The Role of National Institutions in Developing and Implementing the WHO Framework Convention on Tobacco Control
Framework Convention on Tobacco Control

Technical Briefing Series

The Role of National Institutions in Developing and Implementing the WHO Framework Convention on Tobacco Control

Anita Margrethe Halvorssen
Adjunct Instructor
School of Law, University of Colorado,
Boulder, Colorado
“Tobacco control cannot succeed solely through the efforts of individual governments, national NGOs and media advocates. We need an international response to an international problem. I believe that response will be well encapsulated in the development of a Framework Convention.”

Dr Gro Harlem Brundtland
Seminar on Tobacco Industry Disclosures,
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Foreword

The development of a proposed WHO framework convention on tobacco control and possible related protocols will represent the first time that WHO has used its constitutional mandate to facilitate the creation of an international convention. The framework convention will be an international legal instrument that will circumscribe the global spread of tobacco and tobacco products. With its possible related protocols, it will represent a global complement to national and local action, and will support and accelerate the work of Member States wishing to strengthen their tobacco control programmes.

When Member States come to consider a framework convention, they will need to be sensitive to sectoral issues, and to base their discussions on facts rather than on partisan arguments, never losing sight of the public health goals that are the principal reason for tobacco control. The Framework Convention on Tobacco Control Technical Briefing Series is being widely disseminated by the WHO Tobacco Free Initiative with a view to providing Member States with important background information which, it is hoped, will prove of value in their future deliberations.

Dr Derek Yach
Project Manager
Tobacco Free Initiative
جورت

منظمة الصحة العالمية، في عام 1998، وقد أقرت بضرورة مساعدة الدول في تنفيذ مكافحة التبغ، من خلال تشغيل مشروع حيوي على مستوى الهيئات الإدارية بمناعة مبادرة التمتع من التبغ. وتم تفعيل المنظمة الآسيوية بشأن مكافحة التبغ من خلال مجموعة من الطرق الهامة لتجنب الدعم من أجل وضع وتحقيق الاتفاقية الأفريقية بشأن مكافحة التبغ لجان وطنية لمكافحة التبغ عند الزوام.

وتعد هذه الوثيقة الوجهة الرائدة التي أظهرت بفضل هذه المؤسسات الوطنية في وضع وتحقيق الاتفاقية الدولية في مختلف المجالات ذات الأهمية العالمية بالتركيز على حقوق الإنسان والقوانين البيئية وقوانين العمل. وعلى أساس هذا التحليل تقدم التوصيات بشأن الدور الذي ينبغي لجان مكافحة التبغ الوطنية الاضطلاع به في بناء الدعم المقدم لوضع وتنفيذ الاتفاقية الأفريقية بشأن مكافحة التبغ.

وفي الأحوال المثالية ينبغي أن تتمتع لجان مكافحة التبغ الوطنية بالاستقلالية. وإذا تعذر ذلك فإن بالאים التحسين ولاية المؤسسات الوطنية القائمة أو توسيع نطاقها. فالإمكانات، على سبيل المثال، إضافة مسألة مكافحة التبغ لولاية لجنة تعني بحقوق الإنسان وذلك بالربط بينها وبين الحق في التنوع بالصحة، ففي هذا يمكن إضافة الفائدة إلى ولاية لجنة تعني بالتنمية المستدامة. ويتضح أن حل بدبي يمثل في إمكانية توسيع نطاق ولايات آدابيات البحوث الطبية الوطنية لتشمل مكافحة التبغ.

ويجري أيضاً مناقشة تهم السير الفعال للجان مكافحة التبغ الوطنية. ثم تبحث الوثيقة الدور الذي ينبغي للمؤسسات الجديدة أو القائمة الاضطلاع به في بناء الدعم المقدم من أجل وضع وتحقيق الاتفاقية الأفريقية.

وأخيراً تجري دراسة الدور الذي يمكن للمنظمة أن تقوم به في مساعدة البلدان في إنشاء اللجان. وتتطلب المؤسسات الوطنية المتاحة للبلدان اختيار تشكيلة من المدفوع، ودبكات لجان مكافحة التبغ الوطنية، بإتباع الأرشادات المبينة في الوثيقة، أن تكون بمثابة أليات فعالة لتعزيز وضع وتنفيذ الاتفاقية الأفريقية.
执行概要

世界卫生组织认识到由烟草使用造成的巨大的早逝人数，于1998年决定通过建立一个名为无烟草行动的新的内阁级项目，给烟草控制工作重新注入新的活力。拟议的世界卫生组织烟草控制框架公约是这一项目的基石。动员对制定和实施烟草控制框架公约支持的一个重要手段是在适宜的地方建立国家烟草控制委员会。

本文件分析了这类国家机构在全球不同领域制定和实施国际公约，主要集中于人权、环境法和劳动法方面发挥的作用。根据这一分析，就国家烟草控制委员会应在对制定和实施烟草控制框架公约加强支持方面发挥的作用提出建议。

国家烟草控制委员会应理想地具有自主性。如不可能，现有国家机构的职权可予加强或扩大，例如，可通过将烟草控制与健康权利相联系，将其增添为人权委员会的职权，或将其增添为可持续发展委员会的职权。或者，可扩大国家医学研究院的职权以包括烟草控制。

还对国家烟草控制委员会有效工作的要素进行了讨论。然后，文件审查了新的或现有的机构应在加强对制定和实施烟草控制框架公约的支持方面发挥的作用。

最后，对世界卫生组织可在协助各国建立国家委员会方面发挥的作用进行了审议。

可供各国采用的国家机构类型提供了可供选择的广泛模型。通过遵循文件中概述的指导原则，国家烟草控制委员会可作为促进制定和实施烟草控制框架公约的有效机制运行。
Executive summary

Recognizing the enormous premature mortality caused by tobacco use, the World Health Organization (WHO) decided in 1998 to reinvigorate work on tobacco control by creating a new Cabinet-level project entitled the Tobacco Free Initiative. The proposed WHO Framework Convention on Tobacco Control (FCTC) is the cornerstone of this project. One important means of mobilizing support for the development and implementation of the FCTC is the creation, where appropriate, of national tobacco control commissions.

This document analyses the role that such national institutions have played in the development and implementation of international conventions in different areas of global concern, concentrating on human rights, environmental and labour law. On the basis of this analysis, recommendations are presented as to the role that national tobacco control commissions should play in building support for the development and implementation of the FCTC.

Ideally, national tobacco control commissions should be autonomous. If that is not possible, the mandate of existing national institutions can be strengthened or expanded. For example, tobacco control could be added to the mandate of a human rights commission by relating it to the right to health, or it could be added to the mandate of a commission on sustainable development. Alternatively, the mandates of national medical research academies could be expanded to include tobacco control.

Elements for the effective functioning of national tobacco control commissions are also discussed. The document then examines the role that new or existing institutions should play in building support for the development and implementation of the FCTC.

Finally, the role that WHO can play in assisting countries to develop national commissions is considered.

The variety of national institutions available to countries offers a wide choice of models. By following the guidelines outlined in the document, national tobacco control commissions could operate as effective mechanisms for promoting the development and implementation of the FCTC.
Résumé d’orientation

Reconnaissant l’ampleur du problème de mortalité prématurée provoquée par le tabagisme, l’Organisation mondiale de la Santé (OMS) a décidé en 1998 d’intensifier les activités de lutte antitabac en créant un nouveau projet au niveau du Cabinet intitulé l’initiative Pour un monde sans tabac. La future convention-cadre de l’OMS pour la lutte antitabac sera la pierre angulaire de ce projet. Un important moyen de mobiliser l’appui en faveur de l’élaboration et de l’application de la convention consiste à créer, là où il convient, des commissions nationales de lutte antitabac.

Le présent document contient une analyse du rôle que ces institutions nationales ont joué dans l’élaboration et l’application de conventions internationales dans différents domaines d’intérêt mondial, et plus particulièrement en ce qui concerne les droits de l’homme, l’environnement et le droit du travail. Sur la base de ces analyses, des recommandations sont présentées sur le rôle que les commissions nationales de lutte antitabac doivent jouer pour renforcer l’appui en faveur de l’élaboration et de l’application de la convention.

La solution idéale consiste à prévoir des commissions nationales autonomes. Si elle n’est pas possible, le mandat des établissements nationaux existants peut être renforcé ou élargi. Ainsi, la lutte antitabac peut-être ajoutée au mandat d’une commission des droits de l’homme par le biais du droit à la santé ou ajoutée au mandat d’une commission du développement durable. Une autre solution consiste à élargir le mandat d’académies nationales de recherche médicale pour englober la lutte antitabac.

On s’est également penché sur le problème du fonctionnement efficace des commissions nationales de lutte antitabac, puis sur le rôle que les institutions nouvelles ou existantes doivent jouer pour renforcer l’appui en faveur de l’élaboration et de l’application de la convention-cadre.

Enfin, on examine ce que peut faire l’OMS pour aider les pays à mettre sur pied leurs commissions nationales.

L’ensemble des institutions nationales pour lesquelles les pays peuvent opter offre un large choix de modèles. En suivant les principes directeurs énoncés dans le document, les commissions nationales de lutte antitabac peuvent servir de mécanismes efficaces de promotion de l’élaboration et de l’application de la convention-cadre.
Резюме

С учетом очень высоких показателей преждевременной смертности в результате употребления табака Всемирная организация здравоохранения (ВОЗ) приняла решение в 1998 г. стимулировать усилия по борьбе с табаком за счет создания нового проекта на уровне Кабинета, названного "Инициатива по освобождению от табачной зависимости". Предлагаемая Рамочная конвенция ВОЗ по борьбе с табаком (РКБТ) является краеугольным камнем этого проекта. Одним из важнейших средств для мобилизации усилий в отношении разработки и осуществления РКБТ является создание там, где это возможно, соответствующих национальных комиссий по борьбе против табака.

В настоящем документе анализируется роль национальных учреждений, которые они сыграли в разработке и осуществлении международных конвенций в различных областях, представляющих интерес для всего мира в области прав человека, окружающей среды и законов о труде. На основе данного анализа были разработаны рекомендации в отношении роли национальных комиссий по борьбе против табака и той роли, которую они должны сыграть в упрочении поддержки в вопросах разработки и осуществления РКБТ.

В идеальном случае, национальные комиссии по борьбе против табака должны быть автономны. В том случае, когда это невозможно, необходимо обеспечить укрепление или расширение мандата существующих национальных институтов. Так, например, вопросы борьбы против табака могут быть взаимосвязаны с мандатом комиссии по правам человека, с учетом взаимосвязей, которые существуют в связи с правом на здоровье, или эти вопросы могут быть включены в круг ведения комиссии по устойчивому развитию. Другой альтернативой может быть расширение мандатов национальных научно-исследовательских академий, которые могут также охватывать вопросы борьбы против табака.

При этом рассматривается также вопрос об эффективном функционировании национальных комиссий по борьбе против табака. В документе, помимо этого, ставится вопрос о роли, которую могут сыграть новые или уже созданные учреждения в обеспечении поддержки в вопросах разработки и осуществления РКБТ.

Наконец, в нем рассматривается вопрос о той роли, которую может сыграть ВОЗ за счет оказания содействия странам в учреждении национальных комиссий.

Разнообразие национальных институтов, имеющихся в странах, позволяет произвести выбор разнообразных моделей. Следуя основным положениям в данном документе, национальные комиссии по борьбе против табака могут служить эффективным механизмом для содействия в вопросах развития и осуществления РКБТ.
Resumen de orientación

Reconociendo la enorme mortalidad prematura causada por el consumo de tabaco, la Organización Mundial de la Salud (OMS) decidió en 1998 reactivar la lucha antitabáquica creando un nuevo proyecto de gabinete, la Iniciativa «Liberarse del Tabaco». El Convenio Marco Internacional para la Lucha Antitabáquica propuesto por la OMS es la piedra angular de este proyecto. Un medio importante para movilizar apoyo a favor del desarrollo y de la aplicación del Convenio es la creación oportuna de comisiones nacionales de lucha antitabáquica.

En el presente documento se analiza la función que esa clase de instituciones nacionales ha desempeñado en la elaboración y la aplicación de convenios y convenciones internacionales en diferentes esferas que son objeto de preocupación mundial, en particular los derechos humanos, el medio ambiente y el derecho laboral. Sobre la base de este análisis se presentan recomendaciones acerca de la función que deberían desempeñar las comisiones nacionales de lucha antitabáquica en la obtención de apoyo para la elaboración y la aplicación del Convenio.

En condiciones ideales, las comisiones nacionales de lucha antitabáquica deberían ser autónomas. Cuando ello no sea factible puede fortalecerse o ampliarse el mandato de instituciones nacionales existentes. Por ejemplo, la lucha antitabáquica podría incorporarse en el mandato de una comisión de derechos humanos relacionándola con el derecho a la salud, o podría incorporarse en el mandato de una comisión sobre desarrollo sostenible. Otra posibilidad sería que los mandatos de las academias nacionales de investigaciones médicas se ampliaran para incorporar la lucha antitabáquica.

También se abordan algunos elementos relativos al funcionamiento eficaz de las comisiones nacionales de lucha antitabáquica. Se examina luego la función que las instituciones nuevas o existentes deben desempeñar en la promoción del apoyo a la elaboración y la aplicación del Convenio. Por último, se considera la función que la OMS puede desempeñar ayudando a los países a que establezcan comisiones nacionales.

La diversidad de instituciones nacionales disponibles para los países ofrece una amplia variedad de modelos. De conformidad con las directrices esbozadas en el documento, las comisiones nacionales de lucha antitabáquica podrían funcionar como mecanismos eficaces para la elaboración y la aplicación del Convenio.
Introduction

In 1996, the Member States of the World Health Organization (WHO) adopted World Health Assembly resolution WHA49.17, in which they decided to initiate the development of a binding international instrument on tobacco control. In 1998, under the leadership of its new Director-General Dr Gro Harlem Brundtland, WHO decided to reinvigorate its tobacco control activities by making them a Cabinet-level project: the Tobacco Free Initiative. The proposed WHO Framework Convention on Tobacco Control (FCTC) is the cornerstone of that project.¹

National commissions have been identified as an important mechanism for building support for the development and implementation of the FCTC. They can assist in creating public support by mobilizing constituencies within States and by facilitating the development of alliances and networks. In the area of health law, few countries have national tobacco control commissions, but some have specialized institutions for public health, for example, regional ombudsmen for patients’ rights. National institutions are more widespread in other areas of global concern, such as human rights, environment and labour law, where they have been established to promote conventions and protocols. These too can provide guidance on how best to set up new national institutions for tobacco control or to utilize existing institutions to promote the development and implementation of the FCTC.

Some questions arise concerning the use of national commissions. Should separate national institutions be established specifically to promote tobacco control, including the FCTC, or should the mandate of existing national commissions, such as human rights commissions, be expanded to incorporate tobacco control? What tasks should national institutions perform in order to promote the FCTC? What elements are considered necessary for the effective functioning of such institutions? Do such institutions have a role to play in the pre-negotiation stage or only after the FCTC has been adopted? And finally, what is WHO’s role in this process?

This document addresses these issues by reviewing the role national institutions have played in the development and implementation of international conventions in different areas of global concern. It then analyses the role new or existing institutions could play in building support for the codification, ratification and implementation of the FCTC. Both legal and strategic issues are examined. Particular attention is devoted to the function of such institutions in the pre-negotiation and negotiation stages of the FCTC. The document also explores the role WHO can play in assisting countries, especially developing countries, to create new national institutions or expand the mandate of existing institutions to facilitate the FCTC process.
Characterization of national institutions

There is no uniform definition of national institutions, whether in the human rights field or any other area of international law. Such institutions have a variety of names, such as advisory committee, commission, president’s council, board, collaborative organization or ombudsman. The institutions often have different structures and functions, yet their purpose is usually the same in a particular field. In the human rights area, for instance, the purpose of national institutions such as human rights commissions is to promote and protect human rights.

The concept of national institutions is a difficult one to define. Regardless of the names they carry, it is not always clear whether they really differ from government entities. At the other end of the scale are the organizations with links to the government. These are the nongovernmental organizations (NGOs), so categorized because they have no legislative basis. This document does not deal with NGOs as such. Their role in the process of promoting the FCTC is examined elsewhere. For the purposes of this document, national institutions will be divided into two groups; however several characteristics may overlap.

The first group of national institutions consists of entities characterized as autonomous bodies, independent of government control. They are sometimes identified as “parastatal” in that they acquire their powers through a legislative act. Some of them are elected, while some appointed by parliament, yet they operate free of political direction by the government. The law founding the institution identifies specific links with the State, which limits its independence, such as the legislative mandate, reporting obligations and lack of full financial autonomy. The fact that the legislative act grants it a certain independence of action distinguishes it from government entities. Within their area of competence, autonomous institutions have a role complementary to that of government entities. On the whole, ombudsmen for public administration and some human rights commissions fit into this category.

The structure of these institutions may differ considerably. Some consist of one person with a supporting office, as in the case of the ombudsman, and some consist of a diverse group of people representing different interests involved in promoting, for instance, human rights. A good example of an autonomous national institution is the National Commissioner of Human Rights in Honduras. This official is appointed by Congress and enjoys functional, administrative and technical autonomy under the law (see page 22).

The second group of national institutions can be categorized as semi-autonomous: they are not totally independent of the government, but are distinct from government entities that have more general functions. In many countries these institutions are attached in some way or another to the executive branch, yet they also have their basis in a legislative act (or decree) defining their specific functions. An example of such an institution would be the President’s
The Role of National Institutions in the WHO FCTC Process

Council on Sustainable Development (PCSD) in the USA, which was established by President Clinton in 1993 by executive order (see page 25).

The nature of the charter or mandate of the semi-autonomous body is a major determining factor of its status. Is the institution subject to day-to-day control by a government agency or is the mandate open-ended? Is the institution responsible to one of the ministries or departments or does it just submit an annual report? Does it have an administrative role, making administrative decisions and using sanctions, as part of the central administration, or does it have more of a promotional and advisory role, and possibly quasi-judicial competence. The composition of these semi-autonomous bodies is usually diverse, with some representatives from affected groups, such as workers or indigenous groups, in addition to independent experts and government officials acting only in an advisory capacity.

National institutions to promote the development and implementation of the FCTC can be fashioned after either of the above-mentioned groups of institutions, autonomous or semi-autonomous. Establishing institutions as autonomous bodies would appear to be ideal, as that would give them more power and less chance of being influenced by the government, party politics, or other entities. However, even semi-autonomous institutions could play an important role in promoting the FCTC. The review of national institutions in the following section does not emphasize the distinction between autonomous and semi-autonomous bodies. However, it does elaborate on these institutions’ functions and structures.
The role played by national institutions in the development and implementation of international Conventions

This section considers national institutions in the fields of human rights law, labour law and environmental law, as they can provide guidance on how to establish national tobacco control commissions. In the health law area there are very few national institutions, but some examples will also be explored.

Human rights law

Background

The United Nations Charter states as one of the Organization’s purposes “to achieve international cooperation... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. The United Nations has developed a comprehensive strategy to achieve the human rights objective set out in the Charters. This strategy is based on international rules and standards, such as the Universal Declaration of Human Rights. However, the task of promoting human rights cannot be done by one organization alone. It requires the common efforts of every government, individual, group and branch in society.

Regional human rights systems, such as those operating in Africa and the Americas, play an important complementary role in reinforcing international standards. Additional support for the implementation of international human rights standards is provided by nongovernmental organizations. Yet by ratifying human rights conventions, States assume a responsibility to implement the human rights standards. The task of protecting human rights is primarily a national one, as human rights involve relations among individuals and between individuals and the State. However, the ratification of human rights conventions and the incorporation of their provisions into domestic legislation does not guarantee the effective realization of those rights if the law does not also provide powers and institutions to ensure them.

How best to deal with the problem of effective implementation at the national level has prompted a great deal of international interest. As States move from principles to action, it has become increasingly apparent that national infrastructures are essential for the effective implementation of international human rights standards at the national and local levels.
National institutions to promote and protect human rights have existed for a long time. In 1946 the United Nations Economic and Social Council asked Member States to consider "the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights." Since then, there has been a continuing process within the United Nations to promote the establishment of such institutions. Yet only in the 1980s did these national institutions become commonplace. Although the structure and functions of human rights institutions may vary from country to country, they have a common purpose – the protection and promotion of human rights - and are therefore referred to collectively as national human rights institutions.

Much progress was made when the United Nations Commission on Human Rights organized a seminar in 1978 - the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights - which approved a list of guidelines on the structure and functions of national institutions. The suggested functions for national institutions included acting as a source of human rights information, assisting in educating the public, and making recommendations regarding any particular state of affairs that might exist nationally that the government might wish to refer to them. Regarding structure, the guidelines recommended that the institutions should be designed to reflect wide cross-sections of the nation in their composition and should function regularly. These guidelines were later endorsed by the Commission on Human Rights and by the United Nations General Assembly.

In the 1980s, often with the assistance of the Advisory Services Programme of the Centre for Human Rights, a considerable number of national human rights institutions were established. However, only in the last decade did the international community agree to a format as to the structure and functioning of such institutions. A milestone in this process was the identification of the Principles Relating to the Status of National Institutions (the Paris Principles), which were endorsed by the United Nations General Assembly in December 1993. Earlier in 1993, the World Conference on Human Rights had adopted the Vienna Declaration and Programme of Action, which encourages States to establish and strengthen national institutions.

Early United Nations activities in the area of national human rights institutions used a much broader definition for these institutions than the one used today. It included practically any institution at the national level that had a direct or indirect impact on human rights. The concept included, for instance, legal aid offices, NGOs, the judiciary and administrative tribunals, in addition to ombudsman-type institutions and national commissions. In the current work of the United Nations in this area, a concept of national institutions has emerged which is limited on the basis of particular common functions, including: advising governments on human rights matters; educational and promotional activities; and investigating complaints of abuse of power committed by government officials or agencies. Yet, despite the "functional" approach to categorization, the definition of national institutions is still evolving. However, for practical purposes the United Nations activities in this field take "national institutions" to refer to "a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights". Most national human rights institutions fall into one of two categories: human rights commissions or ombudsmen. Specialized institutions are a variation on the human rights commissions. As the name indicates, they are aimed at protecting specific vulnerable groups.
Types of national human rights institutions

Human rights commissions

Human rights commissions deal exclusively with human rights issues and usually consist of collegial organs, the members of which are appointed by the executive branch of government. Commissions are usually established through a legislative act or decree, which also spells out their authority, functions and jurisdiction. Generally these commissions are involved in one or more specific functions directly related to human rights, including an advisory function, an educative function and an impartial investigatory function. Various commissions may differ in the emphasis they place on the different functions. Some commissions cover a broad range of human rights, while others concentrate on particular vulnerable groups.

Receiving and investigating complaints from individuals (or groups) alleging human rights abuses committed in violation of existing national law is the most common function vested in human rights commissions. The procedures used in investigating and resolving complaints vary among different countries, though many rely on conciliation and/or arbitration. Conciliation is sought by bringing the two parties together and attempting to reach a mutually satisfactory solution. If it fails, the commission can resort to arbitration, in which it issues a determination after a hearing. Usually the commission has no authority to impose a binding decision on parties to a complaint. Some countries have established a special tribunal to hear and determine issues from unresolved complaints. In other countries, the commission may transfer unresolved complaints to the regular courts for a final and binding decision.

The advisory function of human rights commissions usually consists of systematically reviewing the government’s human rights policy in order to detect shortcomings and suggest ways of improving it. In addition, the commission also monitors the State’s compliance with its own legislation and international human rights laws, recommending changes where necessary. The initiation of inquiries by the commissions themselves, especially with regard to groups or individuals that do not have the means to lodge individual complaints, is an important indicator of the commissions’ overall effectiveness.

Promoting human rights and educating the public in its rights and the functions of the commission are further important functions. These can include producing and disseminating human rights publications, holding seminars, arranging counselling services, and promoting public debate on various issues in the human rights field.\(^1\)

To cite one example, Nicaragua established a National Commission for the Protection of Human Rights by Decree No. 138 in 1981.\(^4\) The Commission is authorized to create independent investigatory organs to inquire into complaints alleging that citizens are being deprived of their human rights. It can also apply specific remedies to particular cases of violations of human rights. In addition, the Commission can advise the Government on any matters submitted to it pertaining to human rights. Furthermore, it monitors the legislative and administrative systems periodically with a view to suggesting improvements.
The Ombudsman

The ombudsman is an institution that originated in Sweden, with roots back to the Constitution of 1809. More than 90 countries now have an ombudsman-type institution, some of which use other designations such as defensor del pueblo or médiateur de la république.15 Most operate at the national level, but some countries have regional and/or local ombudsmen, as in the United States.16 All countries with ombudsmen have similar procedures for fulfilling the duties of the ombudsman, even if the office is not exactly the same in any two countries. The institution consists of an independent high-level officer who is appointed or elected by parliament and acts on constitutional authority or through special legislation.14 In a sense he or she is part of the parliamentary control of government administration, yet the ombudsman has complete independence and autonomy, with no actual or formal ties to government administration, in terms of either budget or administration.17 In some parts of Africa and the Commonwealth, however, the ombudsman is appointed by the head of state, and may also be required to report that authority.15

The ombudsman’s role is to investigate abuse of power by government officials or agencies on the basis of complaints received from aggrieved persons or on his or her own initiative. The ombudsman can recommend action and must report annually to the legislature or other high authority. These recommendations are not binding, but the public administration in many countries is expected to comply.17

Bringing a complaint to the ombudsman - in some countries, after having exhausted all channels of appeal - is often a person’s last recourse for review of an administrative decision.5 The ombudsman is often called “the ordinary person’s advocate”, yet in reality he or she is an impartial mediator between the complainants and the public administration. The ombudsman is usually a faster alternative to the courts in arriving at an opinion as to whether an individual has suffered injustice at the hands of the public administration. Usually there are no costs involved. Some countries impose a time-limit for the filing of complaints. In addition, some areas of public administration are exempt from the ombudsman’s jurisdiction, such as members of the legislature and the judiciary. With regard to access, many countries allow individuals to lodge complaints directly. In others, a complaint must be submitted to a local member of parliament, who acts as an intermediary.17

Investigations initiated by the ombudsman are usually undertaken on issues which he or she has determined to be of broad concern or issues affecting group rights that are not likely to be the subject of an individual complaint.17

In Honduras, the National Commissioner of Human Rights is appointed by Congress and enjoys functional, administrative and technical autonomy, according to law.17 The Commissioner’s position was established in 1992 by Decree No. 191-94 through an amendment of the Constitution. While in office, the ombudsman and his or her deputies enjoy legal immunity. Complaints can be brought concerning arbitrary administrative action, violation of human rights or other illegal behaviour by the authorities. After completing investigative procedures, including inspections, the Commissioner can make recommendations and suggestions to the responsible agency.

Nigeria has a Collegial Organ, the Public Complaints Commission, which was created by Decree No. 31 (1975) and is somewhat akin to an ombudsman. It can conduct inquiries into
complaints made by members of the public alleging violations of human rights by central or state government or other public entities.\textsuperscript{13} 

**Specialized institutions** 

Specialized institutions are human rights bodies that protect the interests of persons belonging to ethnic, linguistic and religious minorities, indigenous populations, non-nationals, women, children and other vulnerable groups. Generally, they promote government or social policy aimed at protecting one or more of these groups. They are empowered to investigate instances of discrimination against individuals in the group and against the group as a whole. In common with other human rights institutions, they are rarely authorized to make binding decisions or initiate legal actions. They are frequently entrusted with monitoring the effectiveness of existing laws and constitutional provisions related to the group concerned. In this respect, they function as consultants and advisers to parliament and the executive branch.

Some countries have specialized institutions and/or ombudsmen for particular vulnerable groups. The authority of ombudsmen dealing with such groups is also based in a legislative act, yet they are appointed by the executive branch and they are considered part of the public administration. For example, the office of the Norwegian Commissioner for Children is an independent institution, yet it is formally part of the Ministry for Children and Families and reports to it annually.\textsuperscript{14} In addition, the country's Ombudsman for Public Administration, as the higher authority, can review a matter that has been dealt with by the Commissioner.\textsuperscript{17} 

**Environmental law** 

National institutions or commissions, as defined in section II above, have been used less frequently than in the human rights area to promote the development and implementation of conventions dealing with environmental issues. Some experts explain that most countries have ministries of the environment to promote protection of the environment, in contrast to the human rights field, which is usually allocated to a ministry dealing with many different issues in addition to human rights.\textsuperscript{18} Yet, as will be shown below, some countries now have an ombudsman for the environment in addition to the ministry of the environment. These countries have found that an institution with a certain independence from government control is advantageous in improving environmental protection.

One such country, New Zealand, established the Office of the Parliamentary Commissioner for the Environment in 1986.\textsuperscript{19} The Commissioner is independent of the executive branch of government. Appointments are made for a five-year term by the Governor-General (on the Recommendation of the House of Representatives), who has sole power of removal. The Commissioner’s functions include: reviewing the system of agencies and processes established by the Government to manage the allocation, use and preservation of New Zealand’s natural and physical resources; investigating any matter in respect of which the environment may be or has been adversely affected; investigating the effectiveness of environmental planning and management undertaken by public authorities; and responding to requests from the House of Representatives. In addition, the Commissioner has the power to obtain information, examine any person on oath, and appear and be heard at any proceedings relating to the obtaining of statutory consents. The Office of the Commissioner receives between 320 and 375 representations each year, of which 20-25 are thoroughly investigated.\textsuperscript{20}
In Canada, amendments to the Auditor General Act that came into force on 15 December 1995 established the position of Commissioner of the Environment and Sustainable Development; the first appointment to this position was made in 1996.21 The Commissioner’s role is to assist parliamentarians in their supervision of the federal Government’s efforts to protect the environment and foster sustainable development, by providing them with objective, independent analysis and recommendations. However, the Commissioner makes no recommendations on policy issues, such as the implementation of international environmental agreements. The Commissioner comes in after the fact, so that any recommendations remain unbiased.22

On behalf of the Auditor General, the Commissioner monitors the extent to which departments have met the objectives of their sustainable development strategies and implemented their action plans. In addition, petitions are received from the public on sustainable development matters and forwarded to the appropriate minister for response. The Commissioner then reports annually to Parliament on the progress made by the departments and the status of petitions received.

In September 1990, during the early stages of negotiation of the United Nations Framework Convention on Climate Change (UNFCCC), the Ad Hoc Working Group of Government Representatives to Prepare for Negotiations on a Framework Convention on Climate Change recommended that countries be urged to set up a “national coordinating group”, if they had not already done so, to handle national information requirements relevant to the negotiations, and to serve as a link to the secretariat of the negotiations.23 Clearly, early establishment of national coordinating groups was considered important for the negotiation process. However, in many cases such coordinating bodies were set up as interministerial committees, not independent commissions.

National commissions set up specifically for a particular convention are not common. However, a few countries have established a specific committee or national commission to promote the implementation of a convention. The Marshall Islands, for instance, has a multisectoral country team for implementation of climate change activities.24 The team is chaired by an official from the Environmental Protection Authority and includes representatives of business and NGOs. It plays an advisory role in relation to the Government’s policy on climate issues.25

Many countries have established an interdepartmental or interministerial committee to coordinate the government’s position in regard to the negotiation of a particular convention, such as the UNFCCC. In addition, since the 1980s, most countries have a ministry of the environment which handles national information requirements, prepares domestic legislation to implement the conventions, and enforces the laws.

The United Nations Environment Programme (UNEP) has not established a programme to encourage the development of national commissions, as has been done in the human rights area. Instead, through its Environmental Law Programme, it concentrates on training officials from ministries of the environment. UNEP gives seminars and on-site training in, among other things, the development of national environmental legislation.18

In connection with the 1992 United Nations Conference on Environment and Development (UNCED), several countries established national-level commissions or coordinating mechanisms to develop an integrated approach to sustainable development. By 1997, 150 such commissions had been established by governments to elaborate new policies and strategies for sustainable
Development and implementation of international conventions

development or adapt existing policies and plans. These commissions are reportedly also used to promote the implementation of conventions, for instance, the UNFCCC. However, many of them are government-operated, interministerial committees.

In the industrialized countries, most national councils for sustainable development are somewhat more independent of government control. They often consist of a panel of appointed experts in their fields - business leaders, academics or heads of influential organizations. In the USA, as mentioned above, the President’s Council on Sustainable Development (PCSD) was established by President Clinton by executive order in 1993. Its function is to advise the President on issues involving sustainable development, and develop and recommend to the President a national sustainable development action strategy that will foster economic vitality. The Council has four essential objectives: forging consensus on policy; demonstrating implementation of policy; getting the word out about sustainable development; and evaluating and reporting on progress. It reports to the White House Council on Environmental Quality (CEQ). In order to carry out its functions, the PCSD can request information concerning sustainable development from heads of executive agencies.

National commissions for sustainable development that are somewhat separate from the government have also been established in some developing countries. Zimbabwe, for instance, has established a National Advisory Committee on Environment and Sustainable Development. It is attached to the Ministry of Environment and Tourism, but its members are from various other national institutions, universities, research organizations, industry associations and NGOs.

The Gambia established the National Environmental Agency (NEA) in 1994 when it revised its National Environment Management Act of 1987. NEA’s function is to give policy and regulatory advice in order to provide an enabling environment for environmentally sustainable development. This is a high-level institution attached to the Office of the President. It is semi-autonomous both administratively and financially, and has no implementation responsibilities. It has seven areas of operation: policy development; environmental education and awareness building; environmental information management; environmental impact assessment; environmental quality management; pesticides registration and control; and contingency planning and disaster preparedness.

Mongolia’s National Council for Sustainable Development (NCSD) is chaired by the Prime Minister. It serves as a high-level steering committee for the Mongolian Action Plan for the Twenty-first Century (MAP-1). The Council’s day-to-day responsibilities and direction come under the Cabinet Office. A programme management and coordination group provides direct access to policy-makers. It comprises chiefs of departments from the following ministries: economic and restructuring policy; environmental planning and technology; social policy and public health; education; science and technology; arts and culture; agriculture and industrial development; and infrastructure development. An advisory group of national consultants has been appointed, including distinguished individuals from economics, science, business and community interests, including representatives of two leading NGOs.
Labour law

In the labour law field, there are strictly speaking no national commissions dealing with the promotion of ILO conventions. However, in 1976, in order to establish a tripartite machinery to promote the implementation of international labour standards, the International Labour Conference adopted the Tripartite Consultation (International Labour Standards) Convention (No. 144). Article 1 of this Convention requires ratifying States to undertake "to operate procedures which ensure effective consultations, with respect to the matters concerning the activities of the International Labour Organisation ... between representatives of the government, of employers and of workers".

The purpose of such tripartite consultative bodies or procedures is intended to be consultations on a variety of matters, including government replies to questionnaires concerning items on the agenda of the International Labour Conference; questions arising out of reports to be made to the International Labour Office under Article 22 of the ILO Constitution; proposals to be made to the competent authorities in connection with the submission of conventions and recommendations pursuant to Article 19 of the ILO Constitution; and, subject to national practice, the preparation and implementation of legislative or other measures to give effect to international labour conventions and recommendations, in particular ratified conventions.

The nature and form of the procedures of these tripartite bodies are determined in each country according to their national practice after consultation with the representative organizations. The representative organizations are defined as the most representative organizations of employers and workers enjoying the right to freedom of association. The recommendation that accompanied the Tripartite Consultation Convention, which is not a binding instrument, gives examples of possible methods of consultation. These examples include consultations through: a committee specifically constituted for questions concerning ILO's activities, a body with general competence in the economic, social or labour field, and a number of bodies with special responsibility for particular subject areas. Such bodies or procedures exist in most of the ratifying countries, of which there were 88 as of 1 April 1999.

In such tripartite consultation bodies, employers and workers are represented on an equal footing and are freely chosen by their representative organizations. In addition, appropriate training is given to enable participants in the bodies to perform their functions effectively. Furthermore, the competent government authority provides administrative support and financing of the bodies, including training programmes where necessary.

The Norwegian ILO Committee, established in 1947, fulfils Norway's obligations as stipulated in the Tripartite Consultation Convention. It is specifically devoted to issues concerning ILO, and serves as an advisory body to the Government. Its members are from the Ministry of Government and Regional Development, the Ministry of Foreign Affairs, and workers' and employers' organizations. It forwards joint opinions to ILO as to Norway's position with regard to conventions that are being negotiated by ILO Member States and it advises the Government on whether it should ratify adopted conventions that emerge from the yearly ILO Conference. The Committee members usually agree on the recommendations they issue, but if there is disagreement the dissenting opinions are duly recorded. The Committee considers all issues regarding ILO that are of interest to Norway. It also manages the distribution of information about ILO in Norway.
The ILO has also encouraged the establishment of tripartite consultation and cooperation bodies through the Labour Administration Convention (No. 150) and Labour Administration Recommendation (No. 158) of 1978. These bodies have specific responsibilities in the field of national labour policy, such as labour legislation, national employment policy, industrial relations and labour-related research. The consultative bodies propose programmes of action and submit opinions or recommendations on government proposals concerning national labour policy. The decision-making authority is normally not obliged to follow the advice the consultative bodies give it.

In certain cases collaborative bodies are entrusted with actual administration of departments concerned with labour administration, in which case they are referred to as cooperation bodies. They are often independent from government control, and discharge certain administrative responsibilities that have been delegated because it is considered important for such functions to be conducted free of political direction from the government.

Both the consultative and cooperative bodies can be composed in different ways. They can be bipartite (merely the social partners) or tripartite, if the government is also represented. In some cases they are multipartite, being composed of special interest groups, ethnic groups or political parties either exclusively or in addition to the social partners and the government. They may also be composed solely of independent experts.

The scope of the tripartite consultations provided for in the Tripartite Consultation Convention (No. 144) and in the Labour Administration Convention (No. 150) differs. Articles 5 of Convention No. 144 indicates that the consultation is to be held with a view to promoting the implementation of international labour standards. Articles 5 and 6 of Convention No. 150 provide for consultation, within the system of labour administration, including preparation, administration, coordination and review of national labour policy not necessarily related to international labour standards. In the context of developing tobacco control commissions to promote the FCTC, the tripartite consultations provided for in Convention No. 144 are more likely to be used as a model because they are used specifically to promote the implementation of ILO conventions. Nevertheless, the consultation and cooperation organizations can also offer some guidance.

**Health law**

In contrast to the fields of labour law and human rights, where there has been a conscious effort to promote national institutions, the health law field has not received the same impetus. However, there has been a recent proposal for the establishment of national commissions for health. As mentioned above few countries have national tobacco control commissions, but some do have specialized institutions for public health, for example, regional ombudsmen for patients’ rights. Some examples are worth mentioning, as they might serve as models for countries.

One of the few national institutions specifically to promote tobacco control in a developing country is Thailand’s National Committee for the Control of Tobacco Use. It was established in 1989, and is responsible for governmental tobacco control activities. Together, Thailand’s Tobacco Products Control Act and its Nonsmokers’ Health Protection Act, both of 1992, give Thailand some of the world’s most comprehensive legislative protection from involuntary exposure to tobacco smoke and tobacco marketing.
Among the industrialized countries that have national institutions to promote tobacco control are Denmark, Iceland and Norway. Norway’s National Council on Tobacco and Health was established in 1971 and has a mandate adopted by the Ministry of Health and Social Affairs in 1972. It consists of an administrative department and a board composed of 12 experts. The members of the board represent a broad spectrum of interests involved in the promotion of tobacco control. Currently, they include physicians, psychologists, political scientists and a lawyer. Members are appointed by the Ministry of Health and Social Affairs for a three-year term.

The purpose of the Council is to reduce the consumption of tobacco in Norway thereby reducing the extent of health damage caused by tobacco use. It initiates and follows up on activities to prevent the harmful effects of tobacco. The Act relating to Prevention of the Harmful Effects of Tobacco (Act No. 14 of 9 March 1973) requires the Council to investigate the effects of measures implemented in accordance with the Act. The Council also expresses its views before the Ministry makes any decisions pursuant to the Act. In addition, the Act gives the Ministry authority to oblige manufacturers and importers of, and dealers in, tobacco products, as well as their joint organizations, to furnish the Ministry with such information as the Council requires in order to fulfil its functions.

Several Nordic countries have regional ombudsmen for patients’ rights. Their purpose is to promote the rights of patients and improve the public health care system. They function as a kind of mediator between patients and the health care authorities. The institution of ombudsman is usually established through an administrative decision by the county government, which also appoints the ombudsman. The Norwegian Government has proposed a new law on the rights of patients, which gives the regional ombudsmen for patients’ rights a legislative basis. The draft legislation states that the ombudsmen are to be independent, which is interpreted to mean that the ombudsmen are to discharge their responsibilities without being influenced by the government. The decision to have regional ombudsmen rather than one national institution was, in part, based on the consideration that the ombudsmen would be more accessible if there were one in each of the countries. The comments to the draft legislation also stipulates that the ombudsmen institutions are to have their own budgets to strengthen their independence.
The role of national institutions in building support for the codification, ratification, and implementation of the FCTC

National tobacco control commissions can play an important role in the development and implementation of the FCTC. Such commissions can be established or existing commissions can have their mandates expanded to include tobacco control issues and the promotion of the FCTC. As became clear in the human rights area, national institutions have a common purpose, but their functions and structures may vary according to several factors, such as the cultural and legal traditions in different countries. The Vienna Declaration and Programme of Action encourages each State to "choose the framework which is best suited to its particular needs at the national level". None the less, the United Nations Centre for Human Rights has published a handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights. This handbook provides information, guidelines and assistance to all those involved in developing the structures necessary to promote and protect human rights at the national level. These guidelines can be utilized by countries contemplating or developing strategies for the establishment of national institutions to promote tobacco control. This section is to a large extent based on the handbook, adapted to the specific circumstances of tobacco control and the FCTC. The Principles Relating to the Status of National Institutions (see page 20) mentioned above, should also be used as a guide.

Establishing separate national tobacco control commissions or expanding the mandate of existing institutions

At both the pre-negotiation and the negotiation stage, the ideal situation would probably be to have a separate national commission to deal with tobacco control issues. A commission modelled on the national ILO committees, which exist in several countries, would be worth considering. Instead of being tripartite, with government, workers’ and employers’ representatives, it could be multisectoral, including all major groups involved in tobacco control. It could advise WHO on important aspects seen from the particular country’s perspective. At the ratification stage it could advise the government on whether to ratify, and after ratification, it could monitor whether the measures the government adopts to implement the FCTC are in accordance with the convention.

An alternative would be to strengthen the mandate of an existing national health commission to prioritize tobacco control issues. Expanding the mandate of existing national institutions in
the human rights area to include tobacco control would be another option. It would be tempting to use these existing commissions, especially since many countries have human rights commissions. On the whole, however, few countries have national institutions that specifically cover health care issues, let alone tobacco control. It is widely recognized that there is a human right to health, in accordance with Article 12 of the International Covenant on Economic, Social and Cultural Rights. Tobacco control could therefore be included in the mandate of human rights commissions as part of the right to health. Nevertheless, most human rights commissions would need extra financial support to take on more responsibilities. It is likely that a right to health (including tobacco control) would not be given high priority, as other human rights—for instance, civil and political rights—still pose enormous challenges in many countries. Even so, this would not necessarily be insuperable, as the following example from Mexico demonstrates.

In Mexico, the National Commission for Human Rights has drawn up a programme on human rights, ecology and health. One of its recommendations on the environment was issued in response to a complaint lodged by an individual who stated that the authorities responsible for controlling and eliminating pollution had failed to keep the public informed. The Commission recommended that the authorities concerned should publicize widely through the media the harmful effects of environmental degradation on health and the specific measures which the public should take in response. This example demonstrates the use of an existing human rights commissions to promote environmental protection. As the areas of environment and health are closely related, such a commission could also be used to promote tobacco control. A similar programme on human rights, health and tobacco control could be developed. A commission could equally recommend, on its own initiative, that the authorities concerned should publicize widely through the media the harmful effects of tobacco use and second-hand smoke.

The commissions on sustainable development which have been established in many countries could also be candidates to include tobacco control issues in their mandates. Most of them were established, after the adoption of Agenda 21 by UNCED, with the specific function of implementing that international instrument. These commissions are comprehensive in that they address a broad set of social, economic and environmental issues. In its vision statement, the US President’s Council on Sustainable Development does in fact refer to “a safe, healthy, high quality of life for current and future generations.” The negative health effects of tobacco use clearly do not advance a “healthy, high quality of life.”

Another alternative would be to include tobacco control in the mandate of a national commission dealing with labour issues. Many countries have several tripartite organizations involved in labour administration, including those that promote improvements in conditions of work. In view of the harmful effects of tobacco use and second-hand smoke, it should be possible to expand or strengthen their mandates to include the promotion of a tobacco-free work environment and other tobacco control issues. However, this alternative would not be fully satisfactory, as a consultative body on labour matters would not be able to address tobacco control issues that are not labour-related, such as prohibiting minors from smoking or banning tobacco advertising. Even within the labour field, the consultative body would not be able to address all work situations, such as the outdoor work environment, where second-hand smoke (passive smoking) is not an issue or where the self-employed work alone.

Mirroring the situation of many developing countries, for instance, Venezuela has no comprehensive legislation to promote tobacco control. The only existing tobacco control legislation is in the form of presidential decrees banning direct and indirect advertising on radio and television,
and requiring health warnings on advertisements in cinemas, on billboards, in the press and at point of purchase.\textsuperscript{40} Cigarette advertising is also banned at sport facilities under the 1979 Law on Sports. Smoking is prohibited in waiting rooms, theatres, cinemas, sports arenas, public transport vehicles, and on domestic flights. It is also prohibited in administrative service units of the Health Ministry and school buildings. In addition, the National Anti-tobacco Programme has developed six different 10-minute public service announcements on television. In Venezuela, for example, an institution that could possibly be strengthened to promote tobacco control is the National Academy of Medicine. This is a consultative body, established by the Venezuelan Congress and placed under the Ministry of Education.\textsuperscript{44} Institutions such as this could promote the FCTC in many ways, such as assisting in the development of a national policy on tobacco control as well as disseminating information to the government and public.

Many countries have medical research academies that could perhaps be used to promote the FCTC. The purpose of the Medical Research Council of South Africa is to improve the health and quality of life through excellent scientific research.\textsuperscript{45} It was established by an Act of Parliament which defines its mandate and is headed by a governing board. The Council translates health priorities into tangible projects by, among other things, mobilizing targeted task teams to address specific issues, and could make the health effects of tobacco use a priority. Thus it could promote the FCTC by disseminating information to decision-makers and the public on the health effects of tobacco use and by making policy recommendations on the issue to the government.

**Elements for effective functioning** \textsuperscript{12}

The more independent the national tobacco control commission is, the more effective it will be in promoting the national implementation of the FCTC. A national tobacco control commission able to discharge its responsibilities without being influenced by government, party politics or special interests would be the ideal model. It should be established through a legislative act or decree that spells out its purpose, authority, functions and jurisdiction. It should have as broad a mandate as possible to monitor governmental law and policy. The founding law (mandate) will specify its links with the State. These links in turn will limit the commission’s independence somewhat, by including reporting requirements in addition to the possible lack of full financial autonomy. However, as long as the limitations do not interfere with its ability to do its work effectively, the functions of the national tobacco control commission, as expressed in its mandate, are the essential element in its effective working.

The mandate should grant the commission separate legal authority, enabling it to make independent decisions. That independent legal status would allow it to discharge its responsibilities without interference from any branch of government or any public or private entity. This goal can be reached if the commission is made accountable directly to parliament or the head of state. The commission’s day-to-day activities should be conducted independently of any other authority and recommendations should not be subject to review by another authority, except where specified in the mandate. If the commission has the power to investigate complaints, then it should also have the power to require government agencies or private entities to cooperate, including answering requests for information and assisting in investigations.

The sources of funding for the national tobacco control commission should be specified in its mandate. If it has no control over its finances, it is not independent of the government or any
other body that does exercise such control. The commission should if possible be financially independent, so that none of its official actions or decisions affect its budget allocation.

The mandate should also specify the terms and conditions applicable to the commission’s members. The method of appointment of members is critical for its independence. The best way to ensure independence is to designate parliament or a similar body to appoint the members. The mandate will need to specify the method of appointment and criteria for membership (such as qualifications).

The founding law or charter of the commission should also clearly define the subject matter over which it has jurisdiction. These are the areas in which the institution may exercise its competence, such as providing education on tobacco control issues, advising the government on legislative matters, and receiving complaints on the violation of legislation, e.g., a ban on tobacco advertising. Once the FCTC has been adopted and has entered into force, a ratifying State may consider amending the national commission’s charter as appropriate in order to base it on the FCTC. The commission would then be well situated to oversee domestic implementation of the FCTC standards, to identify gaps in protective legislation, and to assist the government in reporting to the treaty body.

To ensure the effective functioning of the national tobacco control commission, it needs to be accessible to the public. This entails informing the public of its existence and functions. In addition, the commission must be physically accessible to its constituency, possibly through regional or local bodies.

The commission should also establish close ties with NGOs and community groups directly or indirectly involved in tobacco control. This can enhance the visibility of the commission and secure community support. Specific NGOs can have formal links to the national commission, so that they can be used in an advisory capacity or recruited as useful partners for individual projects or programmes.

To monitor its progress towards fulfilling its objectives, the national tobacco control commission should be legally and financially accountable to parliament or a similar body. The specific reporting requirements should be stated in its charter. It should also be accountable to the public, through public evaluations of its activities.

**Competence and responsibilities**

**The Pre-Negotiation and Negotiation Stage**

Whether tobacco control becomes the focus of a separate institution or part of an existing institution, one of the most important functions at the pre-negotiation stage is the promotional and educational one. Increasing the awareness of the public with regard to the societal impacts of tobacco and the importance of curbing its use on a global scale is a crucial first step in the right direction. Building public support for the negotiation of the FCTC will be one of the most important factors in the whole process. This can be done by developing and bringing together alliances, networks, and NGOs involved in tobacco control, thereby giving people a sense of participation in the preparatory process.
Once the negotiations are under way, the national tobacco control commissions can help their governments by providing national information required for the negotiations, and by serving as a link to the secretariat of the negotiations. In addition, they can exert political pressure on States to adopt the FCTC. The educational role of the commissions in promoting public awareness and building multisectoral support for the negotiations will be just as important, if not more so, than at the pre-negotiation stage. They could also assist the State in developing and coordinating its national position with regard to the negotiations.

**After adoption of the FCTC**

The next stage, after the FCTC has been adopted, is to put pressure on the government to ratify it. Here again, the national tobacco control commissions can play an important part, by mobilizing public awareness and support for the FCTC. Yet, once the convention has been ratified, the battle has just begun: the difficult task of implementing it begins. The commissions can exercise an advisory function by assisting the government in developing policies and measures to implement the FCTC. Once these measures are in place, the commissions could become part of an effective supervisory mechanism encouraging compliance with the FCTC by monitoring the implementation of policies and measures.

Creating public awareness of the FCTC will be an important part of the national tobacco control commissions’ functions. This can be done by collecting, producing and disseminating information materials on the FCTC and on domestic legislation relating to tobacco control. By working with the media, organizing promotional events and encouraging community initiatives, the commissions can be an important means of facilitating widespread awareness of the negative health effects of tobacco use and second-hand smoke (passive smoking). Furthermore, they can play a valuable role in educating various groups about tobacco control standards by setting up training courses for targeted audiences such as the medical profession, trade union officials and NGOs.

The commissions should be empowered through their mandate or charter to submit opinions, recommendations, proposals and reports to the government or parliament on any matter relating to tobacco control issues. This could be either at the request of the authorities or on their own initiative. For example, they should be able to submit opinions on proposed or existing legislation, to initiate or assist in the drafting of new legislation, or to intervene (e.g. as amicus curiae) in legal proceedings involving questions of tobacco control. As part of its advisory function, the national commission could also advise the government on the acceptance of protocols to the FCTC (once they have been adopted).

A further function of the commission could be to assist the government in fulfilling its obligations under the FCTC by helping to write the reports which countries are required to submit to the FCTC secretariat (WHO) (assuming that a provision is included in the convention), thus serving as a key link between WHO and the government. It could also assist and advise on the implementation of WHO programmes and activities relating to tobacco control.

National tobacco control commissions could play an investigatory role by receiving and considering complaints from individuals and making recommendations to the responsible authorities or private entities. To conduct an effective investigation, the commission would need to be granted the legal capacity to discover whether the complaints are founded, and if so, which authorities or private entities are responsible. In addition, it could itself initiate and
conduct investigations or public inquiries. Reporting on such inquiries would contribute to the publicity regarding national compliance with the FCTC, thereby promoting the implementation of the treaty.

**Structure of the national tobacco control commission**

The members of the national tobacco control commission should be either appointed or elected by the executive branch or parliament. The composition of the commission should be established through a procedure which ensures a broad cross-sectoral representation of the civil society involved in tobacco control, including representatives from NGOs, academic and other qualified experts, members of parliament, and staff from government departments acting in an advisory capacity. The commission should have adequate funding to enable it to have its own staff and premises. The appointment of members of the commission should be effected by an official act. This is to ensure a stable mandate for the members, which is necessary for maintaining its independence.

At the recent WHO European Region meeting held in Prague from 14-16 April 1999, one of the working groups recommended that "WHO should encourage the establishment of a FCTC coordinating committee in all countries involved, with participants coming from all/most parties linked to tobacco control. This would provide a forum for contact and information sharing in all countries".
WHO’s role in assisting countries to develop national institutions or expand the mandate of existing ones

At the outset, it is important to keep in mind that, in accordance with the principle of state sovereignty, it is the right of each State to choose the institutional framework that is appropriate for its national conditions. International organizations can only encourage the establishment of national institutions; they cannot tell countries how to set them up.

Just as the Office of the United Nations High Commissioner for Human Rights (formerly the Centre for Human Rights) has done in the field of human rights, WHO could assist in the establishment or strengthening of national institutions. Helping to create effective institutions could be done by promoting the concept of national tobacco control commissions, by providing information on obtaining resources, and providing guidelines on the different options available. Securing financial assistance for the developing countries to establish national institutions for tobacco control would, in turn, promote the development and implementation of the FCTC. Suggestions have been made for the establishment of a trust fund to enable developing countries to participate more effectively in the development and implementation of the FCTC. Some of this funding would go towards capacity-building in these countries, including the establishment of national institutions.

WHO could collaborate in the strengthening of existing institutions by assisting in the training of staff. This could include: advice on domestic implementation of the FCTC; training and assistance in the drafting of reports to WHO on compliance with the FCTC; assistance in the establishment of cooperative relationships with appropriate partners; information on obtaining and managing resources; assistance in conducting reviews and evaluations; and the provision of fellowships for members and staff of national institutions.
Conclusions

In the preceding sections, this document has analysed the role national institutions have played in the development and implementation of international conventions in different areas of global concern, concentrating on human rights, environmental and labour law. On the basis of this analysis, recommendations are made on the role national tobacco control commissions can play in building support for the development and implementation of the FCTC.

The ideal approach would be to establish autonomous national tobacco control commissions. However, if that is not possible the mandate of existing national institutions could be expanded. Several options are suggested. One would be to include tobacco control issues in the mandate of human rights institutions, possibly by drawing up a programme on human rights, health and tobacco control. Another option would be to add tobacco control to the mandate of national commissions on sustainable development. As conditions of work also encompass indoor air pollution, a smoke-free work environment and other tobacco control issues could become part of the mandate of consultation and cooperation with organizations in the labour field. However, this alternative is not recommended because it would not be able to cover all the tobacco issues that are labour-related, let alone the many important issues that are not labour-related. Finally, national medical research academies are suggested as possible institutions that could be strengthened to include tobacco control.

Elements for the effective functioning of national tobacco control commissions are also examined. The most important elements are those that secure the independence of the institution. The institution should be established through a legislative act or decree. Its charter or mandate should be as broad as possible and allow it to discharge its responsibilities without being influenced by the government or any other public or private entity.

The role of new or existing institutions in building support for the development and implementation of the FCTC is also discussed. The most important functions of a tobacco control commission are the promotional and educational, advisory and investigatory functions. These functions are analysed in the context of the different stages in the development and implementation of the FCTC.

Finally, the part WHO can play in assisting countries to develop national tobacco control commissions is reviewed. WHO can play an important role in this regard, especially by providing guidance, training and financial assistance.

The variety of types of national institution available to countries offers a wide choice of models. By drawing on the guidelines outlined above, national tobacco control commissions should be able to operate as effective mechanisms for promoting the development and implementation of the FCTC.
REFERENCES


2. See WHO Executive Board resolution EB103.R11 entitled "Towards a WHO framework convention on tobacco control" (29 January 1999).


7. Economic and Social Council resolution 9(II) of 21 May 1946.


12. This section is based for the most part on the Handbook cited in note 5 above.


15. See International Ombudsman Institute, University of Alberta, Canada (website http://www.law.ualberta.ca/centres/oil/). There are ombudsman offices in Africa, including Ethiopia, Ghana, South Africa and the United Republic of South-East Tanzania; in South-East Asia, including India, Japan, Sri Lanka; the Western Pacific, including Japan, New Zealand, Papua New Guinea and Western Samoa; in the Americas, including Argentina, Brazil, Canada, Costa Rica, Mexico, Peru, the United States of America and Venezuela; and Europe, including Austria, Croatia, Denmark, Germany, the Netherlands, Norway, Poland, Spain and Sweden.

16. See, for instance, the Ombudsman in Alaska or the Citizen’s Aide Ombudsman in Iowa. (http://www.law.ualberta.ca/centres/oil/).


24. UNFCCC Secretariat, Republic of Marshall Islands: country information (http://www.unfccc.org)


29. UNFCCC Secretariat, Gambia: country information (http://www.unfccc.org). Gambia's highest policy – and decision-making authority for the environment is the National Environment Council (NEMC).


31. Loie Picard, Deputy Legal Advisor, ILO, personal communication, 6 April 1999.

32. The full text of ILO Conventions and Recommendations can be consulted via the ILO website (http://www.ilo.org).

33. Under Article 19 (5) of the Constitution all Members of the ILO have an obligation to submit all conventions adopted by the International Labour Conference to the competent national authorities within specified time-limits. Such a submission should always be accompanied by a statement or proposal setting out the government’s views as to the action to be taken on the conventions (note 31 above and Tripartite Consultation Convention, Article 5, (1)).


38. Loie Picard, Deputy Legal Advisor, ILO, personal communication, 10 April 1999.

39. See Allyn Taylor, National and international institutions for primary care (unpublished manuscript prepared for WHO Division of Strengthening Health Services, 1996).


43. See United Nations General Assembly resolution 2200A (XXI) of 16 December 1966.
44. Law of 7 April 1904. Interview with Dr Rafael Castillo, member of the National Academy of Medicine, Venezuela, 4 April 1999.


46. This section is based to a large extent on the recommendations in Allyn L. Taylor & Daniel Bodansky, note 1 above. In addition, some of the suggestions are adapted from the United Nations handbook cited in note 5 above.

47. This section is based on the Paris Principles, note 10 above.


The Tobacco Free Initiative is a new WHO cabinet project created with the express aim of focusing international attention and resources on the global tobacco epidemic - the cause of a vast and entirely avoidable burden of disease.