



# **HOLD YOUR GOVERNMENT ACCOUNTABLE**

**Using the guidelines for FCTC implementation**

## What is the FCTC?

The WHO Framework Convention on Tobacco Control (FCTC) is the first and only treaty ever to be negotiated through the World Health Organization. Its objective, as set out 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'.

In negotiating the FCTC, countries around the world recognised that the spread of the tobacco epidemic is a devastating global public health problem that can only be fully addressed through coordinated international action. The FCTC has been among the most rapidly and widely embraced treaties in United Nations history. It currently has 161 Parties, covering more than 85% of the world's population. Since entering into force as international law in February 2005, the FCTC has become the framework through which its Parties make, implement and are held accountable for their tobacco control laws and policies.

## The FCTC obligations

Parties to the FCTC are required, under international law, to undertake a range of agreed tobacco control measures. These include:

- general measures, including action to protect tobacco control policies from commercial and other vested interests of the tobacco industry (Article 5);
- price and tax measures to reduce the demand for tobacco (Article 6);
- non-price measures to reduce the demand for tobacco, including:
  - protection from exposure to tobacco smoke (Article 8);
  - regulation of the contents and emissions of tobacco products and of tobacco product disclosures (Articles 9 and 10);
  - measures relating to the packaging and labelling of tobacco products (Article 11);
  - education, communication, training and public awareness (Article 12);
  - bans on tobacco advertising, promotion and sponsorship (Article 13);
  - measures concerning tobacco dependence and cessation (Article 14);
- measures relating to the reduction of the supply of tobacco, including:
  - measures to eliminate illicit trade in tobacco products (Article 15);
  - measures to prohibit sales to and by minors (Article 16); and
  - provision of support for economically viable alternatives (Article 17).

Parties to the FCTC also commit to taking action relating to criminal and civil liability (Article 19), undertaking research, surveillance and exchange of information (Article 20), and cooperating in the scientific, technical and legal fields and the provision of related expertise (Article 22), as well as in the provision of financial resources for implementation of the treaty (Article 26).

Article 21 requires Parties to submit regular reports on implementation of their obligations, meaning that their tobacco control activities must be explained and accounted for within the FCTC's framework. These implementation reports are made public, creating an important lever of public accountability for governments' tobacco control activities.

## **Implementing the FCTC obligations**

Parties to the FCTC come together for regular sessions of the FCTC's governing body, the Conference of the Parties (COP). The COP discusses progress in implementation of the treaty and makes decisions to facilitate more effective implementation. The COP has now met three times – in Geneva, Switzerland in February 2006; Bangkok, Thailand in June-July 2007; and Durban, South Africa in November 2008 – and will next meet in Punta del Este, Uruguay in late 2010.

Among its most important decisions, the COP has adopted guidelines for implementation of four critical Articles:

- Article 5.3 (Protection of tobacco control policies from commercial and other vested interests of the tobacco industry);
- Article 8 (Protection from exposure to tobacco smoke);
- Article 11 (Packaging and labelling of tobacco products); and
- Article 13 (Tobacco advertising, promotion and sponsorship).

The guidelines, available on the website of the FCTC Convention Secretariat: <http://www.who.int/fctc/en/>, contain principles and recommendations to assist Parties in best practice implementation of their treaty obligations. They set standards against which Parties' implementation of their international legal obligations on tobacco control should be judged. They are a critical tool for tobacco control advocates in their work to ensure that governments meet their obligations and act as effectively as possible to protect the public from the devastating effects of the tobacco epidemic.

You should familiarise yourself with the guidelines and use them in your day-to-day advocacy work. The key principles and recommendations contained in the guidelines are summarized below. For more information about the FCTC, FCTC guidelines and the work of the COP, see FCA's website: [www.fctc.org](http://www.fctc.org).

## **Article 5.3: Protection of tobacco control policies from commercial and other vested interests of the tobacco industry**

Parties to the FCTC recognise ‘the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts’ (Preamble). Under Article 5.3, all Parties agree that, in setting and implementing their public health policies with respect to tobacco control, they shall act to protect these policies from commercial and other vested interests of the tobacco industry. Parties also agree to adopt and implement effective measures to promote public access to a wide range of information on the tobacco industry (Article 12(c)).

Key principles and recommendations in the guidelines for implementation of Article 5.3 include:

- *Article 5.3 is grounded in the ‘fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests’* – The tobacco industry exists to produce and promote a product that causes disease, death, and a variety of social ills.
- *Apply protection broadly* – Measures to protect tobacco control from the commercial and other vested interests of the tobacco industry should be implemented in all branches of government that may have an interest in, or the capacity to affect, tobacco control policy. They should be applicable to persons, bodies or entities – including national, state, provincial, municipal, local or other public or semi/quasi-public institutions, bodies, officials, employees or representatives – that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of these policies.
- *Raise awareness* – All branches of government and the public need knowledge and awareness of past and present interference by the tobacco industry in setting and implementing tobacco control policies, including its strategies and tactics and its practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on its behalf.
- *Limit interactions with the tobacco industry and ensure the transparency of interactions that occur* – Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products. Where interactions are necessary, Parties should ensure that they are conducted transparently and, whenever possible, in public.
- *Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry* – Parties should not accept, support or endorse partnerships, non-binding or non-enforceable agreements, voluntary codes of conduct, instruments drafted by or in collaboration with the tobacco industry that are offered as a substitute for legally enforceable tobacco control measures, or tobacco industry involvement in youth, public education or other initiatives.

- *Avoid conflicts of interest* – Parties should mandate clear policies on disclosure and management of conflicts of interest for all persons involved in setting and implementing tobacco control policies. Measures should include:
  - Government officials should be required to declare and divest themselves of financial interests in the tobacco industry.
  - Public office holders involved in tobacco control policy should be required to disclose any intention to engage in any occupational activity with the tobacco industry, and applicants for public office positions related to tobacco control policy should be required to disclose any occupational activity with the tobacco industry.
  - Persons employed by or acting on behalf of the tobacco industry should not be members of any government body that sets or implements tobacco control policy, and should not serve on delegations to sessions of the COP or bodies established by it.
  - No payments, gifts or services, monetary or in-kind, should be accepted from the tobacco industry by any official or employee of government or of any semi/quasi-governmental body. Political contributions from the tobacco industry should be prohibited, or full disclosure required.
- *Ensure transparency of tobacco industry operations and activities* – Parties should require disclosure or registration of tobacco industry entities and affiliated organizations and individuals, including lobbyists. These persons and entities should be required to periodically submit a wide range of information on their operations and activities, and this information should be accessible to the public.
- *Denormalize tobacco industry “social responsibility”* – Tobacco industry “corporate social responsibility” is an inherent contradiction. Parties should ensure that all branches of government and the public are aware of the true purpose and scope of tobacco industry activities described as “socially responsible”, which are a marketing and public relations strategy. Parties should: not endorse, support or participate in any such activities; prohibit non-legally required public disclosure of such activities or expenditures made on them; and not receive any non-legally required political, social, financial, educational, community or other contributions.
- *No preferential treatment for the tobacco industry* – Parties should not grant incentives, privileges or benefits to the tobacco industry to establish or run their businesses.
- *Include State-owned tobacco industry* – Measures to protect tobacco control policy from the tobacco industry should apply to all tobacco industry, including State-owned tobacco industry. Where the tobacco industry is fully or partly State-owned, Parties should ensure that the functions of setting and implementing tobacco control policy are separated from the functions of overseeing or managing the tobacco industry.
- *Ensure effective enforcement, monitoring, and international cooperation* – Parties should put in place enforcement mechanisms, ensure effective monitoring of implementation, and exchange information and expertise with respect to countering tobacco industry strategies and practices.

## Article 8: Protection from exposure to tobacco smoke

Under Article 8 of the FCTC, 'Parties recognize that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability'. Parties therefore agree to adopt and implement, in areas of national jurisdiction, 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. At other jurisdictional levels, Parties agree to actively promote the adoption and implementation of these measures.

Key principles and recommendations in the guidelines for implementation of Article 8 include:

- *Article 8 is grounded in fundamental human rights and freedoms* – In light of the dangers of breathing second-hand tobacco smoke, the duty to protect from tobacco smoke is implicit in the right to life and the highest attainable standard of health, as recognized in many international instruments.
- *100% smoke-free environments* – Effective measures require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100% smoke free environment. There is no safe level of exposure to tobacco smoke. Approaches other than 100% smoke free environments, including ventilation, air filtration and the use of designated smoking areas have repeatedly been shown to be ineffective.
- *Protect everyone* – All people should be protected from exposure to tobacco smoke. 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'.
- *Enact legislation* – Legislation is necessary to protect people from exposure to tobacco smoke. Voluntary measures have repeatedly been shown to be ineffective.
- *Draft legislation carefully* – Define key terms such as 'second-hand tobacco smoke'/'environmental tobacco smoke', 'smoking', 'public places', 'indoor'/'enclosed', 'workplace' and 'public transport' broadly.
- *Implement as quickly as possible* – Article 8 creates a 'continuing obligation to move as quickly as possible to remove any exemptions and make the protection universal'. Each Party should strive to provide universal protection within five years of the FCTC's entry into force for that Party.
- *Ensure effective enforcement* – Impose legal responsibilities for compliance on both affected business establishments and individual smokers, ensure that penalties are sufficiently large to deter violations, and implement an enforcement plan with an identified authority or authorities responsible for enforcement, a system for monitoring compliance and prosecuting violators, and a process for effective training of inspectors.

- *Involve civil society* – Civil society has a central role in building support for and ensuring compliance with smokefree measures, and should be included as an active partner in the process of developing, implementing and enforcing legislation.
- *Involve the public* – Inform, consult and involve the public to ensure support and smooth implementation, and mobilize and involve the community in monitoring and enforcement, including through a complaints mechanism.
- *Monitor and evaluate* – The implementation of smokefree legislation, its enforcement and its impact should be monitored and evaluated.
- *Strengthen and expand protection if necessary* – New or amended legislation, improved enforcement and other measures to reflect new scientific evidence and experience should be implemented when necessary.

## Article 11: Packaging and labelling of tobacco products

Under Article 11 of the FCTC, Parties undertake a number of important commitments with respect to the packaging and labelling of tobacco products. Article 11 gives effect to one of the Convention's key guiding principles: 'Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke' (Article 4.1).

Article 11 requires each Party to implement, within a period of three years after entry into force of the FCTC for that Party, effective measures to ensure that all tobacco product packaging and labelling carry large, rotating health warnings – which must cover at least 30% and should cover 50% or more of the principal display areas – and that packaging and labelling do not promote tobacco products by false, misleading or deceptive means. Article 11 also mandates that Parties require all tobacco product packaging and labelling to contain information on relevant constituents and emissions of tobacco products as defined by national authorities.

Key principles and recommendations in the guidelines for implementation of Article 11 include:

- *Health warnings and messages are effective* – Well-designed health warnings and messages on tobacco product packages have been shown to be a cost-effective means to increase public awareness of the health effects of tobacco use and to be effective in reducing tobacco consumption.
- *Ensure maximum visibility of warnings and messages* – The effectiveness of health warnings increases with their size and prominence. Parties should require that warnings and messages be located at the top of both the front and back of packages – with the front the most visible for most package types – and that they cover as much of the principal display areas as possible.
- *Require full colour pictorial warnings* – Warnings which include pictures are far more effective than those that are text-only, and colour pictures are more noticeable than black and white pictures.
- *Specify clear requirements for rotation* – Rotation of health warnings and messages maintains saliency and enhances impact. Parties should consider both requiring multiple warnings and messages to appear concurrently, and setting dates after which the set of warnings and messages used will change.
- *Use a range of effective health warnings and other messages* – Using a range of health warnings and other appropriate messages increases the likelihood of impact, as different messages resonate with different people. Warnings and messages should be simple, clear, culturally appropriate, believable and personally relevant.
- *Require qualitative information about emissions* – Parties should require relevant qualitative statements about the emissions of tobacco products to appear on product packaging. Parties should not require the display of any

information that might imply that one brand is less harmful than another, including quantitative information about emission yields.

- *Prohibit all packaging and labelling that is false, misleading or deceptive* – this includes – but is not limited to – terms or signs that create the false impression that a particular tobacco product is less harmful than others, including terms such as ‘low tar’, ‘light’, ‘ultra-light’, ‘mild’, ‘extra’, ‘ultra’, and figures for emission yields, such as tar, nicotine and carbon monoxide, including when used as part of a brand name or trademark.
- *Consider requiring plain packaging* – Measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging – other than brand names and product names displayed in a standard colour and font style – may increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from these, and address industry design techniques that may suggest that some products are less harmful than others.
- *Tailor requirements effectively for different kinds of tobacco products and packaging* – Ensure that requirements apply effectively across different types of tobacco products, with content of messages tailored as appropriate, and different types and shapes of packaging.
- *Ensure comprehensive application* – Apply requirements to all tobacco products sold within the jurisdiction – whether manufactured domestically, imported or intended for duty-free sale – and consider applying requirements to products for export.
- *Educate and involve the public* – Coordinate the introduction of new health warnings and messages with broader, sustained public information and education campaigns, and with media activities.
- *Ensure that the tobacco industry bears the costs* – The cost of placing warnings and messages on tobacco product packaging should be borne by the tobacco industry.
- *Ensure effective enforcement* – Inform stakeholders of the requirements; place legal responsibility for compliance on tobacco product manufacturers, importers, wholesalers and retailers, and set a single deadline after which no products can be supplied unless they comply with the new requirements; specify a range of penalties for non-compliance; and identify authorities responsible for enforcement and grant them appropriate enforcement powers.
- *Monitor and evaluate* – Parties should consider monitoring and evaluating their measures to assess their impact and identify where improvements are needed.
- *Review requirements periodically* – Drafting packaging and labelling measures is not a one-time exercise. Parties should review their measures periodically and update them as new evidence emerges and as specific health warnings and messages wear out.
- *Engage in international cooperation* – International cooperation, including sharing of information and transfer of expertise and technology, is essential in this important, constantly changing area.

## Article 13: Tobacco advertising, promotion and sponsorship

Under Article 13, Parties to the FCTC 'recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products'. Each Party agrees to undertake a comprehensive ban within a period of five years after entry into force of the FCTC for that Party (unless prevented from undertaking a comprehensive ban by its constitution or constitutional principles, in which case it commits to applying restrictions on all tobacco advertising, promotion and sponsorship). Tobacco advertising, promotion and sponsorship are defined broadly in Article 1 of the Convention and include all forms of commercial communication, recommendation or action and all forms 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.

Article 13 covers cross-border tobacco advertising, promotion and sponsorship: committing each Party, subject to the legal environment and technical means available to it, to include within its comprehensive ban (or restrictions) cross-border advertising, promotion and sponsorship originating from its territory; and recognizing Parties' sovereign right to ban cross-border tobacco advertising, promotion and sponsorship entering their territory. Parties agree to cooperate in the development of technologies and other means necessary to facilitate the elimination of cross-border tobacco advertising, promotion and sponsorship.

Key principles and recommendations in the guidelines for implementation of Article 13 include:

- *Ensure broad scope of comprehensive ban* – Bans should be truly comprehensive (or, where relevant constitutional constraints exist, restrictions should be as comprehensive as possible). If only certain forms of advertising, promotion and sponsorship are prohibited, the tobacco industry inevitably shifts its expenditure to those that continue to be permitted, using creative, indirect ways to promote tobacco products and tobacco use. Bans should cover the use of words, designs, images, sounds and colours, including brand names, trademarks, logos, names of tobacco manufacturers or importers, colours or schemes of colours associated with tobacco products, manufacturers or importers, or parts of words, designs, images and colours. Legislation should be broadly drafted and should avoid providing lists of prohibited activities that are, or could be understood to be, exhaustive. An indicative list of forms of advertising, promotion and sponsorship which should be covered is attached as the Appendix to the guidelines.

In relation to aspects of a comprehensive ban that may pose special challenges for regulators in introducing a comprehensive ban, key recommendations include:

- a ban on display and visibility of tobacco products at points of sale, recognizing that display of products is 'a key means of promoting tobacco products and tobacco use';
- a ban on tobacco product vending machines, recognizing that they are a means of advertising and promotion;
- a ban on advertising and promotion through product packaging, recognizing that 'packaging is an important element of advertising

- and promotion' and is used in various ways 'to attract consumers, promote products, and cultivate and promote brand identity';
- a ban on advertising and promotion on tobacco products themselves;
  - a ban on internet sales of tobacco products, recognizing that internet sales of tobacco products inherently involve advertising and promotion;
  - a ban on brand stretching and brand sharing;
  - a ban on contributions from tobacco companies to any other entities for 'socially responsible causes', recognizing that such contributions constitute tobacco sponsorship;
  - a ban on tobacco companies publicizing any 'socially responsible' business practices; and
  - measures applicable to depiction of tobacco in entertainment media products such as film, theatre and games, recognizing that such depictions 'can strongly influence tobacco use, particularly among young people' (recommended measures include: certification that such depictions are unpaid; a ban on brand depiction; requirements for display of anti-tobacco advertisements; and implementation of a classification system).
- *Place responsibility for compliance throughout the marketing chain* – Primary responsibility should lie with the initiator of advertising, promotion or sponsorship, usually tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations. Responsibility should also be placed on those involved in production or dissemination of advertising and promotion (such as producers, publishers, and internet service providers) – with the responsibility imposed varying with the entity's role in production and dissemination, and its capacity to control the material – and on those that receive or facilitate sponsorship.
  - *Apply effective penalties* – Parties should introduce and apply penalties which outweigh the potential economic benefits to be derived from the advertising, promotion or sponsorship. Penalties should be applicable to corporate entities as well as individuals.
  - *Monitor and enforce the laws* – Parties should designate a competent authority to monitor and enforce the laws, and entrust it with the necessary powers and resources.
  - *Involve the public* – Engaging the support of the community to monitor compliance and report violations of laws against tobacco advertising, promotion and sponsorship is an essential element of enforcement. Parties should promote and strengthen public awareness in this area and should promote public involvement in enforcement, including by providing a complaints mechanism.
  - *Engage in international cooperation* – Effective international cooperation – including information sharing, provision of expertise and assistance, and cooperation in the development of technology – will be essential to the elimination of both domestic and cross-border tobacco advertising, promotion and sponsorship.

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