

BRAZIL: THE CHALLENGE OF A 100% SMOKE FREE LEGISLATION

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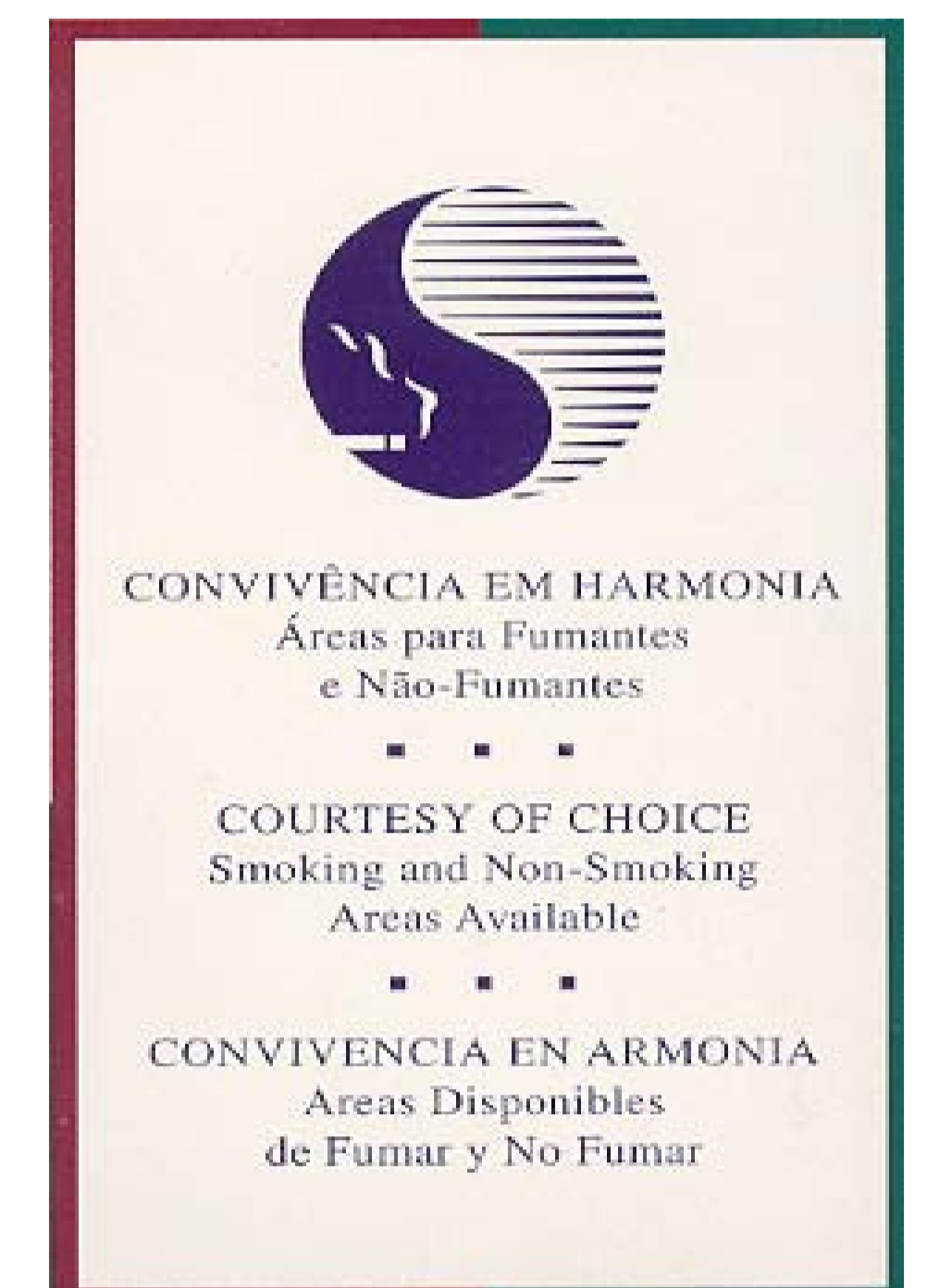
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Since 1996, the Brazilian Federal Law 9.294 prohibits the use of tobacco products in closed places, except in designated smoking areas. In the same year, the decree 2.018 was published, defining areas where smoking could be allowed. The terminology used to define those areas was not clear enough to allow enforcement, resulting in its non-compliance for more than ten years.



other to bring them to the public health side. Additionally, the tobacco industry has, for years, supported “Convivencia em Harmonia” (known in English as Courtesy of Choice), a programme promoting the accommodation of smokers and non-smokers in shared spaces.



It is important to highlight the importance of the nongovernmental organizations work to help to win this battle. In March 2008, a national survey commissioned by the Brazilian Alliance for Tobacco Control (ACT) and conducted by Datafolha (a nationally respected for-profit polling agency) demonstrated that 88% of Brazilian citizens supported the total ban in closed places. A pilot study of the economic impact, funded by the Bloomberg Global Initiative to Reduce Tobacco Use and conducted by ACT and INCA, is under way in João Pessoa municipality to collect evidence to neutralize arguments against smoke-free indoor environments.

While the Federal Bill of Law is not sent to the National Congress in order to enact a comprehensive smoke-free law, this movement is producing sprouts. Two Federal Senators, Tião Vianna and Romero Jucá have presented Bills of Law related to the subject. The Tiao Vianna's Bill is actually getting support from the Minister of Health, since their language would put an end to the existing smoking rooms.

Brazilian population is already claiming for this alteration. Legislation plays an important role in tobacco control. However, it is clear that the capability to produce changes cannot be credited to a Law alone. Above all, it is necessary to have general cooperation and political commitment, observing the means that each country disposes to enact the laws.



The effectiveness of the tobacco control legislation is hard to measure. Even though, there aren't scientific evidences to prove that the decrease in tobacco consumption in Brazil is related to tobacco control laws, the evidence suggests a causal relationship between them. The comprehensive approach to tobacco control in Brazil decreased the prevalence of tobacco use in the adult population significantly between 1989 and 2006, from 34% to 16%, and the reduction in consumption is reflected in decreased rates of death from tobacco-related diseases.

At this moment, the set of current tobacco control laws in Brazil may not be the ideal, but have meant great steps forward to reach a reduction in the smoking prevalence and tobacco related morbidity and mortality, with consequently changes in the concept that smoking is a natural and acceptable behavior to a correlation to disease and dependence.



The only way to protect people fully from tobacco smoke is to create 100% smoke-free indoor environments, with no exceptions. This would also ensure compliance with the WHO Framework Convention on Tobacco Control (FCTC) article 8 guidelines. As Brazil is one Party of FCTC, the country needs to ensure the accomplishment of this principle.

The above Federal legislation does not result in 100% smoke-free indoor environments as it exempts smoking in “separated, isolated, and properly ventilated areas” that are used exclusively for smoking. This language has generated conflicting interpretations, leading to limited and sporadic enforcement of the legislation.

In order to change this situation, the Government, through the Ministry of Health has drafted a Bill of Law last year to make all indoor workplaces and public places 100% smoke-free, and the draft is being discussed internally before being sent to Congress.

Several jurisdictions have led the way in establishing 100% smoke-free indoor environments by strictly enforcing the existing legislation, sometimes accompanied by support from the hospitality sector. The Federal District was the responsible for the first initiative of this kind in Brazil, establishing smoke-free indoor workplaces and in public areas, including restaurants and bars. This experience was followed by João Pessoa, Recife, Rio de Janeiro and Sao Paulo cities.

As expected the tobacco industry has tried to undermine the implementation of smoke-free legislation by covertly supporting bar and restaurant owners' associations and unions in challenging the legislation and regulations. Such legal challenges have delayed enforcement and can result in weaker interpretations of smoke-free legislation. As an example, in May 2008, Rio de Janeiro city announced a municipal decree for 100% smoke-free indoor environments. Two legal challenges were filed by the hospitality sector, which claimed that the municipal decree was unconstitutional. In one of the legal challenges, the court denied an injunction, and in the other the judge granted the injunction in favour of SindiRio, one of the business associations in the hospitality sector. However, the injunction covers only the bars and restaurants affiliated to that association. In this case, the inspectors must apply only the Federal law. This demonstrates the importance to sensitize judges and public prosecutors in