



Kenya

IMPACT ASSESSMENT



The FCTC catapulted Kenya to legislate. Without the FCTC, our law would not have passed. We would still have the industry delaying and watering down tobacco control legislation. The FCTC was an advantage, a positive influence on our own approach. That is why the Kenyan Act is almost completely based on the FCTC. The constitution embraces the FCTC as all international treaties the country is signatory to becomes part of Kenyan law.

Introduction

The impact assessment for the implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC) was conducted in Kenya from 30 November to 2 December 2015. The international team consisted of experts and consultants. The team met senior leaders of government agencies, academia and NGOs involved in tobacco control.

Key facts

Since 2013,
there has been a

20%

increase in tobacco tax revenues due to new regulations



Key tobacco control milestones

2004

WHO FCTC is ratified in Kenya

2005

WHO FCTC enters into force in Kenya

2007

Tobacco Control Act (TCA) is enacted and Tobacco Control Board is established

2010

The five-year national tobacco control action plan begins

2013

The Protocol to Eliminate Illicit Trade in Tobacco Products is signed

2014

Tobacco Control Regulations (TCRs) are proposed

2015

The Kenya National Strategy for the Prevention and Control of Non-Communicable Diseases 2015-2020

52.3%

of retail price of the most sold brand of cigarettes consist of tax



7.8%

of Kenya's adult population smokes;
15.1% of males and **0.5%** of females



9.9%

of Kenyan youth aged 13 to 15 smokes whilst
7% use smokeless tobacco products





The FCTC is a great treaty because it outlines what everyone is supposed to do and has guidelines that help them do it well.

Key observations

- Kenya has made significant advances in initiating and strengthening smoke-free legislation as a result of the WHO FCTC. Prior to the ratification, there were no legal restrictions on smoking in indoor public places, workplaces or public transport. Following ratification in 2007, Nakuru was the first city in Kenya to implement a smoke-free law in public places. Its example was quickly followed by other municipalities, including Nairobi, Mombasa and Kangundo, which adopted similar regulations.
- Kenya's contribution to the drafting and negotiation of the WHO FCTC and its guidelines influenced its own national tobacco legislation. The Tobacco Control Act (TCA) was enacted in 2007 and the Tobacco Control Regulations (TCRs) were proposed in 2014. The WHO FCTC was invaluable in providing guidelines that strengthen tobacco control legislation, by setting minimum requirements for the content and scope of the law. The Convention is also thought to have accelerated adoption of the TCA, since Kenya's first anti-tobacco control bill, drafted in 1995, experienced numerous delays spanning over 12 years. Additionally, fundamental social and environmental rights reaffirmed by the WHO FCTC are included in the 2010 Constitution of Kenya. The Constitution also states that any treaty ratified by Kenya shall become part of national law.
- Kenya has made significant progress towards fulfilling its obligations under the Convention, with notable achievements in the implementation of stringent measures to enforce a comprehensive ban on tobacco advertising, promotion and sponsorship (TAPS). Prior to WHO FCTC ratification, exposure to TAPS was very widespread, including many youth-oriented marketing campaigns. The Global Adult Tobacco Survey reveals that direct and indirect TAPS has been almost completely eliminated and tobacco industry corporate social responsibility activities have also been significantly curbed since implementation of the TAPS ban.
- Kenya is recognized as a leader in tobacco control in the East African region. The country has provided assistance to Gambia and Uganda in the development of their tobacco control legislation in the areas of taxation and illicit trade. Kenya has also worked with other member states in the East African Community – including Burundi, Rwanda, Uganda and Tanzania – to develop joint policy changes that align with the provisions of the WHO FCTC.
- Following the provisions of Article 4.7 of the WHO FCTC, collaboration on tobacco control has flourished between the government and the civil society. This is best exemplified by the establishment of the Tobacco Control Board in 2007. This is a multisectoral advisory board to the Minister of Public Health, and is comprised of members from government agencies, civil society and NGOs. Further, the technical working groups in the national tobacco control programme include representatives/experts from these entities.
- While Kenya has yet to ratify the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products, the Protocol was a driving force in the implementation of an effective track and trace system. This in turn has globalized the issue of illicit tobacco, increased government tax revenue from tobacco products, and decreased illicit trade to a negligible level. The Electronic Cargo Tracking System has been expanded to cover other goods subject to excise taxes. Further, a Google application has been developed which the public can use to verify the legal status of goods subject to excise.
- The WHO FCTC facilitated links between tobacco control, noncommunicable disease (NCD) strategies, community health strategies and the Sustainable Development Goals (SDGs) in Kenya. In 2010 and 2015, the government launched the National Tobacco Control Action Plan (NTCAP 2010-2015) and Strategy for the Prevention and Control of Noncommunicable Diseases (2015-2020) respectively, drawing on global initiatives including the WHO FCTC.
- Kenya has experienced intense tobacco industry interference including litigation challenging the constitutionality of tobacco control measures, as well as development of parallel subordinate legislation. The domestication process of the WHO FCTC increased awareness of industry interference in tobacco control efforts. Kenya's 2007 TCA includes measures for protecting public health policies from tobacco industry interference. The proposed 2014 tobacco control regulations are the most comprehensive in the African region, including almost all the measures in WHO FCTC Article 5.3. Enhanced media coverage of tobacco control and an increased legal capacity to counter industry interference aimed at government officials, policy-makers and the general public, are among measures employed by Kenya to fulfil Article 5.3.

Outcomes

- ✓ Enabled and catalyzed the enactment of tobacco control and smoke-free legislation at national and subnational levels.
- ✓ Enabled legislation to ban all TAPS.
- ✓ Enabled Kenya to become a leader in tobacco control in Africa and a model in tobacco control implementation.
- ✓ Reinforced collaboration across government departments, stakeholders and sectors, including NGOs and civil society.
- ✓ Facilitated innovations in tracking, tracing and verifying of legal status of tobacco products and extension of the same for goods subject to excise.
- ✓ Increased awareness of tobacco industry tactics to interfere with tobacco control efforts and related public policies.