33 The WHO Framework Convention on Tobacco Control and Protocol to Eliminate Illicit Trade in Tobacco Products

Douglas William Bettcher, Juliette McHardy, Pascal Bovet, Adriana Blanco Marquizo

The WHO Framework Convention on Tobacco Control (WHO FCTC) was adopted by WHO Member States in 2003 and came into force in 2005.[1] The WHO FCTC was developed in response to the globalization of the tobacco epidemic and its large negative socioeconomic impacts, as demonstrated by the World Bank and others in the 1990s, as well as significant advocacy from civil society. It is the first public health treaty negotiated under the auspices of WHO and has become one of the most rapidly and widely embraced treaties in UN history with more than 180 Parties.

The WHO FCTC seeks 'to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke' by obliging countries to enact a set of universal and comprehensive provisions for limiting its use. The treaty is a powerful, evidence-based, politically endorsed, multilateral and comprehensive tool to spearhead national action for tobacco control in the context of the powerful transnational nature of the tobacco industry, e.g. for addressing global issues such as smuggling or leakage of tobacco advertisement between countries. Of note, a treaty is a legal instrument that requires much stronger action as compared to nonbinding 'declarations' or 'codes of conduct' with Parties bound to implement WHO FCTC's provisions.

The treaty's provisions include rules that govern the production, sale, distribution, advertising and taxation of tobacco, among others. Parties are encouraged to implement more stringent measures than the treaty requires. The treaty requires that a Party shall implement all the treaty's measures (i.e. no cherry-picking is allowed).

The WHO FCTC is governed by the Conference of the Parties (COP), which meets every two years to review the implementation of the Convention and make decisions to promote its effective implementation, which may involve adopting protocols, guidelines, annexes and amendments to the Convention. The COP is open to Parties and Observers.

To support the implementation of the WHO FCTC, a number of guidelines and policy options have been adopted by the COP.[2,3] These guidelines are agreed to by Parties to the Convention on specific and established

DOI: 10.4324/9781003306689-37

evidence-based measures for the implementation of key provisions that represent statements of best-practice and immense practical value. Because they are adopted by the Parties to the treaty, these guidelines also have legal significance and have been successfully relied on to justify State interpretations of the WHO FCTC and defend related tobacco control measures when challenged.[4] Also in its eighth Session, the COP adopted a strategy providing the priorities for the implementation of the WHO FCTC from 2019 to 2025, including the work of the Parties and the Geneva-based Convention Secretariat.[5]

The WHO FCTC includes a number of measures to reduce the demand and supply of tobacco and its products (Table 33.1).

Table 33.1 Measures to reduce the demand for and supply of tobacco

Measures to reduce the demand for tobacco	
Implementing tax and price policies and prohibiting or restricting sales to and/or importations by international travellers of tax and duty-free tobacco products.	Article 6
Protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.	Article 8
Testing and measuring the contents and emissions of tobacco products, and for the regulation of these contents and emissions.	Article 9
Ensuring manufacturers and importers of tobacco products disclose information about the contents and emissions of tobacco products and parties to make public information about the toxic constituents of the tobacco products and their emissions.	Article 10
Health warnings are included on the packaging and labelling of tobacco products in the country's language and are 50% or more of the display areas (but shall be no less than 30%), ideally with pictures. Packaging and labelling need to be approved by the national authority and should not be misleading or deceptive.	Article 11
Promoting education, communication, training and public awareness.	Article 12
A comprehensive ban on all forms of tobacco advertising, promotion and sponsorship (often referred to as TAPS).	Article 13
Implementing cessation programmes for people with tobacco dependence.	Article 14
Measures to reduce the supply of tobacco	
Action to eliminate illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting – a provision further articulated in the Protocol to Eliminate Illicit Trade in Tobacco Products, see below.	Article 15
Prohibiting the sales of tobacco products (or provision or free products) to minors, requiring evidence of age be provided at sale, making them inaccessible, whether via vending machine or store shelves, without proof of age, and prohibiting their sale in small packets or as individual sticks.	Article 16
Supporting economically viable alternative activities for tobacco workers, growers and, if required, individual sellers.	Article 17

Article 5.3 of the WHO FCTC obliges Parties to protect tobacco control policies from commercial and other vested tobacco industry interests – insulating all policymakers and regulators from tobacco industry influence and making all interactions with the industry transparent. While tobacco industry interference remains among the most significant obstacles to the WHO FCTC's implementation, evidence suggests that national initiatives enshrining the independence and transparency of tobacco control policymaking have often preceded and accompanied effective tobacco control. Other measures include the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture (Article 18), and research, surveillance, reporting and exchange of information (Articles 20–22).

The Convention Secretariat provides technical support to countries in implementing the treaty's obligations, including through the FCTC 2030 project.[6] WHO and other development partners also provide technical support, including through the WHO MPOWER package, a set of six cost-effective and high-impact measures that help countries reduce demand for tobacco (Chapter 18).

The Protocol to Eliminate Illicit Trade in Tobacco Products

Illicit trade poses a serious threat to public health because it increases access to – often cheaper – tobacco products, thus fuelling the tobacco epidemic and undermining tobacco control policies, such as graphic health warnings or plain packaging. It also causes substantial losses in government revenues, and at the same time contributes to the funding of international criminal activities. The Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) which entered into force in 2018 is intended to eliminate all forms of illicit trade in tobacco products. As of 2021, it has been ratified by more than 60 countries. Among the Protocol's Sections (which include supply chain control, offences and international cooperation), the Parties are expected to take forward a set of obligations including establishing a tracking and tracing system for tobacco products and implementing effective controls on all tobacco product manufacturing and transactions in tax-free zones. The Protocol is governed through biennial Meetings of the Parties (MOP) that occur immediately following COP sessions. More information on the Protocol is available on the WHO FCTC website.[7] The Convention Secretariat also serves as the Secretariat to the Protocol.

Novel and emerging tobacco products and nicotine products

With the growing success of tobacco control efforts and declining cigarette sales in high-income countries, the tobacco and other industries have devised new products that can be posed as 'less harmful' with consequences for the applicability of existing regulations and appeal to both current and non-users.

The first major grouping, *heated tobacco products* (HTPs) began to appear in the 1980s but only achieved any substantial use in the mid-2010s. HTPs are

specially engineered tobacco product inserts that, when placed inside custom-designed heating units, produce inhalable aerosols containing nicotine and other chemicals. As tobacco products, they are subject to the provisions of the WHO FCTC despite industry arguments that they should receive different treatment.[8]

By contrast, the second major grouping, *electronic nicotine delivery systems* (ENDS), do not contain tobacco and instead vaporize a solution composed of numerous substances, including nicotine and flavouring chemicals. Although the long-term health effects of inhaling these substances are still unknown, there is evidence of potential adverse health effects as well concerning population health impacts in the form of nicotine uptake among youth.

Although minor as a share of the overall global market for tobacco products and nicotine products, these novel nicotine and tobacco products have threatened to hijack discussions on tobacco control policy and the tobacco industry has sought to create and exploit an appearance of discord to undermine impetus toward implementing evidence-based tobacco control measures. This can, in particular, be seen in the industry's contention that ENDS and HTPs can form part of a harm reduction strategy, such as that used to reduce harm from the use of injectable drugs, with mass advertising and widespread commercial availability claimed as necessary. In reality, HTPs are tobacco products that need to be regulated as such, and science-based evidence, rather than industry-driven marketing strategies, needs to guide the regulation of ENDS. Any public health approach to tobacco harm reduction must be led by this evidence and organized around the fundamental principle of opposition to industry involvement in line with Article 5.3.

The problems associated with ENDS are regularly discussed at the COP. The current position of the COP is as follows: (i) allowing such products to penetrate national markets without regulating them could threaten the implementation of tobacco control strategies and undermine the denormalization of tobacco use upheld by the Convention; (ii) ENDS' health claims should be prohibited until they are scientifically proven; (iii) Parties should consider prohibiting or otherwise regulating ENDS (including as tobacco products, medicinal products, consumer products, or other categories); (iv) Parties should apply regulatory measures to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of ENDS; and (v) HTPs are recognized as tobacco products, subject to all relevant provisions of the WHO FCTC and the relevant domestic legislation and controls.[9] The COP will next review ENDS and HTPs in 2023.

UN Interagency Taskforce on NCDs

The Convention Secretariat and WHO have together worked to ensure support for and adherence to the WHO FCTC across the international system with marked success in the treaty's explicit incorporation within both target 3.A of the UN Sustainable Development Goals (SDGs) and the outcomes of the UN General Assembly's three high-level meetings on NCDs. To give substance to

this high-level recognition, cooperation for tobacco control was institutionalized in the UN Inter-Agency Taskforce on the Prevention and Control of NCDs (Chapter 58). Led by WHO and comprising over 40 intergovernmental organizations, the Taskforce has paid particular attention to the WHO FCTC. This can be seen in its creation and monitoring of a policy on preventing tobacco industry interference within the UN system that was adopted by the UN Economic and Social Council. The Taskforce's thematic group on tobacco control, chaired by the Convention Secretariat, ensures a concerted focus on all aspects of WHO FCTC's implementation within the UN system and prevents the UN agencies from working at a cross-purpose from one another.

Implications of the WHO FCTC and the Protocol for policymakers and practitioners

These institutions and organizations together constitute a powerful set of tools for accelerating tobacco control, promoting health and saving lives. Although there has been substantial progress – with the proportion of the global population benefiting from at least one cost-effective and high impact WHO tobacco control policy quadrupling between 2007 and 2021 – there are still over eight million tobacco-use-related deaths each year.[10] An estimated 100 million deaths could have been averted between 2009 and 2017 if just three main WHO FCTC obligations (increased tax, ban on TAPS and smoking ban in enclosed premises) had been implemented strictly since 2009.[11] In the absence of further effort to implement the evidence-based and highly cost-effective WHO FCTC, we will fail to prevent an estimated one-billion people's deaths over the course of the 21st century – with the great majority of this tragic loss of life occurring in low- and middle-income countries.[12]

Because of the global tobacco epidemic's devastating impact on social and economic wellbeing, as well as the sustainability of universal health coverage, implementing the WHO FCTC is key to sustainable development. Because of this it was included as a specific component of the broader 2030 Agenda for Sustainable Development.[13] The annual economic cost of the global burden of smoking-related diseases, including lost productivity and health care exceeds US$ 1.4 trillion, with a third of this manifesting in more than US400 billion in additional healthcare costs.[14] At the same time, cigarettes are the single greatest source of litter worldwide and tobacco farming is responsible for various forms of severe environmental degradation due to soil depletion and deforestation.[15]

The ongoing COVID-19 pandemic's human, social and economic toll has also been exacerbated by the tobacco epidemic, with current tobacco users exposed to a higher risk of infection and severe disease progression, while people living with NCDs, a significant proportion of which are tobacco-related, have been more vulnerable to severe COVID-19 and suffered from disruptions to treatment caused by the public health responses to this infectious disease (Chapter 28). This deadly interplay between the COVID-19 pandemic and the global tobacco epidemic reveals how the tobacco industry's globalization of

this directly harmful product has also rendered our health systems more vulnerable to communicable diseases with consequences that are evident today and will be faced again unless action is taken.

Accordingly, to preserve human and planetary health, improve social and economic wellbeing, and prepare for the next pandemic, countries need to urgently accelerate their implementation and enforcement of the WHO FCTC provisions with reference to both COP guidance and WHO's MPOWER technical package. Policymakers, health and finance sector officials, public health professionals and civil society organizations all have an active part to play in ensuring their countries are Parties to both the WHO FCTC and the Protocol and, if so, adhering to the legal obligations assumed through ambitious adoption and implementation of its provisions. In addition to this core set of obligations, it is also incumbent on these actors to militate in favour of countries fulfilling supportive responsibilities such as sharing lessons, reporting on progress and promoting global implementation with technical assistance and critically needed financing.

Notes

1 WHO Framework Convention on Tobacco Control. WHO, 2005.
2 WHO FCTC. Guidelines, and policy options and recommendations for implementation of the WHO FCTC. https://fctc.who.int/who-fctc/overview/treaty-instruments.
3 Policy options and recommendations. Articles 17 and 18. WHO FCTC, 2013.
4 Zhou S, Liberman J. The global tobacco epidemic and the WHO Framework Convention on Tobacco Control—the contributions of the WHO's first convention to global health law and governance. In Burci GL, Toebes B (eds.), *Research handbook on global health law*. Cheltenham, UK: Edward Elgar Publishing, 2018.
5 Global strategy to accelerate tobacco control: advancing sustainable development through the implementation of the WHO FCTC 2019–2025. WHO, 2019.
6 FCTC 2030. WHO FCTC. https://www.who.int/fctc/implementation/fctc2030/en/.
7 Protocol to eliminate illicit trade in tobacco products. WHO FCTC, 2013.
8 Conference of the parties to the WHO framework convention on tobacco control. Decision FCTC/COP8/8(22) Novel and emerging tobacco products. WHO, 2018.
9 WHO FCTC. The Convention Secretariat calls parties to remain vigilant towards novel and emerging nicotine and tobacco products. https://fctc.who.int/newsroom/news/item/12-09-2019-the-convention-secretariat-calls-parties-to-remain-vigilant-towards-novel-and-emerging-nicotine-and-tobacco-products.
10 Peruga A et al. Tobacco control policies in the 21st century: achievements and open challenges. *Mol Oncol* 2021;15:744–52.
11 Flor LS et al. The effects of tobacco control policies on global smoking prevalence. *Nat Med* 2021;27:239–43.
12 Drope J et al. *The tobacco atlas*, 6th ed. American Cancer Society and Vital Strategies, Atlanta, USA, 2018.
13 SDG Target 3.a is to strengthen the implementation of the WHO FCTC in all countries, as appropriate, SDG indicator 3.a.1 is age-standardized prevalence of current tobacco use among persons aged 15 years and older.
14 Goodchild M et al. Global economic cost of smoking-attributable diseases. *Tobacco Control* 2018;27:58–64.
15 An assessment of tobacco's global environmental foot print across its entire supply chain, and policy strategies to reduce it. WHO FCTC Global Studies Series. WHO, 2018.