



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

CONFERENCE OF THE PARTIES TO THE
WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

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Provisional agenda item 7.3

Contribution of the WHO FCTC to the promotion and fulfilment of human rights

Report by the Convention Secretariat

Purpose of the document

The present report highlights the mutually supportive nature of the WHO Framework Convention on Tobacco Control (WHO FCTC) and human rights, provides additional considerations on the nexus between tobacco control and human rights, and outlines the work of the Convention Secretariat on human rights. The report is intended to facilitate the deliberations of Parties under the item “Contribution of the WHO FCTC to the promotion and fulfilment of human rights” proposed by a Party and pursuant to decision FCTC/COP9(2).

Action by the Conference of the Parties

The Conference of the Parties (COP) is invited to note the present report and provide further guidance.

Contribution to the Sustainable Development Goals (SDGs): All SDGs; in particular, SDG 3 and Target 3.a, as well as SDGs 5, 8, 10 and 17.

Link to Workplan and Budget item: To be decided by the COP.

Additional financial implications if not included in the Workplan and Budget: None.

Related document(s): *Global Strategy to Accelerate Tobacco Control: Advancing Sustainable Development through the Implementation of the WHO FCTC 2019–2025*.

BACKGROUND

1. The Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) considered at its eighth session a draft decision entitled “Promotion of the WHO FCTC through human rights” proposed by four Parties. As the adoption of the draft decision could not be concluded, the matter was to be resubmitted to the Ninth session of the Conference of the Parties (COP9).¹ In decision FCTC/COP9(2), in light of restrictions made necessary as a result of the COVID-19 pandemic, COP9 deferred the item “Promotion of the WHO FCTC through human rights (item proposed by a Party)” to the Tenth session of the Conference of the Parties (COP10).

2. To facilitate the deliberations of the Parties, the present report highlights the mutually supportive nature of WHO FCTC and human rights (as recognized by the Convention, its Guidelines for implementation and COP decisions), provides additional considerations on the nexus between tobacco control and human rights, and outlines the work of the Convention Secretariat on human rights.

THE MUTUALLY SUPPORTIVE NATURE OF WHO FCTC AND HUMAN RIGHTS

3. The WHO FCTC is “an evidence-based treaty that reaffirms the right of all people to the highest standard of health”.² The right to health is embedded in the Universal Declaration of Human Rights and is recognized in the World Health Organization (WHO) Constitution. It is also enshrined in the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child – three human rights instruments that are recalled in WHO FCTC Preamble.

4. The WHO FCTC has the objective “to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke”. Consequences such as these may be considered to be adverse impacts on human rights. The Global Strategy to Accelerate Tobacco Control: Advancing Sustainable Development through the Implementation of the WHO FCTC 2019–2025 emphasizes that the adverse consequences of tobacco include threats to basic human rights, including the right to the highest sustainable standard of health.

5. Further, the Guidelines for implementation of Article 8 of the WHO FCTC state that “the duty to protect from tobacco smoke, embodied in the text of Article 8, is grounded in fundamental human rights and freedoms” and that “the duty to protect individuals from tobacco smoke corresponds to an obligation by governments to enact legislation to protect individuals against threats to their fundamental rights and freedoms”. According to the Guidelines for implementation of Article 12 of the WHO FCTC, “The duty to educate, communicate with and train people to ensure a high level of public awareness of tobacco production, consumption and exposure to tobacco smoke, and the strategies and practices of the tobacco industry to undermine tobacco control efforts (as embodied in Article 12), derives from the Convention and reflects fundamental human rights and freedoms. These include, but are not limited to the right to life, the right to the highest attainable standard of health and the right to education”.

6. In decision FCTC/COP7(26), the COP emphasized the WHO FCTC as an evidence-based treaty that reaffirms the right of all people to the highest attainable standard of health, recalling the human rights reflected in the WHO FCTC. The decision encouraged Parties to cooperate internationally to

¹ Report of the Eighth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control available at <https://fctc.who.int/publications/m/item/cop8-report>.

² Foreword of the WHO FCTC.

address the issue of increased tobacco consumption in light of the efforts of tobacco companies to undermine tobacco control, by linking the human rights framework and tobacco control efforts. Further, the Delhi Declaration (decision FCTC/COP7(29)) referred to Article 25 of the Universal Declaration of Human Rights and the preamble of the Constitution of the World Health Organization, to re-emphasize that the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being; it followed three other COP declarations (FCTC/COP4(5), FCTC/COP5(5) and FCTC/COP6(26)), which also recalled this fundamental right.

7. In addition to decision FCTC/COP7(26), in which the COP invited the Convention Secretariat to collaborate with existing United Nations mechanisms and processes working on business and human rights issues, to protect public health interests from commercial and other vested interests of the tobacco industry, the COP adopted a number of decisions on institutional matters referring to human rights. In decision FCTC/COP7(19), the COP requested the Convention Secretariat to initiate discussions with the secretariats of a number of international organizations with a view to considering application for observer status to their governing bodies, including the United Nations Office of the High Commissioner for Human Rights (reiterating its request for continued efforts and engagement in international cooperation, in decision FCTC/COP8(6), on the basis of report FCTC/COP/8/20). The COP also included human rights activities in its Workplan and Budget in decisions FCTC/COP7(24) and FCTC/COP8(10).

THE NEXUS BETWEEN TOBACCO CONTROL AND HUMAN RIGHTS: ADDITIONAL CONSIDERATIONS

8. Strengthening the implementation of the WHO FCTC is embedded in Target 3.a of the Sustainable Development Goals (SDGs) and the treaty is an accelerator for sustainable development.¹ The Preamble of the 2030 Agenda for Sustainable Development states that the SDGs “seek to realize the human rights of all” and that “they are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental”. The Human Rights Council (HRC) recognized in its resolutions 35/23 and 37/24 that the 2030 Agenda for Sustainable Development and human rights are mutually reinforcing. Further, the HRC urged States to implement the SDGs, referring to Target 3.a.

9. The work of human rights treaty bodies provides avenues to promote and accelerate the implementation of the WHO FCTC, as recognized in FCTC/COP7(24) and FCTC/COP8(10). For example, the Committee on Economic, Social and Cultural Rights states that discouraging the production, marketing and consumption of tobacco is an intrinsic part of the obligation to protect the right to the highest attainable standard of health under Article 12 of the International Covenant on Economic, Social and Cultural Rights.² Similarly, the Committee on the Rights of the Child referred to the WHO FCTC, calling on States Parties to the Convention on the Rights of the Child to protect children from tobacco and refrain from the advertisement, marketing and sale to children of tobacco;³ urged State

¹ *The WHO Framework Convention on Tobacco Control: an accelerator for sustainable development*, Secretariat of the WHO FCTC and United Nations Development Programme (2017), available at <https://fctc.who.int/publications/m/item/the-who-framework-convention-on-tobacco-control-an-accelerator-for-sustainable-development>.

² Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to the highest attainable standard of health (Article 12), 2000.

³ Committee on the Rights of the Child General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (Article 24), 2013.

Parties to the Convention on the Rights of the Child to regulate or prohibit information on and marketing of substances such as tobacco;¹ drew attention to the risk of tobacco consumption for adolescents;² encouraged ratification of the WHO FCTC; and reaffirmed the requirement for Parties to implement it.³ Further, the Committee on the Elimination of Discrimination against Women expressed its concern about the serious health impact of tobacco on women and referred to the WHO FCTC.⁴

10. The HRC special procedures, including but not limited to the Special Rapporteur on the right to the enjoyment of the highest attainable standard of health, also support the tobacco control agenda. For example, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes pointed out tobacco-related harms in the context of environment and occupational exposure.⁵

WORK OF THE CONVENTION SECRETARIAT ON HUMAN RIGHTS

11. The Convention Secretariat engaged in human rights-related activities on a case-by-case basis, generally on request, in line with COP decisions and Article 24 of the WHO FCTC in order to raise the visibility of the treaty in human rights fora within the scope of its international cooperation function.

12. For example, the Convention Secretariat participated in discussions of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights in order to share experience about negotiation of the WHO FCTC and Article 5.3. The Convention Secretariat also reported on its human rights activities in document FCTC/COP/9/12.

13. The Convention Secretariat also works jointly with WHO on human rights and tobacco control. The Convention Secretariat participates in the human rights working group of the United Nations Interagency Task Force on the Prevention and Control of Non-communicable Diseases and in the WHO Gender, Equity and Human Rights programme. Upon invitation and in collaboration with WHO, the Convention Secretariat engages with the HRC special procedures and human rights treaty bodies, (for example, by contributing to the WHO submission to the Committee on the Elimination of All Forms of Racial Discrimination in relation to racial discrimination and the right to health).⁶

¹ Committee on the Rights of the Child General comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child, 2003.

² Committee on the Rights of the Child, General comment No. 20 on the implementation of the rights of the child during adolescence, 2016.

³ Committee on the Rights of the Child General comment No. 15 (reference above); Committee on the Rights of the Child General comment No. 16 on State obligations regarding the impact of the business sector on children's rights, 2013.

⁴ Committee on the Elimination of Discrimination against Women, CEDAW/C/ARG/CO/6, Concluding Observations, 2010.

⁵ Human Rights Council A/HRC/39/48, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 2018.

⁶ WHO's initial written submission to inform the thematic discussion for a General Recommendation on article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination: Racial Discrimination and the Right to Health, available at: <https://www.ohchr.org/en/events/days-general-discussion-dgd/2022/thematic-discussion-racial-discrimination-and-right-health>.

14. The Convention Secretariat repeatedly raises awareness about the WHO FCTC as a tool to protect vulnerable groups from tobacco harms by recalling that the comprehensive implementation of the treaty, as well as implementation of specific provisions contribute to the protection of the rights of the child (including the right to be free from labour), women's rights, indigenous peoples' rights and the rights of the economically vulnerable groups, such as tobacco growers and workers.

ACTION BY THE CONFERENCE OF THE PARTIES

15. The COP is invited to note the present report and provide further guidance.

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