

Costa Rica's implementation of the Framework Convention on Tobacco Control: Overcoming decades of industry dominance

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Costa Rica's implementation
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Abstract

Objective. To analyze the passage of Costa Rica's 2012 tobacco control law. **Materials and methods.** Review of legislation, newspaper articles, and key informant interviews. **Results.** Tobacco control advocates, in close collaboration with international health groups, recruited national, regional and international experts to testify in the Legislative Assembly, implemented grassroots advocacy campaigns, and generated media coverage to enact strong legislation in March 2012 consistent with the World Health Organization Framework Convention on Tobacco Control, despite tobacco industry lobbying efforts that for decades blocked effective tobacco control legislation. **Conclusion.** Costa Rica's experience illustrates how with resources, good strategic planning, aggressive tactics and perseverance tobacco control advocates can overcome tobacco industry opposition in the Legislative Assembly and Executive Branch. This determined approach has positioned Costa Rica to become a regional leader in tobacco control.

Key words: Latin America; public health law; tobacco smoke pollution; tobacco industry; public policy; tobacco control campaigns

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La implementación del Convenio Marco para
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de dominio de la industria.
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Resumen

Objetivo. Analizar la adopción de la ley de control del tabaco de 2012 en Costa Rica. **Material y métodos.** Revisión de la legislación, artículos de periódicos y entrevistas con informantes clave. **Resultados.** Los defensores del control del tabaco, en estrecha colaboración con grupos internacionales de salud pública y expertos nacionales, regionales e internacionales, reclutados para testificar en la Asamblea Legislativa, implementaron campañas de comunicación e incidencia política que resultaron en la aprobación en marzo de 2012 de una legislación fuerte y en consonancia con el Convenio Marco para el Control del Tabaco de la Organización Mundial de la Salud. Todo esto a pesar de los esfuerzos de la industria tabacalera que, por décadas, había logrado bloquear la aprobación de una legislación eficaz de control del tabaco en Costa Rica. **Conclusión.** La experiencia de Costa Rica ilustra cómo con recursos, una buena planificación estratégica, tácticas agresivas y perseverancia, los defensores del control del tabaco pudieron superar la oposición de la industria tabacalera en la Asamblea Legislativa y el Poder Ejecutivo. La adopción de una ley efectiva de control de tabaco ha posicionado a Costa Rica como un líder regional en el control de tabaco.

Palabras clave: América Latina; leyes de salud pública; contaminación por humo de tabaco; industria tabacalera; política pública; campañas de control del tabaco

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The adoption of the World Health Organization Framework Convention on Tobacco Control (FCTC) in 2005 has led to progress in tobacco control legislation globally.¹ In accordance with FCTC Article 11 Guidelines, (Packaging and Labeling of Tobacco Products) Uruguay (2009)² enacted pictorial health warning labels (HWLs) covering 80% of the package, Ecuador (2011)³ enacted pictorial HWLs covering 60%, and Chile, Peru, Honduras, Panama and Brazil covering 50% of the package. In accordance with FCTC Article 13, Panama (2008)⁴ and Colombia (2009)⁵ enacted comprehensive bans on tobacco advertising, promotion and sponsorship. In Central America, Guatemala (2008),⁶ Panama (2008), and Honduras (2010)⁷ each enacted comprehensive smokefree policies that were in accordance with FCTC Article 8 (Protection from Exposure to Tobacco Smoke).

Despite this progress across in the region, Costa Rica failed to implement the FCTC, due in part from tobacco companies blocking legislation there for decades.⁸ British American Tobacco (BAT) and Philip Morris International (PMI) supplanted proposed strong tobacco control legislation with a weak law that established designated smoking areas in 1995 and used Costa Rica as a model to rollout industry programs designed to prevent legislation, including youth smoking prevention programs, its Courtesy of Choice program, and corporate social responsibility campaigns in the late 90s and the next decade throughout the region.

The first step towards challenging tobacco industry dominance was the creation of a new health advocacy network in 2007, *Red Nacional Antitabaco* (RENATA, National Anti-Tobacco Network). RENATA successfully helped legislators ratify the FCTC in 2008, and introduce a bill to implement the FCTC in 2009.⁹ Despite RENATA's efforts, Health Minister, María Luisa Ávila, privately met with the tobacco industry in March 2010 to weaken the proposed tobacco control bill,⁸ in violation of FCTC Article 5.3 that calls for rejection of a tobacco industry partnership and a transparent interaction with the industry. The Health Minister's violation of FCTC Article 5.3, combined with industry lobbying power with lawmakers, blocked the bill to implement the FCTC through the remainder of the 2006-2010 congressional session.

Materials and methods

We reviewed Costa Rican tobacco control legislation.⁹ We also reviewed Costa Rican newspaper articles using standard snowball searches.¹⁰ Initial search terms included "tobacco law", "regulation", "smoke-free", "tobacco advertising", as well as legislation numbers, and interviewed eleven Costa Rican tobacco control advocates and policymakers in accordance with approved

UCSF Committee on Human Research protocol. Results from these sources were triangulated.

Results

The passage of Law 9028 (2010-2012)

Continuing tobacco industry attempts to delay and weaken legislation to implement the FCTC

The law to implement the FCTC, Bill 17.371, originally introduced in Congress in May 2009 would have created 100% smokefree environments, completely eliminated tobacco advertising, included pictorial health warning labels (HWLs) on cigarette packages, and increased cigarette taxes and penalties for noncompliance (table I). By the time the Legislative Assembly session ended in May 2010, the industry had weakened and delayed consideration of the bill by privately meeting with Health Minister Ávila, who altered the text by significantly lowering cigarette taxes from 100 *colones* (\$0.20) to 25 *colones* (\$0.05) and reducing the size of pictorial HWLs from covering 70% to 30% of cigarette packages (table I).¹¹

When the newly formed Legislative Assembly convened in fall 2010, the weakened bill continued under the same number (17.371) and the industry continued to attempt to weaken it by lobbying new legislators. The companies sent multiple emails to legislators requesting private meetings to discuss tobacco advertising restrictions, smokefree spaces, and tobacco taxes.¹² Legislators told reporters that the industry complained about excessive regulations and sought to negotiate compromises throughout the legislative process,¹³ while one legislator admitted in an interview for this paper that she was threatened and offered favors by the industry.* This lobbying effort included standard industry arguments,¹⁴ claiming that smokers' rights would be violated,¹⁵ and that increased tobacco taxes would result in a rise in contraband.¹² Tobacco companies hired a prominent Costa Rican constitutional lawyer, to write an extensive legal critique in December 2009 that claimed the original bill infringed on smokers' rights and that the tax increase would encourage contraband.† Long time tobacco industry front groups,⁸ the *Cámara Costarricense de Restaurantes y Afines* (CACORE, Costa Rican Chamber of Restaurants) and *Cámara Costarricense de Hoteles* (CCH, Costa Rican Chamber of Hotels) also complained that smokefree policies could result in potential revenue losses.¹⁶

* Granados, Carmen. Interview by Eric Crosbie, November 10, 2014.

† Chavarria, Edwin. Interview by Eric Crosbie, November 11, 2014.

Table I
EVOLUTION OF COSTA RICA'S TOBACCO CONTROL BILL 17.371 (2009-2012)

Legislation		1	2	3	4	5	6	7	8
Date		Hernández Murillo's original bill ⁹ 5 May 09	Health Ministry's weakened version ¹¹ 12 March 10	Aiza's substitute language of the text ¹⁸ 30 Nov 10	Committee members' amended bill ¹⁹ 15 Feb 11	Aiza's amended bill ²⁰ 22 March 11	Committee members' amended bill ²⁴ 16 Aug 11	Aiza's amended bill ²⁵ 24 Aug 11	Law 9028 ³⁰ (Same as column 6) 27 Feb 12
Committee vote		No vote	No vote	Withdrawn	Rejected (2 in favor, 7 against)	Rejected (3 in favor, 6 against)	Approved (5 in favor, 4 against)	Rejected (3 in favor, 6 against)	Enacted
Smoke-free	Workplaces	100% smoke-free	Same	Same	Same	Same	Same	Same	100% smoke-free
	Restaurants and Bars	100% smoke-free	Same	Require designated smoking areas	100% smoke-free	Require designated smoking areas	100% smoke-free	Same	100% smoke-free
	Hotels	100% smoke-free	Same	Exempted	Same	Same	Same	Same	Exempt
	Sanctions	- No warning - Fine for customers (10%) and owners (50%) of the minimum wage for smoking in public places	Same	- Verbal or written warning - Fine for customers (5%) and owners (30%) of the minimum wage for smoking in public places	- No warning - Fine for customers (10%) and owners (50%) of the minimum wage for smoking in public places	- Verbal or written warning - Fine for customers (5%) and owners (25%) of the minimum wage for smoking in public places	- No warning - Fine for customers (10%) and owners (50%) of the minimum wage for smoking in public places	- Verbal or written warning - Fine for customers (5%) and owners (25%) of the minimum wage for smoking in public places	- No warning - Fine for customers (10%) and owners (50%) of the minimum wage for smoking in public places
	Enforcement	Health Ministry and Labor Ministry	Same	Same	Same	Same	Same	Same	Health Ministry and Labor Ministry
Advertising, promotion, and sponsorship	TAPS	100% prohibited	Same	100% prohibited except: - Places and events that only permit adult access - Direct communication with vendors and consumers - Point of sale	Same	Same	100% prohibited except places and events that only permit adult access and through direct communication with vendors and consumers in accordance with protocol established in regulation of this law	100% prohibited except: - Places and events that only permit adult access - Direct communication with vendors and consumers - Point of sale	100% prohibited except places and events that only permit adult access and through direct communication with vendors and consumers in accordance with protocol established in regulation of this law
	Sanctions	Verbal or written warning - Fine of 1-10 times the minimum wage for not complying	Same	Same	- No warning - Fine of 1-10 times the minimum wage for not complying	- Verbal or written warning - Fine of 25% of the minimum wage for not complying	- No warning - Fine of 10 times the minimum wage for not complying	- Verbal or written warning - Fine of 5% of the minimum wage for not complying	- No warning - Fine of 10 times the minimum wage for not complying
	Enforcement	Health Ministry and MEIC	Same	Same	Same	Same	Same	Same	Health Ministry and MEIC
Health Warning Labels on cigarette packages	Front	Graphic: No less than 70%	Graphic: No less than 30%	Text: Up to 50%	Graphic: No less than 50%	Text: No less than 50%	Graphic: 50%	Graphic: Up to 50%	Graphic: 50%
	Back	Text: 100%	Same	Same	Same	Same	Graphic: 50%	Text: 100%	Graphic: 50%
	Sanctions	Verbal or written warning - Fine of 1-10 times the minimum wage for not complying	Same	Same	- No warning - Fine of 1-10 times the minimum wage for not complying	- Verbal or written warning - Fine of 25% of the minimum wage for not complying	- No warning - Fine of 10 times the minimum wage for not complying	- Verbal or written warning - Fine of 5% of the minimum wage for not complying	- No warning - Fine of 10 times the minimum wage for not complying
	Enforcement	Health Ministry and MEIC	Same	Same	Same	Same	Same	Same	Health Ministry and MEIC
Taxes (per cigarette package)	Amount	100 colones (\$0.20)	25 colones (\$0.05)	20 colones (\$0.04)	Same	15 colones (\$0.03)	20 colones (\$0.04)	10 colones (\$0.03)	20 colones (\$0.04)
	Enforcement	Finance Ministry	Same	Same	Same	Same	Same	Same	Finance Ministry
MEIC: Ministry of Economy, Industry and Commerce TAPS: Tobacco Advertising, Promotion and Sponsorship									

MEIC: Ministry of Economy, Industry and Commerce
TAPS: Tobacco Advertising, Promotion and Sponsorship

The tobacco companies likely recognized that once a strong bill reached the full Legislative Assembly plenary session, which includes all 57 legislators, it was likely to pass because 45 of the 57 legislators supported the original strong version of bill 17.371, with public opinion overwhelmingly supporting smokefree environments, advertising restrictions, and increased taxes.⁸ Therefore, the companies focused on the nine members of the Social Issues Committee, which has jurisdiction over tobacco legislation, with the goal of denying re-introduction of a strong bill or, if the health groups mounted significant pressure, convincing the committee to introduce amended and weakened versions of the bill.^{*,‡} This strategy included lobbying Legislator Alicia Fournier, president of the Social Issues Committee, August 2010–April 2011, who originally publicly supported 100% smokefree environments and implementing FCTC guided laws in August 2010,⁸ but then shifted to supporting the industry position of designated smoking areas in public places in January 2011.¹⁷ Each time pressure mounted from health advocates to move forward with a strong bill, other members in the committee, notably Legislator Luis Antonio Aiza introduced substitute language in committee to weaken the bill. For example, in November 2010, he introduced substitute language¹⁸ (table I) that would have required restaurants and bars to have designated smoking areas, lowered cigarette taxes from 25 *colones* (\$0.05) to 20 *colones* (\$0.04), and replaced pictorial HWLs for text only HWLs on cigarette packages.

After health advocates lobbied legislators to pressure Aiza to withdraw the substitute language in January 2011 (see below), they supported other committee members to introduce an amended bill 17.371 in February 2011¹⁹ that reestablished 100% smokefree environments and pictorial HWLs (table I). Legislator Aiza once again tried to weaken the bill by introducing an alternative amended bill 17.371 in March 2011²⁰ that again tried establishing designated smoking areas in restaurants and bars and textual HWLs (table I). Aiza's amended bill was rejected in committee in March 2011; in addition the pro-health committee members' amended bill introduced in February 2011 was also rejected due to a lack of consensus among the committee on smokefree places and tobacco taxes.

Government change creates political opportunity for bill introduction and passage

During the spring and summer of 2011, a new Social Issues Committee President and new Health Minister

created an opening for a strong version of the bill to be introduced and passed. In May 2011, Legislator Rita Chaves, a strong supporter of tobacco control who had worked closely with health advocates, became president of the Social Issues Committee because she was scheduled next in the rotation during the second period (May 2011–April 2012).^{*} This change in leadership created an important opportunity for a strong version of the bill to be approved in committee.

In July 2011, Health Minister María Luisa Ávila resigned as Health Minister. Newly appointed Health Minister Daisy Corrales marked a significant shift from Ávila because she did not meet with the tobacco industry or try to undermine the progress of a strong bill and instead closely collaborated with tobacco control advocates, and emphasized the importance and popularity of the February 2011 strong bill to President Laura Chinchilla.^{‡,§} In addition, government officials interviewed for this study stated off the record that President Chinchilla viewed bill 17.371 as an opportunity to increase her own popularity in the polls since at the time her polling numbers were declining.

Tobacco control advocacy efforts push for the passage of a strong bill

In 2010, RENATA, with the support of a grant from the Bloomberg Initiative to Reduce Tobacco in low and middle-income countries, mounted an ongoing systematic campaign necessary to counter the tobacco industry interference. Between 2010 and 2012, RENATA worked closely with an international coalition of health groups led by the US-based Campaign for Tobacco Free Kids (TFK), to provide key information to legislators, and coordinate advocacy campaigns and press conferences to generate important media coverage at opportune moments to denounce weak bills and help secure passage of a strong bill (table II). In addition, RENATA collaborated with the Pan American Health Organization (PAHO) in its role as technical advisor for the Costa Rican Health Ministry.[&]

Providing key information to legislators

Members of RENATA met with legislators frequently to educate them about the importance of the FCTC,^{*,‡,§} including Article 5.3. Significantly, in August 2011

* Arrieta, Teresita. Interview by Eric Crosbie, November 7, 2014.

‡ Castro, Roberto. Interview by Eric Crosbie, November 10, 2014.

* Chavarria, Edwin. Interview by Eric Crosbie, November 11, 2014.

‡ Arrieta, Teresita. Interview by Eric Crosbie, November 7, 2014.

§ Corrales, Daisy. Interview by Eric Crosbie, November 11, 2014.

‡ Saravia, Susana. Interview by Eric Crosbie, November 10, 2014.

& Blanco, Adriana. Interview by Eric Crosbie, March 11, 2015.

* Castro, Roberto. Interview by Eric Crosbie, November 10, 2014.

Table II
TOBACCO INDUSTRY AND HEALTH ADVOCACY ACTIVITY DURING PASSAGE OF COSTA RICA LAW 9028 (2010-2012)

Tobacco industry		Health advocates		
Examples	Responses	Examples	Results	
Arguments				
Smoke-free laws violate constitutional rights for smokers	- Hired prominent law firm to write legal opinion defending smokers' rights (April 2010)*	- Lobbied legislators to argue the constitution provides a right to health and not a right to smoke	- Provided legislators with a constitutional legal opinion defending the right to health (June 2010) ²¹	- Constitutional Court ruling confirmed the right to health (March 2012) ²⁹
Smoke-free laws result in revenue losses for hospital-ity industry (res-taurants and hotels)	- Industry front groups, the Chamber of Restaurants and Chamber of Hotels complained in media about potential revenue losses ¹⁶	- Provided President Chinchilla and legislators international studies debunking these arguments	- Presented President Chinchilla and legislators with letters from international health groups detailing the international studies that debunk tobacco industry arguments used around the world	- Eight months after Law 9028 passed, 80% of a group of employers reported no change or an increase in business (October 2012)
Raising tobacco taxes will result in an increase in contraband	- Warned legislators about this throughout legislative period ¹²	- Recruited international experts to provide legislators information that a rise in taxes did not increase contraband	- Recruited Reina Roa from Panama's to testify that a rise in taxes did not increase contraband in Panama (May 2011) ²²	- Two years after Law 9028 passed, Finance Ministry verified tax increase had little to no impact on smuggled cigarettes (March 2014)
Tactic/Strategy				
Request private meetings with government officials and health groups to negotiate bills	- Requested private meetings with: - Health Minister Ávila (March 2010) ¹¹ - Legislators (April-Nov 2011) ¹³ - RENATA (August 2011) [‡]	- Educated government officials about the importance of FCTC Article 5.3	- Coordinated a press conference with Legislator Orlando Hernandez, author of the original strong bill, to denounce Health Minister Ávila's private meeting with the industry (March 2010) [§]	- Health Minister Ávila accepted private meeting with industry (March 2010) ¹¹ - Legislators publically stated FCTC did not allow private meetings with tobacco industry (July-Nov 2011) ¹³ - RENATA rejected tobacco industry request for a meeting (August 2011) [#]
Lobby government officials to present alternative and weakened versions of the bill	- Weakened versions of the bill presented to committee - Ávila altered bill (12 March 2010) ¹¹ - Aiza substitute language (30 Nov 2010) ¹⁸ - Aiza amended bill (22 March 2011) ²⁰ - Aiza amended bill (24 August 2011) ²⁵	- Denounced weakened versions of the bill - Lobbied and pushed for strong versions of the bill - Presented key information to legislators - Coordinated advocacy campaigns - Generated media coverage at opportune moments	- Presented President Chinchilla and legislators with letters from international health groups detailing the scientific evidence surrounding smoking to illustrate that the proposals were weak and that these were typical tobacco industry arguments used globally - Placed 1.5 meter cylinders with victims in front of Legislative Assembly to denounce weak bill (January 2015) ²³ - Held a press conference for FCTC importance to push strong bill (February 2011) ⁸ - Filled the public seating area in the Legislative Assembly to pressure Legislators to withdraw weakened version of bill (March 2011) ⁸ - Held a press conference with Legislators to denounce Aiza's alternative amended bill (August 2011) ⁸ - Placed large clock in front of Legislative Assembly to illustrate tobacco death and push strong bill (September 2011) ²⁶	- Legislators dropped all weakened versions of the bill (March 2010-August 2011) - Legislators passed a strong bill in the Social Issues Committee (August 2011) ²⁴ - Legislators passed strong bill in full Legislative Assembly (February 2012) ²⁸
Press legislators to block strong versions of the bill from coming to a vote	- Pressed Legislator Alicia Fournier, President of the Social Issues Committee, to deny strong versions of the bill from coming to a vote (Sept 2010-April 2011) ¹⁷	- Capitalized on government shifts that provided a key opening for a strong version of the bill to be introduced and summoned for a vote	- Laura Chinchilla elected Costa Rican president (May 2010) - Rita Chaves becomes president of Social Issues Committee (April 2011) - Daisy Corrales becomes Health Minister (July 2011)	- Rita Chaves helped introduce strong bill in Social Issues Committee (February 2011) ¹⁹ - Daisy Corrales lobbied President on the importance and popularity of strong bill (July-November 2011) [¶] - President Chinchilla summoned bill for vote to the full Legislative Assembly (November 2011) ²⁷

* Chavarria, Edwin. Interview by Eric Crosbie, November 11, 2014

‡ Arrieta, Teresita. Interview by Eric Crosbie, November 7, 2014

§ Saravia, Susana. Interview by Eric Crosbie, November 10, 2014

Castro, Roberto. Interview by Eric Crosbie, November 10, 2014

& Zamora, Gabriella. Interview by Eric Crosbie, November 10, 2014

¶ Corrales, Daisy. Interview by Eric Crosbie, November 11, 2014

* Chavarria, Edwin. Interview by Eric Crosbie, November 11, 2014

‡ Arrieta, Teresita. Interview by Eric Crosbie, November 7, 2014

§ Saravia, Susana. Interview by Eric Crosbie, November 10, 2014

Castro, Roberto. Interview by Eric Crosbie, November 10, 2014

& Zamora, Gabriella. Interview by Eric Crosbie, November 10, 2014

¶ Corrales, Daisy. Interview by Eric Crosbie, November 11, 2014

several legislators told reporters that they knew full well that the FCTC did not allow meetings with the tobacco industry.¹² In July 2010, RENATA recruited a prominent Costa Rican constitutional lawyer to write a legal opinion²¹ on the constitutionality of the tobacco control legislation originally proposed in 2009, bill 17.371. RENATA used this legal opinion to counter the legal analysis by the industry's lawyer in December 2009 and to make the case for the constitutionality of the bill supported by the Health Ministry and PAHO throughout the legislative process.* RENATA also invited Dr. Reina Roa from Panama's Health Ministry, to testify in the Legislative Assembly in May 2011. She informed the legislators that Panama had increased tobacco taxes in 2009 and contraband had not increased.²² Roa confirmed that the industry's rhetoric that Panama was facing problems of increased contraband was extremely exaggerated in the media.

Coordinating advocacy campaigns and media coverage to denounce weak bills and push for strong bills

RENATA, using the financial assistance from TFK, hired a local public relations company, EnComunicación (In Communication) in 2010 to assist in the design of coordinated media advocacy campaigns. With the support of EnComunicación, RENATA placed fifty 1.5 meter cylinders with faces and stories of victims of tobacco related diseases in the Legislative Assembly to prevent the passage of the weak November 2010 version of bill 17.371,²³ (figure 1). In January 2011, RENATA held a series of press conferences that generated significant media coverage to bring attention to the need for the Legislative Assembly to approve effective tobacco control legislation and reject the tobacco industry influence.[‡] As a result of this pressure, Legislator Aiza withdrew the substitute language of the bill in late January 2011 before a vote took place in committee. In March 2011, Legislator Aiza again presented an amended bill 17.371. This time RENATA filled the public seating area in the Legislative Assembly and called reporters to highlight the potential dangers of approving the weak proposal.[§]

These efforts helped committee members reject Aiza's amended bill 17.371. On May 31, 2011, World No Tobacco Day, RENATA held another press conference to pressure legislators to draft legislation that aligned with the FCTC.[#] These efforts encouraged committee mem-

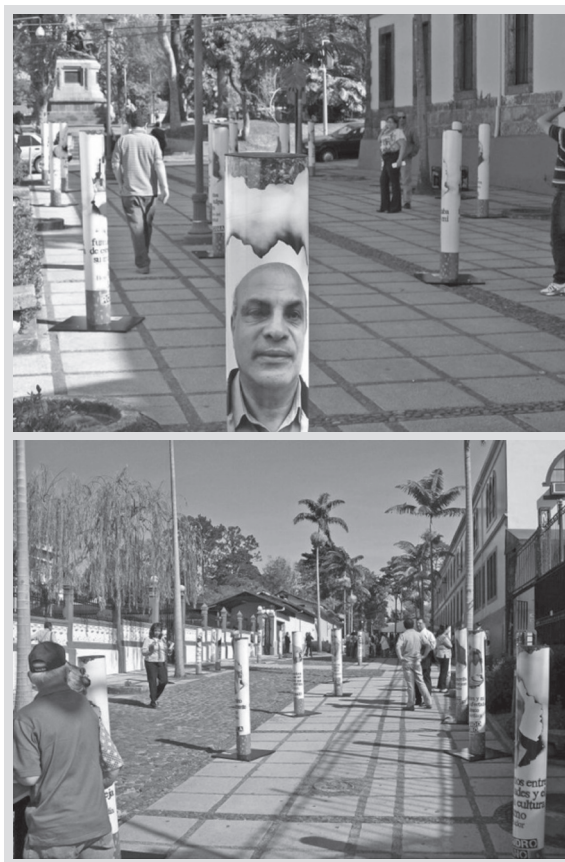


FIGURE 1. IN JANUARY 2011, RENATA PLACED FIFTY 1.5 METER CYLINDERS WITH FACES AND STORIES OF VICTIMS OF TOBACCO RELATED DISEASES IN FRONT OF THE LEGISLATIVE ASSEMBLY²³

bers in August 2011 to introduce and, for the first time, approve an amended bill 17.371²⁴ that reestablished 100% smoke free environments and pictorial HWLs (table I).

The August 2011 amended bill 17.371 passed despite another last minute attempt by Legislator Aiza to introduce another alternative amended bill 17.371 (table I, column 7)²⁵ Aiza's amended bill was rejected in committee as committee members publicly stated that RENATA had warned them of a last minute maneuver by Aiza to delay the bill.¹³ RENATA also organized a press conference together with legislators to denounce Aiza's last minute move.*

* Arrieta, Teresita. Interview by Eric Crosbie, November 7, 2014.

‡ Zamora, Gabriella. Interview by Eric Crosbie, November 10, 2014.

§ Saravia, Susana. Interview by Eric Crosbie, November 10, 2014.

Zamora, Gabriella. Interview by Eric Crosbie, November 10, 2014.

* Arrieta, Teresita. Interview by Eric Crosbie, November 7, 2014.

In September 2011, RENATA placed a large clock inside the Legislative Assembly to show lawmakers that every 2 hours 40 minutes a Costa Rican died from tobacco to help pressure the president to summon the bill for a vote in the full Legislative Assembly²⁶ (figure 2). RENATA with the support of EnComunicación publicized the large clock and the importance of passing the strong bill, which again generated significant media coverage.* These efforts led President Chinchilla on November 30, 2011 to list the legislation passed in committee as one of her legislative priorities in the plenary session beginning in January 2012.²⁷

Final approval of Law 9028

The strong version of the bill was finally summoned for a vote to the full Legislative Assembly, which overwhelmingly passed it 45-2 on February 27, 2012.²⁸ The law established 100% smokefree environments in workplaces and public places, prohibited tobacco advertising, sponsorship and promotion (except in places and events that only permit adult access and through direct communication with vendors and consumers), increased

tobacco taxes and penalties for non-compliance, and required pictorial HWLs covering 50% of the front and back of the package (table I).

On February 26, 2012, one day before the vote in the Legislative Assembly, ten legislators, including Luis Antonio Aiza challenged the bill by sending it to the Constitutional Court (Sala IV) to determine the bill's constitutionality on the grounds that the bill infringed on smokers' rights and that the tax increase would encourage contraband.

On March 20, 2012, the Constitutional Court declared the bill constitutional, stating that there was no proof the bill's tax increase would encourage contraband, and that the bill did not infringe on smokers' rights.²⁹

Two days later she signed the law and published it as Law 9028.³⁰

Discussion

The passage of Law 9028 marked a historical turn around for a country that had been dominated by the tobacco industry for decades. The tobacco industry continued to issue standard arguments they have used throughout the world, including smoke-free laws violate constitutional rights of smokers³¹ and will hurt business revenues,³² and increased cigarette taxes lead to a rise in contraband.³³ However the basis for the industry's recent success in Costa Rica hinged deeply on penetrating the Social Issues Committee and lobbying legislators to prevent a strong bill from leaving committee and entering the full Legislative Assembly. While this proved to be an important roadblock for health advocates, governmental changes in 2011 provided a key opening that health advocates capitalized on to help bring a strong bill to a vote before the full Legislative Assembly.

The Costa Rica experience demonstrates the importance of the collaboration between national organizations and international groups to counter continued tobacco industry interference. Several health advocates in Costa Rica recognized the importance of financial, technical, and legal assistance and expertise from international health groups, which helped coordinate press conferences, generate significant media coverage and pressure legislators to support strong legislation that complied with the FCTC.*[†]§[¶] Recruiting regional



FIGURE 2. IN SEPTEMBER 2011, RENATA PLACED A LARGE CLOCK INSIDE THE LEGISLATIVE ASSEMBLY TO SHOW LAWMAKERS THAT EVERY 2 HOURS 40 MINUTES A COSTA RICAN DIED FROM TOBACCO.²⁶ THE CAPTION READS, “JUDGES, YOU HAVE IN YOUR HANDS A COSTA RICAN TOBACCO CONTROL LAW THAT PROTECTS THE LIFE AND HEALTH OF THE POPULATION.” [TRANSLATED BY AUTHOR]

* Arrieta, Teresita. Interview by Eric Crosbie, November 7, 2014.

† Castro, Roberto. Interview by Eric Crosbie, November 10, 2014.

§ Saravia, Susana. Interview by Eric Crosbie, November 10, 2014.

¶ Zamora, Gabriella. Interview by Eric Crosbie, November 10, 2014.

& Sandi, Luis. Interview by Eric Crosbie, November 7, 2014.

† Walker, Luis. Interview by Eric Crosbie, November 10, 2014.

∞ Amador, Nydia. Interview by Eric Crosbie, November 10, 2014.

experts like Dr. Reina Roa of Panama's Health Ministry, who served as a trustworthy regional voice, was a crucial factor in convincing legislators about exaggerated industry claims about taxes and increased contraband.

Equally important, tobacco control advocates educated legislators in an ongoing and timely manner about tobacco industry tactics and the importance of FCTC Article 5.3. RENATA's ability to track and expose industry interference of government officials spurred a constant awareness among legislators that helped reverse a trend of violating Article 5.3 that had plagued tobacco control in Costa Rica for decades.

The change in Health Minister in June 2011 also marked a key turning point in rejecting tobacco industry partnerships. Health Minister Corrales' close collaboration with RENATA helped convince President Chinchilla to prioritize the bill taking into consideration, among other things, the strong support in public opinion polls for smokefree environments, illustrating that polling³⁴ continues to be an effective strategy for gathering the support of elected officials of tobacco control legislation.

The passage of Law 9028 also marked an important shift for Costa Rica in the region, from falling behind its neighbors to establishing important precedents in tobacco control. Costa Rica became the first country in the Central American region to pass comprehensive tobacco control legislation that included a tobacco tax and joined Panama and Ecuador as the only countries in the region to dedicate tobacco taxes towards tobacco control. The 100% earmarking of tobacco taxes to sponsor activity, implement the law and assist in tobacco prevention and promotion has been a vital financial resource during the implementation phase in Costa Rica.*

Health advocates need to lobby governments to enact similar policies, including drafting legislation in collaboration with the Ministry of Finance (tax authorities) to expand government support to attempt to narrow the focus of the tobacco companies' influence to the amount of the tax and not the tax's distribution to tobacco control programs. Although tobacco companies have attempted to remove funding recognizing the threat such programs pose,³⁵ advocates need to aggressively communicate to tax authorities the importance of these programs. These efforts should also include advocating for a specific tax on all brands of cigarettes such as in Ecuador, which discourages the tobacco

industry from lowering the price of particular brands to increase tobacco consumption.

While Costa Rica was able to follow Panama, a regional leader with a comprehensive tobacco control law, both Nicaragua (2010),³⁶ and El Salvador (2011)³⁷ adopted ineffective national legislation. The Nicaraguan government, which ratified the FCTC in April 2008, enacted tobacco control legislation that allowed designated smoking areas, required only text HWLs, and permitted tobacco advertising in journals, magazines, at sporting events, and at the point of sale. The Salvadorian government passed tobacco legislation that originally established 100% smokefree environments but President Mauricio Funes vetoed the law. Even though tobacco control advocates convinced legislators to overturn the veto, the President refused to issue the regulations and issued an amendment in Congress that surprisingly the same legislators approved. Despite this setback, in February 2014, President Funes signed the FCTC, which was ratified by Congress in April 2014. Therefore advocates in both countries should adopt similar aggressive strategies used in Costa Rica to pressure each government, as ratified parties of the FCTC, to implement the treaty.

Conclusion

Costa Rica's experience illustrates how with resources, good strategic planning, aggressive tactics and perseverance tobacco control advocates can overcome tobacco industry opposition in the Legislative Assembly and Executive Branch. Although for years Costa Rica fell behind several countries in the region, this determined approach has positioned Costa Rica to become a regional leader in tobacco control.

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