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SHADOW REPORT TO THE PERIODIC REPORT BY THE GOVERNMENT OF BRAZIL

PREVENTING AND REDUCING TOBACCO USE IN BRAZIL: PENDING TASKS

REPORT FILED BY THE FOLLOWING ORGANIZATIONS:

O'Neill Institute
for National and Global Health Law

O'Neill Institute

for National and Global Health Law

The O'Neill Institute for National and Global Health Law at Georgetown University is a center for health law, scholarship, and policy. Housed at Georgetown University Law Center, in Washington DC, the Institute's mission is to provide innovative solutions for the leading health problems both domestically and globally. The Institute, a joint project of the Law Center and School of Nursing and Health Studies, also draws upon the University's considerable intellectual resources, including the School of Medicine, the Public Policy Institute, and the Kennedy Institute of Ethics
www.oneillinstitute.org

The Campaign for Tobacco-Free Kids is an organization dedicated to the fight to reduce tobacco use and its devastating consequences in the United States and around the world through education about the tobacco problem; exposure of tobacco industry tactics; advocacy and mobilization of organizations and individuals through sharing programs and information with partners around the world. By changing public attitudes and public policies on tobacco, the Campaign for Tobacco-Free Kids strives to prevent kids from smoking, help smokers quit, and protect everyone from secondhand smoke.
www.tobaccofreekids.org/index.php

The Alliance for Tobacco Control (*Aliança de Controle do Tabagismo*) is a non-governmental organization comprised of individuals and civil society groups committed to controlling the tobacco epidemic through activities aimed at decreasing the environmental, health and social afflictions generated by production, consumption and exposure to tobacco smoke.
www.actbr.org.br

SHADOW REPORT TO THE PERIODIC REPORT BY THE GOVERNMENT OF BRAZIL

PREVENTING AND REDUCING TOBACCO USE IN BRAZIL: PENDING TASKS

The O'Neill Institute for National and Global Health Law (the "O'Neill Institute"), the Campaign for Tobacco Free Kids ("CTFK") and The Alliance for Tobacco Control ("ACTBr"), hereby respectfully submit the following shadow report; the purpose of which is to assist the United Nations Committee on Economic, Social and Cultural Rights as it evaluates the second periodic report filed by the Federative Republic of Brazil (the "State" or "Brazil"). This report will focus on the State's obligations regarding Article 12 of the International Covenant on Economic, Social and Cultural Rights and the *fight against tobacco use*. In particular, we examine the prevailing law and the tasks which remain to be done in the context of tobacco use prevention as well as activities which are intended to protect the community from tobacco's damaging impact.

I. BRAZIL, THE RIGHT TO HEALTH AND TOBACCO

In view of the importance of health for human dignity and people's wellbeing, countries around the world, and Brazil in particular, have assumed the obligation to recognize, guarantee and protect the right to health. Brazil accepted this international obligation when it signed and ratified international treaties reaffirming this right and setting forth requirements for its fulfillment.

In particular, the International Covenant on Economic, Social and Cultural Rights (the "Covenant")[1] expressly establishes "enjoyment of the highest possible level of physical and mental health" and public health in general as subjects for protection. This treaty plays an important role in urging States Parties to incorporate this fundamental right into domestic law while also serving as a unifying document for its interpretation and protection.[2]

[1] Ratified by Brazil on January 24, 1992.

[2] The Citizen Constitution of Brazil shelters the right to health in Articles 6, 24, 196, 197, 198, 200 and 227.

The O'Neill Institute for National and Global Health Law is a non-governmental organization committed to providing both reliable and independent information to UN committees on the issue of the right to health. CTFK is also a non-governmental organization committed to fighting tobacco consumption around the world. Finally, ACTBr, also a non-governmental organization, is committed to controlling the tobacco epidemic in Brazil. Thus, it is appropriate for the O'Neill Institute, CTFK and ACTBr to evaluate the position taken by Brazil concerning its obligation to respect, protect – guarantee- and fulfill the right to health within the framework of the fight against smoking and tobacco use. As a starting point, government estimates, from Brazil state that 200,000 people die each year from causes linked to tobacco use; 7 deaths each day are attributable to passive smoking (second hand smoke).[3]

Brazil has experienced a general decline in smoking prevalence. *However*, the trends among the most vulnerable populations – the poor and the young – are alarmingly high.[4] Smoking prevalence is significantly higher among the uneducated. Between 2002 and 2003, a survey assessing cigarette experimentation among Brazilians aged 18 years or younger showed experimentation rates between 36% to 58% of males and 31% to 55% of females. Conversely, the smoking student population varied between 11% and 27% among males and between 9% and 24% among females.

This background provides the context for the areas of greatest concern to the O'Neill Institute, CTFK and ACTBr as we evaluate the State's actions with regard to Article 12 of the Covenant.

II. THE RIGHT TO HEALTH AND TOBACCO CONTROL IN BRAZILIAN LEGISLATION

In its General Comment Number 14 on to the Right to the Highest Attainable Standard of Health, this Committee has determined that "three types or levels of obligations are imposed on the Party States: the obligation to *respect, protect* and *fulfill* . . . . The obligation to *protect* requires the States to adopt measures to avoid third party interference in the application of guarantees set forth in Article 12."[5] Regarding violations to the obligation to protect the right to health, the Committee has decided that:

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[3] Ministry of Health of Brazil, *Instituto Nacional de Câncer* (INCA) available online: http://www.inca.gov.br/

[4] Iglesias R, Jha P, Pinto M, Costa e Silva VL, Godinho J. Controle do Tabagismo no Brasil (Washington, DC: World Bank, 2007). According to this review, smoking prevalence in Brazil declined from 35 percent in 1989 to 16 percent in 2006.

[5] Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Article 12), U.N. Doc. E/C.12/2000/4 (2000).

> violations of the obligations to protect arise from the fact that a State may not adopt all necessary measures within their jurisdiction in order to protect persons against violations of the right to health by third parties. Included in this category are such omissions as … non-protection of consumers and workers from damaging health practices, as occurs in the case of ... <u>not deterring the production, marketing and use of tobacco</u>, drugs and other harmful substances. . . .[6] (Emphasis ours)

The scientific and medical evidence is overwhelming that active and passive smoking endanger the public health, injure the health of users *and* non-users and play a major, preventable role in the development of cardiac and lung diseases as well as many forms of cancer. States are under an obligation to take measures aimed at preventing and reducing tobacco use as part of the duty to protect citizens' right to health imposed by the International Covenant on Economic, Social and Cultural Rights. These measures include, but are not limited to, implementation of legislation regulating tobacco production, advertisement, distribution and use as well as public policies – such as smoking cessation programs – designed to protect the consumer from both active and passive smoking.

Brazil has taken important steps to reduce the threat tobacco poses for life, health, the environment and the general population. It has developed public policies for health protection, particularly to reduce tobacco use. For example, it has signed and ratified the World Health Organization's Framework Convention on Tobacco Control. *Yet* serious failures to fulfill its obligation to protect the public health from tobacco continue.

1. <u>World Health Organization: Framework Convention on Tobacco Control</u>

Brazil is a signatory of (and has ratified) the Framework Convention on Tobacco Control (FCTC), the first international instrument negotiated under the auspices of WHO. The FCTC makes the States' rights to protect public health a priority[7] by implementing measures that will prevent and reduce tobacco use in the population. Brazil signed the FCTC text on June 16, 2003, and it became part of Brazilian law with its enactment on January 02, 2006 (through Decree 5,658/2006).

The FCTC aims to set the minimal tobacco control standards in signatory States. Toward that end, Brazil created the National Commission to implement this international treaty.[8] The Commission is led by the Ministry of Health and is comprised of

[6] *Ibid*.

[7] Preamble to the Framework Convention on Tobacco Control.

[8] The National Commission followed the National Commission for Tobacco Control Use (CNCT) body created in 1999, whose main objective was to analyze national data and information on tobacco control so that the President of the Republic could effectively negotiate during the Framework Convention rounds of

representatives from the Ministries of Foreign Affairs, Agriculture, Fishing and Supply, Treasury, Justice, Labor, Education, Development, Industry and Commerce, Agricultural Development, Communications, Environment, Environmental Communication, Civil Cabinet, Science and Technology, Planning, the National Anti-Drug Office and the Special Office on Women's Policies.

While this Commission has established relationships with civil society groups to expand its policy reach, it has no internal or permanent participation in non-governmental organizations with knowledge in the matter, nor does it officially consult or coordinate with scholars or health specialists. These groups are best suited to assist the State to understand, draft and enforce laws that will fulfill its obligations under the FCTC.

Thus, the government of Brazil should not only encourage but also develop formal mechanisms for civil society participation (NGOs, academic institutions, etc) in process of the implementation of the FCTC.

2. BRAZIL'S TOBACCO CONTROL LEGISLATION

The Citizen Constitution of Brazil addresses the right to health in several articles, among them Articles 6, 23, 24, 30, 194, 195, 196, 197, 198, 199, 200, 220, 221 and 227. Particularly relevant, for present purposes, is Article 220, Paragraph 4, which establishes restrictions on advertising and states the need to establish warnings on the damaging effects of harmful products like tobacco:

> commercial advertising of tobacco, beverages and agro toxins, medicines and therapies shall be subject to legal restrictions under the terms of subsection II of the previous paragraph and whenever necessary, shall contain a warning on the damages resulting from their use.

Currently, the principal federal laws and decrees designed to protect the population against the risks of exposure to environmental tobacco smoke are:

- Law No. 9294 (15 July 1996), which bans smoking of cigarettes, cigarillos, cigars, pipes, or any other tobacco product in "enclosed collective areas" of both public and private establishments, such as government offices, hospitals, classrooms, libraries, workplaces, theaters and cinemas, except in duly designated smoking areas, which are properly isolated and ventilated. Consequently, this law allows the use of tobacco products in specific enclosed areas, exclusively for the use of tobacco products.
- Decree No. 2018 (1 October 1996), which regulates Law No. 9294/96 by defining the concepts of "collective areas" and "designated smoking areas."
- Law No. 10167 (27 December 2000) amends Law No. 9294/96, and bans tobacco smoking in aircraft and any other means of collective transportation and its

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negotiations (1999 to 2003). Ministry of Health of Brazil, *Instituto Nacional de Câncer* (INCA) available online: http://www.inca.gov.br/tabagismo/frameset.asp?item=cquadro3&link=comissao.htm

corresponding regulation,[9] set forth provisions on restrictions on the use and marketing of these products.

The ban therefore governs:

- Magazines, newspapers, television, radio, internet and what is visible in public spaces;
- The sponsorship of national and international sporting events, as well as cultural events;
- Direct solicitation through mail, internet, distribution of samples and the marketing of these products in teaching and health establishments and government buildings;
- Involvement of children and teenagers in the advertising of tobacco-derived products;
- Deceptive information and practices including the production, marketing and advertising of cigarettes called "light," "mild," "smooth," and similarly misleading labels, since they could lead the consumer to believe that such cigarettes are less harmful to health.
- The insertion of images and warning phrases is required on cigarette packs and on advertising posters; and
- The sale of cigarettes to minors under the age of 18.

However, important exceptions and gaps in the law thwart its effectiveness and violate citizens' right to health.

Brazilian law allows tobacco to be promoted by posters, notice boards and signs, as well as advertising on the packaging of the packs, inside the points of sale for this product. Tobacco manufacturers and retailers, therefore, can promote dangerous products which threaten public health at the "point of sale." As a result, the tobacco industry has "drastically expanded the number of points of sale nationally [whether by establishing spots] that are temporary (such as at traditional festivities or regional celebrations) or permanent."[10] Points of sale are found within retail establishments such as bakeries, newsstands, supermarkets, snack bars, gas stations, and malls.

Additionally, the tobacco industry promotes its products through the sale of backpacks, watches, compact discs and misleading "corporate responsibility" campaigns that associate their brands with themes important to students.[11] These activities demonstrate noncompliance by the State with respect to its obligation to protect the right to health. The State has not taken effective measures to safeguard citizens' health from third-party

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[9] Decree by ANVISA RDC No. 15, January 17, 2003.

[10] See Aliança de Controle do Tabagismo, Online: http://www.actbr.org.br/tabagismo/legislacao.asp

[11] *Ibid*. See also, online: http://www.dialogosuniversitarios.com.br/

actions. As this Committee has already stated in General Comment No. 14, States fail to protect the right to health when they fail to regulate tobacco companies' promotional activities targeting youth. Furthermore, the State has failed "to discourage the marketing of tobacco."

Existing regulations do not explicitly consider the unique threat tobacco poses to children's health, nor do related laws establish adequate measures to protect it. States are under an obligation to take measures to ensure children's health and their physical, mental, spiritual, moral and social development. Despite the ban on the use of cigarettes in classrooms and their sale in proximate areas, tobacco use among teenagers is higher than in the general population and, worse, it is increasing.[12] No qualitative measures have been taken to discourage use among this population which the industry specifically targets. For example, the law does not explicitly provide for a minimum distance between a point of sale and institutions of learning. In practice, this ban is illusory because points of sale, with tobacco advertisements, are visible from places where young people gather. Furthermore, there is no efficient oversight for the ban on sales to minors.

In addition to the State's failure to protect children and young people from advertisement, tobacco products are available to youth as a result of the thriving illegal trade in tobacco. This is a serious problem for Brazil. Illicit trade in tobacco deprives the State of tax revenues[13] which may be used for health programs and reduces the price of tobacco products facilitating their purchase by minors. The State must take measures commensurate with those established in Article 15 of the FCTC to effectively fight such trade and reduce the impact on this vulnerable group.

Thus, the State should comprehensively ban all forms of promotion, including points of sale and corporate social responsibility. All of this in line with the FCTC.

Finally, the average price for a pack of cigarettes in Brazil continues to hover near the lowest prices in the world; prices are even less on the black market. Low prices expand access and availability both for adults and minors.[14] Article 6 of the FCTC requires that states consider price and tax policies that will enhance public health and reduce tobacco use. Currently in Brazil, the real price of cigarettes—obtained by dividing their nominal price by the consumer price index—is lower than it was in the 1990s. In 2005, the real price of cigarettes was 19% lower than in 1993. Between 1990 and 1993, the real price of cigarettes increased significantly (78%), and remained high until 1998, although not as high as in 1993. Between the second quarter of 1998 and the third quarter of 2000, the

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[12] Ministério da Saúde / Instituto Nacional de Câncer – Programa Nacional de Controle do Tabagismo e Outros Fatores de Risco de Cáncer – Modelo Lógico e Avaliaçao, 2003. Rio de Janeiro: ING; 2003.

[13] Framework Convention Alliance. Available Online:
http://www.fctc.org/dmdocuments/INB2_MB_Technology.pdf

[14] Cavalcante, Tania. Experiencia brasileña con políticas de control del tabaquismo [Brazilian experience with tobacco control policies]. Page 549. Magazine *Salud pública de méxico / Vol.46, No.6, November-December, 2004.*

real price decreased and, finally, between the fourth quarter of 2000 and the fourth quarter of 2005, the price increased again, but remained lower than the prices identified at the beginning of the 1990s.[15]

3. THE NATIONAL REGULATORY FRAMEWORK

Currently, the principal federal regulations are:

- National Policy on Oncological Care (Ministry of Health No. 2,439 (December 08, 2005).
- Agreement on Health and Consolidation of the National Health System, as well as the Approval of Operating Guidelines for the Above Agreement (Ministry of Health, No. 399 (February 22, 2006).
- Health Promotion Policy (Ministry of Health No. 687 – March 30, 2006).
- Ministry of Health resolutions GM/MS No. 1035 (31 May 2004), which included treatment in the Unified Health System, and SAS/MS No. 442 (August 13, 2004).

The State's Ministry of Health works together with the National Health Oversight Agency (ANVISA), the body responsible for protecting the health of the population by exercising control over production and marketing of products and services subject to public health surveillance.[16] ANVISA maintains a record of tobacco-derived products and issues regulations to control the production, marketing and advertising of these products. While ANVISA maintains a transparent and open process for meeting with industry representatives and citizen constituencies, its regulations have not gone far enough to protect the right to health.

A. 100% SMOKE-FREE ENVIRONMENTS

Federal regulations have done little to clarify the definition of "separated, isolated, and properly ventilated areas" as set forth under Brazilian law. This has generated conflicting interpretations, leading to limited, sporadic enforcement. For example, the law states that such areas should be "areas exclusively for smoking," language that invites the interpretation that designated smoking rooms cannot be used to serve food and drinks or to provide other services. Some judicial decisions, however, have interpreted designated smoking rooms more broadly as "areas for smokers."

Recently, the Ministry of Health prepared a draft law to amend Federal Law No. 9294/96

[15] Iglesias R, Jha P, Pinto M, Costa e Silva VL, Godinho J. Controle do tabagismo no Brasil. *Washington, DC; World Bank, 2007*. Iglesias R, Nicolau J. A Economia do controle do tabaco nos países do Mercosul e associados: Brasil. *Organização Pan-Americana da Saúde e Organização Mundial da Saúde; 2006.*

[16] Ministry of Health, *Agência Nacional de Vigilância Sanitária*. Available online: http://www.anvisa.gov.br

and ANVISA formed two working groups to study the issue. ANVISA Board of Executive Directors Resolution (RDC) No. 527 (22 September 2006) formed a work group to formulate a proposal of technical regulations for "designated smoking areas." And, the ANVISA Resolution No. 528 (22 September 2006) formed a working group to implement the "Tobacco-Free Environments Program."

As discussed below, Brazilian law does not meet the international standard for ensuring that enclosed environments are 100% cigarette smoke-free. The draft law would ban tobacco use in all enclosed areas, resulting in 100% tobacco-free environments in the country. The main points of this bill include:

- Banning smoking of cigarettes, *cigarillos*, cigars, pipes, or any other tobacco product in enclosed areas, whether public or private, such as bars, restaurants, malls, hospitals, etc;
- Requiring signs forbidding smoking to be posted in visible places;
- Fining the individuals responsible for allowing the use of tobacco products in their establishments. In cases of recidivism, the establishment may be closed.

However, these organizations worked at odds with one another. ANVISA held public hearings to clarify the definition of designated smoking rooms, drafted a proposed regulation and then withdrew the proposed regulation under the expectation that the Ministry of Health's draft law would formally amend Federal Law No. 9294/96. The result was an additional level of confusion in the law, with state and municipal authorities often awaiting the proposed amendment. Meanwhile, the Brazilian Executive did not send the Ministry of Health's proposed law to the National Congress, and continues to analyze the proposal as of this report.

- Pending Tasks in 100% Smoke-Free Environments

While the use of cigars and other tobacco-derived products is banned in publicly accessible areas, such as public offices, hospitals, schools, libraries, work environments, planes, public transportation, theaters and cinemas, smoking is permitted in areas specially designed for the purpose (called "*fumódromos*").

For publicly accessible places like restaurants, bars, pubs, dance halls, cabarets, gaming casinos and other legally authorized gaming places and similar establishments, public health is persistently threatened by exposure to indoor tobacco smoke. Separating smokers from non-smokers does not eliminate exposure to the tobacco hazard. Smoke from tobacco products evenly disseminates in that environment. Furthermore, tobacco smoke easily passes through ventilation mechanisms.[17] Several scientific studies have shown that ventilation systems are not capable of protecting the health of people who gather in these establishments. The simple division between smokers and non-smokers is not an effective measure to protect non-smokers from environmental tobacco smoke.

[17] Ministry of Health of Brazil, *Instituto Nacional de Câncer* (INCA) available online: http://www.inca.gov.br/english/tobacco/globalaction.pdf

Furthermore, employees in these establishments are continuously exposed to environmental tobacco smoke.[18] General Comment No. 14,[19] in relation to the right to a healthy natural and workplace environment, encourages states to establish preventive as well as reduction measures to population's exposure to harmful substances such as those found in environmental tobacco smoke. Permitting smoking in these places, not only ignores the Committee's recommendations regarding the right to health, but also violates the guidelines for implementation of Article 8 of the Framework Convention, which require enclosed environments that are 100% cigarette smoke free.

Even under current law, authorities fail to effectively enforce the segregated smoking areas; there remain premises where no separate smoking areas have been established, resulting in severe damage to the health of both workers and customers.

In consequence, we urge this Committee to recommend the Brazilian State to enact legislation to establish that enclosed environments should be 100% free of tobacco smoke.

B. Consumer Information

Under decree RDC N 335 of November 21, 2003, ANVISA requires tobacco retailers to rotate warnings about smoking on cigarette packs.

However, Brazilian law is contradictory on the issue of publishing nicotine, tar and carbon monoxide information. Tobacco companies are required to include ingredient and constituent information on the package label, but they are not required to publish the levels of nicotine and tar contained in these products or their emissions. Brazil does prohibit the association of a product's brand name with the disclosure of the product's nicotine, tar and carbon monoxide levels.[20] Voluntary disclosure of such information denies consumers their rights and jeopardizes the public health. Thus, by making voluntary the disclosure of accurate information vital to health, the State violates its obligation to respect this right (in accordance to the principles enshrined in General Comment No. 14). According to the National Cancer Institute (INCA), "in the time [a cigarette is smoked], more than 4,700 toxic substances are introduced into the body, including nicotine (responsible for chemical dependence), carbon monoxide (the same poisonous gas that comes out of automobile tailpipes) and tar, which is made up of approximately 48 pre-cancerous substances, such as agro toxins and radioactive substances (which cause cancer)." The State's law regulating cigarette packs fulfills neither the Constitutional nor the international obligation to protect public health. In addition, the law violates the intent of Article 11.2 of the Framework Convention on

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[18] Ministry of Health of Brazil, *Instituto Nacional de Câncer* (INCA) available online: http://www.inca.gov.br/tabagismo/frameset.asp?item=apoio&link=problema.htm

[19] Committee on Economic, Social and Cultural Rights, General Comment No. 14, The Right to the Highest Attainable Standard of Health (Article 12), U.N. Doc. E/C.12/2000/4 (2000), para. 15

[20] World Health Organization, available online: http://www.who.int/tobacco/media/en/Brazil.pdf

Tobacco Control which aims at providing consumers information and prohibiting misleading packaging.

In order to fulfill its obligations to its citizens, Brazil should require all products to contain necessary information on nicotine, tar and carbon monoxide levels. ANVISA should harmonize existing regulations toward this end.

C. TOBACCO AGRICULTURE

Articles 17 and 18 of the FCTC encourage the State to find economically viable alternatives for workers, growers and eventually, small sellers of tobacco. Brazil has been a major promoter of this initiative. The State's representative presented a "model for introducing alternative livelihoods while sustaining rural development," presented was presented "at the third session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control. Also, a regulatory framework for family farming and a national program for diversification in tobacco-growing regions were established in 2006, with support for starting new income-generating activities."[21]

- Pending Tasks in Tobacco Agriculture

Brazil is the world's third largest tobacco producer and world leader in tobacco leaf export. Tobacco production and preparation are prominent economic activities in the north and south of the country. States depend heavily on the collection of tobacco taxes, mainly through the value added tax. Tobacco drives the economy of 39 municipalities in the relatively poor northeast, particularly in the states of Paraíba, Rio Grande do Norte, Ceará and Pernambuco. Family incomes there are dependent on tobacco agriculture. Tobacco in Brazil generates more net yield per hectare than corn or beans. The pending tasks for Brazil are, among others, (i) finding economically viable alternatives to tobacco production, and (ii) controlling the use of agro pesticides in places where there is production of tobacco.

Tobacco plantations require an enormous "amount of pesticides to protect the plant from insects and diseases, and the heavy use of fertilizers to enrich the soil, and the use of wood as fuel to feed the ovens used for dying the green leaf, to prepare it for storage, transportation and processing. These features cause tobacco crops to be hazardous for the planter's (growers) health and for the environment."[22] Diseases resulting from green tobacco and agro-toxic chemical exposure include respiratory and dermatological

[21] World Health Organization, available online: http://www.who.int/gb/fctc/PDF/cop3/FCTC_COP3_11-en.pdf

[22] Ministry of Health of Brazil, *Instituto Nacional de Câncer* (INCA) available online: http://www.inca.gov.br/english/tobacco/globalaction.pdf

disorders and cancer.[23] The lack of knowledge, the limited resources, low-cost production as well as climate conditions tend to exacerbate these diseases.

In order to improve this situation that threatens the health of many to tobacco growers, we urge this Committee to recommend the State to expand programs aimed at tobacco crop replacement. Additionally, the government of Brazil should act promptly to protect those now involved in tobacco growing from agrochemical and pesticide exposure.

III. CONCLUSIONS AND RECOMMENDATIONS

Throughout this report we have provided the Committee with a comprehensive legal analysis outlining the main flaws of Brazil's regulation of tobacco control and its connection with the health of its citizens. We request this Committee to take this analysis into account when drafting recommendations to the Brazilian government. In sum, we urge you to request the Brazilian government to undertake the following steps:

1. The State should enact legislation to establish that enclosed environments must be 100% free of tobacco smoke.

2. The State should not only encourage but also develop formal mechanisms for civil society participation (NGOs, academic institutions, etc) in process of the implementation of the FCTC.

3. The State should enact a comprehensive ban of all forms of tobacco promotion including points of sale and corporate social responsibility campaigns.

4. The State should require the disclosure of nicotine, tar and carbon monoxide levels and existing regulations should be harmonized to obtain that result.

5. The State should raise taxes on tobacco products.

6. The State should expand programs aimed at tobacco crop replacement and act to protect those now involved from agrochemical and pesticide exposure.

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[23] Conference of the Parties to the WHO Framework Convention on Tobacco Control- Third session - Durban, South Africa, 17–22 November 2008; FCTC/COP/3/11; 4 September 2008.

UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
42nd Session Period (May 4-22, 2009)

SHADOW REPORT TO THE PERIODIC REPORT BY THE GOVERNMENT OF BRAZIL

PREVENTING AND REDUCING TOBACCO USE IN BRAZIL: PENDING TASKS

ADDENDUM REGARDING METHODS FOR TAR AND NICOTINE MEASUREMENT

ADDENDUM ON THE REPORT FILED BY THE FOLLOWING ORGANIZATIONS:
THE O'NEILL INSTITUTE FOR NATIONAL AND GLOBAL HEALTH LAW
THE CAMPAIGN FOR TOBACCO-FREE KIDS
THE ALLIANCE FOR TOBACCO CONTROL (*ALIANÇA DE CONTROLE DO TABAGISMO*)

In 1966, the United States Federal Trade Commission (FTC) adopted a standardizing testing method, known as the Cambridge Filter Method or FTC method, for the measurement of tar and nicotine yields of cigarette smoke. Under the International Organization for Standardisation (ISO), similar testing methods were adopted for use around the world.

There are two major weaknesses built into health claims based on the ISO/FTC methods: (1) machine-measurements of tar and nicotine are not valid estimates of the amounts of tar or nicotine received by smokers; and (2) many smokers mistakenly believe that lower yield or light cigarettes deliver less tar, produce lower rates of disease and are therefore 'safer'.[1]

In 2008, the FTC rescinded its guidance regarding the FTC machine-based testing stating that "machine-based measurements of tar and nicotine yields based on the Cambridge Filter Method do not provide meaningful information on the amounts of tar and nicotine smokers receive from cigarettes or on the relative amounts of tar and nicotine they are likely to receive from smoking different brands of cigarettes."[2] They found the machine-based testing to be "poor predictors of tar and nicotine exposure […] primarily due to smoker compensation – i.e., the tendency of smokers of lower-rated cigarettes to

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[1] World Health Organization—Scientific Advisory Committee on Tobacco Product Regulation. SACTob Conclusions on Health Claims Derived from ISO/FTC Method to Measure Cigarette Yield. Geneva: WHO; 2003. Available from: http://www.who.int/tobacco/sactob/recommendations/en/iso_ftc_en.pdf.
[2] United States Federal Trade Commission (FTC). FTC Proposes Rescinding 40-Year Guidance on Statements Concerning Tar and Nicotine Yields [press release]. 2008 Jul 8. Available from: http://www.ftc.gov/opa/2008/07/cigarettefyi.shtm

take bigger, deeper, or more frequent puffs, or to otherwise alter their smoking behavior in order to obtain the dosage of nicotine they need."[3]

Studies have revealed that the tar and nicotine ratings as they are displayed by the industry mislead consumers. Tobacco industry marketing directly and indirectly promotes the health benefits of 'light' and 'low' tar cigarettes with the result that many smokers mistakenly believe 'low' tar cigarettes are healthier than higher tar level cigarettes. These advertising and marketing approaches have contributed to consumers' using low yield cigarettes in an attempt to reduce their health risks, or as a step towards or an alternative to smoking cessation.[4]

Today, the consensus within the scientific community is that the ISO/FTC methods are flawed and that tar, nicotine, and carbon monoxide numerical ratings based upon current ISO/FTC methods and presented on cigarette packages and in advertising as single numerical values are misleading and should not be displayed.[5] Any effort to provide consumers information about tar and nicotine content must take these deficiencies in existing technology into account.

WHO Scientific Advisory Committee on Tobacco Product Regulation
(now known as TobReg, the WHO Study Group on Tobacco Product Regulation)

Based on the existing science, WHO's Scientific Advisory Committee on Tobacco Product Regulation makes the following conclusions and recommendations:
1. Tar, nicotine, and CO numerical ratings based upon current ISO/FTC methods and presented on cigarette packages and in advertising as single numerical values are misleading and should not be displayed.
2. All misleading health and exposure claims should be banned.
3. The ban should apply to packaging, brand names, advertising and other promotional activities.
4. Banned terms should include light, ultra-light, mild and low tar, and may be extended to other misleading terms. The ban should include not only misleading terms and claims but also, names, trademarks, imagery and other means to conveying the impression that the product provides a health benefit. [6]

Therefore, recommendation number 4 of our Shadow Report should read as follows:

The government should continue to require that tobacco companies include ingredient and constituent information on the package label and forbid the disclosures of levels of nicotine, tar and carbon monoxide and other ingredients and constituents found in tobacco smoke until methods for evaluating exposure and the health impact of such exposure are developed that provide meaningful, non-misleading information to consumers.

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[3] FTC. Rescission of FTC Guidance Concerning the Cambridge Filter Method. Washington, DC: FTC; 2008. Available from: http://www.ftc.gov/os/2008/11/P944509cambridgefiltermethodfrn.pdf
[4] World Health Organization—Scientific Advisory Committee on Tobacco Product Regulation. SACTob Conclusions on Health Claims Derived from ISO/FTC Method to Measure Cigarette Yield. Geneva: WHO; 2003. Available from: http://www.who.int/tobacco/sactob/recommendations/en/iso_ftc_en.pdf.
[5] World Health Organization—Scientific Advisory Committee on Tobacco Product Regulation. SACTob Conclusions on Health Claims Derived from ISO/FTC Method to Measure Cigarette Yield. Geneva: WHO; 2003. Available from: http://www.who.int/tobacco/sactob/recommendations/en/iso_ftc_en.pdf.
[6] WHO Scientific Advisory Committee on Tobacco Product Regulation
http://www.who.int/tobacco/sactob/recommendations/en/iso_ftc_en.pdf