

SHADOW REPORT TO THE PERIODIC REPORT BY THE GOVERNMENT OF ARGENTINA

**TOBACCO CONTROL IN ARGENTINA: ADVANCES AND PENDING
TASKS**

REPORT FILED BY THE FOLLOWING ORGANIZATIONS:

O'Neill Institute

for National and Global Health Law

Georgetown Law • Georgetown Nursing & Health Studies



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The O’Neill Institute for National and Global Health Law (the “O’Neill Institute”), the InterAmerican Heart Foundation – Argentina (FIC – Argentina) and the Foundation for the Development of Sustainable Policy (FUNDEPS) hereby respectfully submit the following shadow report, the purpose of which is to assist the Committee on Economic, Social and Cultural Rights (the “Committee” or “CESCR”) in evaluating the periodic report filed by the Argentine Republic (the “State” or “Argentina”). This report will focus on the State’s obligations arising from Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) with respect to the prevention and reduction of tobacco use. In particular, we examine the newly passed national tobacco control law, recognizing its advances and examining whether it fulfills the State’s obligations to respect, protect and promote the right to health as regards tobacco control. Additionally, this report highlights those tasks that the State must continue to develop in order to effectively discourage tobacco consumption and to protect the community from the deleterious effects of tobacco use.

A. THE IMPACT OF THE TOBACCO EPIDEMIC IN ARGENTINA

1. Tobacco’s Health Consequences. The Sanitary, Economic and Social Impact of Tobacco

In Argentina, chronic noncommunicable diseases (NCD) either cause, or are related to, approximately 80% of the population mortality.^{1 2} Tobacco consumption is one of the principal risk factors for NCDs and, in Argentina, generates 40,000 deaths per year and a loss of more than 800,000 disability-adjusted life years (DALYs) (constituting the second leading cause of death after arterial hypertension).^{3 4} The following table, which compares the country’s different causes of death, clearly illustrates the gravity of the tobacco epidemic in Argentina. Due to the impact of tobacco on the health of Argentines, the State

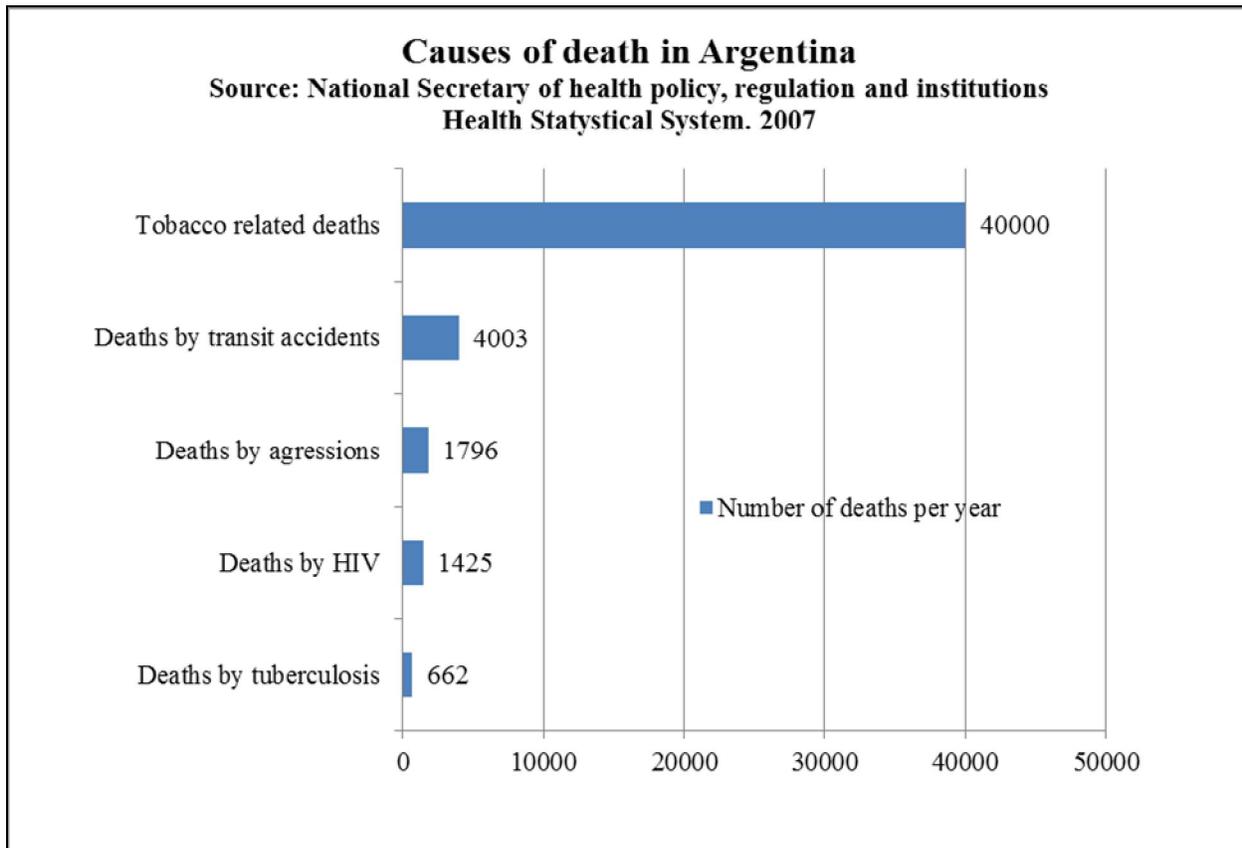
¹ Ferrante D: “Mortalidad por enfermedades crónicas: demasiado tarde para lágrimas.” *Rev Argent Cardiol* 2006, 74:196-197.

² Ferrante D, Virgolini M: “Salud pública y factores de riesgo: vigilancia de factores de riesgo de enfermedades no transmisibles.” *Rev Argent Cardiol* 2005, 73:221-227.

³ Pitarque R, Perel P, Sanchez G. Mortalidad anual atribuible al tabaco en Argentina, año 2000. Programa Vigía, Ministerio de Salud de la Nación.

⁴ Rossi, S.; Roger, M. E.; Leguiza, J.; Irurzun, A.; Carga global de enfermedad atribuible al tabaquismo en Argentina; Programa Vigía; Ministerio de Salud de la Nación.

must implement all of the available measures to minimize the terrible effects arising from tobacco consumption.



NCDs are preventable and scientific evidence points to the effectiveness of educational, preventive, and treatment interventions.^{5 6 7 8} The most cost-effective control policies are those oriented towards risk factors, as are the tobacco control measures.⁹

In Argentina, between 2005 and 2009, due to the various tobacco control interventions at the sub-national level, tobacco consumption was reduced from 29% to 27.1%, and exposure to secondhand smoke was reduced from 50% to 40.4%. These rates, however, continue to be among the highest in the region. The reduction in the prevalence of tobacco use is low in comparison with countries that have implemented

⁵ Browson R, Remington P, Wegener M. *Chronic Disease Epidemiology and Control*. Third Edition. American Public Health Association, Washington DC, 2006.

⁶ Disease Control Priorities in Developing Countries. World Bank, Washington DC, 2006.

⁷ Guide to community preventive services: evidence based recommendations for programs and policies to promote population health. [Available at: <http://www.thecommunityguide.org>] [Last visited: 28 de enero de 2011].

⁸ Nissinen A, Berrios X, Puska P. Community-based noncommunicable disease interventions: lessons from developed countries for developing ones. *Bulletin of the World Health Organization*, 2001; 79(10): 963-970.

⁹ The MPOWER Package. *WHO Report on the Global Tobacco Epidemic*. World Health Organization, Geneva, 2008.

policies in line with those established by the Framework Convention for Tobacco Control.¹⁰ Argentina has not yet ratified this treaty, nor has it succeeded in passing a national law implementing all of the corresponding measures.

It is also important to note that the health impact felt by the Argentine population is concentrated on the poor, as there exists an inverse correlation between levels of income/education and the prevalence of tobacco consumption: the lower the income, the greater the consumption.¹¹ The discriminatory impact felt by those who find themselves in vulnerable socio-economic situations provides an additional reason for the Argentine State to channel its efforts towards an adequate response to the tobacco epidemic.

2. The Discriminatory Effect on Specific Sectors of the Population or Vulnerable Groups: Women and Youth

Through the promotion of sporting events, music festivals, movies and fashion events, the tobacco industry succeeds in reaching a massive public, and has adapted its advertising message to capture the attention of women and youth. The tobacco industry's internal documents make it clear that they have identified children and adolescents as a key segment of the market, and have studied their habits and developed products and marketing campaigns specifically directed towards them. Despite the tobacco industry's assertions that advertising is exclusively aimed towards adults, their internal documents prove otherwise.¹² One study, carried out in Argentina, revising the tobacco industry's internal documents, showed that the marketing strategy in Argentina is directed towards 15 year-old youths.¹³ This advertising effectively reaches its intended target. In Argentina, 90% of young people between the ages of 14 and 17 reported having seen advertisements in the month prior to the survey.¹⁴ There is a direct relationship between advertising and consumption. A study carried out in 1998 supports this notion: cigarette advertising makes smoking appear attractive.¹⁵ There also exists a direct relationship between cigarette advertising and preferred brands among youth. A study conducted with children in the eighth and ninth

¹⁰ WHO Framework Convention on Tobacco Control. World Health Organization, Ginebra, Suiza, 2003.

¹¹ WHO (2004), Tobacco and poverty. A vicious circle, WHO/NMH/TFI/04.0. Available at: http://www.who.int/tobacco/communications/events/wntd/2004/en/wntd2004_brochure_en.pdf.

¹² For example, in one internal document produced by Phillip Morris, the tobacco company stated, "*The adolescent of today is the potential regular client of tomorrow and the large majority of smokers begin smoking in adolescence...The consumption patterns of adolescents are particularly important to Phillip Morris.*" (Internal documents of Phillip Morris – 1981, Published as part of the United States' Master Settlement Agreement).

¹³ Braun S, Mejia R, Ling P, et al. Tobacco industry targeting youth in Argentina. *Tob Control*. 2008 Apr;17(2):111-7. Epub 2008 Feb 25.

¹⁴ Míguez, Hugo A., Uso de tabaco en jóvenes: exposición y vulnerabilidad en el campo de las representaciones sociales, Buenos Aires, 2004.

¹⁵ Adolescents' responses to cigarette advertisements: links between exposure, liking, and the appeal of Smoking. Jeffrey Jensen Arnett, George Terhanian. *Tobacco Control* 1998; 7:129–133.

grades at two different schools in Chicago, United States, demonstrated that the preference for purchasing a particular brand of cigarettes is proportional to the corresponding advertisement's perceived level of attraction.¹⁶

This pattern regarding youth smoking habits repeats itself in the case of women. The promotion of tobacco consumption took into account an advertising strategy that led tobacco companies to promote tobacco as a symbol of independence and modernity more than 20 years ago.¹⁷ This campaign had a direct impact on the population. Currently 11,348 women in Argentina die every year as a result of tobacco-related illnesses. Between 1980 and 2008, the cases of lung cancer among Argentinean women doubled, while the rate of illness among men decreased by 2% annually. This situation was a point of particular concern in Argentina's last report for the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). That Committee observed with concern "*the widespread use of tobacco among women in Argentina and the serious health impact of tobacco on women. The Committee is particularly concerned that women are often targets in tobacco advertising campaigns, which encourage and increase the usage of tobacco among women, resulting in tobacco-related diseases and deaths.*"¹⁸

The Argentine State must develop public policies focused on granting a greater level of protection for the right to health to those segments of the population that are particularly affected by the tobacco epidemic: the poor, women, children, and youth.

B. TOBACCO, LEGAL FRAMEWORK AND PUBLIC POLICIES IN ARGENTINA

1. National Law: Protection of Health. Tobacco Control

In Argentina, there has been a historic tendency to favor tobacco production and commercialization over the protection of public health. During the last 40 years, more than 50 projects concerning tobacco control laws have lost parliamentary status without being considered or approved,¹⁹ added to the fact that

¹⁶ UICC *GLOBALink* The International Tobacco-Control Network Selected documents: Report by Ronald M. Davis, M.D. *F.A.I.R. v. City of Chicago*, 97 C 7619 April 1998.

¹⁷ Mizerski R. The relationship between cartoon trade character recognition and product category attitude in young children. Presented at the "Marketing and Public Policy Conference," May 13-14, 1994. [Cited by the U.S. Food and Drug Administration at *Federal Register* 1996 (August 28); 61(168):44477-8.].

¹⁸ CEDAW, Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women to the Argentine State report, 46th session period, July 12-30, 2010, CEDAW/C/ARG/CO/.

¹⁹ E. Sebríe, J. Barnoya, E. Pérez-Stable, S. Glantz; Tobacco industry successfully prevented tobacco control legislation in Argentina; *Tobacco Control*; Octubre 2005; 14:e2 Sitio: www.tobaccocontrol.com Available at: <http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=1748093&blobtype=pdf>.

Argentina is the only country in South America that has not yet ratified the Framework Convention on Tobacco Control (FCTC).

Despite these obstacles, in the last 5 years there have been important advances in the area of tobacco control, especially at the sub-national level, as will be seen in detail in a later section. There has also been significant progress made in building capacity for tobacco control; numerous studies conducted on the epidemiology of the problem and on the impact of interventions have resulted in a generation of useful information for decision-making.^{20 21 22 23 24} Numerous reviews of the tobacco industry's internal documents have exposed the industry's strategy.^{25 26}

The combination of these and other factors produced a process that led to an increased awareness of the problem posed by the tobacco epidemic and solidified its place on the public agenda. In June 2011, the National Congress approved, for the first time in the history of the country, a tobacco control law (No. 26.687) that captures some of the minimum standards established by the Framework Convention and that, among its primary resolutions, includes an absolute ban on smoking in both public and private work spaces, mandates the inclusion of health warnings with images on cigarette packages, and regulates the contents of cigarettes.

Although the national tobacco control law does suffer from weaknesses that will be discussed in a later section, its approval signals important regulatory progress in Argentina concerning the protection of health in the face of the serious health consequences posed by tobacco consumption and exposure to secondhand smoke. This law is a significant step in ensuring the effective protection of the right to health as established by Article 12 of the ICESCR.

²⁰ Schoj V, Alderete M, Ruiz E, Hasdeu S, Linetzky B, Ferrante D. Impacto de legislación 100% libre de humo en la salud de los trabajadores gastronómicos de la ciudad de Neuquén, Argentina. *Tob Control*. 2010 Apr;19(2):134-7. Available at: http://www.ficargentina.org/images/stories/Documentos/Impacto_salud_Neuquen_ALH.pdf.

²¹ Schoj V, Sebríe E, Pizarro M, Hyland A, Travers M; Monitoreo de políticas de ambientes 100% libres de humo de tabaco en Argentina: estudio de polución por humo de tabaco en lugares cerrados en 15 ciudades (2007 - 2009); *Salud Pública Méx* 2010; Vol. 52(sup 2):157-167. Available at: <http://bvs.insp.mx/rsp/articulos/articulo.php?id=002517>.

²² Ferrante D LB, Konfino J, King A, Virgolini M, Laspiur S. 2009 . National Risk Factors Survey: evolution of the epidemic of chronic non communicable diseases in Argentina. Cross sectional study. Available at: http://www.msal.gov.ar/ENT/Publicaciones/PDF/Art%C3%83%C2%ADculo%20Encuesta%20Nacional%20De%20Factores%20De%20Riesgo%202009_Rev%20Argent%20Salud%20Publica.pdf. *Rev Argent Salud Publica* 2011;2(6):34-41.

²³ Rios B, Schoj V. Revisión y análisis de los recursos de amparo presentados en contra de leyes de ambientes libres de humo de tabaco en Argentina. InterAmerican Herat Foundation – Argentina. Comunicación del autor. 2011.

²⁴ Sebríe EM, Glantz SA. Local smoke-free policy development in Santa Fe, Argentina. *Tob Control*. 2010 Apr;19(2):110-6. Epub 2009 Dec 2.

²⁵ Sebríe EM, Glantz SA. "Accommodating" smoke-free policies: tobacco industry's Courtesy of Choice programme in Latin America. *Am J Public Health*. 2007 Aug;97(8):1357-67. Epub 2007 Jun 28.

²⁶ Flores ML, Barnoya J, Mejia R, Alderete E, Pérez-Stable EJ Litigation in Argentina: challenging the tobacco industry. *Tob Control*. 2006 Apr;15(2):90-6.

1.a Strengths of the National Law. Regulatory Process.

In accordance with internationally recommended standards, Law 26.687 establishes two of the most important and efficient tobacco control measures: smoke-free environments and the introduction of health warnings, which will also be the two measures highlighted in this report. Other measures, like the prohibition of sale to minors, the regulation of cigarette contents, and education and awareness programs, among others, are also included in the body of the law. While these measures are not responsible for generating the greatest impact in reducing the levels of tobacco consumption, they do contribute to the regulation's principal objective of protecting health.

Smoke-free Environments

In Article 23, the law establishes an absolute ban on smoking in all enclosed public spaces, including work, teaching, and health establishments. **It has been proven that the implementation of 100% smoke-free environments protects the lives of individuals exposed to the deadly effects of secondhand smoke from tobacco products, as it reduces smokers' tobacco consumption by 30% and can reduce by up to 50% the initiation of smoking by teenagers and adolescents.**²⁷

Numerous studies conducted in Argentina, as well as in other countries, demonstrate the health benefits that are produced as a result of the implementation of 100% smoke-free laws.²⁸ There has been evidence of improvements in the respiratory health of restaurant workers,²⁹ as well as a reduction in the number of hospital admissions for heart attacks in provinces with smoke-free environments. There has not, however, been any reduction in the number of coronary events witnessed by hospitals in provinces that have not established such smoke-free laws.³⁰

These types of measures are also justified in order to achieve effective protection for employees. In accordance with the ICESCR, State Parties recognize the right of everyone to “*safe and healthy working conditions*” in Article 7. Similarly, Article 12 establishes “*the improvement of all aspects of environmental and industrial hygiene,*” as one of the measures to be implemented for the adequate protection of health. The maintenance of safety in the work environment requires that the workspace be free of environmental contaminants.³¹ This includes secondhand smoke, which is classified as a Class I

²⁷ WHO, Sin humo adentro, 2007. http://www.ficargentina.org/images/stories/Documentos/sinhumo_dentro_oms_2007.pdf.

²⁸ Institute of Medicine of the National Academies. Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence. Washington DC; Institute of Medicine: 2009.

²⁹ *Supra* footnote 20.

³⁰ Ferrante D y col. Reducción de admisiones hospitalarias por síndromes coronarios agudos luego de la implementación de la ley 100% libre de humo en Santa Fe, y una comparación con la ley de restricción parcial de la Ciudad de Buenos Aires. Ministerio de Salud de la Nación 2009. Comunicación del autor.

³¹ R164 Recomendación sobre seguridad y salud de los trabajadores, 1981.

carcinogen³² by institutions like the WHO, the Pan American Health Organization (PAHO) and the International Agency for Research on Cancer (IARC).³³ These institutions are also in agreement that there is no safe level of exposure to secondhand smoke from tobacco.

In this sense, we reaffirm the position taken by the CESCR when analyzing the report from the Federal Republic of Brazil, during which time the CESCR noted, “*with concern (...) that, while the use of tobacco-derived products is banned in publicly accessible areas, smoking is permitted in areas specially designed for the purpose.*” In this same report, the CESCR recommended, “*that the State party... enact legislation to ensure that all enclosed public environments are completely free of tobacco.*”³⁴

For these reasons, the regulation introduced by Article 23 in Law 26.687 establishing smoke-free environments in all public spaces is an effective public policy for tobacco control, and therefore complies with the obligation set forth by Article 12 of the ICESCR to protect the right to health.

Health Warnings

Law 26.687 also mandates the incorporation of health warnings with images on cigarette packages. Chapter III regulates the incorporation of health messages with accompanying images on all packaging for tobacco products. The health message must be written in black letters, inside a black rectangular box, against a white background, and must occupy the bottom 50% of one of the principal display areas. The image must occupy the bottom 50% of the other principal display area. Likewise, the use of misleading terms such as “light,” “smooth,” “mild” or any other term that might give consumers a false impression that one type of cigarette is less harmful to health than any other, is prohibited. According to the WHO’s recommendations, **the inclusion of health warnings with accompanying images on cigarette packages is a cost-effective method of alerting and informing the public, including both smokers and nonsmokers, about the risks of tobacco consumption.**^{35 36 37} Moreover, these interventions can be

³²Productos de esa misma naturaleza cancerígena como el asbesto, el silicio o el benceno tienen estándares de regulación mucho más estrictos que los que se imponen (y discuten) respecto al tabaco.

³³ Pan American Health Organization (PAHO), *Health in the Americas*, Vol. I, 2002 ed., Washington DC.

U.S. Department of Health And Human Services, Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health. *The Health Consequences of Involuntary Smoking. A Report of the Surgeon General*. Rockville, Maryland: U.S. Department of Health And Human Services, 1986. Available at: http://www.cdc.gov/tobacco/sgr/sgr_1986/index.htm.

³⁴ CESCR (2009), Examination of reports presented by State parties regarding conformity to Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil, E/C.12/BRA/CO/2, p. 30.

³⁵ Hammond D et al. Effectiveness of cigarette warning labels in informing smokers about the risks of smoking: findings from the International Tobacco Control (ITC) Four Country Survey. *Tobacco Control*, 2006, 15(Suppl.3):iii19–iii25.

³⁶ Datafolha Instituto de Pesquisas. 76% são a favor que embalagens de cigarros tragam imagens que ilustram males provocados pelo fumo; 67% dos fumantes que viram as imagens afirmam terem sentido vontade de parar de fumar. *Opinião pública*, 2002 (http://datafolha.folha.uol.com.br/po/fumo_21042002.shtml, accessed 6 December 2007).

implemented without any cost to the government whatsoever. The guidelines established by the **WHO recommend text and picture warnings that cover at least 50% of both sides of cigarette packages, and are periodically rotated.**^{38 39}

Regarding the use of health warnings as a tobacco control measure, the Argentine legislation establishes standards for the protection of the right to health that are consistent with the level of protection required by the ICESCR.

1.b Weaknesses of the National Tobacco Control Law No. 26.687

Despite our country's regulatory advances, implied by the enactment of a national tobacco control law, there exist various elements within that very law that fail to guarantee the maximum standard of protection for health and which facilitate the tobacco industry's interference in the application of the law. When referring to weaknesses in the national law, we are referring to those articles of the regulation that do not constitute the most effective measures for protecting health, or that may even hamper its application and fulfillment.

Regarding advertising, promotion and sponsorship, the national law fails to meet international standards. Moreover, the issue of taxes and pricing is a topic that the country has yet to regulate. Chapter II of Law 26.687 regulates the advertising, promotion and sponsorship of tobacco products. Specifically, Article 5 establishes: "*The advertising, promotion and sponsorship of tobacco products through any medium of diffusion or communication, whether direct or indirect, is prohibited.*"

- Advertising of Tobacco Products

Although the absolute prohibition on advertising, promotion and sponsorship of tobacco products is established as a first measure, Article 6 reads: "*Exceptions to the prohibition on advertising and promotion established in the preceding article occur:*

a) Inside establishments where tobacco products are sold in conformity with the regulations set forth by the present law;

³⁷ World Health Organization. *Tobacco warning labels. Factsheet No. 7*. Geneva, Framework Convention Alliance for Tobacco Control, 2005 (<http://tobaccofreekids.org/campaign/global/docs/7.pdf>, accessed 25 February 2008).

³⁸ World Health Organization. *WHO Framework Convention on Tobacco Control, Article 11*. Geneva, World Health Organization, 2003 (updated reprints 2004, 2005) (http://www.who.int/tobacco/framework/WHO_FCTC_english.pdf, accessed 21 March 2008).

³⁹ World Health Organization. *Tobacco: deadly in any form or disguise*. Geneva, World Health Organization, 2006 (http://www.who.int/tobacco/communications/events/wntd/2006/Tfi_Rapport.pdf, accessed 21 March 2008).

- b) *In commercial publications exclusively geared towards individuals or institutions whose businesses are involved in the cultivation, fabrication, importation, exportation, distribution, storage or sale of tobacco products;*
- c) *For direct communications directed towards individuals 18 years and older, as long as previous consent has been obtained and age has been verified.”*

The advertising, promotion and sponsorship of tobacco products is one of the primary causes of the tobacco epidemic’s expansion because it is the principal method of recruiting new smokers from among children.

It is well documented that the advertising, promotion and sponsorship of tobacco increase its consumption and proliferates misleading messages that confuse the public, particularly children and adolescents.⁴⁰ Studies show that images related to tobacco, such as those included in advertising and promotions, encourage former smokers to relapse into addiction at greater rates. In conclusion, the advertising, promotion and sponsorship of tobacco products incentivizes young people to smoke, smokers to smoke more, and former smokers to relapse into addiction.⁴¹

It has been amply demonstrated that comprehensive bans on advertising, promotion and sponsorship of tobacco products decrease tobacco consumption.^{42 43} In contrast, partial restrictions are ineffective in reducing tobacco consumption because advertisements prohibited by one communication channel are simply displayed through another, thus circumventing the end goal, which is the reduction of consumption and the protection of public health.⁴⁴

For these reasons, the advertising, promotion and sponsorship of tobacco products must be absolutely banned. It is important to note that the advertisement of goods, which constitutes purely profit-driven speech intended to promote the consumption of a commodity, does not fall within the scope of protection of freedom of expression, but rather commercial freedom. Because it falls within the scope of commercial

⁴⁰ Andrews RL, Franke GR. The determinants of cigarette consumption: A meta-analysis. *Journal of Public Policy and Marketing*. 1991; 10:81-100. (8)Warner KE. *Selling Smoking: Cigarette Advertising and Public Health*. Washington, DC: American Public Health Association; 1986. (9) WHO, 2008. p 36.

⁴¹ Sources of cited conclusions: Andrews RL, Franke GR. The determinants of cigarette consumption: A meta-analysis. *Journal of Public Policy and Marketing*.1991; 10: p. 81-100 Warner KE. *Selling Smoking: Cigarette Advertising and Public Health*. Washington, DC: American Public Health Association; 1986. Perry CL. The Tobacco Industry and Underage Youth Smoking: Tobacco Industry Documents from the Minnesota Litigation. *Archives of Pediatric and Adolescent Medicine*. 1999;153:935-941; Lovato C, Linn G, Stead LF, Best A. Impact of tobacco advertising and promotion on increasing adolescent smoking behaviors. *Cochrane Database Syst Rev*. 2003; (4):CD003439.

⁴² Saffer H. Tobacco advertising and promotion. In: Jha P, Chaloupka FJ, eds. *Tobacco control in developing countries*. Oxford, Oxford University Press, 2000.

⁴³ Borland RM. Advertising, media and the tobacco epidemic. In: *China tobacco control report*. Beijing, Ministry of Health, People’s Republic of China, 2007. http://tobaccofreecenter.org/files/pdfs/reports_articles/2007%20China%20MOH%20Tobacco%20Control%20Report.pdf. (accessed 21 February 2008).

⁴⁴ *Supra* footnote 18.

freedom, it is subject to greater restrictions. This view is supported, for example, in the most recent version of General Comment No. 34 of the United Nation’s Human Rights Committee which, upon making a list of the types of expressions protected by the freedom of expression, makes a clarification and affirms that “commercial speech may be included.” In this way, it is specifically differentiated from other types of speech that are expressly included, such as religious and educational speech or cultural and artistic expressions.⁴⁵

This view is further expounded by the CESCR which, in analyzing the report from the Federal Republic of Brazil in 2009, noted “*with concern that it is still permissible to promote the use of tobacco through advertising in the State party (. . .)*.”⁴⁶

The authorization to advertise at points of sale is empowering the tobacco industry to reorient its advertising efforts towards this channel of communication. Advertising displayed in points of sale increases the likelihood that minors will begin smoking, while at the same time broadcasting pro-smoking messages to buyers of all ages, whether smokers or nonsmokers, results in smokers of all ages experiencing an increased desire to smoke when presented with images related to smoking and tobacco products.

Regarding Article 6, part b) of Law 26.687, the WHO has stated that, in order to be effective, an absolute ban must be directed at *all individuals or entities* involved in the production, placement and/or dissemination of tobacco advertising, promotion and sponsorship.⁴⁷ In this sense, the advertising of tobacco products should be banned in all publications, including those directed towards producers or individuals involved in production.

Finally, regarding the exception allowing for advertising directed at individuals older than 18 years of age, provided that they have consented to the advertising and their ages have been confirmed, it is important to note that, in these cases, the likelihood that the age of individuals receiving direct advertisements can be conclusively proven is very low, given that the law leaves open the possibility that direct advertisements be distributed over the Internet, cell phones, public walkways, etc. Moreover, this measure is extremely difficult to monitor. As restrictions on certain advertising, such as at points of sale, have increased worldwide, the tobacco industry has shifted its resources to more direct methods of advertising (i.e. relational marketing, or “one-to-one” marketing), which constitute a new strategy for the promotion of tobacco products.

⁴⁵ United Nations Human Rights Committee, General Observation No. 34, July 2011, p. 11. (unofficial translation).

⁴⁶ CESCR (2009), Examination of reports presented by State parties regarding conformity to Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil, E/C.12/BRA/CO/2, p. 30.

⁴⁷ Guidelines for the application of Article 13 (*Tobacco Advertising, Promotion and Sponsorship*) of the WHO Framework Convention on Tobacco Control, 2008.

For these reasons, the Argentine State must take the necessary measures to guarantee a full and comprehensive ban on all forms, direct and indirect, of tobacco advertising, as it is the only measure consistent with the obligation established in Article 12 of the ICESCR to protect the right to health.

- Sponsorship by the Tobacco Industry

Regarding the sponsorship of tobacco products, Article 8 states: “*It is prohibited that manufacturers and retailers of tobacco products carry out brand patronage or sponsorship in any type of activity or public event, and through any medium of communication.*”

The ban on “brand patronage or sponsorship” limits the prohibition to public events or activities put on by specific tobacco product brands, thus permitting tobacco industry sponsorship using the company name, or, in other words, allowing for social corporate responsibility (SCR).

It is becoming increasingly common for tobacco companies to seek to portray an image of good corporate citizenship by making contributions to worthy causes, or by taking other measures to promote “socially responsible” business practices. The sole purpose of the tobacco industry’s SCR programs is to hinder and undermine the implementation of effective tobacco control policies and to divert attention away from tobacco control policies.⁴⁸

For these reasons, the WHO recommends prohibiting tobacco companies from making contributions to any other entity or event for “socially responsible causes” because it constitutes a form of sponsorship. Propaganda expressing the “socially responsible” business practices of the tobacco industry should be prohibited because it is a form of advertising and promotion.⁴⁹

In this sense, the use of a tobacco company’s name in a social, sporting or any other event, is a way of achieving the patronage and sponsorship of these companies’ products in the market, and is usually directed at specific sectors of society, especially young people and women.

Therefore, the Argentine State must eliminate the concept of “brand sponsorship” contained in Article 8 and instead prohibit all forms of tobacco product promotion and sponsorship in order to ensure the adequate protection of the right to health, in accordance with Article 12 of the ICESCR.

⁴⁸ Tobacco Industry and corporate responsibility, an inherent contradiction. World Health Organization, 2004.

⁴⁹ Guidelines for the application of Article 13 (*Tobacco Advertising, Promotion and Sponsorship*) of the WHO Framework Convention on Tobacco Control, 2008.

2. The National State's Principal Outstanding Duties with Regards to Tobacco Control

2.a Regulation of cigarette taxes and pricing

The single most effective method of preventing tobacco consumption among children and young people is increasing tobacco taxes and prices. While increases in cigarette price significantly reduce the consumption of tobacco in the population as a whole, they generate a particularly significant impact on the decrease in consumption in young people and socio-economically poorer sectors.⁵⁰ Evidence shows that for every 10% increase in the real price of cigarettes, overall cigarette consumption by adults is reduced by approximately 4%, and there is an 8% reduction in the number of young people who smoke.

The national law does not contain any measure regulating taxes or prices, nor is there a legislative instrument responsible for regulating aspects of tobacco taxes and prices with the end goal of reducing tobacco consumption and protecting public health.

The tobacco industry has propagated the myth worldwide, and in Argentina as well, that an increase in cigarette prices, by lowering consumption, reduces revenues. This myth has been disproved by dozens of studies that show that, even reducing consumption, revenues increase.⁵¹ In Argentina, an evaluation of the elasticity of cigarette prices conducted in 2004 has shown that there exists a margin to increase cigarette prices by up to 100% without reducing revenue.⁵² On the other hand, the State spends practically twice as much on the direct costs of medical care associated with tobacco-related illnesses than it recovers from taxes on cigarettes. One research study has shown that, in 2003, Argentina spent more than \$4 billion pesos on direct medical costs for tobacco-related illnesses (lung cancer, heart attack, stroke, and chronic obstructive pulmonary disease), which represents 16% of the total expenditure on the National State's Public Health. In this same year, the State collected \$2.5 billion pesos as a result of taxes on tobacco.

⁵⁰ Consulted sources: WHO Report on the Global Tobacco Epidemic, 2008: The MPOWER package. Geneva: World Health Organization, 2008. ISBN: 978 92 4; WHO Technical Manual on Tobacco Tax Administration. World Health Organization 2010; [Chaloupka FJ, Straif K, Leon ME](#). Effectiveness of tax and price policies in tobacco control. [Tob Control](#). 2011 May;20(3):235-8. Epub 2010 Nov 29; Ross H, Chaloupka FJ. Economic policies for tobacco control in developing countries. *Salud Publica Mex*. 2006;48 Suppl 1:S113-20; Andrea S. Licht,^{1,2*} Andrew J. Hyland,¹ Richard J. O'Connor,¹ Frank J. Chaloupka,³ Ron Borland,⁴ Geoffrey T. Fong,⁵ Nigar Nargis,⁶ and K. Michael Cummings¹ How Do Price Minimizing Behaviors Impact Smoking Cessation? Findings from the International Tobacco Control (ITC) Four Country Survey. *Int J Environ Res Public Health*. 2011 May; 8(5): 1671-1691; Belen Saenz-de-Miera, James F Thrasher, Frank J Chaloupka, Hugh R Waters, Mauricio Hernandez-Avila, Geoffrey T Fong. [Self-reported price of cigarettes, consumption and compensatory behaviours in a cohort of Mexican smokers before and after a cigarette tax increase](#). *Tob Control*. 2010 December; 19(6): 481-487. Published online 2010 September 24. doi: 10.1136/tc.2009.032177.

⁵¹ MPOWER, Un plan de medidas para hacer retroceder la epidemia de tabaquismo. World Health Organization, 2008.

⁵² González-Rozada, Martín Economía del control del tabaco en los países del Mercosur y Estados Asociados: Argentina: 1996-2004. Washington, D.C.: OPS, © 2006. PanAmerican Health Organization" (The Economy of Tobacco Control in the countries of the Common Southern Market and Associated States).

Tobacco is not a “profitable business venture” for the State, which spends more on health than it recovers from taxes.⁵³

This measure will reduce consumption, especially in children and young people, and will increase revenue for the State, all while avoiding the expenditure of important resources currently being used to treat tobacco-related illnesses. Taking into account Article 2 of the ICESCR and the reference to the obligation to apportion “the maximum available resources” to progressively achieving the realization of economic, social and cultural rights, a measure that grants greater protection to one of these rights and additionally generates extra resources for the State, is considered a requirement from the perspective of the ICESCR. In contrast, in Argentina, the policies related to the economic aspects of tobacco are currently directed towards promoting the production of tobacco.^{54 55}

Given the lower price of cigarettes in our country, the tax burden is ineffective in reducing tobacco consumption.⁵⁶ Argentina has some of the most inexpensive cigarettes in Latin America, making them particularly accessible to young people. One study developed by FIC – Argentina evaluated the differences in cigarette prices, adjusted for inflation and for Gross Domestic Product (GDP).^{57 58} In Argentina, unlike in other countries in the region, cigarettes have become less expensive and more accessible since 2007 because prices have not been adjusted for inflation and wage growth.

⁵³ Jose Maria Bruni. “Direct costs of smoking-related health care and taxes on tobacco use in Argentina” (2003, 2004, 2005). Masters Program in Health Systems and Social Security. Masters dissertation. Director: Dr. Mario Glanc 97 Buenos Aires, 2007.

⁵⁴ The enactment of Law 19.800 in 1972 which created the STF (Special Tobacco Fund) is the greatest evidence of the protection provided by the Argentine State to the agroindustrial tobacco chain. The STF represents (7%) of the total taxes collected by the State from sales of cigarette packages, and is paid to tobacco producers in proportion to their level of production. In 2009, the STF represented 735 million pesos, or 60% more than in 2008, and its growth continued to increase in 2010. The SFT, which remains active at the present time, ultimately operates as a subsidy that solely benefits the tobacco industry and large producers, and is used as a highly effective tool for maintaining low tobacco prices, in blatant opposition to the measures recommended for the reduction of tobacco consumption and the protection of health.

⁵⁵ Gonzalez Rozada Martin. Economic Report on Tobacco in Argentina 2010. Data provided by the author. The report was completed to be presented at the National Senate during a public hearing to promote the ratification of the FCTC. May, 2010. Available at: http://www.ficargentina.org/images/stories/Documentos/Informe_FET_Gonzalez_Rozada.pdf.

⁵⁶ Impuestos Internos en el Tercer Milenio (Internal Taxes in the Third Millenium). Roberto Sixto Fernández Buenos Aires, April 2009 http://www.mecon.gov.ar/sip/dniaf/impuestos_internos_tercer_milenio.pdf.

⁵⁷ Report on the Implementation of the FCTC in Latin America and the Caribbean, InterAmerican Heart Foundation, 2010. http://www.ficargentina.org/images/stories/Documentos/reporte_cmct_espanol.pdf.

⁵⁸ Cynthia de Paz. Diagnóstico de situación de los impuestos al tabaco en Argentina y del ejecución del FET (Fondo Especial de Tabaco). Informe desarrollado para la Fundación Interamericana del Corazón Argentina, 2011. Datos provistos por el autor.

Table 1**Real Price Index for the Purchase of Cigarettes over the period 2007-2010**

(RPI normalized to 1.00 in 2007)

Real Price Index				
Country	2007	2008	2009	2010
Argentina	1.00	1.01	0.84	0.94
Bolivia	1.00	0.98	1.04	1.20
Brazil	1.00	1.02	0.96	1.16
Chile	1.00	1.21	0.87	1.14
Colombia	1.00	1.12	0.88	1.15
Ecuador	1.00	1.42	0.83	1.25
Mexico	1.00	1.17	1.10	1.14
Panama	1.00	1.23		2.16
Uruguay	1.00	1.09	1.00	1.22
Venezuela	1.00	2.17	1.75	2.18

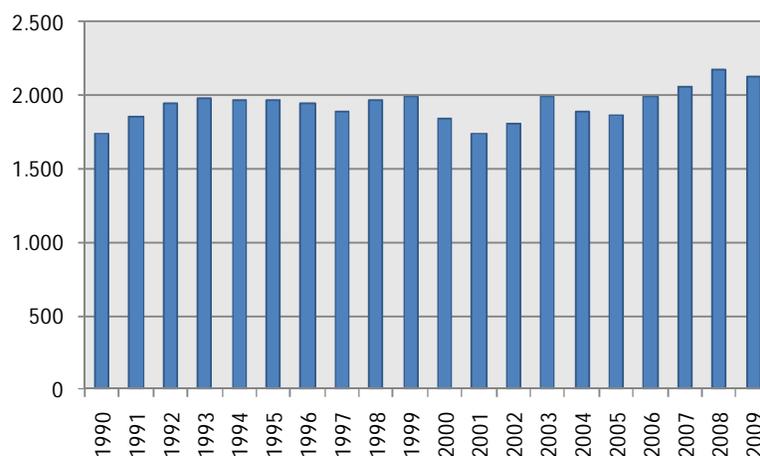
Source: Martín González Rozada

Table 2**Affordability Index for the purchase of cigarettes of the period 2007-2010**

Affordability Index				
Country	2007	2008	2009	2010
Argentina	2.03	1.84	1.50	1.75
Bolivia	5.25	5.25	5.40	6.30
Brazil	1.76	1.69	1.51	1.83
Chile	2.11	2.51	1.88	2.41
Colombia	1.69	1.80	1.40	1.78
Ecuador	4.87	6.64	3.59	5.59
Mexico	2.32	2.64	2.46	2.73
Panama	2.87	3.31		5.23
Uruguay	2.64	2.66	2.30	2.73
Venezuela	2.19	4.81	3.78	5.72

Source: Martín González Rozada¹

As a result of the gradual lowering of cigarette prices, even with the recent regulatory advances that have taken place in Argentina in the last few years, the consumption of cigarette packs has not significantly decreased, as illustrated in Graph 1.

Graph 1. Cigarette Consumption (in millions of packs)

Source: Secretary of Agriculture. Report prepared by Martín González Rozada in May 2010.

Through a price-lowering strategy, the tobacco industry has succeeded in sustaining sales and maintaining stable tobacco consumption, thereby neutralizing the potential impacts of tobacco consumption reduction resulting from the implementation of legislative measures.

Increasing taxes on, and prices of, tobacco has been particularly highlighted as a central measure for turning the tide of the tobacco epidemic in the WHO's Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases, which was unanimously signed by the States at the recent United Nations Summit on September 19-20, 2011.⁵⁹

The Argentine State must design a tax policy that promotes an increase in cigarette prices in order to efficiently achieve a reduction in tobacco consumption and, in so doing, guarantee the protection of the right to health, particularly for youth and the poor.

2.b Ratification of the FCTC: a Pending Duty of the Argentine State

The WHO's 56th World Health Assembly on May 21, 2003, unanimously approved the FCTC, which establishes a legal international framework for tobacco control and which constitutes an effective, inexpensive solution for reducing the illnesses, deaths, and environmental and economic harms caused by tobacco consumption.

This international instrument is the legal framework that places upon States obligations which facilitate the implementation of laws that are necessary to protect the global population from the toxic effects of tobacco consumption and exposure to secondhand smoke. As of September 29, 2011, 171 countries had ratified the FCTC, and Argentina is the only country in South American that is still not a member of the first public global health treaty.

The FCTC was developed as a **global response** to the concerns of the global spread of the tobacco epidemic. Its principle objective, as declared in Article 3, is *“to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.”*

Monitoring bodies have recognized the importance of the FCTC for the protection of the right to health, as established in human rights treaties. In 2009, in discussing the report from Brazil, the CESCR itself noted with satisfaction the ratification of the FCTC and subsequently recommended the implementation

⁵⁹ A/66/L.1 <http://www.un.org/es/comun/docs/?symbol=A/66/L.1>.

of tobacco control measures consistent with the FCTC. Similarly, in 2010, the CEDAW Committee, seeking to ensure the adequate protection of health for women, urged the Argentine State to ratify and implement the FCTC and to put in place legislation aimed at banning smoking in public places and restricting tobacco advertising.⁶⁰

The main instrument in the growth of tobacco consumption worldwide has been the international marketing strategy. Scientific evidence demonstrates that, worldwide, the tobacco industry has undermined country's efforts to implement effective tobacco control policies that endanger industry profitability. The **economic power of transnational tobacco corporations**, whose income is **US\$ 378 billion per year** (an amount greater than the GDP of countries such as Norway or Saudi Arabia) has generated an unequal battle with the governments of countries where the industry lobby has often prevailed over tobacco control initiatives.

For this reason, the adoption of National Tobacco Control Law No. 26.687 does not replace Argentina's need to join this international treaty in order to be able to effectively comply with Article 12 of the ICESCR as regards the tobacco epidemic.

In order to guarantee the protection of the right to health, the Argentine State must ratify the FCTC and implement the comprehensive measures proposed by this treaty, thereby impeding the tobacco industry's interference in the development of public policies.

3. Coordination of Legal Framework and Policies at the National and Sub-national Level

Argentina has been slow to progress in the legal framework for tobacco control on a national level, as exemplified by the failure to ratify the FCTC and the delay in adopting a national tobacco control law, which did not take shape until mid-2011. For this reason, many sub-national governments established regulations aimed at reducing the negative impacts of the tobacco epidemic in their respective jurisdictions.

In this context, provinces like Santa Fe, Neuquén, Tucumán, San Luis, Córdoba and Mendoza, among others, enacted regulations establishing smoke-free environments with various levels of protection for health, but which, in any case, were a regulatory advance compared to the absence of any regulation at the national level. For example, the Neuquén province, after establishing smoke-free environments in “any type of enclosed public or private institution of public use” advanced even further by establishing a clear rule of interpretation: “In the case of conflict, the nonsmokers' right to health will prevail in all enclosed

⁶⁰ CEDAW Committee (2010), Concluding Observations of the CEDAW Committee: Argentina. Available at: <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ARG-CO-6.pdf>, p. 39 y 40.

spaces with public access (. . .).” Likewise, the Santa Fe, Neuquén and San Luis provinces enacted a law with more general content, including, for example, an absolute ban on the advertising, promotion and sponsorship of tobacco products in their jurisdictions.

The absence of a national framework also prompted local jurisdictions to develop active tobacco control policies. Of particular note are the municipal ordinances of the cities of Bahía Blanca and Salta, which strictly established smoke-free environments, in accordance with the recommendations of the WHO and other specialized organizations. These two ordinances are but two examples of the more than thirty ordinances enacted in different cities in the Argentine Republic.

In this regulatory context, Tobacco Control Law No. 26.687, whose strengths and weaknesses have been the focus of the analysis carried out in earlier sections, was enacted in June 2011. In regards to the application of the law, Article 39 establishes: “*The provinces and the Autonomous City of Buenos Aires are invited to enact, in their exclusive jurisdictions, regulatory measures of a similar nature to those laid forth for the national sphere.*” As a result of the term “are invited,” this excerpt has been used to argue that the Argentine provinces are empowered with deciding whether or not to apply the national law. This biased interpretation has resulted in the failure of various provinces to apply the law, thereby maintaining a legislative void as regards tobacco control. Similarly, in those provinces governed by a law with more protective standards than those established by the national law, there has been concern as to whether the national law must be applied, which would in effect invalidate the provincial law guaranteeing a greater degree of protection for the right to health.

Nevertheless, in keeping in line with the CESCR’s own precedents, we consider it important that it be emphasized that, in the case of overlapping between regulatory regimes, preeminence must be granted to that law which grants a higher degree of protection to the human right at stake. Thus, in regards to tobacco control, those provincial and municipal regulations that more restrictively establish smoke-free environments or that place an absolute ban on tobacco advertising, promotion and sponsorship will remain in effect, given that they provide more adequate protection of the right to health. On the other hand, in those provincial territories where no tobacco control laws exist, or the existing law establishes less protective parameters than those contained in the national law, the national law shall apply.

The federal character of a government cannot be an obstacle to the effective observance of human rights at all levels of government. The CESCR, on several occasions, has commented on the importance of ensuring the effective observation of economic, social and cultural rights at all levels of government in federal countries. In its analysis of the State of Canada’s situation, the CESCR affirmed that:

The Committee reiterates its recommendation that the Federal Government take concrete steps to ensure that provinces and territories are made aware of the State party’s legal obligations under

the Covenant, that the Covenant rights should be enforceable within provinces and territories through legislation or policy measures, and that independent and appropriate monitoring and adjudication mechanisms be established in this regard (. . .).

The Committee recommends that federal, provincial and territorial legislation be brought in line with the State party's obligations under the Covenant (. . .).

The State party should take immediate steps, including legislative measures, to create and ensure effective domestic remedies for all Covenant rights in all relevant jurisdictions.⁶¹

A similar approach is adopted by the CESCR in analyzing the case of the Republic of India in 2008, in which the Committee states what might be understood as a general principle, applicable to federal States, for the protection of economic, social and cultural rights:

The Committee recommends the State party to ensure that the complexities arising from the federal structure of government and the delineation of responsibilities between federal and state levels do not result in the lack of effective implementation of the Covenant in the State party.⁶²

This same position was also adopted by the Human Rights Committee which, in analyzing the specific case of Argentina, affirmed that it “*observes that the federal system of government in the State party entails provincial involvement in the implementation of many of the rights provided for in the Covenant (. . .).*”⁶³

From a Human Rights perspective, and keeping in line with the CESCR, the issues related to the federal system of government should in no way prevent any level of government from providing the maximum level of protection to the rights in question. Therefore, in a situation, such as the current one, in which there exist competing tobacco control regulations, the prevailing hierarchical order should be the one that best protects the right to health.

Taking into account the precedents set by the CESCR and the Human Rights Committee, where there are overlapping tobacco control regulations in a federal state, the regulation that most adequately protects the right to health must prevail.

⁶¹ CESCR (2006), Examination of reports presented by State parties regarding conformity to Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, E/C.12/CAN/CO/4, p. 35, 39 y 40.

⁶² CESCR (2008), Examination of reports presented by State parties regarding conformity to Articles 16 and 17 of the Covenant, Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, E/C.12/IND/CO/5, p. 48.

⁶³ Concluding Observations of the Human Rights Committee, Argentina, U.N. Doc. CCPR/CO/70/ARG (2000), p. 3.

C. CONCLUSIONS AND RECOMENDATIONS

The Argentine State has made some progress in its effort to control the tobacco epidemic, whose terrible impact has been described in this report. These advances include the establishment of smoke-free environments and the incorporation of health warnings accompanied by images on cigarette labels. On the other hand, the State has yet to adequately implement other tobacco control measures, particularly those related to advertising, promotion and sponsorship of tobacco products, the establishment of fiscal policies to discourage tobacco consumption, and moving towards the ratification of the FCTC.

Keeping in mind the previously discussed advances and pending tasks, the O'Neill Institute, FIC – Argentina and FUNDEPS respectfully suggest that this Committee adopt the following recommendations for the purpose of ensuring the effective implementation of Article 12 of the ICESCR as regards tobacco control in Argentina:

1) The Argentine State shall take the necessary measures to guarantee a full and comprehensive ban on all forms of advertising, direct or indirect, as it is the only measure consistent with the obligation to protect the right to health established in Article 12 of the ICESCR and avoid differential impacts in certain segments of the population, like among children, young people, and women.

The Argentine State shall eliminate the concept of “brand sponsorship” from Article 8 of the tobacco control law, prohibiting all forms of tobacco promotion and sponsorship.

2) The Argentine State shall apply a tax policy that generates an increase in cigarette prices, with the aim of reducing tobacco consumption, especially among the poorest sectors of the population, and preventing young people from beginning to smoke.

3) The Argentine State shall ratify the FCTC and take legislative measures to guarantee the treaty's incorporation into national law.

4) The Argentine State must keep in mind that, in accordance with precedents set by the CESCR and the Human Rights Committee, in the face of overlapping regulations due to the federal system of government, the regulation which most adequately protect the right to health must prevail.