

# IMPLEMENTATION OF THE FCTC:

## A COLLECTIVE CHALLENGE IN NEED OF A COLLECTIVE SOLUTION

*The WHO Framework Convention on Tobacco Control (FCTC) has become one of the fastest endorsed UN treaties, but its implementation remains uneven among the 176 Parties. Additional treaty mechanisms are needed to analyse progress, and address shortfalls in implementation. A subsidiary body on FCTC implementation – an inter-sessional forum led by FCTC Parties – would provide all Parties with an opportunity to accelerate implementation of the Convention. The value of similar mechanisms to many other treaties is proven. A process for establishing a subsidiary body to oversee and accelerate implementation of the FCTC should be initiated at COP5.*

### COP: An opportunity to work, learn, progress

In November 2012, delegates from more than 170 countries will meet in Seoul to review progress in implementing tobacco control globally, regionally and at the country level. They might all share a common aim:

*How can I showcase the tobacco control successes of my country and learn from others how to overcome obstacles to effective tobacco control, such as lack of resources or tobacco industry interference?*

Government delegates, as well as FCA members, travel to sessions of the FCTC Conference of the Parties (COP) with various expectations, but they share a common commitment – advance work on the first global public health treaty so that fewer people die and suffer due to tobacco use.

In three high-level documents in 2011 – the UN Political Declaration<sup>1</sup>, the Moscow Declaration on non-communicable diseases (NCDs)<sup>2</sup> and the Rio Political Declaration on Social Determinants of Health<sup>3</sup> – governments committed to accelerate implementation of the FCTC. In 2012, the World Health Assembly adopted a target of a 25 per cent relative reduction in premature NCD mortality by 2025.

Now it is time for the FCTC COP to deliver on its critical role and put in place measures to oversee, stimulate, and accelerate action demanded by the highest level of governments. COP5 represents a unique opportunity to take major steps in establishing a subsidiary body on FCTC implementation.

### Every mature treaty has an independent implementation mechanism

Many environmental, human rights, anti-corruption and arms treaties contain mechanisms and procedures to turn commitments into action. These mechanisms are well documented and have proven to be especially valuable in the cases of the environmental treaties<sup>4</sup>:

The **Mechanism for Promoting Implementation and Compliance** established under the Basel Convention<sup>5</sup> facilitates implementation by providing advice to Parties on how to access financial and technical support, including technology transfer and capacity-building.

The **Committee for the Review of the Implementation of the Convention** (UN Convention to Combat Desertification, UNCCD) regularly assesses progress towards achieving the objectives of the Convention, and promotes the exchange of and access to information on best implementation practices.

Both these permanent implementation review bodies were established after several years of a treaty's existence: at COP6 of the Basel Convention and COP5 of the UNCCD.

1 UN resolution A/RES/66/2 – Political Declaration of the UN HLM on NCDs  
2 First Global Ministerial Conference on Healthy Lifestyles and Noncommunicable Disease Control - Moscow Declaration  
3 World Conference on Social Determinants of Health – Rio Political Declaration on Social Determinants of Health

4 Goeteyn, N. & Maes F. 2011. Compliance Mechanisms in Multilateral Environmental Agreements: An Effective Way to Improve Compliance? Chinese Journal of International Law pp791-826  
5 Decision V/12 of Basel Convention Conferences of Parties



# THE WAY FORWARD

## COP5: The right time to address implementation, but ...

Party reports and their compilation – the FCTC Global Progress Report – reveal mixed progress on implementation.

For example, according to the latest global report, more than 60 Parties had taken steps to prevent the tobacco industry from interfering with their tobacco-control policies<sup>6</sup>. Yet almost the same number of Parties indicated no progress in this area as of mid-2012<sup>7</sup>. These reports also highlight existing barriers: lack of political will, administrative and capacity deficits, and a shortfall of financial resources.<sup>8</sup>

To achieve progress at COP5, Parties should elaborate on their implementation reports. Concrete examples of difficulties Parties face when developing national tobacco control legislation, prioritising tobacco control, and securing resources or overseeing and measuring impact will help COP to address these challenge in the most appropriate way.

Similarly, focused discussions should take place among Parties concerning international cooperation and assistance for tobacco control.

## ... more is needed to tackle challenges in a comprehensive manner

Neither a compilation of Parties' reports nor discussions at COP can replace an in-depth analysis of difficulties implementing the FCTC. At COP5, Parties should establish procedures which would allow for a more deeper analysis of progress, which would take place on a regular basis between sessions of the COP. Following examples of other treaties, a FCTC subsidiary body on implementation of the Convention should be put in place.

Establishing such a subsidiary body was part of the vision for the FCTC in early meetings where the Convention was negotiated, and is provided for within the COP's general power to establish such mechanisms (Article 23).

<sup>6</sup> World Health Organization (WHO). 2010. Global Progress Report on Implementation of the WHO Framework Convention on Tobacco Control. Geneva: WHO.

<sup>7</sup> Calculated from answers provided through WHO Implementation Database: <http://apps.who.int/fctc/reporting/database/> accessed July 23, 2012.

<sup>8</sup> United Nations (UN). 2012. Secretary General Report: Ad Hoc Inter-Agency Task Force on Tobacco Control. E/2012/70. New York: UN.

## An ideal FCTC implementation review:

To accelerate implementation of the FCTC, Parties need to better understand existing obstacles and how to effectively address them. An appropriate implementation review mechanism should help Parties to identify implementation challenges, as well as provide sufficient assistance to overcome them. It is paramount that the subsidiary body operates under the principles of inclusiveness and collaboration. Its key responsibilities should include to:

- Analyse Party reports and promote further discussions with Parties on specific challenges they experience when developing, introducing, and enforcing FCTC measures;
- Review all identified shortfalls in implementation, including those where difficulties to secure necessary resources and technical expertise were identified as obstacles to implement the FCTC;
- Develop recommendations applicable to individual Parties as well as to Parties experiencing similar implementation difficulties;
- Suggest where to obtain technical or legal expertise and access necessary resources;
- Monitor and evaluate the provided support;
- Promote knowledge sharing and cooperation among Parties.

**Article 23** Conference of the Parties shall keep under regular review the implementation of the Convention and take the decisions necessary to promote its effective implementation and may adopt protocols, annexes and amendments to the Convention, in accordance with Articles 28, 29 and 33. Towards this end, it shall:

(d) consider reports submitted by the Parties in accordance with Article 21 and adopt regular reports on the implementation of the Convention;

(e) promote and facilitate the mobilization of financial resources for the implementation of the Convention in accordance with Article 26;

(f) establish such subsidiary bodies as are necessary to achieve the objective of the Convention;

# WHAT CAN BE DONE?

## At COP5, Parties should embark on establishing additional ways to review and support implementation of the FCTC.

Parties need to research and discuss possible forms of such mechanisms, to ensure that both review and support for implementation are provided simultaneously. To achieve progress, COP5 should:

- Agree on **key principles** of an ideal implementation support and review mechanism for the FCTC;
- Establish an **intersessional Expert Group** with the following objectives: **review best practices** from other international agreements, including implementation and compliance mechanisms of multilateral environmental agreements; **prepare a report for COP6**, outlining possible systems for implementation review that might be adopted by the COP.

At the same time, COP5 should establish an **intersessional Working Group** to review and strengthen FCTC mechanisms of assistance and consider establishing additional tools to stimulate sustainable investment in implementation of the Convention.