

INSIDE THIS ISSUE

LES CONTRIBUTIONS VOLONTAIRES ÉVALUÉES : QUEL EST LE PROBLÈME ?	2
MAURITIUS NGO SUCCESSFULLY FIGHTS THE TOBACCO INDUSTRY	3
ENJEUX ET PERTINENCE D'UNE COOPÉRATION JUDICIAIRE RENFORCÉE	4
EVOLUTION OF THE UK'S ARTICLE 5.3 POLICY FOR DIPLOMATS	5
TOBACCO INDUSTRY CALLING FOR "GOOD GOVERNANCE" IS LAUGHABLE	5
WHAT IS A SMOKING MACHINE?	6

DEATH CLOCK

SINCE THE OPENING OF THE FIRST WORKING GROUP FOR THE FRAMEWORK CONVENTION ON TOBACCO CONTROL ON 25 OCTOBER 1999,

74'481'848

PEOPLE HAVE DIED FROM TOBACCO RELATED DISEASES.
(AT 9AM 17 OCTOBER 2014)

UNDER THE SPOTLIGHT: TOBACCO INDUSTRY INTERFERENCE IN THE COP

The COP has been very tough about excluding the public. Justifiably so, as the public badge was being carried by so few genuine members of the public it might as well have been renamed 'tobacco industry representative'. The problem is that the industry is already inside the COP with a seat at the table on many delegations (see article on page 5).

As Parties debate the need for inter-sessional work to strengthen Article 5.3 implementation, and changes in the rules to require screening of the public for tobacco industry links, it is time for Parties to take a good look at themselves. If the public can be forced to declare whether or not they have tobacco industry links, surely Parties too should be called to account. After all, a tobacco industry advocate **inside** a delegation has to be more powerful than one on the **outside**.

While more action on Article 5.3 is important, for instance to develop guidance for international organisations and amend the rules of procedure to prevent the tobacco industry coming in as members of the public, the COP must also put its own house in order. As the saying goes, "*sunlight is the best disinfectant*".

In other words, what's needed is more transparency. If the public and observers have to declare any affiliation with the tobacco industry, why shouldn't delegates too? Of course, Parties have the right to choose who they want on their delegations, but they need to be transparent about it.

Principle 2 of the Article 5.3 guidelines is very clear: "*Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent*." In fact, read into the body of the guidelines and they are even more explicit. Recommendation 4.9 states: "*Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on*

delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties."

The very least Parties should do is ensure that any delegates with tobacco industry links are required to be transparent about it.

We understand that today in Committee B, during the discussions on agenda item 6.7 about public participation, there will be a proposal that attempts to address this problem. It will suggest that when Parties are filing their credentials for meetings of the COP and other subsidiary bodies, they include information about whether any members of

“

THE VERY LEAST PARTIES SHOULD DO IS ENSURE THAT ANY DELEGATES WITH TOBACCO INDUSTRY LINKS ARE REQUIRED TO BE TRANSPARENT ABOUT IT

”

their delegation are affiliated with the tobacco industry, and the extent of such affiliation.

But as the Thai proposal, which goes to Committee A tomorrow shows, there's more to comprehensive implementation of Article 5.3 than the COP. Thailand will be asking for support for its draft decision urging Parties to strengthen implementation of Article 5.3 and its guidelines throughout government, particularly diplomatic missions, as well as internationally.

There are already good examples of Parties that meet some if not all of the standards set in the Thai proposal on Article 5.3, for

LES CONTRIBUTIONS VOLONTAIRES ÉVALUÉES : QUEL EST LE PROBLÈME ?

La principale source de financement du plan de travail de la COP sont les contributions volontaires évaluées. Elles sont complétées par des fonds extrabudgétaires obtenus par le Secrétariat.

Les Parties en retard dans le paiement de leurs contributions ont évoqué le problème que représenterait le concept de contributions 'volontaires'. Au sein de certaines administrations, le point focal tabac se fait dire si c'est volontaire, nous ne sommes pas obligés de payer.

Mais quel est le véritable problème et que cherche-t-on à résoudre ? Un problème de non paiement pour des raisons administratives ou un problème de manque d'engagement et de volonté politique ?

Les montants sont parfois dérisoires et il y a peut être un véritable problème administratif, tel que soulevé par le Nigeria. Mais également certaines Parties voient des changements de personnels et les nouvelles personnes ne sont pas automatiquement au courant des obligations.

Il y a également le problème des Parties qui n'ont jamais soumis un rapport et d'autres Parties qui ne participent pas à la COP depuis plusieurs sessions.

ALORS QUE FAIRE ?

Il y a plusieurs solutions :

La première est de changer le vocabulaire et retirer le concept de base volontaire associé actuellement aux contributions évaluées. Cela pourra aider certaines Parties à régler leurs contributions. Mais ce n'est peut-être pas le cas de toutes les Parties qui ont des difficultés – et de toute façon cela ne résoudra ni le problème de volonté politique ni le problème d'autres difficultés que les parties rencontrent mais qui sont à ce jour pas très claires.

La deuxième solution est que le secrétariat clarifie les procédures et communique précisément les modalités de paiement et de soumission des rapports avec l'aide si besoin des bureaux régionaux et nationaux de l'OMS. En quelque sorte, faire un suivi plus soutenu.

Cela permettra à certains pays de s'acquitter de leurs obligations mais encore une fois cela ne règlera pas tous les problèmes.

La réalité est que, quel que soit le nom que l'on donne à la contribution financière, s'il n'y a pas de sanction, celle-ci est moralement obligatoire pour un traité de santé publique et est essentielle à la vie de la COP et à ses travaux et donc à la lutte contre le tabac.

La COP doit s'accorder sur une solution pour faire évoluer cette situation que l'on ressasse depuis des COP et des COP sans avancer.

Par exemple : une aide pratique et immédiate pour que la vingtaine de Parties qui n'ont rien payé puisse enfin le faire. Et la même démarche envers la cinquantaine de pays qui ont des difficultés à soumettre leur rapport, à savoir une proposition d'aide pratique pour qu'ils puissent enfin eux aussi expliquer comment ils mettent en œuvre la CCLAT.

Et si tout cela ne fonctionne pas il sera temps pour la COP de changer le vocabulaire et d'analyser en profondeur le problème de financement. Mais au moins tout aura été essayé.

Augustin Faton
Président
Initiative pour l'Éducation et le Contrôle du Tabagisme

Daouda Elhadj Adam
Conseiller technique pour l'Afrique
Union internationale contre
la Tuberculose et les Maladies Respiratoires

MAURITIUS NGO SUCCESSFULLY FIGHTS THE TOBACCO INDUSTRY

On 21 June 2013, the Cabinet of Ministers of Mauritius took note that an international tobacco company based in Dubai planned to open a tobacco manufacturing plant in the free port of Mauritius for export to African countries.

VISA, a tobacco control NGO in Mauritius and a member of the Framework Convention Alliance (FCA), wrote to the Prime Minister of Mauritius and other ministers concerned, strongly opposing the establishment of the tobacco plant. VISA's complaint was based on the fact that the project violated the WHO Framework Convention on Tobacco Control (FCTC) as well as the United Nations Political Declaration of the High-Level Meeting of the General Assembly on the Prevention and Control of Non-Communicable Diseases.

In its letter to the Prime Minister VISA wrote, "The tobacco industry is engaged in aggressive marketing on the African continent with a view to increasing the consumption of tobacco products. Already, 80 percent of the six million annual tobacco-related deaths in the world are occurring in low and middle-income countries."

"With the production facilities being offered to the tobacco industry in our free port, the Government of Mauritius is becoming party to the strategy of the tobacco industry, which aims to increase tobacco production and consumption in Africa. This would lead to further tobacco-related suffering and deaths on a continent already facing the double burden of communicable and non-communicable diseases."

International organisations, including the WHO, as well as the international and local media were informed of the decision made by the Government of Mauritius. The January 2014 issue of *Online First*, the online edition of the publication *Tobacco Control* of the British Medical

Journal, published an article on the subject to highlight VISA's opposition to the project.

Also, with the collaboration of FCA, Action on Smoking and Health (ASH USA) and the African Tobacco Control Alliance (ATCA), VISA circulated two online petitions to mobilise

However, VISA continued to oppose the project through the media and during national tobacco control events, such as World No Tobacco Day. VISA maintained its quiet advocacy with relevant agencies and influential people, as well as intelligence-gathering efforts.

“

IT IS COMFORTING TO NOTE
HOW CIVIL SOCIETY ORGANISATIONS,
THROUGH
COLLECTIVE ACTION, CONTINUE TO BE GUIDED
BY THE SPIRIT OF THE WHO FCTC
IN THE FIGHT
AGAINST THE TOBACCO INDUSTRY
AND IN THE PROMOTION OF PUBLIC HEALTH.

”

international support against the tobacco plant. The petitions were endorsed by 233 organisations and tobacco control advocates from 46 countries, indicating strong and wide opposition from the international community to the proposed tobacco manufacturing plant. The petitions were sent to the Prime Minister and other ministers concerned, the media and international organisations.

The official response from the Ministry of Agro-Industry was that the "cigarette is a legal product worldwide and smokers will purchase the product whether manufactured in Mauritius or in any other country". This statement ignored the health, social, economic and environmental consequences of tobacco use.

We are now pleased to confirm that plans to establish the tobacco manufacturing plant in the free port of Mauritius have been abandoned. At a time when the global tobacco control community is assembled in Moscow to debate and consolidate future strategies against the tobacco epidemic, it is comforting to note how civil society organisations, through collective action, continue to be guided by the spirit of the WHO FCTC in the fight against the tobacco industry and in the promotion of public health.

Deowan Mohee
VISA President

“

MAIS QUEL EST LE VÉRITABLE PROBLÈME ET QUE CHERCHE-T-ON À RÉSOUDRE ? UN PROBLÈME DE NON PAIEMENT POUR DES RAISONS ADMINISTRATIVES OU UN PROBLÈME DE MANQUE D'ENGAGEMENT ET DE VOLONTÉ POLITIQUE ?

”

ENJEUX ET PERTINENCE D'UNE COOPÉRATION JUDICIAIRE RENFORCÉE

Alors que les discussions autour du groupe d'experts sur la mise en œuvre de l'Article 19 se poursuivent, il y a lieu de rappeler à quel point cet article, consacré à la responsabilité, concerne des enjeux importants.

Il s'agit, d'une part, de soutenir les Parties attaquées par l'industrie du tabac dans leur mise en œuvre des dispositions du traité et, d'autre part, de faire état de la responsabilité de l'industrie du tabac et de ses alliés dans les contournements et violations des législations mais aussi dans les coûts sanitaires, financiers et sociaux induits pour les pays, en relation avec la consommation des produits du tabac.

S'agissant des procédures engagées par l'industrie du tabac contre les politiques publiques de santé, le phénomène n'est pas nouveau. Ainsi, à titre d'illustrations, en 1991, la législation française de lutte contre le tabagisme, la loi Evin, a fait l'objet d'un recours devant le Conseil constitutionnel via des parlementaires complaisants ; en 1998, la première directive européenne relative à une interdiction de la publicité a été annulée ; en 1996, la législation avancée prévue aux Etats-Unis avec la FDA a été mise à mal, etc.

Toutefois, l'adoption et la mise en œuvre de la CCLAT ont renforcé considérablement cette pratique. Les procédures engagées contre l'Uruguay (taille des avertissements sanitaires), l'Australie (paquets neutres), la Norvège (suppression des états), l'Union Européenne (nouvelle directive sur les produits du tabac)

etc. en constituent autant d'exemples. L'objectif est d'empêcher l'adoption de mesures fortes de contrôle du tabac et leur diffusion à d'autres pays, de semer la discorde entre les Parties, de briser la coopération mise en place grâce à la CCLAT.

Dans cette perspective, le rôle de la prévention judiciaire, au sens de la surveillance de toutes les pratiques de contournement des législations de contrôle du tabac et de la condamnation des infractions avec prévention de leur récidive, apparait primordial. Les actions en justice soulignent en effet l'ampleur de la responsabilité des fabricants et la légitimité des autorités publiques à agir.

RÔLE DE LA SOCIÉTÉ CIVILE

L'expérience d'un pays comme la France, dont le modèle juridique existe dans de nombreux autres pays notamment les pays francophones, le démontre clairement et met en exergue le rôle plus particulier que les organisations de la société civile peuvent jouer en bonne intelligence avec les autorités publiques.

Le droit pour les associations spécialisées d'agir en justice est explicitement prévu dans la loi. Le Ministère de la Santé soutient plus particulièrement deux de ces associations à l'origine de la jurisprudence en la matière. Ainsi dans le domaine des infractions à la législation interdisant la publicité, la promotion et le parrainage en faveur du tabac, plus de 80 décisions de principe ont été obtenues par le Comité National Contre le Tabagisme (CNCT),

au niveau de la Cour suprême qu'est la Cour de Cassation. Ces décisions ont permis de faire vivre le texte législatif en l'adaptant aux nouvelles pratiques de contournement des fabricants. Elles ont également statué sur des stratégies de défense adoptées par ceux-ci dans tous les pays au travers du recours à la liberté d'expression, et la référence à la Convention Européenne des Droits de l'homme et du citoyen, le détournement du droit à l'information, etc.

Ces procédures permettent non seulement de contribuer à faire appliquer les législations de protection, elles révèlent également la face que souhaitent cacher les fabricants, contribuant ce faisant à la dénormalisation de cette industrie et de ses produits.

Ces procédures peuvent être utiles pour d'autres pays et dans cette perspective, il est essentiel que les Parties prévoient de poursuivre la coopération sur ce sujet majeur.

Pascal Diethelm
OxyRomandie

Emmanuelle Béguinot
Comité National Contre le Tabagisme

EVOLUTION OF THE UK'S ARTICLE 5.3 POLICY FOR DIPLOMATS

In 2012, shortly before the last COP, a leaked letter revealed that the British Ambassador had lobbied the Panamanian trade minister to discourage tobacco tax increases because of the harm these were causing to what he described as 'one of the most important British companies'. At the time, the British Government defended his behaviour, but since then, after much soul-searching, standards have improved beyond recognition.

Designed to prevent such an occurrence happening again, detailed guidance for diplomats has been put in place. The guidelines clearly state that interactions with the tobacco industry should be limited, and where necessary, "should be conducted with maximum transparency to demonstrate our compliance with the FCTC".

The FCA Bulletin has separately covered the disgraceful deal between Imperial Tobacco and Lao PDR. This locked the Lao government into a 25-year contract losing them a total of US\$79.4 million in taxes over the past 12

years. There is no evidence that British diplomats had any involvement in this deal, but regrettably there was a guest posting on the official blog page of the British Ambassador to Lao PDR's which reads as an endorsement of Imperial Tobacco. Mr Alistair Brown posted in December 2013 that he had "taken up a position in Laos" in October 2009, "on behalf of my very British, Bristol-based employer, Imperial Tobacco Group Ltd". Mr Brown arrived in Lao in February 2010, "to discover that Lao Tobacco Ltd was the ... largest British investment company in the whole of Laos... LTL grows 100% of the tobacco used in our domestic and export cigarettes".

This was posted shortly before the updated UK Government guidance was issued. The guidance says explicitly that posts must **not** "Offer any endorsement of, or recommendations for, any tobacco company and should be careful to avoid creating the impression that any such endorsement exists".

[our emphasis]. Action on Smoking and Health (ASH) (UK) wrote to the British Foreign Minister alerting him to the issue just before COP started and Mr Brown's blog post was quickly removed.

As the Foreign Office guidance states, 'public health oriented civil society groups around the world are well organised and connected and may seek to highlight any activity that appears to conflict with the FCTC or these guidelines. The FCTC states that the "participation of civil society is essential in achieving the objective of the Convention and its protocols". Governments should be aware: we **are** watching you.

Deborah Arnott
ASH (UK)

TOBACCO INDUSTRY CALLING FOR "GOOD GOVERNANCE" IS LAUGHABLE

After being asked to leave the public gallery on Monday, Japan Tobacco International (JTI) lashed out in a press statement which laughably claimed that COP "lacked transparency, accountability and integrity", and called upon it to respect rules of "good governance".

JTI thinks it is being clever in using the same terms routinely levelled against the tobacco industry. However, the company ought to know it has just accused 179 governments of these serious charges. Well, that's the audacity of an industry that feels no shame or remorse in selling a product that kills millions a year.

JTI was bemoaning the fact that COP was "shutting out legitimate businesses", but it forgot to tell COP that the tobacco industry was adequately represented in the Japanese delegation, which includes two representatives from the Tobacco (and Salt) Industries Office. Incidentally, Japan owns about 30 percent of JTI's business.

Japan is not the only Party that has delegates with tobacco connections. Others include:

- In WPRO, China has four representatives of the State Tobacco Monopoly Administration listed, while the Vietnamese delegation had a Vietnam Tobacco Association representative join the delegation as an interpreter, but this person has taken the floor as a delegate.
- In EURO, Greece and Kyrgyzstan have delegates linked to, working for, or sponsored here by the tobacco industry.
- In AFRO, the United Republic of Tanzania included the Tanzania Tobacco Board on its delegation to represent tobacco growers.

This is only citing a few examples.

In attending COP, Parties have been reminded of Article 5.3 guidelines, and they are aware of Recommendation 4.9 about tobacco industry representatives being on delegations. Yet, their presence seems to be a recurring problem.

While the tobacco industry made a song and dance about not being allowed to participate at COP, there are all sorts of industry sightings and rumours floating around. There is a rumour that a non-Party – which incidentally is a low-income country – sent a large delegation, most of whom travelled on business class, to COP. Printed materials from the tobacco industry have also been making their rounds.

While the industry is complaining in the public arena, we can sometimes catch some familiar industry buzz words inside the rooms. Dr Margaret Chan was spot-on in her opening address when she reminded COP, "Please, do not be fooled by them."

Southeast Asia Tobacco Control Alliance



DIRTY ASHTRAY
AWARD



ORCHID AWARD

To all Parties that are taking a cooperative approach with the goal of reaching consensus on all agenda items



FRAMEWORK CONVENTION
ALLIANCE
BUILDING SUPPORT FOR TOBACCO CONTROL

The Framework Convention Alliance (FCA) is a global alliance of NGOs working to achieve the strongest possible Framework Convention on Tobacco Control. Views expressed in the Alliance Bulletin are those of the writers and do not necessarily represent those of the sponsors.

Framework Convention Alliance

Rue Henri-Christiné 5
Case Postale 567
CH-1211
Geneva, Switzerland

Representative Office:
FCA c/o ASH International
701 4th Street NW, 3rd Floor
Washington, DC 20001 USA

Phone: +1 202 289 7155
Fax: +1 202 289 7166
Email: info@fctc.org

www.fctc.org

[facebook.com/FrameworkConventionAlliance](https://www.facebook.com/FrameworkConventionAlliance)

twitter.com/FCAforTC



WHAT IS A SMOKING MACHINE?



A smoking machine (see picture) is used to test emissions in cigarette smoke as a part of the International Organization for Standardization (ISO) method. Under the ISO method, the machine smokes a cigarette with a 2 second puff of 35 ml every 60 seconds.

However, humans do not smoke like smoking machines. Smokers compensate to get the amount of nicotine desired, such as by smoking more deeply. When smokers inhale more to get more nicotine, smokers will also inhale more substances in tobacco smoke.

The ISO test method has been around for many years, but it has been discredited as a reliable means to measure relative harm of different cigarettes. Even the tobacco industry has been forced to acknowledge that smoke machine test yields are not representative of the quantity of substances actually inhaled by a smoker.

Continued from page 1

UNDER THE SPOTLIGHT: TOBACCO INDUSTRY INTERFERENCE IN THE COP

example the United Kingdom, which even though it is one of the homes of Big Tobacco, has a clear policy to ensure compliance with Article 5.3. This is particularly important because two out of the top four tobacco transnationals, Imperial Tobacco (2010 profits US\$2 billion) and British American Tobacco (2010 profits US\$4.2 billion) are British, and major exporters of their deadly products. The British Government, as a Party to the FCTC, has a particular responsibility not to aid the tobacco industry in exporting death around the globe.

The UK also makes clear that in line with WHO guidance on the Article 5.3 guidelines, "tobacco industry" means not only tobacco manufacturers, wholesale distributors, and

importers of tobacco products, but also tobacco growers, associations or other entities representing any of the above, as well as industry lobbyists. This is a high standard, which other Parties would do well to follow.

Article 5.3 is not yet fully implemented, and as a result, the tobacco industry continues to successfully undermine implementation of the FCTC. We urge all Parties in all regions to support the measures to improve the effectiveness of Article 5.3 being put forward today in Committee A by Thailand and in Committee B by Djibouti.