ban tobacco advertising, promotion and sponsorship should be passed before 14 February 2011 to enable the country to meet the five year deadline of the obligation under the Convention. It should identify an enforcement mechanism that will ensure compliance. It is also recommended that cross-border advertising, promotion and sponsorship originating from and entering into its territory should be banned according to provisions of Article 13.2 and 13.7. Furthermore, integration between the countries of Central America (via the Central American Secretariat for Economic Integration - SIECA or the Central American Integration System - SICA) and Mexico, through the signing of sub-regional treaties to implement a 100% ban on tobacco advertisement and sponsorship can be promoted.

Measures concerning tobacco dependence and cessation (Article 14)

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

As part of the comprehensive health care standards for primary and secondary care, the rules and guidelines addressing tobacco dependence, cessation and treatment are targeted solely towards the elderly.

The General Hospital San Juan de Dios has a cessation clinic and also developed some clinical guidelines for cessation through psychological consultation. The cessation clinic works part time and guidelines have not been formally published.

Gap - currently the national guidelines concerning tobacco dependence, cessation and treatment do not address all population groups, such as adolescents and women of reproductive age.

It is therefore recommended that comprehensive guidelines concerning tobacco dependence and cessation should be further developed and disseminated for broader use at the different levels of health care.

Article 14.2 requires 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. ”*

Only the General Hospital has a cessation clinic which offers consultation sessions lasting about 15 minutes. Doctors from different departments are involved. They rely on counseling only and do not prescribe medicines. Rehabilitation centers for substance abuse managed by SECCATID also provide advice on cessation and could be a potential venue for treatment of tobacco dependence. Some private doctors do provide limited counseling and cessation services. Pharmaceutical products are available in the market, but these products are not accessible to smokers who have limited financial resources, due to their elevated cost.

Gaps identified include:

1. There is no comprehensive and integrated programme concerning tobacco dependence and cessation in Guatemala.
2. The focus has been limited to setting up cessation clinics and not integration of cessation service within the primary health care system
3. There is no national quitline for tobacco cessation.
4. Pharmaceutical products for treatment of tobacco dependence are not available in the public health service.
5. There are no training courses on cessation and treatment of tobacco dependence. There is also no training on providing brief cessation advice.

It is recommended that national programmes and services on diagnosis and treatment of tobacco dependence and counseling services on cessation of tobacco use should be established. These services should be provided in health care facilities, educational institutions, workplace and sporting environments. It should be integrated into the national health and education system. Training on brief cessation advice should be provided to all health workers and educators. A national toll-free quitline should be set up or built on the existing hotline for smoke-free law. The cost of treatment of tobacco dependence and cessation services should be covered by the appropriate national authority.

Illicit trade in tobacco products (Article 15)

In Article 15.1, 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.*”

Decree 61-67 – Law on Tobacco and Tobacco Products - addresses this issue and specifies the penalty for tobacco smuggling. It shows Guatemala has recognized the importance of combating illicit trade in tobacco products as an essential component of tobacco control.

Guatemala has met the obligation under 15.1 of the Convention.

Article 15.2 calls on each Party to “*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.*”

Gap - no measures have been taken to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist in determining their origin.

It is therefore recommended that new measures should be introduced to include this requirement.

Article 15.2(a) requires that “*unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: “Sales only allowed in (insert name of the country, sub national, regional or federal unit)” 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.*”

Gap - no such markings are required for Guatemala.

It is therefore recommended that new measures should be introduced to include this obligation so that the words "Sales only allowed in Guatemala" are required on all unit packets.

15.2(b) calls Parties to “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.”

Guatemala has not yet developed the tracking and tracing regime. However, some cigarettes packaging carry a toll-free Customs hotline number to allow the public to notify the authority about smuggling.

Gap - lack of a practical tracking and tracing regime.

It is therefore recommended that Customs, the Public Ministry together with other stakeholders should develop a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.

Article 15.3 requires that “the packaging information or marking specified in 2(a) shall be presented in legible form and/or appear in its principal language or languages.”

All labels are required in official language - Spanish. Guatemala has met the obligation under Article 15.3 of the Convention.

Article 15.4(a) calls on Parties to “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”

There is currently no estimate about the level of illicit tobacco products of the market share in Guatemala. The Tax Administration Authority has been confiscating illicit tobacco products but in practice documentation is not regular or consistent resulting in a lack of official data.

Gap - lack of documentation of the amount of illicit trade in tobacco products

It is therefore recommended that the Customs, tax and other relevant authorities should proactively collect data on illicit trade in tobacco products to enable a better estimate of the magnitude of the problem and therefore be better prepared for response.

Article 15.4 (b) calls on Parties to “*enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband Cigarettes.*”

Decree 61-77 includes sanctions on smuggling and fraud as criminal acts. Those who are responsible for committing this crime will be punished with imprisonment from two to six years and a fine equal to the tax evaded, without prejudice to the obligation to pay the required taxes.

Guatemala therefore met the obligation under Article 15.4 of the Convention with the existing legislation. However, it is necessary to establish mechanisms to monitor their compliance.

Article 15.4 (c) calls on Parties to “*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*”

Confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are not automatically destroyed and it is up to the court to decide on a case by case basis. For those destroyed, there are no clear guidelines to use environmentally-friendly methods.

Gap - lack of clear policy to ensure all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products to be destroyed and guidelines to destroy them using environmentally-friendly methods.

It is therefore recommended that clear policy should be put in place to destroy all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products. It is further recommended that the MSPAS and the Ministry of Environment should work together and establish environmentally-friendly methods to destroy all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products.

Article 15.4(d) calls Parties to “*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.*”

Gap - currently there is no tracking and tracing system for tobacco products in Guatemala. Guatemala has not met the obligation under Article 15.4(d) of the Convention.

Article 15.4(e) calls on Parties to “*adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products*”

Decree 61-77 – Law on Tobacco and Tobacco Products, authorizes the seizure of offender's assets, in such a way that they will be entrusted to the authorities. This does not imply that the seizures will automatically become the property of the state. If the offender

does not pay the taxes and the corresponding fine the property will be sold and the proceedings will be used to pay the fines. Nevertheless, in Guatemala, the confiscation of proceeds generated from illicit trade in tobacco products is still not standard practice.

Guatemala has not met the obligation under Article 15.4 of the Convention.

Article 15.5 calls on Parties to “*provide information collected pursuant to subparagraphs 4(a) and 4(d) of this Article in their periodic reports to the Conference of the Parties, in accordance with Article 21.*”

Guatemala has provided such information through its two year report on 9 April 2008 to the Conference of the Parties and therefore met the obligation under Article 15.5 of the Convention.

Article 15.6 calls Parties to “*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.*”

Currently Guatemala has not engaged in cooperation at regional and subregional levels to combat illicit trade of tobacco products. Some sub-regional cooperation in Central America is under discussion.

Gap – lack of international, regional or bilateral cooperation on combating illicit trade on tobacco products.

It is therefore recommended that the Guatemala Tax Administration Authority should actively engage in sub-regional cooperation in Central America as a first step to address the provision under Article 15.6 of the Convention.

Article 15.7 calls on Parties to “*adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.*”

Decree 61-77 regulates any interested entities growing and manufacturing tobacco products must apply for a license from the Internal Revenue Department² and a health license from health care centers. Licensing for the distribution of tobacco products is not required.

Gap – lack of licensing requirement for the distribution of tobacco products.

It is recommended that licensing for distribution of tobacco products should be introduced. Guatemala Tax Administration Authority should tighten border patrols against illicit tobacco trade and regularly check the market to uncover and seize illicit tobacco products.

² Currently the Tax Administration Authority

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.*”

Decree 90-97 and its amendments prohibit selling tobacco or tobacco products in any form to minors under 18 years of age and consumption in any establishment.

SECCATID works with 12 ministries and communities to promote the enforcement of banning sales to minors and ensuring that tobacco products are not sold close to education institutions.

Guatemala has met the obligations under this Article. However, enforcement and compliance is still a challenge. The sale of tobacco products is still easily accessible to the minors. According to the Global Youth Tobacco Survey (GYTS) conducted in Guatemala, 50.5% (2006) and 51.7% (2008) students aged 13-15 bought cigarettes in a store, and 85.0% (2006) and 80.9% (2008) were not refused purchase because of their age.

It is therefore recommended that government should require tobacco product sellers to place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age. It is further recommended that sale of tobacco products in any manner by which they are directly accessible, such as in-store shelves should also be banned to better protect the minors.

Article 16.1 (d) calls on Parties to “*ensure that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.*”

Vending machines currently do not exist in Guatemala. Guatemala therefore has no tobacco sales through vending machines.

Gap - Lack of regulation on banning tobacco vending machines make it possible for tobacco industries and retailers to introduce tobacco vending machines in the future.

It is recommended that a provision be introduced in the Draft Bill on Article 13 to prevent use of vending machines for selling tobacco products in the future.

Article 16.3 calls on Parties to “*endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.*”

Decree 90-97 strictly prohibits sale of cigarettes in a single stick or less than 20 sticks per package for both domestic and imported products.

Guatemala has met the obligation under Article 16.3 of the Convention.

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"*.

There is no large scale tobacco growing and cigarette manufacturing in Guatemala. The Ministry of Agriculture stopped extension services to support tobacco farming activities in 1998. Tobacco farming is therefore not a strategic component in the country's agriculture sector. While the Ministry of Agriculture does not promote tobacco farming, it also has not been engaged in supporting tobacco farmers to diversify and shift to other alternative livelihood such as growing tropical fruits. The Ministry is waiting for the Congress to approve its future policy framework which has a component to provide extension services and micro credits for the farmers.

There are very promising opportunities for the government to take advantage of the presence of the Food and Agriculture Organization (FAO) and the World Food Programme (WFP) in the country to explore cooperation opportunities in meeting the obligations under Article 17.

Gaps – lack of awareness by the Ministry of Agriculture of this obligation under the Convention. The Ministry of Agriculture also currently lacks resources in providing extension service to farmers to shift to alternative livelihoods.

It is therefore recommended that the Ministry of Agriculture should take immediate action in promoting economically viable alternatives to tobacco farmers. It is further recommended that the Ministry of Agriculture should follow up with FAO and WFP for possible cooperation in helping to meet the obligations under this Article.

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

In Articles 18, Parties agree to *"have due regard to the protection of the environment and the health of persons in respect of the environment in respect of tobacco cultivation and manufacture."*

Gap - no measures have been reported by Guatemala in meeting this obligation. The Ministry of Environment was made aware of this Article during the needs assessment mission.

It is recommended that the Ministry of Environment in coordination with the Ministry of Agriculture and the MSPAS work together and make joint efforts in meeting this treaty obligation.

Liability (Article 19)

Article 19 promotes "the use of legislative actions or Parties' existing laws, to deal with criminal and civil liability including compensation, as tools for tobacco control."

The Public Ministry has shown great interest in exploring utilization of this Article and has identified existing laws that could be used to address compensation in tobacco control.

Gap - no such efforts have been initiated so far in Guatemala.

It is recommended that the Public Ministry and other relevant agencies should be encouraged to take action to use the existing laws to deal with criminal and civil liability including compensation, as tools for tobacco control.

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."

With the support from PAHO/WHO and United States Centre for Disease Control, Guatemala conducted the nationwide GYTS in 2006 and 2008. Guatemala also conducted the Global Health Professional Students Survey in 2009. The latest adult smoking prevalence was obtained from the World Health Survey conducted in 2003.

In 2005, the National Statistic Bureau (INE) conducted a national household health survey for SECCATID. Factors related to tobacco use and smoking is included in this survey. The final result has not been officially released.

Gaps identified include:

1. No national system for epidemiological surveillance of tobacco consumption and related social, economic and health indicators.
2. Lack of local data on adult tobacco use and burden of disease related with tobacco and direct costs attributable to tobacco use and exposure to tobacco smoke.

The Government of Guatemala is therefore urged to:

- ***Develop and promote the national research capacity and cooperate with competent international and regional organizations. To conduct research addressing the determinants and consequences of tobacco consumption and exposure to tobacco smoke, the direct and indirect costs generated by tobacco, as well as research for identification of alternative crops.***
- ***Strengthen the development of training programs and support for all those engaged in tobacco control activities, including planning, implementation, monitoring and evaluation.***

- *Establish a national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators and integrate it into national, regional and global health surveillance. This system should provide standardized and systematic information targeting all relevant population groups e.g. adults, youths, elderly, pregnant women, etc.*
- *Promote and facilitate the exchange of publicly available scientific, technical, socioeconomic, commercial and legal information, as well as information regarding practices of the tobacco industry and the cultivation of tobacco.*

Reporting and exchange of information (Article 21)

Article 21 requires each Party to “*submit to the Conference of the Parties, through the Convention Secretariat, periodic reports on implementation of the Convention, which should include all relevant obligations as contained in the reporting instrument.*”

Guatemala has provided its two-year (first) report on the implementation of the Convention on 9 April 2009, accompanied by attachments providing more background information in relation to the implementation of certain provisions of the treaty. The five-year (second) implementation report will be due in February 2011.

Guatemala has met the obligation under Article 21 of the Convention.

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 fulfill 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 programmes.”*

The Government has received support from PAHO/WHO in tobacco control training and conducting advocacy campaigns. Guatemala also received support from PAHO/WHO and the United States Center for Disease Control for various surveys under the Global Tobacco Surveillance System.

United Nations Development Assistance Framework (UNDAF) is the strategic programme framework for the UN Country Team (UNCT) to collectively respond to the priorities in national development. The Current UNDAF covers the period of 2010-2014 and does not directly include work related to the implementation of the Convention. The existing UNDAF however, can contribute positively to Guatemala's implementation of the treaty. This was brought to the attention of the United Nations Residence Coordinator.

Gaps – the broader international cooperation on implementing the Convention has not been fully utilized. The current UNDAF have not given due consideration to support Guatemala in meeting the obligations under the Convention.

It is recommended that the government of Guatemala should proactively seek opportunities to cooperate with other Parties, competent International Organizations and development partners present in the country. It is also recommended that the government of Guatemala should advocate for the support of meeting the obligations under the WHO FCTC as a priority area in the future UNDAF.

Financial resources (Article 26)

In Article 26, Parties recognize “*the important role that financial resources play in achieving the objective of this Convention.*”

Article 26.2 calls on Parties 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.*”

Article 25 of Decree 61-77 allocated all the taxes collected from tobacco products to be used to finance the health sector budget through MSPAS. However, there is no budget line for tobacco control within the Ministry.

Gaps – lack of budget line in MSPAS and other relevant ministries which have obligations to the implementation of the Convention. These resources should be availed by the responsible ministries and government agencies. Dedicated staff should be funded to work on tobacco control and meet the obligations under the Convention.

It is therefore recommended that the Government of Guatemala take the following actions:

- ***Establish within the budget of the MSPAS and relevant agencies, a dedicated budget line for implementation of the Convention.***
- ***Urge the other relevant ministries to provide funds to support implementation of the relevant provisions of the Convention in their budgets, 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).***

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.*”

International organizations and development partners are active in Guatemala. The UN Health Theme Group plays an instrumental role in providing support to Guatemala’s health sector and includes members from PAHO/WHO, UNICEF, UNAIDS and UNFPA. PAHO/WHO has been working very closely with the government in providing technical

assistance in helping the country to implement the WHO FCTC and conduct various surveys on tobacco use.

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

It is recommended that, in the spirit of Article 26.3 of the Convention, the Government of Guatemala takes advantage of the presence of international development partners in the country and promotes the inclusion of implementation of the WHO FCTC in bilateral and multilateral agreements and action plans worked out with these agencies. The Ministry of Foreign Affairs, Ministry of Finance and Ministry of Health will have key roles in meeting obligations under this Article.

Article 26.3 specifically points out that 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. "

Gap - currently no policy and project has addressed the issue of economically viable alternatives to tobacco production, including crop diversification.

It is recommended that the Ministry of Agriculture should explore possibilities of collaboration and getting assistance from relevant development partners in order to meet this obligation under the Convention.

Article 26.4 calls on " 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. "

Gap - currently Guatemala has not been successful in mobilizing financial assistance from regional and international organizations and financial and development institutions which provide aid to developing countries, including Guatemala, in meeting their obligations under the Convention.

The Ministry of Foreign Affairs is fully committed that Guatemala will promote implementation of the Convention in the relevant bilateral and multi-lateral forums.

It is therefore recommended that Guatemala takes a leadership role in meeting this obligation and becomes a strong advocate for putting the WHO FCTC higher in the international development agenda.

ANNEX I

List of the Participating government agencies and the International Team of the Joint Needs Assessment

Participating agencies

- Ministry of Public Health and Social Assistance
- Ministry of Foreign Affairs
- Ministry of Public Finance
- Ministry of Interior
- Ministry of Education
- Ministry of Employment
- Ministry of Agriculture
- Ministry of Environment and Natural Resources
- Tax Administration Authority
- Guatemala Customs Service
- SECCATID
- Guatemala Social Security Institute
- Municipality of Guatemala
- Public Ministry
- Health Commission of the Congress
- University of San Carlos from Guatemala
- Galileo University
- College of Physicians and Surgeons in Guatemala
- Voice Against Cancer
- Tobacco Control Coalition of Guatemala

National Organizing Committee

- Dr Guillermo Echeverria, Administrative Vice Minister, Ministry of Public Health and Social Assistance – MSPAS
- Lic Lilian Barillas, Coordinator of the Tobacco Control Committee, MSPAS
- Lic Blanca Dardón, Deputy Coordinator of the Tobacco Control Committee, MSPAS
- Lic Milena Ramírez, a member of the Tobacco Control Committee, MSPAS
- Dr Judith Cruz, a member of the Tobacco Control Committee, MSPAS

Convention Secretariat

Dr Ahmed Ogwell Ouma
Ms Liu Guangyuan

WHO Tobacco Free Initiative

Dr Armando Peruga

WHO Regional Office of the Americas

Dr Roberta Caixeta

WHO Country Office in Guatemala

Dr Pier Paolo BALLADELLI (PWR)
Lic Maggie Fischer

Annex II

Mandate and Members of the Tobacco Control Commission

Mandate:

- Responsible for the coordination of the implementation of the WHO FCTC
- Advise MSPAS in matters related to the implementation of WHO FCTC
- Develop proposals, guidelines and norms that facilitate the implementation and application of WHO FCTC
- Liaison with the Minister in setting up the tobacco control programme
- Coordinate with other government agencies in implementing the WHO FCTC
- Represent MSPAS in activities carried by other sectors undertaken at national or international levels related to the implementation and enforcement of the WHO FCTC
- Develop a plan for implementation of WHO FCTC, including measures regarding the protection and enforcement of exposure to tobacco smoking; regulation of the contents of the products of tobacco; packaging and labeling of tobacco; education, communication, training and public awareness; advertising, promotion and sponsorship of tobacco; sales of tobacco to minors and minors.
- Promote and channel the negotiation of technical and financial assistance of international cooperation for the development of plans, policies, programs and projects to implement the WHO FCTC
- Serve as liaison between MSPAS and any other institution, or agency in relation to the implementation of the WHO FCTC
- Prepare reports for meetings of the Conference of the Parties convened by WHO and follow-up agreements
- Perform other duties assigned by the Minister's Office

Members

- Department of Health Services
- Department of Regulation of Health and Environment Programs
- Non Communicable Disease Programme
- Office of the Minister

Mandate and Members of the Technical Commission on Tobacco Advertising

Mandate:

To provide an opinion on the advertising material to be authorized

Members:

- The Health and Environment Regulation Department
- National Programme of Chronic and Non Communicable Disease
- National Programme of Mental Health
- National Programme of Oral Health
- Human Resources Department
- Health Promotion and Educational Department
- National Epidemiology Centre

Annex III

Laws, regulations and administrative directives relevant to the implementation of the WHO FCTC

Constitution

1. The Guatemalan Political Constitution

Laws (Decrees approved by the Congress)

1. Decree 61-77: Law on Tobacco and Tobacco Products
2. Decree 90-97, Health Code and its amendments
3. Decree 80-2005: Ratification of WHO FCTC
4. Decree 74-2008: Smoke-free law

Regulations (Government Agreements approved by the President of the Republic).

1. Ministerial Accord 426.2001, Regulation for the approval and control of publicity and places of consumption of tobacco products.
2. Ratification instrument dated November 11, 2005 of the President of the Republic.
3. Government Agreement No. 137-2009: Regulations to enforce the Smoke-free Law

Ministerial Agreements (approved by MSPAS)

1. Ministerial Agreement No. SP-M-1480-2009 and its amendments: Establishment of the Ministerial Commission on Tobacco Advertising.
2. Ministerial Agreement No. SP-M-1693-2009: Establishment of the Commission for the Development of Regulations for the Implementation of the WHO Framework Convention for Tobacco Control.

Annex IV

Health Warnings

Set 1

Front of pack:

The consumption of this product produces cancer.

Side of pack:

The consumption of this product causes serious damage to your health.

Set 2

Front of pack:

The consumption of this product produces cardiovascular diseases.

Side of pack:

The consumption of this product causes serious damage to your health

Set 3

Front of pack:

The consumption of this product causes cancer of the mouth and pharynx.

Side of pack:

The consumption of this product causes serious damage to your health

Set 4

Front of pack:

Smoking and tobacco use causes abortion and malformation among pregnant women.

Side of pack:

The consumption of this product causes serious damage to your health

Set 5

Front of pack:

The consumption of this product causes lung cancer.

Side of pack:

The consumption of this product causes serious damage to your health