

October 2021

## The Framework Convention on Tobacco Control (FCTC) Conference of the Parties (COP): an explainer

From 8–13 November 2021, government delegations from around the world will meet virtually to discuss tobacco and nicotine policy at the Ninth Meeting of the Conference of the Parties (COP) to the Framework Convention on Tobacco Control (FCTC).<sup>i</sup> Decisions taken at these meetings influence or determine how international tobacco control policies are implemented at a domestic level. These decisions will also be very influential in determining the future of the safer nicotine products, such as vaping devices, snus, nicotine pouches and heated tobacco devices, used in tobacco harm reduction.<sup>ii</sup>

This GSTHR Briefing will explore what the FCTC is, what COP meetings are and how they operate. The Briefing precedes a longer report, *Fighting the Last War: The FCTC and International Tobacco Control*, to be published by the GSTHR on 27 October 2021.<sup>iii</sup>

### What is the FCTC?

The FCTC is an international agreement developed in response to the international nature of the public health crisis caused by tobacco use and smoking. It was the first treaty negotiated under the auspices of the World Health Organization (WHO).<sup>iv</sup>

After years of negotiations, the FCTC entered into force in February 2005. To date, 181 countries have both signed and ratified the FCTC, meaning it has been approved by domestic parliaments. These countries are referred to as Parties to the Convention. Six countries have signed but not ratified. Nine have done neither. Paradoxically, a number of Parties to the Convention have monopoly or substantial stakes in their own domestic or state-owned tobacco companies.

The Preamble to the FCTC has several *recitals* (giving context to the Convention) which are unambiguous in recognising the need to reduce death and disease from the use of tobacco. These recitals are given within the context of the universal right to health with nobody left behind, and include:

- » *Reflecting*...the devastating worldwide... consequences of...exposure to tobacco smoke.
- » *Seriously concerned* about increase in worldwide consumption...particularly in developing countries...
- » *Recalling* Article 12 of the International Covenant on Economic, Social and Cultural Rights... which states that it is the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- » *Determined* to promote measures of tobacco control based on current and relevant scientific, technical and economic considerations.<sup>v</sup>

## What is the COP?

Biennial COP meetings are where discussions, negotiations and decisions about the implementation of the FCTC and international tobacco control measures take place between the Parties.

Parties who have both signed and ratified the FCTC or who have acceded to the FCTC can take an active role in discussions and decisions. Signatories only have observer status; their views do not have to be formally considered.

The positions that Parties will take are usually decided well before the COP. Much of the pre-COP discussion and positioning goes on in the meetings of the six WHO Regions. Parties can speak for themselves at the COP, but are encouraged to allow the region's elected country to lead.

Delegations primarily consist of health officials, although other domestic departmental interests concerning, for example, business and trade, might also attend. NGOs and subject specialists may also be represented. At COP meetings, decisions are taken by consensus and voting is very rare. Every Party carries equal weight.

## How do COP meetings function?

Apart from the **main plenary sessions** which involve all Parties, the COP breaks into two groups. **Committee A** deals with policy matters and **Committee B** with administrative matters, including funding. Both Committees discuss agenda items and will sometimes draft decisions to enable consensus to be reached in plenary sessions.

It may be decided that specific issues must be considered at the next COP. A **Working Group** of COP delegates may be convened to, for example, work on developing guidelines for specific FCTC Articles. Alternatively, an **Expert Group** may be convened by the **FCTC Secretariat** (see below) to report on specific technical issues.

There are also standing expert groups including the **Tobacco Laboratory Network (TobLabNet)**, which develops standard testing and measurement methods for tobacco products, and the WHO Study Group on **Tobacco Product Regulations (TobReg)**, which focuses on tobacco and nicotine science and policy.

The **FCTC Secretariat** is the administrative body that supports the COP and, while the WHO has no direct line management over it, the Secretariat is housed in the WHO HQ in Geneva. It coordinates the COP meetings and produces the necessary documentation, including proposals for the agenda.

The Secretariat is funded by Parties, both in the form of assessed contributions for mainstream Secretariat work, and voluntary contributions for specific projects. The assessment is made on the basis of a formula related to gross domestic product (GDP). Few countries pay the amount they owe.

## How does the WHO interact with the COP?

While the WHO hosts COP meetings, officially it does not have a voice in the negotiations. Although it cannot propose amendments to the text, the WHO can intervene to encourage governments to endorse its views on tobacco control.

The **WHO Tobacco Free Initiative (TFI)** is the public face of WHO tobacco control policies and programmes as well as providing policy and legal advice to Parties.<sup>vi</sup> The TFI oversees MPOWER, the process and monitoring mechanism which has implemented the FCTC since 2007.<sup>vii</sup>

## Which non-state observers are present at the COP?

The Preamble to the FCTC recognises the “special contribution of non-governmental organizations and other members of civil society...to tobacco control efforts nationally and internationally...”<sup>viii</sup> NGOs involved in tobacco control are allowed a presence at the COP, but only those specifically accredited by the WHO. International non-governmental organisations can apply for WHO accreditation. Smaller NGOs can participate as members of the NGO tobacco control umbrella body known as the Framework Convention Alliance (FCA) membership is dependent on FCA accreditation and rules.<sup>ix</sup>

Observer status and FCA accreditation are only open to those with no connections to the tobacco industry, however tangential or historical. To date, no advocacy NGOs representing people directly affected by tobacco control regimes have been considered eligible for Observer status or membership of the FCA. This includes groups representing smokers and users of safer nicotine products.

## What should change at COP 9 and future COP meetings: the GSTHR view

When the FCTC was being negotiated (2000–2003) and at the first three COP meetings, the public gallery was open so that anyone could witness the deliberations. Over time, the general public – including media – has been excluded from all but the opening day plenary, by a decision of the Parties.

This conflicts with the way other UN agency meetings are conducted, including the Commission on Human Rights, the Commission on Narcotic Drugs and the COP meeting on Climate Change. The funding for the FCTC COP relies on public money donated by the Parties. It follows that there needs to be public accountability and transparency. At present, this is lacking. Lack of transparency at COP needs to be raised with government accountability departments.

In our forthcoming report we will argue that in recent years, Parties to the FCTC have largely been content to follow the direction of travel set out by the WHO on tobacco and nicotine policy. The WHO and the FCTC Secretariat have considerable influence, since most countries are passive and go with the flow. This is very different to other substantive global issues such as trade and climate, where national governments fight strongly for national positions and leadership.

What goes on at COP is in the gift of national governments. Parties need to take back control of the process. Where appropriate, they must share evidence and best practice from their own domestic policy experience, on the use of safer nicotine products for smoking cessation, for example. There should also be better communication between Parties to the FCTC and their national populations: COP and the FCTC are often ‘invisible’ on the domestic policy agenda. In turn, this gives considerable power and influence to civil servants, who are the interface between governments and COP.

Crucially, there needs to be better communication from affected populations to their own domestic governments. People who can attest to the role of safer nicotine products need to share their experience with their elected representatives and ensure the important role of tobacco harm reduction is communicated to their government delegation to COP.

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For further information about the Global State of Tobacco Harm Reduction's work, or the points raised in this GSTHR Briefing Paper, please contact [info@gsthr.org](mailto:info@gsthr.org)

About us: **Knowledge•Action•Change** (K•A•C) promotes harm reduction as a key public health strategy grounded in human rights. The team has over forty years of experience of harm reduction work in drug use, HIV, smoking, sexual health, and prisons. K•A•C runs the **Global State of Tobacco Harm Reduction** (GSTHR) which maps the development of tobacco harm reduction and the use, availability and regulatory responses to safer nicotine products, as well as smoking prevalence and related mortality, in over 200 countries and regions around the world. For all publications and live data, visit <https://gsthr.org>

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- <sup>i</sup> Information about COP 9, to be held virtually from 8–13 November 2021, can be accessed here: <https://fctc.who.int/who-fctc/governance/conference-of-the-parties/ninth-session-of-the-conference-of-the-parties>
- <sup>ii</sup> For more information, see the GSTHR's introductory guide, *Tobacco Harm Reduction and the Right To Health*: <https://gsthr.org/resources/item/tobacco-harm-reduction-and-right-health>
- <sup>iii</sup> To register to take part in the online launch on 27 October 2021, and to receive a copy of the report, visit: <https://events.gsthr.org/>
- <sup>iv</sup> The full text of the Framework Convention on Tobacco Control can be accessed at: <https://fctc.who.int/publications/i/item/9241591013>
- <sup>v</sup> Framework Convention on Tobacco Control: <https://fctc.who.int/publications/i/item/9241591013>
- <sup>vi</sup> WHO Tobacco Free Initiative website: <https://apps.who.int/tobacco/about/en/>
- <sup>vii</sup> MPOWER: Monitor tobacco use and prevention policies; Protect people from tobacco smoke; Offer help to quit tobacco smoking; Warn about the dangers of tobacco; Enforce bans on tobacco advertising, promotion and sponsorship; and Raise taxes on tobacco
- <sup>viii</sup> Framework Convention on Tobacco Control: <https://fctc.who.int/publications/i/item/9241591013>
- <sup>ix</sup> Framework Convention Alliance website: <https://fctc.org/>