

procedural rules that shift litigation costs to the losing party,<sup>1</sup> would be relevant in Uganda. So would legislation granting legal aid to plaintiffs bringing claims against the tobacco industry.

Proving causation of disease by smoking would be particularly challenging in Uganda because of difficulty in tracing the necessary personal medical records of claimants. The paucity of data makes it difficult to bring suits against the tobacco industry to recover costs of treating tobacco-related illnesses. It is unclear whether the Ugandan government has the political will to sue tobacco companies. Furthermore, Uganda does not have a federalist political system to facilitate this type of litigation. However, in Nigeria the Federal government and three state governments, inspired by the USA, are suing British American Tobacco, Philip Morris International and International Tobacco Limited for costs of treating smoking-related diseases. These cases demonstrate to Uganda and the rest of Africa the evidential value of incriminating internal tobacco industry documents, the potential (via media coverage) for public education on

tobacco control and the importance of international collaboration in supporting product liability litigation.

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## Invited commentary

The article by Daynard and LeGresley<sup>1</sup> 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.

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