Feasibility of tobacco product liability litigation in Uganda: invited commentary

The US tobacco litigation experience discussed in the paper on product liability by Daynard and LeGresley\(^1\) shows that suing the tobacco industry to hold it responsible for harm caused by its products is a daunting yet rewarding undertaking. While public interest litigation in Uganda brought about smoke-free legislation,\(^2\) product liability litigation against the tobacco industry remains underdeveloped.

Uganda’s legal system, based on English common law, allows individual personal injury claims and ‘class action’ or ‘representative action’ suits. Only two product liability cases have been brought against the tobacco industry in Uganda.\(^3\)\(^4\) Both were personal injury claims by individual smokers but were dismissed on technical grounds in their early stages. The plaintiffs were ordered to pay part of the defendants’ costs, highlighting a disincentive for tobacco product liability litigation in low-income countries like Uganda. Such litigation is prohibitively expensive, especially when the financially superior tobacco companies use ‘delay tactics’ intended to pressure the plaintiff to give up. The proposal for legislation (relating to Article 19 of the Framework Convention on Tobacco Control) correcting the
Strategic directions and emerging issues in tobacco control

Invited commentary

The article by Daynard and LeGresley highlights the achievements of product liability on tobacco litigation in the USA. The concept of product liability for tobacco is still a new issue in many low- and middle-income countries. In Nepal, litigation is an indispensable part of the tobacco control bill becoming law. Product liability litigation is now becoming popular in Nepal and similar low- and middle-income countries.

In Nepal, product liability litigation against multinational tobacco companies was started in 2003 by the non-governmental organisation Non-Smokers’ Rights Association of Nepal. This organisation pursued two lawsuits in 2007 and achieved the historical landmark victory against multinational tobacco companies in 2009 to ban advertisement, promotion and sponsorships; a contempt of court action in 2010 against giant multinational tobacco companies; and an international petition against derailing and delaying the tobacco control law. As a result, the tobacco control bill was passed and become a law in April 2011 and the enforcement of the ban on smoking in public places came into effect from August 2011, both of which are significant steps towards the tobacco control initiative in Nepal.

But the journey of tobacco litigation is still continuing in Nepal to implement the 75% pictorial health warning on tobacco products. The litigation process and related efforts have drawn new attention to the public health hazards of tobacco.

The tobacco industry’s vulnerability to product liability has not yet been seriously taken into account in tobacco control laws in middle- and low-income countries like Nepal. Thus, tobacco control advocates and litigation practitioners must be supported in pursuing such litigation. The Framework Convention on Tobacco Control and tobacco control laws must provide that governments or states take steps to pursue tobacco product liability settlement agreements with multinational tobacco companies similar to that of the Master Settlement Agreement in the USA. International funding agencies such as the Bloomberg and Gates Foundations should prioritise product liability litigation in low- and middle-income countries. The article shows some reluctance to adequately discuss disparity issues between the USA and global product liability on tobacco control policies.

Hom L Shrestha
Correspondence to Mr Hom L Shrestha, Nepal; nosmoran2002@hotmail.com
Competing interests None.
Provenance and peer review Commissioned; internally peer reviewed.

REFERENCE

REFERENCES
Feasibility of tobacco product liability litigation in Uganda: invited commentary

Jacqueline Tumwine

_Tob Control_ 2012 21: 228-229
doi: 10.1136/tobaccocontrol-2011-050377

Updated information and services can be found at:
http://tobaccocontrol.bmj.com/content/21/2/228

These include:

**References**
This article cites 2 articles, 1 of which you can access for free at:
http://tobaccocontrol.bmj.com/content/21/2/228#ref-list-1

**Email alerting service**
Receive free email alerts when new articles cite this article. Sign up in the box at the top right corner of the online article.

Notes

To request permissions go to:
http://group.bmj.com/group/rights-licensing/permissions

To order reprints go to:
http://journals.bmj.com/cgi/reprintform

To subscribe to BMJ go to:
http://group.bmj.com/subscribe/