

REPUBLIC OF NIGER DECREE N° 2008-223/PRN/MSP
July 17, 2008 MINISTRY FOR THE PUBLIC HEALTH

Establishing the modes of enforcement of n° 2006-12 of May 15, 2006 relative to tobacco control.

THE PRESIDENT OF THE REPUBLIC,

CONSIDERING the Constitution of August 9, 1999;

Considering the ordinance n° 93-13 of March 2, 1993 instituting a code of public health;

Considering the law n° 2006-006 of April 15, 2006 authorizing the ratification of FCTC of the World Health Organization;

Considering the law n° 2006-12 of May 2006 relating to tobacco control;

Considering the decree n° 99-108/PRN/MSP of November 1, 1999 establishing the structure, the composition and the operation of the medical police force;

Considering the decree n° 2007-214/PRN of June 3, 2007 nominating the Prime Minister, Chief government;

Considering the decree n° 2007-216/PRN of June 9, 2007 appointing the members of Government;

Considering the decree n° 2007-250/PRN/MSP of July 19, 2007 appointing the Minister of Public Health;

Considering the decree n° 2007-501/PRN/MSP of November 8, 2007 organization of the Public Health Ministry; ON report/ratio of the Minister of the Public health;

The Council of Ministers hereby declare:

DECREE

TITLE I: GENERAL PROVISIONS

CHAPTER ONE: FIELD OF APPLICATION

Article 1: This decree determines the extent to which smoking in public places is prohibited and specifies the enforcement powers available to public health police responsible for the enforcement of the decree.

It establishes, moreover, the liabilities of the manufacturer and the distributor of tobacco products in the event of damage caused by the consumption of these products.

CHAPTER 2: DEFINITIONS

Article 2: Under the present decree, one understands the following terms to signify:

- public place or receiving from the public: closed place which is open to the public or which constitutes a work place; or any enclosed place, covered or not, to which the public has access, either through free or paid access including stores, restaurants, bars, hotels, movie theaters, nightclubs, casinos, theatre venues laboratories, university campuses, faculty halls, schools, military establishments, childcare establishments or any other place of lodging for minors;

- work place: any place used by people during their work including: hallways, entryways, cafeterias, restrooms, recreation rooms and the other such rooms used by the workers during their employment, even if no work is carried out in these surfaces. These places are extended to closed vehicles used during work, including taxis, ambulances and delivery vehicles;

- Means of public transport: any means of transporting people, including elevators, to which people have free or paid access;

- Places reserved for smokers: an enclosed room reserved for cigarette smoking which must meet strict standards of equipment, maintenance and maintenance;

- Tobacco control: a series of strategies aimed at reducing the sale, purchase and harmful effects of tobacco products with the goal of improving public health by reducing consumption of tobacco products and the exposure of second hand smoke;

- Illicit trade: all activities and conduct prohibited by the illicit trade laws regarding the production, distribution, exposure, reception, and possession including any other activities conducted to facilitate such an activity;

- Tobacco products: all products intended to be smoked, sniffed, sucked or chewed, as long as they are at least partially composed of tobacco;

- Promotion - advertising: any form of communication, recommendation of action or commercial contribution having as its aim, effect, or likely effect to encourage, directly or indirectly, the use of tobacco or of a tobacco product;

- Sponsorship - sponsoring: any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

- Distribution: marketing or transfer on a purely free basis or any other form of donation including the tasting of products;

- Minor: any human being less than eighteen years old;

- Passive smoking: the inhalation of second hand smoke by nonsmokers who are in close physical proximity to smokers;

- Emission: any substance or combination of substance produced with the lighting of a tobacco product.

TITLE II: INTERVENTION TO SMOKE IN THE PUBLIC PLACES OR RECEIVING FROM THE PUBLIC

Article 3: Prohibition to smoke in public places as promulgated in article 12 of the corresponding tobacco control law applies in closed places which are open to the public or which constitute work places, in particular:

- theatres;
- meeting rooms;
- restaurants, bars and hotels;
- theatres and cinemas;
- libraries and museums;
- airports;
- aerodromes;
- gaming rooms and casinos;
- conference rooms;
- classrooms;
- concert halls;
- laboratories.

Article 4: Prohibition to smoke in work places as promulgated in article 12 of the corresponding tobacco control law applies to closed spaces open to the public, workshops, taxi stations and markets.

This prohibition also applies to non-enclosed spaces in public or private schools, junior high schools and high schools, public or private healthcare facilities, and establishments intended for the reception, education or lodging of minors.

Article 5: Prohibition to smoke in the public modes of transportation as promulgated in article 13 of the corresponding tobacco control law applies to the collective mode of transport, in particular:

- urban or inter-city taxis;
- school buses;
- buses that transport employees;
- any vehicle in the presence of nonsmoking passengers;
- elevators;
- planes;
- trains.

Article 6: Prohibition to smoke does not apply in the places reserved for the smokers within the places mentioned in articles 3 and 4 of this decree and within this case these places can be created, if necessary, by the person or the organization responsible for the places. These places cannot be created within the formation or public or private educational establishments, of public or private health facilities and of the establishments intended for the education or the lodging of the minors.

Article 7: The places reserved for smokers are closed rooms solely designed for cigarette smoking and in which no performance of service is conducted. No act of maintenance can be carried out in these places without the ventilation of air occurring in the absence of every occupant.

Article 8: The places reserved for smokers must allow frequent ventilation. The process of ventilation must not constitute a crossing point for nonsmokers. The area of a smoking room cannot exceed 35m². A medical warning based on the decree of the Minister of Public Health is to be affixed at the entry of the places reserved for smokers.

Article 9: The creation of the places reserved for smokers and the methods of their implementation in the sites cited in articles 3 and 4 of this decree are to be submitted for the approval of the staff representatives and if necessary to the committee of hygiene and labor safety.

Article 10: Minors less than eighteen years old can neither access the places reserved for smokers nor purchase tobacco products. Any sale of tobacco products to minors is prohibited.

Article 11: The person in charge of these places is responsible for carrying out regular maintenance and ventilation of the places reserved for smokers.

Article 12: Any violation of the prohibition to sell tobacco products to minors will be punished by a fine of fifteen thousand (15 000) CFA. Any violation of the provisions of this article will be punished of a fine of one hundred (100 000) CFA. Moreover, legal proceedings could be conducted in the event of serious delinquency. In the event of repeated misconduct, the aforementioned fees will be doubled and the establishment could be closed for fifteen (15) days at the minimum and thirty (30) days at the maximum. In the event of a legal judgment finding further violations to the same establishment, the permanent closure of the establishment could occur.

TITLE III: POWERS OF THE MEDICAL POLICE

Article 13: The medical police are responsible for the enforcing the articles pursuant to the tobacco control law and decree, in particular article 15 of the aforesaid the law and the corresponding activities with regards to promotion, publicity, sponsorship and marketing. The defense forces and public safety officials as well as the inspectors of monitoring and control are also responsible for ensuring the effectiveness of these measures.

Article 14: Subject to the provisions of article 21 of the corresponding tobacco control law, the chief of the medical police force is entitled to enforce, through fines, the following articles of the tobacco control law as enumerated in this decree: 9,10,11,12 and 13. The amount of the fine cannot however exceed a sum equivalent to one hundred and thousand (100 000) CFA. The other persons in charge of the medical police force at the urban communities level,

urban and rural communes and checkpoints at the borders, are entitled to enforce the aforementioned articles with fines not exceeding one hundred and thousand (100 000) CFA.

Article 15: The method of administering fines is as follows:

- for the infringements of the provisions of article 9: one hundred thousand (100 000) CFA;
- for the infringements of the provisions of articles 10 and 11: one hundred thousand (100 000) to one million (1 000.000) CFA;
- for the infringements of the provisions of articles 12 and 13: five thousand (5 000) CFA;
- for the infringements of the provisions of this decree: five thousand (5 000) to twenty five thousand (25 000) CFA.

TITLE IV: LIABILITY OF THE MANUFACTURER AND DISTRIBUTOR

Article 16: The manufacturers and the distributors of tobacco products of tobacco are responsible for the damage caused by the consumption of these products.

Article 17: The victims of tobacco products are entitled to conduct direct legal actions against the manufacturers and/or distributors of the tobacco in question. They can be assisted by tobacco control organizations or by legal counsel of their choice.

The court which has jurisdiction of these matters will be the court of the place of residence of the plaintiff or failing this, the site at which the manufacturer or distributor conducts her/his activities.

The manufacturer and or the distributor shall be held responsible when the product does not meet appropriate standards as defined by the corresponding legal codes or when the victim or her representative proves on a scientific basis, that the consumption of tobacco is the exclusive cause of the damage.

TITLE V: FINAL AND TEMPORARY PROVISIONS

Articles 18: The owners of the places referenced in articles 3 and 4 have a twelve (12) months deadline from the publication of this decree to conform to the regulations relating to the creation of the places reserved for smokers.

Article 19: The Minister of Public health is responsible for the implementation of this decree.

Article 20: This decree which repeals all contrary former provisions will be published in the Official journal of the Republic of Niger.

Fact with Niamey, on July 17, 2008

Signed: The President of the Republic MAMADOU TANDJA

Prime Minister SEINI OUMAROU

Minister of the Public health ISSA ROLLS

For certified copy The general secretary government LARWANA IBRAHIM