

Autocratic WHO excludes stakeholders from tobacco control

By Staff Writer | 22 September, 2021

THE World Health Organisation is due to hold the 9th Conference of the Parties to its Framework Convention on Tobacco Control. Not represented? Tobacco farmers, tobacco manufacturers, tobacco sellers, and tobacco users.

The Framework Convention on Tobacco Control (FCTC) was a milestone treaty on the way to making the World Health Organisation (WHO) a public health autocracy.

It was the first multilateral treaty signed under article 19 of the WHO's constitution. It was the first to bind countries in pursuit of a non-communicable health concern. Adopted in May 2003, and coming into force in February 2005, it has become one of the



most widely and rapidly ratified treaties in United Nations history.

The FCTC sets rules and regulations for the production, distribution, sale, advertisement, and taxation of all tobacco products. Ratifying countries – which means, most countries in the world – are required to implement decisions made at biennial Conferences of the Parties (COPs) in domestic legislation.

There is just one problem. This process is inherently dictatorial. Public health bureaucrats and government officials meet behind closed doors to plot ever-tighter restrictions on tobacco products. There are strict policies in place that exclude anyone with any interest in tobacco or its products.

There is no representation for tobacco farmers, no representation for tobacco product manufacturers, no representation for tobacco retailers, and no representation for tobacco consumers.

Even journalists who want to cover the 9th COP, due to be held online from 8 to 13 November 2021, have to declare, in some detail, that they have no ties, financial or otherwise, to the tobacco industry. Media representatives also have to surrender a lot of personal information, including their email, telephone number, and home address. Why the FCTC would want to know where journalists live, one can only speculate.

All this is quite remarkable, given that one in six people on Earth smoke. That 1.3 billion people have no voice in how they're being governed is a travesty of justice.

The COPs are not conferences of all the stakeholders. They are entirely one-sided meetings, consisting of a handful of people who claim a right to impose their will upon the non-consenting rest of us. It is an autocratic echo chamber.

Public participation

South Africa's constitution is a model of participatory democracy. It recognises some fundamental rights of the governed, vis-à-vis the government.

Among these provisions is that lawmakers at all levels of government must facilitate public involvement in legislative and other processes, conduct their business in an open manner, and hold their sittings, and those of their committees, in public.

In *Doctors for Life International v Speaker of the National Assembly and Others*, Justice Albie Sachs wrote: 'All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a meaningful fashion. The objective is both symbolical and practical: the persons concerned must be manifestly shown the respect due to them as concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws.'

There are also international covenants that establish the right of every citizen to participate directly in matters that concern them. This finds expression in article 25 of the International Covenant on Civil and Political Rights, a treaty administered under

the auspices of the United Nations High Commission on Human Rights, and which is binding on ratifying countries.

The FCTC unashamedly contradicts this right. It rejects public participation. It explicitly excludes anyone who is directly or indirectly impacted by the decisions it takes. It requires ratifying states to implement its decisions in national legislation, protest be damned.

Even its records are increasingly stripped bare of the information that would be required for anybody outside the dark (though presumably not smoky) back rooms of the WHO to conduct a meaningful analysis of what was discussed or what evidence was presented.

At an FCTC conference, health ministers step out of their usual world, where issues such as economic growth, employment, trade, intellectual property and individual rights fiercely contest with and limit the scope of public health interventions. They step into a calm, relaxing environment where everyone is entirely like-minded, and any whiff of opposition is censored.

The FCTC treaty allows health ministers to pass measures which they would never have got past their domestic legislatures, burdened as they are with opposing interests and public participation requirements.

Unopposed, these ministers can peacefully make international law with which their home governments are forced to comply.

Individual freedom

It is legitimate for governments to ensure that the use of tobacco does not harm *other people*. This would justify certain limitations on tobacco use in public places, for example. It is not legitimate for governments to ensure that tobacco use does not harm the user, however. That is entirely their own choice.

The obvious counterargument to this is: but what about the burden such people place on public healthcare?

That would be a valid concern (and a valid critique against the universal, state-funded healthcare model that the WHO advocates), if only it were true.

Smokers have the good grace to die about ten years younger than non-smokers, which means that they don't get the chance to be a burden on

the healthcare sector. In fact, their lifetime healthcare costs are lower. Every pack of cigarettes smoked saves the government some healthcare money. Even before taking tobacco taxes into account, smokers are not a financial burden to society.

Even if they were, however, that would not give governments the right to infringe on their personal liberties. While it might be justifiable to impose temporary restrictions in an emergency if the healthcare sector is under threat of being overwhelmed, it certainly is not justifiable to permanently control people's diets, or force people to exercise, or prohibit dangerous adventure sports, in order to achieve the laudable-sounding public health goal of having healthier citizens.

Excluding evidence

For public health experts, however, it is very tempting to get dictatorial about certain health-related behaviours. They're all about writing 'prescriptions', after all. If you ask them, sugar should be taxed out of existence, daily exercise should be compulsory, failure to floss should be a punishable offence, and motorbikes should be banned.

That is how the FCTC works. The primary basis for its decisions is the subjective opinion of public health bureaucrats, none of whom have any connection or interest in the living and working conditions of tobacco farmers, any expertise in the economics of the tobacco industry, or any concern for the free choices of tobacco consumers.

By refusing to engage, even formalistically, with people even remotely involved in the use or production of tobacco products, the FCTC denies itself a wealth of evidence about how the industry operates, how consumers respond, how its decisions will affect stakeholders, and what unintended consequences might arise.

Autocratic rigidity

Gregory F. Jacob, a lawyer who had a hand in negotiating the FCTC, in a thoroughgoing paper on secrecy and exclusion in the FCTC implementation process, recounts an example.

The 6th COP considered how to provide economically viable alternatives to tobacco farmers who depend on growing and selling tobacco to survive. International farming associations were excluded from providing input of any kind, solely because they had an economic interest in tobacco farming.

‘[W]hen a group of tobacco farmers showed up outside of the COP7 meetings in Delhi to peaceably protest their continuing exclusion from deliberations, the Convention Secretariat called upon security to round them up and bus them miles away, to a location where COP delegates could neither hear nor see them,’ Jacob writes.

‘Even Interpol (yes, Interpol!) has been prohibited from providing input to the COP on combating illicit trade in tobacco products,’ says Jacob, ‘for the sole reason that it has the temerity to work with the tobacco industry to track tobacco shipments.’

The autocratic rigidity of the FCTC has severe and negative consequences, not only for tobacco manufacturers and everyone they employ, but also for tobacco users, tobacco farmers, and even people who would like to quit smoking. I’ll delve into these consequences in future columns.

Interventions in pursuit of public health and tobacco policy should be based on all the evidence, about how all the stakeholders are affected by decisions.

Instead, a closed clique of autocrats conferencing in secret (video chat) rooms make rules in total disregard of the livelihoods of people on the ground, or even the practical effectiveness of their decisions.

As a matter of principle, the FCTC has no place in a world in which participatory democracy is held up as the most virtuous means of government, and it ought not to be ratified by a country that is constitutionally committed to participatory democracy. – dailyfriend.co.za

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