



BRIEFING PAPER:
REPORTING AND EXCHANGE OF INFORMATION

Second Session of the Conference of the Parties to the WHO FCTC
Bangkok, Thailand
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Recommendations

At the second session of the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (FCTC) the COP should:

- 1. Decide that all reports submitted periodically by Parties under Article 21 shall be placed on a publicly accessible website within 30 days after submission.**
- 2. Request that the Secretariat prepare, for its third session, a paper outlining options for the establishment of a subsidiary body tasked with overseeing reporting arrangements and analysing national reports in order to allow the implementation of the Convention to be monitored and reviewed, and recommendations to be made towards maximizing its effectiveness.**
- 3. Request that the Secretariat prepare, for its third session, a synthesis of Parties' reports on implementation that is as comprehensive as is practicable.**
- 4. Request that the Secretariat, to the extent feasible, provide access through its website, on a continuing basis, to copies of all Parties' national tobacco legislation and regulation and, as appropriate, Parties' subnational legislation and regulation.**
- 5. Decide that Parties be required to report annually in relation to financial resources and mechanisms of assistance, and in relation to priorities, constraints and barriers encountered in implementing the Convention.**

Background

Under Article 21 of the FCTC, each Party is required to submit periodic reports on its implementation of the Convention to the Conference of the Parties. These reports are required to include information on various matters that are specified in Article 21 including: legislative, executive, administrative or other measures taken to implement the Convention; constraints or barriers encountered in implementation of the Convention and the measures taken to overcome these barriers; financial and technical assistance provided or received for tobacco control activities; surveillance and research; and other specified matters relating to taxation, advertising, promotion and sponsorship, cross-border trade in tobacco products (including illicit trade), and information on the health effects of tobacco consumption and exposure to tobacco smoke, and legislation, regulation and pertinent jurisprudence.

The frequency and format of reports on implementation are not specified in the Convention. Under Article 21.2, they are to be determined by the COP. Article 21.2 states that each Party shall make its initial report within two years of the entry into force of the Convention for that Party.

At its first session (COP-1), by its decision FCTC/COP1(14), the COP adopted a graduated reporting system, with reports required to be submitted by each Party within two years, five years and then eight years of entry into force of the Convention for that Party. The COP also adopted a provisional format for the reports required to be submitted within two years. Formats for the reports to be submitted within five years and eight years were to be elaborated at the second session of the COP. The COP decided ‘to conduct an independent assessment of the reporting arrangements in 2009’ and ‘to further consider the matter of reporting in 2010’.

The role of reporting and exchange of information in monitoring the implementation of the Convention and in maximizing its effectiveness

Decision FCTC/COP1(14) notes the important role played by Parties’ periodic reporting in monitoring the implementation of the FCTC and in maximising its effectiveness. The decision states that the COP considers ‘that national reports should enable Parties to benefit from each others’ experience through an effective feedback mechanism’. The Annex to the decision, which outlines the COP’s approach to reporting and contains the provisional format for reports, states that: ‘The objective of reporting is to enable Parties to understand and learn from each others’ experience in implementing the WHO Framework Convention on Tobacco Control by providing details of the progress being made by member countries in implementation’. It encourages Parties ‘to be mindful’, in preparing reports, ‘of the opportunities for shared learning’ and, where appropriate, to ‘include examples of best practice or e-mail contact details for someone who would be able to provide further information on an aspect of implementation’. It also notes that: ‘The Parties’ reports will form the basis for consideration on implementation of the Convention consistent with Article 23.5(d)’. Under Article 23.5, the COP is required to ‘keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation’. The consideration of reports (Article 23.5(d)) is one of a number of actions that the COP must undertake ‘[t]owards this end’.

Under the heading ‘Feedback arrangements’, the Annex to decision FCTC/COP1(14) states: ‘To facilitate access to examples of best practice in specific areas of tobacco control, it is proposed that all Parties’ reports are to be available on a web site and arranged under the headings – Two Year Reports, Five Year Reports and Eight Year Reports to enable Parties to understand the progress being made internationally in implementing the WHO Framework Convention on Tobacco Control. It is expected that this web site will allow access by non-ratifying countries which may be seeking information to allow them to take effective steps in tobacco control. This is consistent with the objective to learn from each others’ experience’.

The need for adjustments to processes for reporting and exchange of information

On 9 May 2007, the interim Secretariat to the FCTC released document A/FCTC/COP/2/6, entitled ‘Synthesis of reports on implementation of the WHO Framework Convention on Tobacco Control received from Parties (before 27 February 2007)’. The document, which will be considered by the COP at its second session (COP-2), provides a very general overview of the reports of the 28 Parties that submitted reports by 27 February. While the document contains some useful observations and summary statements, it is much too general to allow many helpful

conclusions to be drawn about progress in implementation of the Convention generally or the successes of, or challenges faced by, individual Parties in implementing their obligations. Part of the explanation for the limited nature of the observations and conclusions offered is undoubtedly that the document considers the reports of only 28 Parties – when there are more Parties reporting, a greater number of observations and conclusions will be able to be drawn. Nevertheless, the document raises a number of concerns about the adequacy of the reporting arrangements adopted by the COP thus far.

First, notwithstanding the intention of the COP that all reports be available on a website, the first reports were only made available on 15 June, i.e. just over two weeks before the commencement of COP-2, and three-and-a-half months after the first reports were required to be submitted. This lengthy time-lag between submission and publication means that the effectiveness of reporting – the objective of which, as identified at COP-1, is ‘to enable Parties to understand and learn from each others’ experience in implementing the WHO Framework Convention on Tobacco Control by providing details of the progress being made by member countries in implementation’ – is reduced. This lengthy time-lag also greatly diminishes the role that civil society can play in contributing to the success of the FCTC, running contrary to one of the guiding principles of the Convention, that ‘[t]he participation of civil society is essential in achieving the objective of the Convention and its protocols’ (Article 4.7), and to the emphasis in the Preamble on ‘the special contribution of nongovernmental organizations and other members of civil society not affiliated with the tobacco industry ... to tobacco control efforts nationally and internationally and the vital importance of their participation in national and international tobacco control efforts’.

Second, the document notes (at paragraph 71) that: ‘In existing treaties that feature a system of national reporting and an assessment of reports by the treaty’s Conference of the Parties, a subsidiary body is often tasked to undertake [the work of revising reporting tools and analysing national reports] under the guidance of the Conference of the Parties, in preparation of the Conference of the Parties’ deliberations on the relevant issues. In the longer term, the Conference of the Parties to the WHO Framework Convention on Tobacco Control may wish to consider the establishment of a subsidiary body charged with this task’. In the absence of a subsidiary body dealing with reporting and exchange of information, the capacity for learning from other countries’ experiences through the reporting exercise is greatly diminished – in effect, it is reduced to reading Parties’ submitted reports, and a very general report by the Secretariat. There is no forum for focused discussion of the successes and challenges of implementation, the sharing of experiences, the identification of common concerns and ideas, and the articulation of possible future action to maximize the effectiveness of the treaty. The Framework Convention Alliance (FCA) notes that the independent assessment of reporting arrangements planned for 2009 may be the forum in which the establishment of a subsidiary body is considered by the Parties, but encourages Parties to begin thinking about the need for such a body and building momentum towards its establishment. In order to contribute to this process, the FCA recommends that the COP request the Secretariat to prepare, for its third session (COP-3), a paper outlining options for the establishment of such a subsidiary body.

Pending the establishment of a subsidiary body to oversee reporting arrangements and to consider Parties' reports, there are steps that could be taken by the COP and the Secretariat to increase the usefulness of reporting and feedback processes. The FCA recommends that the COP request the Secretariat to prepare, for COP-3, a synthesis of Parties' reports on implementation that is as comprehensive as is practicable. Such a report should be prepared in place of the kind of very limited synthesis prepared for COP-2. A comprehensive report would discuss, in more detail, both the challenges and successes of implementation of Parties generally and of individual Parties in particular, and would far better serve Parties in enabling them to learn from one another's experiences. The COP should also request that the Secretariat, to the extent feasible, provide access through its website, on a continuing basis, to copies of all national tobacco legislation and regulation of Parties, and, as appropriate, to subnational legislation and regulation of Parties. Ready access to such materials will assist both Parties and civil society in monitoring implementation of the Convention, learning about Parties' experiences and identifying best practices.

Third, reports are required to be submitted relatively infrequently – ie after two years, and then at three yearly intervals. In addition, the fact that Parties will report at different times and in different years, based on when they ratified the Convention, means that no single 'snapshot' of the progress of implementation – with all its successes and failures – will ever be available. This may be an inevitable reality in the first stages of the life of the Convention, but, over time, it would be preferable if the timing of reporting requirements were harmonized and if reports were required to be submitted more often, either annually or every two years. Decision FCTC/COP1(14) notes that the COP considers that 'national reporting should, in light of limited experience and resources, not be unduly burdensome'. Following the submission of initial reports, subsequent reports should be easier for Parties to complete, as institutional capacity and knowledge of reporting requirements and processes become established. More, rather than less, frequent reporting should become the norm.

If the reporting arrangements adopted at COP-1 – two, five and eight year reports, and Parties reporting at different times – are continued, the COP should give consideration to regarding reporting on two critical issues as separate cases, warranting different treatment. Responses to questions relating to financial resources and mechanisms of assistance, covering both the need for assistance and the ability to provide assistance (currently question 7 of the reporting instrument) and those relating to priorities, constraints and barriers to implementation (currently question 8 of the reporting instrument) are critical to making progress in the first stages of implementation of the FCTC. As such, the COP should agree that each Party be required to submit reports on these two matters annually for at least the first five years after entry into force of the Convention for that Party.