

# Towards a smoke-free world? South America became the first 100% smoke-free subregion in the Americas

Gianella Severini,<sup>1</sup> Rosa Carolina Sandoval,<sup>2</sup> Gustavo Sónora,<sup>3</sup> Patricia Sosa,<sup>1</sup> Patricia Gutkowski,<sup>1</sup> Luciana Severini,<sup>2</sup> Víctor Valdivia,<sup>3</sup> and Ernesto M. Sebríe<sup>1</sup>

**Suggested citation** Severini G, Sandoval RC, Sónora G, Sosa P, Gutkowski P, Severini L, et al. Towards a smoke-free world? South America became the first 100% smoke-free subregion in the Americas. *Rev Panam Salud Publica.* 2022;46:e103. <https://doi.org/10.26633/RPSP.2022.103>

## ABSTRACT

Almost 20 years after the launching by the Pan American Health Organization of its “Smoke-Free Americas” initiative in 2001, in December 2020, South America became the first subregion in the Americas to accomplish 100% smoke-free environments in line with Article 8 of the World Health Organization Framework Convention on Tobacco Control (FCTC). Some of these countries adopted legal measures that are more robust than others, including in their laws specific outdoor places in the smoking ban (like Argentina and Uruguay) and/or novel nicotine and tobacco products under their scope (like Ecuador and Paraguay). The 10 countries took different paths to adopt this public health measure, either through executive or legislative measures or a combination of both. A few countries, like Argentina, Brazil, and Venezuela, started at the subnational level and then moved on to the national level, similar to the rest of the countries.

For achieving this milestone, an adequate context was crucial: the broad ratification of the FCTC and the relevance given to the human right to health, civil society efforts, commitments made by intergovernmental bodies, media and communication strategies, and the development of scientific evidence. Countries faced obstacles, including the well-known interference of the tobacco industry, which among other strategies used litigation; however, courts and judges upheld comprehensive legal measures on smoke-free environments.

The process by which South America achieved this milestone represents a role model for other subregions of the Americas and the world.

## Keywords

Smoke-free environments; tobacco smoke pollution; health policy; South America.

## THE HUMAN RIGHT TO HEALTH REQUIRES ESTABLISHING SMOKE-FREE ENVIRONMENTS

The existence of a constitutional right to health in most South American countries,<sup>1</sup> the broad ratification of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), and the relevance given to human rights in the region gave a great impulse to the passage of tobacco control laws and

regulations at the country level. Regional dynamics focusing on this language and legal framework gave traction to the adoption of Article 8 of the FCTC as enabling legislation in most countries in the region (1). These factors have also been influential in upholding these policies whenever they have been judicially challenged.

Most of the constitutions of the countries in South America include some form of the right to health. Examples include Argentina (Articles 43 and 75, Section 22), Brazil (Articles 6 and

<sup>1</sup> Campaign for Tobacco-Free Kids, Washington, D.C., United States of America. ✉ Ernesto M. Sebríe, [ESebríe@tobaccofreekids.org](mailto:ESebríe@tobaccofreekids.org)

<sup>2</sup> Pan American Health Organization, Washington, D.C., United States of America

<sup>3</sup> International Union Against Tuberculosis and Lung Disease, Paris, France

<sup>1</sup> This article uses the geopolitical subregion classification used by the Pan American Health Organization (PAHO). This classification considers that the South American subregion includes the following 10 Member States: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, and Venezuela. Information available from: <https://open.paho.org/2020-21/subregions/South%20America>.

196), Chile (Article 9), Colombia (Articles 46 and 64), and Venezuela (Article 76).

The legal framework at the national level has greatly assisted the ratification of the FCTC and the approval of national laws for its implementation. Evidence of this benefit is that nine of the 10 countries in South America have ratified the FCTC (all except Argentina) (2). Moreover, judicial decisions at the national level sustaining the constitutionality of tobacco control policies have also characterized the FCTC as a human rights treaty, which has significant implications for justifying the protection of health over other rights. Examples include the decisions from Peru, where the Supreme Court declared the FCTC as a human rights treaty and upheld the constitutionality of smoke-free laws, and from Colombia, sustaining the constitutionality of a tobacco advertising, promotion, and sponsorship (TAPS) ban (3, 4).

Furthermore, all these countries are signatories to the most relevant human rights treaty related to health, the International Covenant on Economic, Social and Cultural Rights (ICESCR) (2), which sets forth the right to health in its Article 12. Establishing smoke-free environments (SFE) has increased the State's protection of the right to health in this subregion. Once a country reaches a certain level of the right to health protection, there are two fundamental principles to be respected from a human rights perspective: progressive realization and non-retrogression. These principles mean that States must move forward as effectively as possible toward the complete protection of the right to health (progressive) and that they cannot adopt measures that weaken the protection already achieved (non-retrogression) (5).

This article aims to analyze the process in which South America achieved complete adoption of national provisions in line with FCTC Article 8. The article analyzes the legal measures chosen by these countries, and the scope of these bans, and refers to the positive context that enhanced these milestones, including intergovernmental bodies' commitments, civil society efforts, media and communications strategies, and scientific evidence development. It also studies challenges regarding implementing these measures and resistance by the tobacco industry.

## AN INTERNATIONAL OBLIGATION TO CREATE SMOKE-FREE ENVIRONMENTS

In 2001, Member States of the Pan American Health Organization (PAHO) approved a Resolution urging all countries

of the Americas to protect all nonsmokers by creating SFE in all workplaces and public places as soon as possible (6). This Resolution also called for the PAHO Secretariat to develop a framework of action under the name "Smoke-Free Americas" and strengthen its technical support to countries to adopt and implement SFE through country capacity-building actions aimed at policymakers and local tobacco control advocates.

In 2005, the FCTC entered into force, which in its Article 8 requires States Parties to "adopt and implement effective measures providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and, as appropriate, other public places" (7). To fulfill FCTC Article 8, States Parties must include and define comprehensively enclosed or indoor places, public places, workplaces, public transport, and other spaces that are incorporated into the legislation. In this regard, the Guidelines for Implementation of Article 8 (8) provide all the elements that should be included in the definitions. Thus, regulations shall consider and integrate the FCTC and Guidelines definitions into domestic legislation for proper interpretation and implementation of the smoking ban.

In addition, in 2008, WHO presented a policy package of six effective tobacco control policies, known as MPOWER, to help countries fulfill obligations under the FCTC. To implement this policy package, countries need to: Monitor tobacco use; Protect people from tobacco smoke; Offer help to quit tobacco use; Warn about the dangers of tobacco; Enforce bans on tobacco advertising and promotion; and Raise taxes on tobacco products. These measures involve specific demand-reduction interventions for effective tobacco control, which can be adapted to each country's needs (9). According to the 2021 WHO report on the global tobacco epidemic, SFE jointly with health warning labels were the most implemented measures by countries in the Americas, in alignment with the FCTC and WHO criteria (10).

## THE PATH FOR A SMOKE-FREE SOUTH AMERICA

As of March 2022, the 10 South American countries have accomplished 100% SFE with the highest level of achievement, according to the criteria set by WHO since 2008 (see Figure 1) (10). Before achieving this milestone, different generations of laws have been adopted banning smoking in indoor public places.

During the late 1980s and until the mid-1990s, the first legal measures establishing SFE were very limited in scope, had

**FIGURE 1. Timeline of adoption of legal measures in line with FCTC Article 8 in South America, 2005–2020**



**Source:** Prepared by the authors based on data from the WHO Report on the Global Tobacco Epidemic 2021: Addressing new and emerging products (10).

multiple loopholes, and were rarely enforced. For example, in 1988, Venezuela established a ban only on educational facilities.

Since around 1995, new laws adopted in the region required smoking designated areas and ventilation systems mirroring the tobacco industry's Courtesy of Choice (also known as "Coexistence in Harmony"), the accommodation program developed in the United States and extended to Latin America to prevent the approval of comprehensive SFE laws (11). Examples include the first tobacco control laws adopted in Chile in 1995 and Brazil in 1996.

After the adoption of the FCTC in 2005, new laws adopted required comprehensive smoke-free provisions in all indoor public places, workplaces, and public transportation. In 2005, Uruguay became the first country to adopt a 100% smoke-free policy by Decree, which went into force in March 2006. Colombia, in 2008, and Peru, in 2010, adopted similar measures.

From 2011 onwards, the rest of South American countries adopted SFE consistent with FCTC Article 8 and WHO criteria. In December 2020, Paraguay became the last country in South America to adopt a national comprehensive smoke-free policy (12). Many of the laws enacted during this period include under their scope both conventional as well as novel tobacco and nicotine products, such as electronic nicotine delivery systems (ENDS), to protect people from exposure to both second-hand tobacco smoke (SHS) and second-hand emissions (11, 13).

The current legal framework<sup>2</sup> in the subregion differs from country to country, having some legal measures that are more robust than others. For example, in Argentina, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, and Uruguay, smoking is not only banned in all enclosed public places, enclosed workplaces, and public transportation, but also in some specific outdoor spaces (e.g., in facilities where sporting and cultural events are held or outdoor areas of health and educational facilities).

On the other hand, there is still room to strengthen the current bans as the evidence and lessons from best practices progress. For instance, smoking is still allowed in hotel rooms in Ecuador. These hotel rooms not only constitute workplaces, exposing cleaning workers to SHS, but also expose other customers to third-hand smoke (14). Therefore, to ensure universal protection against tobacco smoke exposure, these exceptions should not be allowed.

Furthermore, some countries have included ENDS usage in their legal measures. To date, Argentina, Bolivia, Brazil, Ecuador, Paraguay, and Uruguay include a prohibition of ENDS use in their SFE legal measures. It is worth noting that Argentina, Brazil, and Uruguay ban their use in these places even though they also ban the sale of these products. This is significant, as these products may be available through illicit commercialization. Venezuela forbids the commercialization of these products, but smoke-free provisions do not apply to them, and Chile has regulated them as therapeutic products (15).

The introduction of new products in the market imposes a challenge to smoke-free legislation in countries that do not regulate these products, as it could be interpreted that their use is allowed in places where smoking is already prohibited. Permitting the use of ENDS where smoking is not allowed

reduces incentives to quit and may have contrary effects on the denormalization of smoking (10). With regard to other novel products containing tobacco (such as Heated Tobacco Products), it is important to recall that these systems, including the devices designed for consuming such products, are tobacco products, and thus, subjected to tobacco control laws and regulations. Legal measures should ban the use of all types of novel products where smoking is banned (16). Besides, governments should be aware that the tobacco and related industries aggressively market these products with misinformation campaigns (10).

## MULTIPLE WAYS TO ACHIEVE A SMOKE-FREE POLICY

There are multiple paths to achieve the objectives of the FCTC and various ways to implement measures required by the treaty effectively. It depends on each country's legal and political context to decide which path is the most effective and feasible. This has also been the case for the adoption of SFE measures.

### Different legal measures

FCTC Article 8 establishes that government authorities can adopt their provisions through executive or legislative measures. These measures could be taken in a complementary way (one after the other) or in an exclusive way (either one).

Laws enacted by the legislative body are usually the preferred means of FCTC implementation when politically feasible due to their stability, and because the legislative process promotes general public debate (5). Though, amending or enacting a law would need greater agreements and different procedures (usually longer). Argentina, Bolivia, Brazil, Chile, Ecuador, and Peru achieved SFE in line with the FCTC Article 8 and WHO criteria, by enacting general laws on tobacco control (either the first time they were passed or after a subsequent law amended them).

Regulations enacted by the executive branch (President or Ministry of Health, for example) are important for implementing laws. Besides, they can provide the specificity needed to complement a measure established by law. For instance, Paraguay's recent regulation has reflected how the executive branch improved the public policy established by law to better protect the right to health. It was not until 2020, through a Decree regulating Paraguay's general tobacco control law, that the country aligned its SFE with the FCTC. Through this recent Decree, the Government established that "the places authorized to smoke, vape, e-smoking, or keep tobacco products lit, including heated tobacco products, were outdoor sites or areas with no crowds or gathering of people" (17).

On the other hand, we can also find examples of comprehensive and robust tobacco control measures taking the form of executive decrees or resolutions, either as a precursor to tobacco control legislation or in place of it. For example, Colombia and Uruguay chose executive measures as a first and quick step in the process leading to the implementation of FCTC Article 8. This paved the way and was followed by legislative action that led to the approval and enactment of strong and comprehensive national tobacco control laws (5). In the case of Venezuela, the path by which it achieves 100% SFE is with a Resolution of

<sup>2</sup> The legislation database of the 10 countries analyzed is available from: <https://www.tobaccocontrollaws.org/legislation>.

**TABLE 1. Different paths to achieve FCTC Article 8 in South America, 2005–2020**

Law/Law amended	Law complemented by Executive Decree	Executive Decree as a precursor of a Law	Executive Decree/ Resolution
<p><b>Argentina.</b> Law No. 26687/2011.</p> <p><b>Bolivia.</b> Law No. 1280/2020.</p> <p><b>Brazil.</b> Law No. 9294 amended by Law No. 12.546/2011.</p> <p><b>Chile.</b> Law No. 19419 amended by Law No. 20060/2013.</p> <p><b>Ecuador.</b> Organic Law for the Regulation and Control of Tobacco. 2011.</p> <p><b>Peru.</b> Law No. 28705 amended by Law No. 29517/2010.</p>	<p><b>Paraguay.</b> Law No. 5538/2015 regulated by Decree 4624/2020.</p>	<p><b>Colombia.</b> Resolution 01956/2008. The following year, Colombia enacted Law No. 1336/2009, maintaining 100% smoke-free environments.</p> <p><b>Uruguay.</b> Decree No. 268/2005 entered into force in 2006. Later in 2008, Uruguay enacted Law No. 18256/2008, maintaining 100% smoke-free environments.</p>	<p><b>Venezuela.</b> Ministry of Health Resolution No. 030/2011.</p>

**Source:** Prepared by the authors based on data from the WHO Report on the Global Tobacco Epidemic 2021: Addressing new and emerging products (10) and from Campaign for Tobacco-Free Kids legislation database, available from: <https://www.tobaccocontrolaws.org/>.

the Ministry of Health enacted on behalf of specific Venezuelan laws: the Organic Law on Public Administration, the Organic Law on Health, and the Law ratifying the FCTC, among others. The different legal measures by which each country achieved SFE are outlined in Table 1, and examples of the pros and cons of each path are summarized in Table 2.

### National vs. subnational strategies

In some countries with larger territories, higher population, and with a federal, decentralized political system, subnational authorities may regulate health-related issues including tobacco control either exclusively or together with the national government (5).

In South America, Argentina (Santa Fe Province in 2005), Venezuela (State of Monagas in 2006), and Brazil (City of Rio de Janeiro in 2008) are examples of countries that started with the subnational strategy. All three countries implemented

comprehensive subnational smoke-free laws before their national laws. Legislation at the subnational level has provided an effective strategy, as an alternative to national legislation, to increase the percentage of the population protected from exposure to SHS (11). Finally, subnational efforts to adopt stronger laws than the national law becomes a way to set a precedent for achieving national legislation enforceable in the whole country.

In many cases, national laws set the minimum standards that subnational laws must achieve. FCTC Article 2 (1) states that Parties are encouraged to implement measures beyond those required by the FCTC and its protocols to better protect human health. This Article could help to sustain arguments supporting subnational jurisdictions adopting stronger laws than national ones (18).

### AN ADEQUATE CONTEXT IN ACHIEVING THIS MILESTONE: THE ROLE OF CIVIL SOCIETY, INTERGOVERNMENTAL ORGANIZATIONS, THE MEDIA, AND EVIDENCE

Several factors that were crucial to reach 100% SFE in South America and build awareness of the health effects of SHS exposure are described below.

#### Capacity building through grants and professionalization

Since 2007, the Bloomberg Initiative to Reduce Tobacco Use has been supporting cities and countries to develop high-impact, evidence-based tobacco control interventions. The initiative, through a grant program (19) jointly managed by The International Union Against Tuberculosis and Lung Disease (The Union) and Campaign for Tobacco-Free Kids (CTFK), has supported tobacco control initiatives in 12 countries in the Americas by providing capacity building, advocacy, community mobilization, and evidence-based material. Around 30% of those grants were fully dedicated to supporting FCTC Article 8.

Capacity building through grants that achieved professionalization in the area has been essential in the field. For example, the Latin America Lawyers network, launched in 2009, was the starting point of a process that has continued nowadays. More than 100 lawyers from civil society organizations and governments throughout the region have received legal training due

**TABLE 2. Comparison between executive and legislative measures**

Executive measures	Legislative measures
<ul style="list-style-type: none"> <li>• It could be a “transitional step” before a law is enacted or a “complementary step.”</li> <li>• They can usually be enacted faster, as they do not need greater agreements among different stakeholders.</li> <li>• Given the greater flexibility of this type of regulation, it can be easily modified by a subsequent administrative authority.</li> <li>• Multiple bodies may need policy development in the absence of a body with broad jurisdictional authority.</li> <li>• It could be more flexible in implementation because it can be adapted to different circumstances.</li> <li>• Flexibility can be positive when there is a need for enforcement discretion but negative when the government does not impose strict rules.</li> </ul>	<ul style="list-style-type: none"> <li>• One of its characteristics is to link all government entities.</li> <li>• Promotes general public debate.</li> <li>• Its approval results from a wide political consensus.</li> <li>• It has little flexibility and discretion for its application.</li> <li>• Certain measures can only be applied through a law enacted by Congress.</li> <li>• It may have a higher level of resistance (even more room for tobacco industry interference).</li> <li>• Need for clarity in the text and, in some cases, detail in the scope.</li> <li>• Need to monitor implementation and to provide clarity to apply sanctions.</li> <li>• Laws can be complemented through an executive measure to clarify and improve requirements.</li> </ul>

**Source:** Prepared by the authors based on data from the Manual for Developing Tobacco Control Legislation in the Region of the Americas (5) and on the study analysis.



to a joint effort from CTFK, The Union, and O'Neill Institute Georgetown University Law School, joined after by PAHO/WHO.

### Mandates and commitments by intergovernmental bodies

As mentioned above, in 2001, Member States of PAHO adopted a resolution calling for enacting policies to protect all nonsmokers from exposure to SHS. In 2008 and 2010 (20, 21), these Member States adopted other resolutions to urge the ratification of the FCTC, if they had not done so, and implement the MPOWER package. More recently, in 2017, Member States of PAHO approved the Strategy and Plan of Action to Strengthen Tobacco Control in the Region of the Americas 2018–2022 (22), which includes a strategic line to achieve 100% SFE. This strategy is aligned with other commitments previously assumed by the Member States.<sup>3</sup> These commitments mentioned are highly significant for countries to urge the implementation of tobacco control measures, whether they are States Parties to the FCTC or not.

However, as of March 2022, 11 out of 35 PAHO Member States have not achieved legal measures consistent with FCTC Article 8 and WHO criteria (23). This achievement has become even more significant with the COVID-19 pandemic, as the vulnerability of those exposed to SHS and suffering from smoking-related diseases was highlighted.

### Role of communication strategies in promoting public health

Mass media campaigns (including social media) are effective tools to build public support for smoke-free laws. In the last 15 years, many paid campaigns were launched by governments and civil society organizations in South America to support smoke-free policies. That is the case of Uruguay, where the government launched the campaign “*Un millón de gracias*” (A million thanks) in 2006, and Brazil, where São Paulo’s government and the nongovernmental organization (NGO) ACT launched campaigns to bring support to the SFE local law in 2009. All these campaigns were evaluated through surveys, and findings showed that they generated strong support for smoke-free regulations (24, 25).

Media relations strategies (earned media campaigns) are also key to helping advance tobacco control policies. In 2008, the Colombian Coalition for Tobacco Control (a coalition of NGOs) led the efforts to advocate for a national law that included smoke-free measures. According to advocates, their work with journalists had a crucial role in the approval of the bill in 2009 (1). In Argentina, during the discussion of the national Tobacco Control Law in 2011 and its regulation in 2013, the NGO Fundación InterAmericana del Corazón Argentina implemented an earned media plan. As a result, in 2013 alone, more than 200 positive stories were published in newspapers, TV, radio, and digital outlets (26). In addition to the efforts at the country level, numerous workshops were

held for journalists in the region. From these training sessions, many journalists became allies of tobacco control and collaborated at key moments by publishing positive articles that helped advocacy strategies.

### Generation of scientific evidence to support the adoption and implementation of the policy

Having strong scientific evidence to support the different legal measures by which countries achieved 100% SFE was also crucial for adopting and implementing these policies. Comprehensive SFE result in a dramatic decrease in SHS exposure (27), which translates into positive health and economic outcomes. For example, studies conducted in South America showed benefits in cardiovascular (28–30) and respiratory health, and a decrease in neonatal and infant mortality (30). Studies of the economic impact in Latin American countries found high economic benefits (31). In addition, these measures may have contributed to a reduction in tobacco consumption (32); for example, in Uruguay where the overall tobacco smoking prevalence among adults 15 years and older significantly declined from 25.0% in 2009 to 21.6% in 2017. Also, the prevalence of current use of any tobacco products among youth aged 13–15 years decreased from 23.2% in 2007 to 11.5% in 2019 (33, 34).

### CHALLENGES TO FULL IMPLEMENTATION OF COMPREHENSIVE SMOKE-FREE LAWS

#### Tobacco industry interference: the use of litigation

The tobacco industry has threatened or brought legal action against several countries concerning a range of tobacco control measures, including comprehensive smoke-free laws. These challenges exemplify the tobacco industry’s broader strategy of using litigation to contest regulation: when they fail to stop the adoption of these policies, they challenge them in court through litigation.

In South America, court rulings have emphasized the right to health in their rulings upholding the challenged laws. The industry’s arguments included the violation of individual freedom (right to personal autonomy), free enterprise, right to commerce, right to economic freedom, and principles of proportionality and reasonableness. All these arguments have been consistently disregarded (11). In the only country (Paraguay) where a smoke-free legal measure was not upheld, the decision was on the grounds that the measure was enacted without the correct process (11). Challenges were not only focused on national laws but also on subnational laws. In those cases, industry’s arguments also referred to the supposed excess of the powers of subnational jurisdictions. However, courts also confirmed that local authorities did not exceed their competence to legislate public health and upheld the challenged subnational laws (11). Table 3 presents examples of these legal challenges in South America.

Today, it is quite unusual for the tobacco industry to challenge smoke-free legal measures through litigation. Their efforts to undermine progress in tobacco control policies are now focused on preventing the adoption of TAPS ban, pictorial health warning labels (35), plain packaging, flavor bans,

<sup>3</sup> Such as the WHO Global Plan of Action for the Prevention and Control of NCDs 2013–2020 and the PAHO Plan of Action for the Prevention and Control of NCDs in the Americas 2013–2019, among others.

**TABLE 3. Examples of legal challenges against smoke-free legal measures in South America**

Country	Case	Arguments	Outcome
Brazil	Confederação Nacional do Comércio de Bens, Serviços e Turismo v. Paraná (ADI 4353, ADI 4351)	Unconstitutionality of a smoke-free environments subnational law of Paraná	The Courts upheld the constitutionality of the subnational laws.
	Confederação Nacional do Comercio de Bens, Servicos e Turismo v. Rio de Janeiro	Unconstitutionality of a smoke-free environments subnational law of Rio de Janeiro	
	Confederação Nacional do Turismo v. São Paulo Associação Brasileira de Bares e Restaurantes, seccional São Paulo v. Diretor Exectivo da Fundação de Proteção e de Defesa do Consumidor de São Paulo, et al.	Unconstitutionality of a smoke-free environments subnational law of São Paulo	
Paraguay	Flavour of America S.A. v. Paraguay	Unconstitutionality of a smoke-free environments Presidential Decree	The Supreme Court ruled against the Presidential Decree, stating that the Executive Branch issued it exceeding its powers.
	Tabacalera del Este S.A., et al. v. Paraguay		
	Philip Morris Paraguay S.A. et al. v. Paraguay		
	British Tobacco Productora de Cigarrillos Sociedad Anónima (Probat S.A.) v. Paraguay		
Peru	5 000 Citizens v. Article 3 of Law No. 28705	5 000 Peruvian citizens challenged the constitutionality of the tobacco control law article regulating smoke-free environments.	The Constitutional Court dismissed the plaintiffs' suit and confirmed the law's constitutionality.

**Source:** Prepared by the authors based on data from Campaign for Tobacco-Free Kids litigation database, available from <https://www.tobaccocontrolaws.org/>.

and regulations for their new products, such as heated tobacco products and ENDS. As the tobacco industry usually repeats its arguments and strategies, it is crucial to maintain regional and global efforts to defend tobacco control laws from industry attacks and seek stronger tobacco control legislation (18).

### Adequate and sustained enforcement

Lack of adequate enforcement could weaken the implementation of comprehensive smoke-free laws. Monitoring of compliance with these measures also requires sustainability, and for that, governments in the region need financial and human resources. For example, evaluations, public dissemination of results of the implementation of smoke-free policies, and proper analysis of data about inspections would help local and national authorities to identify gaps, unclear definitions in the law or regulation, the need to increase public education campaigns, or the role of civil society in monitoring compliance (5).

### CONCLUSIONS

South America has become the first subregion of the Americas to adopt national provisions consistent with FCTC Article 8. These countries have achieved 100% SFE policies through laws, decrees, resolutions, or a combination of these. Some countries have provisions that are more robust than others.

Even though there has been tremendous progress in the region in achieving an SFE South America, we must not lose sight that it took almost 20 years since the commitment made by the PAHO Member States in 2001 and 15 years since the FCTC entered into force in 2005.

Some obstacles lie ahead, and some others have been overcome. The tobacco industry has aggressively introduced in the

market a new generation of tobacco and nicotine products that have imposed new challenges to SFE legislations. Also, the lack of enforcement weakens the implementation of comprehensive smoke-free laws in the subregion. On the other hand, fortunately, courts have overruled tobacco industry challenges against SFE legal measures, and nowadays it is quite unusual to hear about SFE-related litigation.

The milestone reached in South America is essential as a standard for other subregions of the Americas. It demonstrates that this objective is eminently achievable and can be reached through different routes. It also shows that an adequate context, with seriously committed actors, is crucial for promoting a public health policy.

**Author contributions.** GS, RCS, LS, GSo, and EMS conceived the original idea. GS, PG, PS, LS, VV, and EMS wrote the first and subsequent drafts of the manuscript. All authors collected and analyzed the data and contributed to revisions of the paper. All authors reviewed and approved the final version.

**Acknowledgments.** We would like to thank Dr. Eric Crosbie and Ms. Beatriz Albuquerque de Figueiredo for providing feedback on this manuscript.

**Conflict of interest.** None declared.

**Financial support.** GS, PS, PG, EMS, GSo, and VV received funding from the Bloomberg Initiative to Reduce Tobacco Use. The Bloomberg Initiative has not played a role in the conduct of the research or the preparation of this article.

**Disclaimer.** Authors hold sole responsibility for the views expressed in the manuscript, which may not necessarily reflect the opinion or policy of the *RPSP/PAJPH* and/or those of the Pan American Health Organization (PAHO).

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Manuscript received on 15 December 2021. Revised version accepted for publication on 14 March 2022.

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## ¿Hacia un mundo libre de humo? América del Sur se convierte en la primera subregión 100% libre de humo en la Región de las Américas

### RESUMEN

Casi 20 años después del lanzamiento de la iniciativa "América libre de humo" de la Organización Panamericana de la Salud en el año 2001, en diciembre del 2020, América del Sur se convirtió en la primera subregión de la Región de las Américas en lograr que 100% de los entornos sean libres de humo, en consonancia con el Artículo 8 del Convenio Marco para el Control del Tabaco de la Organización Mundial de la Salud (CMCT). Algunos de países de la subregión adoptaron medidas legales más sólidas e incluyeron en su legislación la prohibición de fumar en lugares al aire libre concretos (como Argentina y Uruguay) o de introducir nuevos productos de nicotina y tabaco en su alcance jurídico (como Ecuador y Paraguay). Los diez países tomaron diferentes caminos para adoptar esta medida de salud pública, ya fuera mediante disposiciones ejecutivas, legislativas o una combinación de ambas. Algunos países, como Argentina, Brasil y Venezuela, empezaron a nivel subnacional y luego, de un modo similar al del resto de países, pasaron al nivel nacional.

Para lograr este hito fue crucial un contexto adecuado: una amplia ratificación del CMCT y la relevancia dada al derecho humano a la salud, los esfuerzos de la sociedad civil, los compromisos asumidos por los órganos intergubernamentales, los medios y las estrategias de comunicación, y el progreso de la evidencia científica. Los países se enfrentaron a obstáculos, entre ellos la conocida interferencia de la industria tabacalera, que entre otras estrategias empleó el uso de litigios; sin embargo, distintos tribunales y jueces respaldaron medidas legales integrales de ambientes libres de humo de tabaco.

El proceso mediante el cual América del Sur ha logrado este objetivo representa un modelo a seguir para otras subregiones de las Región de las Américas y el mundo.

### Palabras clave

Ambientes libres de humo; contaminación por humo de tabaco; política de salud; América del Sur.



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## Rumo a um mundo livre de fumo? A América do Sul tornou-se a primeira sub-região 100% livre de fumaça de tabaco nas Américas

### RESUMO

Em dezembro de 2020, quase 20 anos depois do lançamento da iniciativa “Américas sem Fumo” pela Organização Pan-Americana da Saúde, em 2001, a América do Sul tornou-se a primeira sub-região das Américas a alcançar ambientes 100% livres de fumaça de tabaco, em conformidade com o Artigo 8 da Convenção-Quadro para o Controle do Tabaco da Organização Mundial da Saúde (CQCT). Alguns desses países adotaram medidas legais mais robustas que outros, com a inclusão da proibição de fumar em determinados locais ao ar livre (como Argentina e Uruguai) e/ou de novos produtos de nicotina e tabaco no escopo de suas leis (como Equador e Paraguai). Os dez países seguiram caminhos diferentes ao adotarem essa medida de saúde pública, por meio de medidas executivas ou legislativas ou ainda por uma combinação de ambas. Alguns países, como Argentina, Brasil e Venezuela, começaram no âmbito subnacional e depois passaram ao âmbito nacional, de maneira semelhante aos demais países.

Para alcançar esse marco, foi crucial ter um contexto adequado: a ampla ratificação da CQCT, bem como a importância dada ao direito humano à saúde, os esforços da sociedade civil, os compromissos assumidos por organismos intergovernamentais, as estratégias de mídia e comunicação e o desenvolvimento de evidências científicas. Os países enfrentaram obstáculos, incluindo a conhecida interferência da indústria do tabaco, que, entre outras estratégias, recorreu ao litígio; entretanto, os tribunais e juízes mantiveram medidas legais abrangentes sobre ambientes livres de fumo.

O processo pelo qual a América do Sul alcançou esse marco constitui um exemplo para outras sub-regiões das Américas e para o mundo.

**Palavras-chave** Ambientes livres de fumo; poluição por fumaça de tabaco; política de saúde; América do Sul.

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