



This document relates to item 5.1 of the provisional agenda

Sixth Session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control,
13-18 October 2014, Moscow

FCA Policy briefing
Reporting & Implementation Review

Key recommendations

- To strengthen implementation of the Convention, COP6 should establish an implementation review committee and finance its operations.
- A clear mandate for the committee and guiding principles for its work should be also adopted at COP6.
- To finalise the terms of reference for the committee, specific methods of its work should be further considered and adopted by the COP.
- Among its initial tasks, the implementation review committee could test several methods of work or review FCTC reporting arrangements.

FCTC reporting at a glance

One of Parties' obligations under the WHO Framework Convention on Tobacco Control (FCTC) is to submit periodic reports on implementation of the Convention¹. The key purpose of FCTC reporting arrangements is to collect necessary information to enable the COP to oversee implementation of the Convention.

Over the past years, good progress has been made in keeping the FCTC reporting instrument in line with the guidelines of the Convention, unifying the reporting cycle for all Parties, and significantly enhancing the online reporting database. Unfortunately, the potential of FCTC reporting is still underutilised.

Every two years, Parties collect and compile an extensive amount of data on their tobacco control policies and tobacco consumption, and submit them to the Convention Secretariat. At present, the reporting instrument is comprised of a mandatory questionnaire with more than 350 questions and an even longer optional module. While Parties invest considerable time and effort to collect the data, they receive no feedback on their progress with implementation or compliance². The data is not assessed in any way, for example to identify areas where Parties might need additional tools or targeted assistance. The information is used only to produce a Global Progress Report.

At the sixth session of the Conference of the Parties (COP6), it is time to establish an FCTC implementation review committee that would assess FCTC implementation in a systematic way in order to facilitate and accelerate implementation.

¹ Article 21 of the FCTC

² As noted in para 11 of report FCTC/COP/6/17, the feedback to Parties is provided only when certain data is missing or needs to be clarified.

Experience of other international Conventions

To enhance the usefulness of their reporting processes, many environmental and human rights treaties have established mechanisms, procedures or committees to facilitate the review of individual Party reports. The purpose of such reviews is to better understand difficulties in implementation and to provide tailored guidance on how treaty implementation can be improved/accelerated. The experiences of international treaties in this area are well documented and have proven to be especially valuable in the case of environmental treaties³. The COP was presented with an overview of this experience at its fifth session⁴. FCA has also produced materials in this regard⁵.

Specific mechanisms to review implementation vary from treaty to treaty, but their key parameters are similar. Their work is guided by the governing bodies of these treaties, such as the COP, and takes place inter-sessionally. These mechanisms were usually established after several years of a treaty's existence, and their operations are overseen by a geographically representative committee.

FCTC implementation review mechanism

While considering the examples of other Conventions, it is important to recognise that the WHO FCTC is the only public health treaty, and as such it should develop its own unique implementation review instrument.

FCA recommends that the COP establish an "implementation review mechanism" rather than a "mechanism to facilitate review of Parties' reports". The purpose of the mechanism—a committee—should be to encourage implementation, rather than to merely go over Parties' reports.

To put in place an effective implementation review committee, the COP should carefully consider the committee's mandate and guiding principles for its work. Report FCTC/COP/6/17 provides a good basis for this discussion. COP6 should consider adopting a five-point mandate for the committee (four points were proposed in paragraph 20 of report FCTC/COP/6/17; FCA's addition is marked in *italics*):

- Review implementation reports submitted by the Parties, based on an initial technical review to be completed by the Convention Secretariat;
- Inform reporting Parties of any issues identified concerning insufficient implementation or non-compliance, and encourage the utilization of relevant resources and mechanisms of assistance available internationally;
- *Facilitate information sharing, assistance and learning on effective ways of implementing the provisions of the Convention;*
- Provide input to the development of the global progress report on implementation of the Convention, prepared by the Convention Secretariat for submission to the COP;
- Report to the COP on its work, including challenges identified and recommendations, as appropriate, with regard to implementation of the Convention.

The report also recommends that an inter-governmental expert committee would be an appropriate body to carry out this work, with the support of the Convention Secretariat and the guidance of the COP (paragraph 16). FCA endorses this recommendation. We further suggest that COP6 agree on the guiding principles for the work of the committee. In FCA's views, an FCTC implementation review

³ Goeteyn, N. & Maes F. 2011. Compliance Mechanisms in Multilateral Environmental Agreements: An Effective Way to Improve Compliance? Chinese Journal of International Law pp791-826.

⁴ COP5 report FCTC/COP/5/14

⁵ For more information see FCA's briefing paper from COP2 at: <http://www.fctc.org/images/stories/2007/fca-2007-cop-sir-cop2-briefing-en.pdf>

mechanism should operate under the principles of transparency, inclusiveness, expedition, cost-effectiveness, collaboration and constructive dialogue.

Method of work of the FCTC implementation review mechanism

Once the COP has agreed on the guiding principles and mandate of the implementation review committee, it should also discuss its method of work. In particular, COP6 should provide guidance regarding when and how Parties' reports should be reviewed, what type of recommendations the committee should produce and whether these recommendations will be addressed to individual Parties as well as to the COP.

Review of Parties' reports

There are a number of different ways in which the committee could review Parties' reports:

- The committee could review reports only of those Parties that request a review;
- The committee could review Parties' reports only when issues of non-compliance are raised with the Secretariat;
- The committee could be instructed by each session of the COP to review the implementation of a limited number of FCTC articles by all Parties.

Other Conventions have adopted terms of reference (ToR) detailing the method of work of their implementation review mechanisms. In the case of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Committee that administers the mechanism for promoting implementation and compliance may receive submissions from:

- a) A Party that concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention;
- b) A Party that has concerns or is affected by a failure to comply with and/or implement the Convention's obligations by another Party with whom it is directly involved under the Convention;
- c) The secretariat, if ... it becomes aware of possible difficulties of any Party in complying with its reporting obligations, provided that the matter has not been resolved within three months by consultation with the Party concerned.

The Committee, under the guidance of the COP, may also review general issues of compliance and implementation of specific provisions under the Basel Convention⁶.

The Committee overseeing procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety may only receive submissions relating to implementation or compliance from:

- a) Any Party with respect to itself;
- b) Any Party, which is affected or likely to be affected, with respect to another Party⁷.

According to the proposed mandate, the FCTC committee should "review implementation reports submitted by the Parties, based on an initial technical review to be completed by the Convention Secretariat" (paragraph 20). It is not clear whether the committee will be tasked to review entire reports of all Parties, parts of the reports or only reports of selected Parties. The nature and scope of the technical review meant to be completed by the Convention Secretariat is not clear either.

⁶ Full terms of reference of the Mechanism for Promoting Implementation and Compliance with the Basel Convention are available at:
<http://www.basel.int/TheConvention/ImplementationComplianceCommittee/Mandate/tabid/2296/Default.aspx>

⁷ Methods of work of the Compliance Committee are available at : http://bch.cbd.int/protocol/cpb_art34_cc.shtml

In FCA's view, at least two complementary approaches to reviewing Parties' reports could be considered. The reports could be reviewed article-by-article, starting with those articles for which a deadline for implementation exists (Article 8 and 11) or for which guidelines have been developed. Another approach could be to assess the implementation reports of a representative sample of Parties, ensuring geographic representation, different socio-economic levels and differences in trends of tobacco use prevalence (on decline/growing/stabilized). Different methods of work may provide different insights and opportunities to formulate appropriate recommendations for improvements.

Formulating recommendations

Terms of reference for implementation review mechanisms of other Conventions also specify what type of support and recommendations will be provided to Parties once the review is undertaken. These include, for example:

- a) Provision of advice, non-binding recommendations and information relating to establishing and/or strengthening its domestic legislation;
- b) Facilitation of assistance, including on how to access financial and technical support, as well as technology transfer or capacity-building;
- c) Voluntary compliance action plans, including benchmarks, objectives and indicators of the plan, as well as an indicative timeline for its implementation.

The proposed mandate for an FCTC mechanism states that the committee will "inform reporting Parties of any issues identified concerning insufficient implementation or non-compliance, and encourage the utilization of relevant resources and mechanisms of assistance available internationally" (paragraph 20). It should be clarified whether Parties will also receive specific guidance on which steps to take to meet the requirements of the Convention. Other options for feedback that the committee could provide to Parties, and which would be particularly helpful to Parties, should be discussed at the COP.

Possible initial tasks for the FCTC implementation review committee

The overarching objective of the committee should be to encourage implementation of the Convention. As such, its initial task could be to assess the suitability of different methods of work and test them. Alternatively, an initial task of the committee could consist of reviewing the FCTC reporting arrangements and propose improvements. For example, the committee could suggest how to simplify and clarify some of the questions in the reporting questionnaire and how to standardise methodology to enable implementation of the FCTC to be monitored over time, across countries and across different provisions. The committee could also consider specific improvements to support available to Parties when filling out the questionnaire.

Conclusions

Parties' implementation reports contain valuable information on the advancements in tobacco control over the past years. Only a fraction of this data is currently used to inform COP discussions. The time has come to establish an FCTC implementation review mechanism which will enhance the usefulness of Parties' implementation reports and in so doing facilitate and accelerate implementation of the FCTC.

At COP6, Parties should agree on a clear mandate of the implementation review committee and guiding principles for its work. To finalise the terms of reference for the committee, specific methods of its work should be further considered and adopted by the COP. Once established, predictable funding should be dedicated for the work of the committee. As its first task the implementation review committee could suggest improvements to simplify and streamline FCTC reporting arrangements or further assess appropriate methods of its work.