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## *News and Views*



# Expansion of Smoke-Free Policies: Stepping Up FCTC's Game

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## Abstract

The Framework Convention for Tobacco Control (FCTC) is undoubtedly the most efficient international instrument for tobacco control. Article 8 FCTC shapes many smoke-free policies worldwide and in doing so it is usually associated with smoke-free regulation in enclosed public spaces. Our paper highlights that the FCTC contains a sound foundation for smoke-free policies that stretch beyond enclosed public places, such as open public spaces and (quasi-)private spaces. We demonstrate, in particular, that such wide smoke-free regulation, which is gaining momentum around the globe, is versatile and compatible with human rights standards. As such, these expanded smoke-free policies contribute to a wider culture of smoking denormalisation that scales up FCTC's aspiration for tobacco control and subsequently to a smoke-free global society.

## Keywords

smoke-free zones – FCTC – outdoor spaces – human rights

## 1 Introduction

In 2022, the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), the first international treaty negotiated under the auspices of WHO, will be celebrating its 17th anniversary. The FCTC's entry into force in 2005 and its implementation represent a milestone for the promotion of public health in general and for tobacco control in particular. The Article 8 FCTC measures on the protection from exposure to tobacco smoke, in particular, constitute one of the primary non-price measures to reduce tobacco consumption that have shaped many smoke-free policies around the globe. After all, the FCTC has been ratified by 182 States.<sup>1</sup>

Regrettably, not all parties have adopted comprehensive smoke-free policies. Only 34% of the world's countries have adopted smoke-free laws, and only 24% of the world's population are protected by comprehensive smoke-free

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1 The FCTC counts 182 state parties: United Nations Treaty Collection, 'WHO Framework Convention on Tobacco Control', *United Nations Treaty Collection* (2021), available online at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IX-4&chapter=9&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=_en) (accessed 21 January 2022).

legislation.<sup>2,3</sup> Even so, the nature of the smoke-free policies actively undergoes an interesting transformation. An increasing number of jurisdictions has started expanding their smoke-free policies.<sup>4</sup> These smoke-free policies reach beyond enclosed public spaces and workplaces, targeting open public spaces and (quasi-)private spaces such as playgrounds, beaches, (shared) gardens, private cars, and even private homes. Such policies raise compelling questions: To what extent is the FCTC supporting such policies? And, from a human rights perspective, do these policies create tensions with human rights standards or are they in conformity with these standards?

While Article 8 FCTC is commonly associated with smoke-free policies in enclosed public spaces and workplaces, this article will demonstrate how the FCTC framework can be used to accommodate, and even encourage, wider policies. While a large scholarly body of work focuses on these smoke-free policies, prior research has mainly focused on certain types of smoke-free spaces,<sup>5</sup> or on their impact,<sup>6</sup> public support,<sup>7</sup> and local particularities.<sup>8</sup> To date, no review has demonstrated how versatile the existing global practice with respect to expanded smoke-free zones is and how this practice upholds the FCTC aims in a human-rights compliant fashion. This article will bridge that gap by scrutinising how these smoke-free policies fit within the existing FCTC framework (2), by demonstrating that expanded policies reflect a growing global trend (3), and by arguing that such policies support, rather than compromise, human rights (4).

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- 2 *E.g.*, Smoke free England, 'The Date England's Health Started to Improve', *Smoke free England* (1 July 2007), available online at <http://www.smokefreeengland.co.uk/> (accessed 21 January 2022).
  - 3 WHO, 'Report on the Global Tobacco Epidemic, 2021: Addressing new and emerging products', WHO (2021), available online at <https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021> (accessed 21 January 2022).
  - 4 A. Tsampi, 'Dataset: Novel smoke free zones', *DataverseNL* (15 April 2021), available online at <https://doi.org/10.34894/FK8YKR>.
  - 5 K. Snyder, J.H. Vick and B.A. King, 'Smoke-free multiunit housing: a review of the scientific literature', *Tobacco Control* 25 (2016) 9–20, DOI: 10.1136/tobaccocontrol-2014-051849.
  - 6 M.K. Radó, F.J. Mölenberg, A. Sheikh, C. Millett, W.M. Bramer, A. Burdorf, F.J. van Lenthe and J.V. Been, 'Impact of expanding smoke-free policies beyond enclosed public places and workplaces on children's tobacco smoke exposure and respiratory health: protocol for a systematic review and meta-analysis', *BMJ Open* 10 (2020) e038234, DOI: 10.1136/bmjopen-2020-038234.
  - 7 N.W. Boderie, F.J. Mölenberg, A. Sheikh, W.M. Bramer, A. Burdorf, F.J. van Lenthe and J.V. Been, 'Assessing public support for extending smoke-free policies beyond enclosed public places and workplaces: protocol for a systematic review and meta-analysis', *BMJ Open* 11 (2021) e040167, DOI: 10.1136/bmjopen-2020-040167.
  - 8 H. Ko, 'The effect of outdoor smoking ban: evidence from Korea', *Health Economics* 29(3) (2020) 278–293, DOI: 10.1002/hec.3979.

## 2 Expanded Smoke-Free Zones in FCTC: An Open-Ended Message for Tobacco Control

Article 8 FCTC provides that '[e]ach Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke *in indoor workplaces, public transport, indoor public places and, as appropriate, other public places*'.<sup>9</sup> This provision regulates a specific set of smoke-free spaces, namely indoor workplaces, public transport, and indoor public places, but what about the remainder of the spaces that can potentially become smoke-free, such as (quasi-) outdoor spaces and (quasi-)private spaces?

Article 8 FCTC supports smoke-free policies in 'other public spaces', but this open-ended phrasing requires further scrutiny. This is particularly necessary considering the wide scope of the notion of 'public space' in the FCTC framework. While the official Guidelines for implementation of Article 8 (Guidelines) acknowledge that the precise definition of 'public spaces' can vary between jurisdictions, the Guidelines, nonetheless, note the importance of defining this term as broadly as possible.<sup>10</sup> The Guidelines suggest that '[t]he definition used should cover all places accessible to the general public or places for collective use, regardless of ownership or right to access'.<sup>11</sup> This broad definition, encompassing 'public spaces' that are private in ownership but collectively used, opens regulatory options for smoke-free policies in spaces such as the common spaces of a condominium or the shared garden of multi-unit housing.

Outdoor and quasi-outdoor public spaces are explicitly considered in the FCTC system. The Guidelines specify that Article 8 'creates an obligation to provide universal protection by ensuring that all indoor public places, all indoor workplaces, all public transport and possibly other (outdoor or quasi-outdoor) public places are free from exposure to second-hand tobacco smoke'.<sup>12</sup>

Private spaces of non-collective use, such as private homes or cars, raise more complexities as the FCTC seems to recommend particular measures. In private spaces, where the implementation of a smoking ban 'may not be

<sup>9</sup> Emphasis added by the authors.

<sup>10</sup> FCTC, 'Guidelines for implementation of Article 8 FCTC. Adopted by the Conference of the Parties at its second session', decision FCTC/COP2(7), para. 18.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.* para. 24.

feasible or appropriate', the Guidelines on Article 8 FCTC recommend less intrusive measures such as public education campaigns.<sup>13</sup> The consideration of private homes gets more complex where spaces serve a dual function, e.g., as private homes for some users and as working spaces for others. The Guidelines suggest that '[c]areful consideration should be given to workplaces that are also individuals' homes or dwelling places, for example, prisons, mental health institutions or nursing homes. These places also constitute workplaces for others, who should be protected from exposure to tobacco smoke'.<sup>14</sup>

The Guidelines also specify that '[t]he language of the treaty requires protective measures not only in all "indoor" public places, but also in those "other" (that is, outdoor or quasi-outdoor) public places where "appropriate"'.<sup>15</sup> For the identification of those outdoor and quasi-outdoor public places where legislation is appropriate, '[p]arties should consider the evidence as to the possible health hazards in various settings and should act to adopt the most effective protection against exposure wherever the evidence shows that a hazard exists'.<sup>16</sup> It is thus to be noted that the Guidelines acknowledge the non-static character of the spaces that need to become smoke-free, endorsing the progressive expansion of smoke-free zones on the basis of the evolving scientific evidence.<sup>17</sup> The idea of expansion is reflected in Principle 7 of the Guidelines: 'The protection of people from exposure to tobacco smoke should be strengthened and expanded, if necessary; such action may include new or amended legislation, improved enforcement and other measures to reflect new scientific evidence and case-study experiences'.<sup>18</sup>

It is in this regard important to consider existing empirical evidence assessing the effectiveness of smoke-free policies extending beyond public places. Regulations prohibiting smoking in private cars with minors present, for example, have been well studied over recent years. Such regulations are justified by the very high levels of tobacco smoke in a small confined space, the clear link between tobacco smoke exposure and adverse paediatric health outcomes, and the inability of children to regulate their own level of exposure.

13 *Ibid.* para. 29.

14 *Ibid.* para. 21.

15 *Ibid.* para. 27.

16 *Ibid.*

17 A. Tsampi, 'Novel smoke-free zones and the right to respect for private life under Article 8 of the European Convention on Human Rights (on the occasion of the Dutch Decree of 22 June 2020, amending the Tobacco and Smokers' Order introducing the obligation to impose, designate and enforce a smoking ban in the areas belonging to buildings and facilities used for education)' *Europe of Rights & Liberties/Europe des Droits & Libertés* 2 (2020) 381–398.

18 FCTC, *supra* note 10.

A meta-analysis combining effect estimates from ten countries/provinces demonstrated that such regulations were linked to a 31% reduction (95% CI 13–45) in children's exposure to tobacco smoke in cars.<sup>19</sup> This was recently confirmed in an analysis across three UK countries,<sup>20</sup> and the regulation in Scotland was followed by a significant reduction in paediatric asthma hospitalisations.<sup>21</sup> There is additional evidence concerning other spaces, indicating for example that: regulating smoking in school grounds reduces children's tobacco smoke exposure;<sup>22</sup> outdoor smoke-free spaces – even when voluntary – can substantially reduce smoking in the area;<sup>23,24</sup> national smoke-free prison regulations increase quit attempts and respiratory medication dispensing among inmates;<sup>25</sup> and comprehensive smoke-free laws covering both indoor and outdoor spaces are associated with substantial reductions in severe respiratory infections among children.<sup>26</sup> Recent international surveys indicate substantial support for extending smoke-free places beyond enclosed

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- 19 M.K. Radó, F.J.M. Mölenberg, L.E.H. Westenberg, A. Sheikh, C. Millett, A. Burdorf, F.J. van Lenthe and J.V. Been, 'Effect of smoke-free policies in outdoor areas and private places on children's tobacco smoke exposure and respiratory health: a systematic review and meta-analysis', *Lancet Public Health* 6(8) (2021) e566–e578, DOI: 10.1016/S2468-2667(21)00097-9.
- 20 A.A. Laverty, F.T. Filippidis, J.V. Been, F. Campbell, H. Cheeseman and N.S. Hopkinson, 'Smoke-free vehicles – impact of legislation on child smoke exposure across three countries', *European Respiratory Journal* 58(6) (2021) 2004600, DOI: 10.1183/13993003.04600-2020.
- 21 D.F. Mackay, S.W. Turner, S.E. Semple, S. Dick and J.P. Pell, 'Associations between smoke-free vehicle legislation and childhood admissions to hospital for asthma in Scotland: an interrupted time-series analysis of whole-population data' *Lancet Public Health* 6(8) (2021) e579–e586, DOI: 10.1016/S2468-2667(21)00129-8.
- 22 S. Azagba, R.D. Kennedy and N.B. Baskerville, 'Smoke-free school policy and exposure to secondhand smoke: a quasi-experimental analysis' *Nicotine & Tobacco Research* 18(2) (2016) 170–176, DOI: 10.1093/ntr/ntv077.
- 23 L.J. Breunis, M. Bebek, N. Dereci, M.L.A. de Kroon, M.K. Radó and J.V. Been, 'Impact of an inner-city smoke-free zone on outdoor smoking patterns: a before-after study' *Nicotine & Tobacco Research* 23(12) (2021) 2075–2083, DOI: 10.1093/ntr/ntab109.
- 24 H.N. Platter and S.B. Pokorny, 'Smoke-free signage in public parks: impacts on smoking behaviour', *Tobacco Control* 27(4) (2018) 470–473, DOI: 10.1136/tobaccocontrol-2016-053624.
- 25 E.J. Tweed, D.F. Mackay, K.A. Boyd, A. Brown, T. Byrne, P. Conaglen, P. Craig, E. Demou, L. Graham, A.H. Leyland, N. McMeekin, J.P. Pell, H. Sweeting and K. Hunt, 'Evaluation of a national smoke-free prisons policy using medication dispensing: an interrupted time-series analysis', *Lancet Public Health* 6(11) (2021) e795–e804, DOI: 10.1016/S2468-2667(21)00163-8.
- 26 S.L. Lee, W.H. Wong and Y.L. Lau, 'Smoke-free legislation reduces hospital admissions for childhood lower respiratory tract infection' *Tobacco Control* 25(e2) (2016) e90–e94, DOI: 10.1136/tobaccocontrol-2015-052541.

public places across various European countries.<sup>27</sup> In addition to the emerging evidence supporting the effectiveness of such regulations, high levels of public support provide impetus for policy makers to consider implementation.

### 3 Expanded Smoke-Free Zones in Global Practice: A Versatile Message for Tobacco Control

We have illustrated that the implementation of expanded smoke-free policies is encompassed by the FCTC framework. What is more, these policies are not only supported by the FCTC framework, but also reflected by a growing global trend. Phasing out tobacco consumption and exposure to tobacco smoke requires novel strategies: 'something new, bold, and fundamentally different from the tried-and-true'.<sup>28</sup>

The mapping of expanded smoke-free policies worldwide cannot be easily exhausted, as they are at times adopted at a subnational level.<sup>29</sup> It is however possible to discern that this trend is versatile when it comes to (a) spaces; (b) the nature of the regulation; and (c) its implementation.

- (a) Versatility of spaces: Expanded smoke-free zones cover a number of different spaces such as (quasi-)outdoors public spaces (e.g., streets<sup>30</sup> or public transport waiting points);<sup>31</sup> enclosed private spaces (e.g., private cars);<sup>32</sup> open private spaces (e.g., balconies);<sup>33</sup> quasi-private enclosed

27 S.O. Nogueira, M. Fu, A. Lugo, O. Tigova, E. Henderson, M.J. López, L. Clancy, S. Semple, J.B. Soriano, E. Fernandez, S. Gallus and TackSHS Project Investigators, 'Non-smokers' and smokers' support for smoke-free legislation in 14 indoor and outdoor settings across 12 European countries', *Environmental Research* 204(Pt C) (2021) 112224, DOI: 10.1016/j.envres.2021.112224.

28 K.E. Warner, 'An endgame for tobacco?' *Tobacco Control* 22 (2013) 13, DOI: 10.1136/tobaccocontrol-2013-050989.

29 Tsampi, *supra* note 4.

30 H. Ueda, F. Armada, M. Kashiwabara and I. Yoshimi, 'Street smoking bans in Japan: a hope for smoke-free cities?' *Health Policy* 102(1) (2011) 49–55, DOI: 10.1016/j.healthpol.2011.05.013.

31 E.g., European Commission, *Poland: European Commission, Overview of smoke-free legislation and its implementation in the EU*, available online at [https://ec.europa.eu/health/sites/default/files/tobacco/docs/smoke-free\\_legislation\\_overview\\_en.pdf](https://ec.europa.eu/health/sites/default/files/tobacco/docs/smoke-free_legislation_overview_en.pdf) (accessed 21 January 2022).

32 E.g., Western Australia, *Tobacco Products Control Amendment Bill 2008*, available online at [https://www.parliament.wa.gov.au/Parliament/Bills.nsf/B44BC7AF820AB3A7C825750D00021CB8/\\$File/Bill%2B017-3.pdf](https://www.parliament.wa.gov.au/Parliament/Bills.nsf/B44BC7AF820AB3A7C825750D00021CB8/$File/Bill%2B017-3.pdf) (accessed 21 January 2022).

33 E.g., European Commission, *Latvia: European Commission, Overview of smoke-free legislation and its implementation in the EU*, available online at <https://ec.europa.eu/health/>



spaces (e.g., multiunit housing);<sup>34</sup> and open quasi-private spaces (e.g., shared gardens).<sup>35</sup> Depending on the nature of the regulated space, some smoke-free policies are more widespread than others. It comes as no surprise that private homes are the less regulated spaces.<sup>36</sup> Very few examples related to regulation of smoke-free homes at a national level can be found worldwide. In light of Article 9(1)(a) of the Nigerian National Tobacco Control Act 2015, no person shall smoke tobacco or tobacco products ‘in a residential house co-occupied by a person who is below 18 years of age, except in a room exclusively occupied by the smoker’.<sup>37</sup> Along with Nigeria, Thailand is another rare example of a State planning to ban smoking at home.<sup>38</sup> Certainly this scarcity does not necessarily imply that closed private spaces do not attract the interest of expanded smoke-free policies. A significant number of these smoke-free policies pertain to private cars, mostly with children as passengers.<sup>39</sup> The age of the passengers at which the protective measures apply varies from 6 to 19 years old.<sup>40</sup> Such practice is not surprising as spaces frequented by children – young people included –<sup>41</sup> are by far the most regular outdoor

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sites/default/files/tobacco/docs/smoke-free\_legislation\_overview\_en.pdf (accessed 21 January 2022).

- 34 American Non-smokers' Rights Foundation, 'U.S. public housing authority policies restricting or prohibiting smoking', *American Non-smokers' Rights Foundation* (1 October 2021), available online at <https://no-smoke.org/wp-content/uploads/pdf/public-housing-authorities.pdf> (accessed 21 January 2022).
- 35 E.g., Northern Macedonia, *Law on protection from smoking (Official Gazette of Republic of Macedonia no.: 36/95, 70/2003). Consolidated version*, available online at <https://www.tobaccocontrollaws.org/files/live/Macedonia/Macedonia%20-%20Law%20on%20Protection%20from%20Smoking.pdf> (accessed 21 January 2022).
- 36 American Non-smokers' Rights Foundation, 'U.S. Laws for 100% smokefree multi-unit housing', *American Non-smokers' Rights Foundation* (1 October 2021), available online at <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf> (accessed 21 January 2022).
- 37 Nigeria, *National Tobacco Control Act 2015*.
- 38 Bangkok Post, 2019, 'Smoking at home to be banned', *Bangkok Post* (21 June 2019), available online at <https://www.bangkokpost.com/thailand/general/1699504/smoking-at-home-to-be-banned> (accessed 21 January 2022).
- 39 Tsampi, *supra* note 4.
- 40 Global Advisors Smokefree Policy, 'Smoke-free vehicles when children are present', *Global Advisors Smokefree Policy* (2015), available online at <http://www.njgasp.org/wp-content/uploads/2014/05/sf-cars-white-paper-8-14-15-455pm-FINAL-ON-WEBSITE.pdf> (accessed 21 January 2022).
- 41 American Non-smokers Rights Foundation, 'Smokefree and tobacco-free U.S. and tribal colleges and universities', *American Non-smokers' Rights Foundation* (1 October 2021),

and indoor smoke-free spaces. From Australia<sup>42</sup> to Asia,<sup>43</sup> from Africa<sup>44</sup> to Europe<sup>45</sup> and to America,<sup>46</sup> the number of smoke-free playgrounds, public gardens, parks, schoolyards, sport parks, stadiums and arenas is significantly growing. The exact width of the regulated spaces can vary to ban smoking for example even 50 metres of any place that provides services to children.<sup>47</sup> The protection of vulnerable persons such as children, but also pregnant women,<sup>48</sup> patients,<sup>49</sup> or the elderly<sup>50</sup> seems to be connected to the adoption of expanded smoke-free policies. It is not, however, the only relevant factor. The wider public should be protected in both rural places – such as forests<sup>51</sup> and beaches –<sup>52</sup> and urban areas – such as streets, pedestrian areas and squares.<sup>53</sup>

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available online at <http://no-smoke.org/wp-content/uploads/pdf/smokefreecollegesuniversities.pdf> (accessed 21 January 2022).

- 42 *E.g.*, Queensland Government, *Tobacco laws in Queensland* (6 September 2021), available online at <https://www.qld.gov.au/health/staying-healthy/atods/smoking/laws> (accessed 21 January 2022).
- 43 *E.g.*, Hong Kong, *Cap. 371 Smoking (Public Health) Ordinance* (2006), available online at [https://www.elegislation.gov.hk/hk/cap371?xid=ID\\_1438403108484\\_001](https://www.elegislation.gov.hk/hk/cap371?xid=ID_1438403108484_001) (accessed 21 January 2022).
- 44 *E.g.*, Tobacco Control Laws, *Nigeria* (26 July 2021), available online at <https://www.tobaccocontrollaws.org/legislation/country/nigeria/summary> (accessed 21 January 2022).
- 45 *E.g.*, French Republic, *Interdiction de fumer – Tabagisme* (19 October 2021), available online at <https://www.service-public.fr/particuliers/vosdroits/F160> (accessed 21 January 2022).
- 46 *E.g.*, Tobacco Control Laws, *Costa Rica* (24 March 2021), available online at <https://www.tobaccocontrollaws.org/legislation/country/costa-rica/summary> (accessed 21 January 2022).
- 47 Republic of Uganda, *The Tobacco Act* (2015), available online at <https://old.ulii.org/ug/legislation/act/2015/22-3> (accessed 21 January 2022).
- 48 *E.g.*, S. Negri, 'Smoke-free environments: lessons from Italy', in: M.E. Gispen and B. Toebes (eds.), *Human Rights and Tobacco Control* (Cheltenham: Edward Elgar Publishing, 2020) pp. 209–222.
- 49 *E.g.*, Singapore National Environment Agency, *Overview-Smoking prohibition* (2022), available online at <https://www.nea.gov.sg/our-services/smoking-prohibition/overview> (accessed 21 January 2022).
- 50 *E.g.*, Queensland Government, *supra* note 42.
- 51 *E.g.*, Southeast Asia Tobacco Control Alliance, *Smoke-free parks: Philippines and Malaysia* (2022), available online at <https://seatca.org/smoke-free-parks-philippines-and-malaysia-2/> (accessed 21 January 2022).
- 52 *E.g.*, Niagara Regions, 2022, 'Niagara's smoke and vape-free outdoor spaces by-law (new)', accessed 21 January 2022, <https://www.niagararegion.ca/health/substances/tobacco/smoke-free-outdoor-spaces.aspx>.
- 53 *E.g.*, City of Santa Barbara, *Smoke-free city* (25 July 2019), available online at <https://www.santabarbaraca.gov/services/community/smoking/default.asp> (accessed 21 January 2022).

- (b) Versatility of regulation: While the mainstream smoke-free policies are usually regulated through central national legislation, this is not frequently the case for expanded smoke-free policies. Certainly, nationwide policies that are based on formal legislation, or other arrangements,<sup>54</sup> is a possibility especially for spaces frequented by children.<sup>55</sup> However, expanded smoke-free policies are typically enacted at a subnational level, by municipalities and other local jurisdictions such as city councils, county boards of commissioners, and local boards of health, which exercise their common authority to regulate smoking on public property. These policies can be based, among others, on a combination of national and sub-national law.<sup>56</sup> Also, a growing number of administrative authorities, such as hospitals and schools administrators, are adopting smoke-free campus policies, which extend to all outside grounds, such as parking lots, and property, whether owned, leased or rented.<sup>57</sup> In addition to the aforementioned, smoke-free policies are also enacted through voluntary engagements and simple campaigns.<sup>58</sup> Private regulation is also an option, especially for smoke-free homes. House rules or by-laws put in place by owners/managers of premises against smoking in their premises. In Finland, a housing corporation may prohibit smoking in shared outdoor areas under its control near the entrances and air inlets of the building, in children's play areas and on shared balconies.<sup>59</sup>

54 Smoke-free projects can be implemented through memoranda of understanding (MoUs) between domestic authorities: *e.g.*, Southeast Asia Tobacco Control Alliance, *supra* note 51.

55 Hellenic Republic, 2019, 'Νόμος 4633/2019: Σύσταση Εθνικού Οργανισμού Δημόσιας Υγείας (ΕΟΔΥ), ρυθμίσεις για τα προϊόντα καπνού, άλλα ζητήματα του Υπουργείου Υγείας και λοιπές διατάξεις (Establishment of the National Public Health Organization, tobacco products regulations, other issues under the Ministry of Health and other provisions)'. accessed 21 January 2022, <https://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/s-ygeiasEODY-pap-%CE%9D%CE%95%CE%9F-apospasma.pdf>, Section 16.

56 *E.g.*, Tobacco Control Laws, Australia (17 September 2019), available online at <https://www.tobaccocontrolaws.org/legislation/country/australia/summary> (accessed 21 January 2022).

57 Public Health Law Center at Mitchell Hamline School of Law, *Smoke-free & tobacco-free places-outdoors* (2021), available online at <https://www.publichealthlawcenter.org/topics/commercial-tobacco-control/smoke-free-tobacco-free-places/outdoors> (accessed 21 January 2022).

58 United States Environmental Protection Agency, *Secondhand smoke and smoke-free homes* (2022), available online at <https://www.epa.gov/indoor-air-quality-iaq/secondhand-smoke-and-smoke-free-homes> (accessed 21 January 2022).

59 Republic of Finland, *Tobacco Act* (2016), available online at [https://www.finlex.fi/en/laki/kaanokset/2016/en20160549\\_20161374.pdf](https://www.finlex.fi/en/laki/kaanokset/2016/en20160549_20161374.pdf) (accessed 21 January 2022), Sections 78–79.

Housing corporations may also request the municipality to impose such a ban on smoking inside individual apartments.<sup>60</sup> On the other side of the Atlantic, most California cities allow landlords to regulate smoking at will.<sup>61</sup>

- (c) Versatility of implementation: Depending on the regulated space, the implementation of the policies can be assigned to state authorities or private entities. To list a few representative examples, the implementation of smoke-free policies in outdoor spaces where children play in Greece belongs, amongst others, to the national police itself;<sup>62</sup> local law enforcement officers are implementing smoke-free policies in Italian beaches;<sup>63</sup> in the Netherlands, the implementation of smoke-free educational facilities belongs to the persons responsible for each facility and depending on the seriousness of the violation, the Dutch Food and Consumer Product Safety Authority (NVWA) may impose a written warning or an administrative fine;<sup>64</sup> in Saudi Arabia, youth volunteers from the Saudi Red Crescent collaborate with the keepers of the Mosques for 'guiding' visitors should they start to light a cigarette near the mosque zones;<sup>65</sup> expanded smoke-free policies in USA parks are usually self-enforced by citizens themselves.<sup>66</sup>

60 *Ibid.*

61 State of California, *Civil Code* (2022), available online at [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1947.5](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1947.5) (accessed 21 January 2022), Section 1947.5.

62 *Supra* note 55.

63 WHO, Regional Office for Europe, *Bibione. Breathe by the sea. The story of a smoke-free beach in Italy*, WHO Regional Office for Europe (2014), available online at [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/249013/Bibione-Breathe-by-the-Sea-updated-version.pdf](https://www.euro.who.int/__data/assets/pdf_file/0019/249013/Bibione-Breathe-by-the-Sea-updated-version.pdf) (accessed 21 January 2022), p. 20.

64 Kingdom of the Netherlands, *Besluit van 22 juni 2020, houdende wijziging van het Tabaks- en rookwarenbesluit ter introductie van de verplichting een rookverbod in te stellen, aan te duiden en te handhaven op de terreinen die horen bij gebouwen en inrichtingen die worden gebruikt voor onderwijs* (Decree of 22 June 2020, amending the Tobacco and Smokers' Order introducing the obligation to impose, designate and maintain a smoking ban in the areas belonging to buildings and facilities used for education), available online at <https://zoek.officielebekendmakingen.nl/stb-2020-218.html> (accessed 21 January 2022).

65 WHO, *WHO smoke-free city case study. Tobacco-free cities for smoke-free air: a case study in Mecca and Medina*, WHO (2011), available online at [http://www.emro.who.int/images/stories/tfi/documents/PUB\\_KOBE\\_TOBACCO\\_FREE\\_CITIES\\_SAUDI\\_EN.pdf](http://www.emro.who.int/images/stories/tfi/documents/PUB_KOBE_TOBACCO_FREE_CITIES_SAUDI_EN.pdf) (accessed 21 January 2022).

66 Respiratory Health Association, *Smoke-free parks: A comprehensive review of the policy considerations underlying state and municipal smoke-free parks laws* (2014), available online at <https://resphealth.org/wp-content/uploads/2017/08/RHA-Smoke-free-Parks.pdf> (accessed 21 January 2022).

The same diversification applies to the implications of non-compliance with smoke-free regulations. Fine imposition is the most common but not the only implication.<sup>67</sup> Smoking on popular beaches in Thailand, for example, might as well imply imprisonment.<sup>68</sup> In Uganda one cannot smoke within 50 metres from the place of service or consumption of food or drink and for every person who fails or refuses to comply with this regulation, it is required to leave the place; if not, getting arrested is a possibility.<sup>69</sup> Interestingly enough, research has shown that voluntary smoke-free policies are also potentially effective.<sup>70</sup>

#### 4 Expanded Smoke-Free Policies: A Human Rights-Compliant Message for Tobacco Control

Tobacco poses tremendous challenges to the dignity, health and wellbeing of individuals. Several authors have, therefore, stressed that the production and sale of tobacco are an important concern of human rights.<sup>71</sup> Governmental measures to reduce smoking can therefore be seen as a direct expression of the human rights of everyone in society, including their rights to life, health, privacy and physical integrity. Yet in taking such measures, governments may have to limit the rights of smokers, who may claim rights to privacy and freedom of movement. This means that a careful balance needs to be struck between tobacco control measures and the rights of everyone involved.<sup>72</sup> We argue that international, regional and domestic human rights mechanisms, including courts, have an important role in deciding how rights interact in the context of tobacco control and smoking.

When it comes to expanded smoke-free policies specifically, the question arises whether these policies are in sync with aforementioned rights of smokers. Case law that offers clarity in this difficult balancing act is still scant. An analysis by Tsampi shows that many tobacco-related cases have been brought

67 Republic of Namibia, *Notice of intention to make regulations: Tobacco Products Control Act* (2010), available online at <http://www.lac.org.na/laws/2011/4831.pdf> (accessed 21 January 2022).

68 Southeast Asia Tobacco Control Alliance, *Popular beaches in Thailand now smoke-free* (2022), available online at <https://seatca.org/popular-beaches-in-thailand-now-smoke-free/> (accessed 21 January 2022).

69 *Supra* note 47.

70 *Supra* note 23.

71 *E.g.*, C. Dresler, H. Lando, N. Schneider and H. Sehgal, 'Human rights-based approach to tobacco control', *Tobacco Control* 21 (2012) 208–211.

72 *supra* note 17.

before the European Court of Human Rights (the Court).<sup>73</sup> Specifically, there has been a range of cases addressing smoking in enclosed public spaces, including in prisons and other detention facilities. In these cases, the Court accepted that the State has an obligation to adopt measures with a view to avoiding exposure to second-hand smoking. The Court based these rulings on Articles 3 and 8 of the European Convention on Human Rights (ECHR), the prohibition of inhuman and degrading treatment and the right to respect for private life.<sup>74</sup>

When discussing whether or not *expanded* smoke-free policies (that stretch beyond enclosed public spaces) are human rights-compliant, the case law of the Court could provide guidance in defining the centre of gravity in this human rights balancing act. On the one end of the balancing equation, smokers have the right to respect for private life. On the other end of the equation, non-smokers have the right to life and the right to privacy and family life. The right to respect for private life of smokers is particularly interfered with – but not necessarily violated – by smoking bans in enclosed private spaces. Yet, looking at the Court's case law, smoking potentially amounts to 'inhuman and degrading treatment' of non-smokers, especially in enclosed spaces. It is to be expected that such claims may be even more successful when children are involved, as they are unable to regulate their own level of exposure and are particularly vulnerable when it comes to exposure to second-hand smoking.<sup>75</sup> Tobacco smoke exposure has a considerable adverse respiratory health impact among children, and previous studies have already revealed that smoke-free policies covering enclosed public places have a positive effect on child health.

As such, although some might say that expanded smoke-free policies cause tensions with human rights, this paper and previous research have shown that the implementation and regulation of such policies is not only in conformity with global health standards and in line with the FCTC, but is also, and even more importantly, protecting human rights of non-smokers and children in particular. What is more, implementing smoke-free policies is not about enforcing changes in lifestyle. Smoking is an addiction with serious health consequences

73 A. Tsampi, 'The European Court of Human Rights and (Framework Convention on) Tobacco Control', *European Convention on Human Rights Law Review* [published online ahead of print 2021], 7 June 2021. DOI: <https://doi.org/10.1163/26663236-bja10022>.

74 *E.g.*, European Court of Human Rights, *Aparicio Benito v Spain* App no 36150/03 (13 November 2006); European Court of Human Rights, *Stoine Hristov v Bulgaria* App no 36244/02 (16 October 2008).

75 *E.g.*, M.E. Gispen and B. Toebes, 'The human rights of children in tobacco control' *Human Rights Quarterly* 41(2) (2019) 340–373, DOI: 10.1353/hrq.2019.0029; B. Toebes, M.E. Gispen, J.V. Been and A. Sheikh, 'A missing voice: The rights of children to a tobacco-free environment' *Tobacco Control* 27(1) (2018) 3–5, DOI: 10.1136/tobaccocontrol-2017-053657.

for both the smoker and the people that are exposed to second-hand smoke. To phase out tobacco consumption and pursue FCTC's aspiration of a smoke-free global society, expanded smoke-free policies (that reach beyond the traditional smoking bans in enclosed public spaces) might just be the right step towards the light at the end of the tunnel.<sup>76</sup>

## 5 Conclusion

While Article 8 FCTC is usually associated with the regulation of smoking in enclosed public spaces, it is important to highlight that it also leaves ample room for and encourages wider smoke-free policies, which are gaining momentum worldwide. The versatility of expanded smoke-free regulation ensures the level of flexibility required for addressing legal challenges that are often connected with human rights protection. Expanded smoke-free zones are becoming increasingly popular without compromising human rights; on the contrary, they greatly contribute to a wider culture of smoking denormalisation that allows the FCTC message on tobacco control to get to the next level. The aspiration of smoke-free generations encompassed by a number of jurisdictions is getting thus closer to its materialization.<sup>77</sup>

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76 T. Faber, A. Kumar, J.P. Mackenbach, C. Millett, S. Basu, A. Sheikh and J.V. Been, 'Effect of tobacco control policies on perinatal and child health: a systematic review and meta-analysis', *Lancet Public Health* 2 (2017) e420–e437, DOI: 10.1016/s2468-2667(17)30144-5; WHO, 'Tobacco control to improve child health and development: thematic brief', WHO (15 March 2021), available online at <https://www.who.int/publications/i/item/9789240022218> (accessed 21 January 2022).

77 J.V. Been, A.A. Laverty, A. Tsampi and F. Filippidis, 'European progress in working towards a tobacco-free generation' *European Journal of Pediatrics* 180(12) (2021) 3423–3431, DOI: 10.1007/s00431-021-04116-w; A.E. Kunst, 'Commentary on Titus et al.: Understanding how smoke-free policies can contribute to smoke-free generations' *Addiction* 26 November 2021, DOI: 10.1111/add.15748.