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 LeGresley¹ 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

What this paper adds

This paper briefly summarises more than 60 years of litigation against the tobacco industry and discusses the strategy’s continued usefulness around the world.

REFERENCES
Invited commentary

The article by Daynard and LeGresley1 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 2005 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 became 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 control and the importance of international collaboration in supporting product liability litigation.

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REFERENCES


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