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FCA Policy Briefing
FCTC reporting arrangements

Key recommendations:

- The FCTC reporting instrument should continue to include questions specific to each of the FCTC guidelines, as well as provide Parties with opportunities to share additional information;
- Parties should agree to establish an FCTC implementation review mechanism, and agree on its key principles;
- COP5 should establish an intersessional Expert Group to prepare a report for COP6 outlining possible systems for implementation review of the FCTC, and make recommendations on the most appropriate format;
- COP5 should prioritize activities of the Convention Secretariat to support Parties in fulfilling their reporting obligations and allocate sufficient and predictable resources for these activities.

Introduction

The reporting instrument within the WHO Framework Convention on Tobacco Control (FCTC) is a key tool which helps the Conference of the Parties (COP) oversee implementation of the Convention. Information contained in the current reports allows Parties to share experiences and, at the same time, they reveal progress on tobacco control in individual countries and globally.

The importance of reporting is outlined in the text of the Convention¹, and key parameters of FCTC's reporting instrument were established in 2006 at the first session of the Conference of the Parties (COP1)². In past years, the reporting instrument has been updated and new components have been established. At this point, the FCTC reporting instrument comprises the following items:

- The official questionnaire for Parties, which includes questions on specific provisions of the Convention; and
- Step-by-Step instructions to help Parties fill in the questionnaire.

¹ Article 21 of the FCTC.

² COP1 decision FCTC/COP1 (14).

At COP4, Parties agreed to submit responses to the official questionnaire periodically, every two years³. In 2012, Parties were requested to submit their reports between 1 January and 30 April 2012. As of 8 June 2012, 97 Parties had submitted their reports⁴. All responses submitted are available on the FCTC website⁵. Moreover, data provided by Parties is also uploaded into the WHO FCTC implementation database, which is an online tool searchable by Party and by treaty article or measure⁶.

Finally, Parties' reports serve as a key input for a global overview on implementation of the FCTC, which is regularly prepared by the Convention Secretariat. Five Global Progress Reports on the implementation of the Convention have been published since 2006. The latest report will be presented at the fifth session of the Conference of the Parties (COP5)⁷.

At COP5, Parties will not only need to review the latest Global Progress Report (FCTC/COP/5/5), but they should also discuss possible updates and improvements to the reporting arrangements, including the FCTC reporting instrument. FCA believes that a more comprehensive assessment of Parties' reports will help identify both best practices and obstacles to implement provisions of the Convention. Such analysis, usually delivered through implementation review mechanisms, will allow a more targeted response to challenges encountered by Parties. FCA encourages Parties to set up an Expert Group at COP5 to work intersessionally and develop options for an FCTC implementation review mechanism.

Topics to be reviewed at COP5

Several options to enhance FCTC's reporting arrangements are suggested by the report of the Convention Secretariat (FCTC/COP/5/14) such as:

- Update official reporting instrument (questionnaire);
- Enhance standardization of indicators and definitions;
- Introduce additional mechanisms to review implementation of the Convention.

Suggestions related to the official questionnaire and standardization of definitions are of a technical nature and should be reviewed carefully by the Parties. Proposals to enhance review of implementation of the Convention introduce additional ways to analyze the progress in turning FCTC's commitments into effective policies at the country level. These options should be further examined by the Parties. Key proposals included in report FCTC/COP/5/14 and recommendations of the FCA are discussed below.

³ COP4 decision FCTC/COP4 (16).

⁴ Information on the status of reports is available on the FCTC web site: http://www.who.int/fctc/Reporting_Status_Alpha_order_June2012.pdf.

⁵ FCTC web site: http://www.who.int/fctc/reporting/party_reports/en/index.html.

⁶ FCTC web site: http://www.who.int/fctc/reporting/implement_database/en/index.html.

⁷ Report FCTC/COP/5/5.

Official reporting instrument – necessary updates

The content of the official questionnaire for Parties has changed several times already and new updates may need to be introduced at COP5. The latest version of the questionnaire reflects the text of the Convention, as well as of the guidelines that have been adopted. When guidelines on Articles 5.3, 8, 11, 12, 13 and 14 were adopted at the past COP sessions, it was decided that their content should be reflected in the questionnaire^{8 9}. According to the report on FCTC's reporting arrangements, this practice should be changed¹⁰.

The report suggests an alternative approach of incorporating the content of the guidelines in FCTC's reporting instrument. It proposes adding a single open-ended question, rather than developing several guideline-specific questions based on the content of newly adopted guidelines. An open-ended question would read: "Please indicate the specific provisions of the guidelines for implementation of [Article X] of the Convention that were taken into account when implementing [Article X]".

FCA considers that such a change may potentially weaken the reporting instrument. In particular, the format of the questionnaire should allow for comparability of Parties' data over time. A single open-ended question would result in countries sharing information of differing nature and levels of detail. Comparison of such responses – among countries and over time – may become highly problematic. Instead, FCA suggests that the existing practice of including guideline-specific questions in the reporting questionnaire should be maintained, as it ensures consistency and collection of comparable data.

For instance, guidelines on Article 6 (Price and tax measures) will be considered for adoption at COP5. In order to monitor implementation of price and tax measures on tobacco products, FCA recommends aligning the reporting instrument with the text and recommendations of the guidelines. Additional questions, such as ones related to affordability of tobacco products or long-term policies for Parties' tobacco taxation structure, may need to be introduced.

Additionally, the reporting cycle was harmonized with the biennial cycle of the regular sessions of the COP in 2010¹¹. As a result, all Parties are required to provide their reports at the same time¹², which allows decisions of the COP, such as the adoption of guidelines, to be easily reflected within the reporting instrument used in the following reporting cycle.

Standardization of indicators and definitions – a new tool to support the process

The collection of comparable data on tobacco use and tobacco control is critical to accurately assess the magnitude of the tobacco epidemic, to evaluate the effectiveness of tobacco control policies and to address emerging trends and understand common difficulties with implementation. Further standardization of indicators and definitions within the FCTC reporting instrument would be highly desirable.

⁸ Report FCTC/COP/5/14 para 3.

⁹ Decisions FCTC/COP3 (10); FCTC/COP3(17); FCTC/COP4(16).

¹⁰ Report FCTC/COP/5/14, para 4.

¹¹ COP4 decision FCTC/COP4(16).

¹² For the 2012 Global Progress Report, the reports were due by 30 April 2012.

FCA welcomes the progress achieved in this area in past years¹³, and encourages COP5 to agree to develop an FCTC Indicator Compendium, as proposed by report FCTC/COP/5/14. The Compendium – a detailed list of indicators with their descriptions – should reflect the content of the Convention and its guidelines. It should be updated regularly as new treaty instruments are adopted.

Review of implementation of the Convention – additional opportunities to address challenges and showcase best practices

Parties' reports on implementation of the Convention represent an enormous amount of data. They provide periodic information on tobacco consumption and tobacco control measures taken by each Party. However, without an in-depth analysis, the wealth of these regular updates remains untapped. In FCA's view, a comprehensive analysis of information regularly submitted by Parties would provide crucial insights on both the difficulties implementing the FCTC and successes achieved. Such analysis, usually delivered through implementation review mechanisms, would identify achievements in FCTC implementation, as well as areas where implementation still does not reach desirable levels. Consequently, an in-depth analysis of Parties' reports would help deliver a more targeted response to the implementation challenges encountered by Parties. At COP5, Parties should agree to establish a dedicated mechanism to assess information included in Parties' reports to identify best practices, and address remaining shortfalls in implementation of the Convention.

Many environmental and human rights treaties have established mechanisms and procedures to facilitate the review of individual Party reports to better understand difficulties in implementation, and to provide tailored assistance¹⁴. These mechanisms are well documented and have proven to be especially valuable in the case of environmental treaties¹⁵.

While specific mechanisms to review implementation vary from treaty to treaty, their key parameters are similar. Their work is guided by the governing bodies of these treaties, such as the COP, and takes place intersessionally. In addition, evidence shows that these mechanisms were established after several years of a treaty's existence, and their operations are overseen by a geographically representative forum. Annex 3 of report FCTC/COP/5/14 provides a detailed overview of existing implementation review mechanisms for 10 human right treaties, 7 environmental treaties and 2 international labour standards.

Following the example of other treaties, COP5 should agree to establish an FCTC implementation review mechanism and agree on the key principles which would guide its work. At the same time, COP5 should establish an intersessional Party-led Expert Group to research possible systems of implementation review under the FCTC. The Expert Group should prepare a report for COP6 outlining appropriate options and possible Terms of References for the work of an FCTC implementation review mechanism.

While considering the examples cited above, it is important to recognise that the WHO FCTC is the only public health treaty and it should develop its own unique implementation review instrument which will help Parties to identify implementation challenges, as well as provide sufficient assistance to overcome them.

¹³ Report FCTC/COP/5/14, para 7-12.

¹⁴ Report FCTC/COP/5/14, para 26-32.

¹⁵ Goeteyn, N. & Maes F. 2011. Compliance Mechanisms in Multilateral Environmental Agreements: An Effective Way to Improve Compliance? Chinese Journal of International Law pp791-826.

COP5 to agree on key principles of an FCTC implementation review mechanism

While more work is needed to determine the most appropriate format for an FCTC implementation review mechanism, COP5 should agree on key characteristics and principles under which this mechanism will operate. These principles should guide the work of the Expert Group.

In FCA's view, the FCTC's implementation review mechanism should operate under the principles of inclusiveness, collaboration and constructive dialogue. Its key responsibilities should include:

- Analysing Party reports and promoting further discussions with Parties on specific challenges they experience when developing, introducing, and enforcing FCTC measures;
- Reviewing all identified obstacles in implementation, including those where securing necessary resources and technical expertise were recognized as existing barriers;
- Developing recommendations applicable to individual Parties as well as to Parties experiencing similar implementation difficulties;
- Suggesting where to obtain technical or legal expertise and access necessary resources;
- Monitoring and evaluating the support provided;
- Promoting knowledge sharing and cooperation among Parties.

More attention is needed on assisting Parties with their reporting obligations

One of the Parties' obligations under the FCTC is to submit periodic reports on their implementation of the Convention. Although many Parties comply with the reporting obligations, some do so with significant delays. Moreover, there are still 18 Parties which have never submitted their implementation reports¹⁶.

Calling on all Parties to submit their implementation reports on time, FCA welcomes proposals to facilitate timely submission of the reports. Measures such as a regularly updated list of submitted and overdue reports available on the FCTC website or regular reminders issued by the Convention Secretariat and delivered to Parties at various occasions should be endorsed by COP5. Proposals such as "a procedure to prevent accumulation of overdue reports" or "a procedure for examining the status of implementation of the treaty by a Party in the absence of a report"¹⁷ may need to be further clarified before being considered by COP.

More importantly, FCA believes that providing necessary support to Parties in fulfilling their reporting obligations should receive sufficient attention at COP5. The 2014-2015 workplan and budget proposes activities of the Convention Secretariat that include individual support with reporting obligations for up to 10 Parties¹⁸. Unfortunately, these activities will take place only when extrabudgetary resources become available. COP5 may wish to discuss the most appropriate ways to support Parties with their reporting obligations and prioritize such assistance. Sufficient and predictable resources, including staff time, should be made available for these activities.

¹⁶ Angola, Cape Verde, Cote D'Ivoire, Dominica, Equatorial Guinea, Grenada, Guinea, Guinea-Bissau, Kiribati, Liberia, Nicaragua, Saint Lucia, Sierra Leone, The Former Yugoslav Republic of Macedonia, Turkmenistan, United Republic of Tanzania, Uzbekistan, Zambia.

¹⁷ Report FCTC/COP/5/14, para 21.

¹⁸ COP5 Explanatory note on Proposed workplan and budget for the financial period 2014–2015 (FCTC/COP/5/INF.DOC./2), budget item 3.2.

Conclusions

In 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. FCA welcomes this progress and considers that COP5 must build on those achievements.

FCA recommends that the established practice of past years of including guideline-specific questions in FCTC's reporting questionnaire should be maintained by COP5. In addition, FCA welcomes the development of the FCTC Indicator Compendium, which should promote standardization of key definitions and indicators included in the FCTC reporting instrument.

In order to strengthen the Convention and COP's capacities to review implementation, FCA encourages COP5 to agree on key characteristics and principles of a FCTC implementation review mechanism. At the same time, COP5 should set up an Expert Group to work intersessionally and develop the most appropriate model for FCTC's implementation review mechanism.

Finally, FCA urges all Parties to submit their implementation reports on time. FCA recommends that COP5 should prioritise activities of the Convention Secretariat to support Parties in fulfilling their reporting obligations and allocate sufficient and predictable resources for these activities in the 2014-2015 budget.