

Survey on implementation of Article 19 of the WHO Framework Convention on Tobacco Control on liability

At its tenth session, the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) decided to re-establish an expert group on liability, taking into account the work completed by the expert group on liability established pursuant to decision FCTC/COP5(9) and whose mandate was extended in decision FCTC/COP6(7).

In accordance with the mandate provided in decision FCTC/COP10(13) and with support from the Convention Secretariat, to assess country practice, the Expert Group on Implementation of Article 19 of the WHO FCTC on Liability surveyed Parties, nongovernmental organizations (NGOs) that are observers to the COP and other civil society groups not affiliated with the tobacco industry or those working to further its interests, in relation to:

- the extent of Article 19 implementation;
- methods adopted for implementing Article 19, including means of cooperation between Parties;
- any Article 19-related litigation that has taken place in their country/or region; and
- if there has been no, or only partial implementation of Article 19, the reasons for that.

The Expert Group also took the opportunity to ask questions about tobacco industry efforts to evade liability and methodologies used for estimating the health care costs of tobacco use.

The survey was circulated in the six working languages of the COP.

The survey contained in the present document serves as supplementary information to document FCTC/COP/11/6. The findings based on the responses to the survey served to inform the report of the Expert Group submitted the COP pursuant to decision FCTC/COP10(13).

Survey on implementation of Article 19 of the WHO Framework Convention on Tobacco Control on liability

Purpose: To collect information on the implementation of Article 19 of the WHO FCTC at Party level to inform the work of the Expert Group on implementation of Article 19 on liability.

Rationale: Decision FCTC/COP10(13) mandates the Expert Group on implementation of Article 19 on liability to collect and review information in respect of the practice that has evolved at Party level.

Use of responses to the survey: Responses provided to the survey will be used to inform the report of the Expert Group to COP11, as set out in Decision FCTC/COP10(13), and may be used to identify potential case studies of implementation.

Survey guidance:

1. Parties and stakeholders are invited to complete this survey, including focal points for tobacco control [and/or/in consultation with] other individuals with appropriate technical background or expertise relevant to the implementation of Article 19 of the WHO FCTC. For civil society organizations and other non-Party stakeholders, please consider including other countries in your region in the context of your response where appropriate and specifying which countries have been included.
2. Please email the completed survey forms in Microsoft Word format to ricaforte@who.int by close of business on **20 September 2024 (CET)**.
3. Please note that any answers to the questions that Parties or stakeholders may be able to provide could be helpful. Respondents are invited to complete as many responses as they can.
4. Parties and stakeholders are invited to consider attaching any supporting information, including copies of court pleadings and other legal documents, studies, legislation, regulations, policies, or any other instruments relevant to their responses to the survey.

Declaration of interest:

I/the organization that I represent do/does not have and have not/has not had any affiliation, direct or indirect, financial or non-financial, with the tobacco industry, its front groups or other vested commercial interests.

☐ I CONFIRM there is no affiliation.

☐ I CANNOT confirm there is no affiliation.

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Name:	
Position:	
Institution/ affiliation:	
Party/Country to which your response corresponds:*	
E-mail address:	
Date:	
*If the response to a question concerns more than one Party/Country, please indicate which Party/Country you are referring to in respect of each response.	

The text of Article 19 of the WHO FCTC may be downloaded through this [link](#).

Article 19 Implementation Generally	
<p>1. To what extent do you consider that the Party/country where you are based has successfully implemented Article 19? <i>(Please choose one)</i></p> <p>a. Fully implemented <input type="checkbox"/></p> <p>b. Partially implemented <input type="checkbox"/></p> <p>c. No action taken <input type="checkbox"/></p>	
<p>1.1 If you answered fully or partially implemented to Question 1: what are the actions that best describe the Party's method of implementation? <i>(You may choose more than one):</i></p>	
Criminal Liability	
a. Introducing measures that provide for individuals or corporate entities to be held criminally liable for violations of tobacco control laws.	<input type="checkbox"/>
b. Introducing measures that provide for individuals or corporate entities to be held criminally liable for violations of general laws that apply to the manufacture, supply and marketing of tobacco products.	<input type="checkbox"/>
c. Taking enforcement action against individuals or corporate entities for criminal breaches of tobacco control laws or general laws that	<input type="checkbox"/>



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apply to the manufacture, supply and marketing of tobacco products.	
Civil Liability	
d. Introducing measures that provide for individuals or corporate entities to be held civilly liable for violations of tobacco control laws.	<input type="checkbox"/>
e. Introducing measures that provide for individuals or corporate entities to be held civilly liable for violations of general laws that apply to the manufacture, supply and marketing of tobacco products.	<input type="checkbox"/>
f. Taking enforcement action against individuals or corporate entities for civil breaches of tobacco control laws or general laws that apply to the manufacture, supply and marketing of tobacco products.	<input type="checkbox"/>
g. Introducing measures that make it easier for individuals or private entities not affiliated with the tobacco industry, such as civil society organizations, to bring civil enforcement actions against the tobacco industry for non-compliance with tobacco control-related laws.	<input type="checkbox"/>
Compensation	
h. Introducing measures that make it easier for victims of tobacco-related harm, and those who have suffered tobacco-related harms, to bring compensation claims against the tobacco industry (e.g., tobacco-related cost recovery and damages legislation)	<input type="checkbox"/>
1.2 If you answered 'partially implemented' or 'no action taken' to Question 1, what have been the main obstacles to implementing Article 19?	
1.3 If you answered 'fully implemented' or 'partially implemented' to Question 1, what are the measures that, in your opinion, were fundamental to implement Article 19?	

Instructions for Questions 2 - 16. Please give as much detail as possible, including the applicable legislation, remedies, actors (civil society, governmental agencies, etc.) rules, sanctions or judicial decisions, as appropriate. If no measures were taken or you cannot answer the questions, please indicate so in your response.

All references to "your country" in Questions 2 – 19 should be read as meaning "the country or countries to which this response corresponds."

Specific questions related to criminal liability

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2. Please describe measures that your country has in place to establish the criminal liability of individuals or corporate entities for violations of tobacco control laws.

3. Please describe measures that your country has in place to establish the criminal liability of individuals or corporate entities for violations of general criminal laws that apply to the manufacture, supply and marketing of tobacco products, including anti-corruption, anti-bribery, anti-trust or anti-competition legislation.

Specific questions related to civil liability

4. Please describe measures that your country has in place to establish the civil liability of individuals or corporate entities for violations of tobacco control laws.

5. Please describe measures that your country has in place to establish the civil liability of individuals or corporate entities for violations of general civil laws that apply to the manufacture, supply and marketing of tobacco products.

6. Please describe measures that your country has taken to make their civil justice systems more accessible generally and which would apply to victims of tobacco-related harm and/or those seeking to hold the tobacco industry legally accountable for their actions (e.g., class action procedures, rules on standing, jurisdiction upon economic groups, legal aid support, cost capping rules, discovery obligations on defendants and/or reversing the burden of proof, etc.).

Specific questions related to compensation

7. Please describe measures that your country has in effect that make it easier for victims of tobacco-related harm, and those who have incurred tobacco-related health care costs, to bring compensation claims against the tobacco industry (e.g., tobacco health care cost recovery and damages legislation).

Specific questions related to supporting tobacco control

8. Please describe the measures that your country has in effect to align civil and criminal liability activities with tobacco control objectives and outcomes (e.g. identification of health-related objectives in lawsuits or enabling legislation, use of compensation payments to fund tobacco control activities, measures to ensure that money paid in compensation is not generated through activities which perpetuate harm, involvement of health ministries in the management and outcome of litigation).

Questions related to enforcement and litigation against the tobacco industry

9. In the last 10 years, how many criminal cases have there been in your country against individuals and corporate entities for violations of tobacco control laws or general criminal laws that apply to the manufacture, supply and marketing of tobacco products? Please describe these cases giving as much detail as possible, including any pleadings (e.g., complaints or judicial decisions).



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10. In the last 10 years, how many civil cases have there been in your country against individuals and corporate entities for violations of tobacco control laws or general civil laws that apply to the manufacture, supply and marketing of tobacco products? Please describe these cases giving as much detail as possible, including any pleadings (e.g., complaints or judicial decisions).	
11. Have there been any civil or criminal cases filed against the tobacco industry in your country in the last 10 years?	
Yes <input type="checkbox"/> No <input type="checkbox"/> I do not know <input type="checkbox"/>	
11.1 For cases that had successful outcomes, please choose the relevant outcome below and describe the successful outcome of each case and include any judicial decisions. <i>(You may check as many boxes as applicable.)</i>	
a. A declaration that a tobacco company or executive breached tobacco control laws or general laws applicable to the manufacture, supply and marketing of tobacco products, or an admission by a tobacco company or executive that it breached such laws.	<input type="checkbox"/>
b. A tobacco company being ordered to pay a fine.	<input type="checkbox"/>
c. An executive of a tobacco company being ordered to pay a fine or having criminal penalties applied to the executive.	<input type="checkbox"/>
d. A tobacco company being ordered to pay damages to a victim of tobacco-related harm or someone who has incurred smoking or tobacco use-related health costs, or a legal settlement in which a tobacco company agrees to pay compensation.	<input type="checkbox"/>
e. An injunction preventing a tobacco company or executive from engaging in business-related conduct (e.g., regarding marketing, sponsorships etc.).	<input type="checkbox"/>
f. Where litigation likely contributed to a change in tobacco control laws, such as a change in legislation or policy.	<input type="checkbox"/>
g. Where litigation likely contributed to a public health benefit, such as a change in the public perception of the tobacco industry (denormalization).	<input type="checkbox"/>
h. Please describe any civil or criminal cases or investigations in your country, or countries in your region, that have been brought against any individuals or corporate entities for non-compliance of laws that apply to the manufacture, supply and marketing of novel and emerging tobacco products (e.g., heated tobacco products) or ENDS/ENNDS in the past five years.	<input type="checkbox"/>
11.2 For cases that were not successful, what was the outcome?	



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Assistance in legal proceedings

12. In the cases identified in question 10, has assistance in legal proceedings been provided by other WHO FCTC Parties (e.g. assistance in providing evidence, information on costing methodologies, or legal co-operation to subpoena witnesses or to recover damages)?

Yes ☐

No ☐

I do not know ☐

12.1 If you answered “yes”, what forms have that assistance taken?

12.2 If you answered “no”, what was the assistance needed but not obtained?

13. Do you believe the legal system of your country has the experience and/or resources available to bring litigation (civil or criminal) against the tobacco industry in a way that is just, affordable and within a reasonable time? By legal system we mean the courts law enforcement agencies including prosecutors and legal professionals.

Yes ☐

No ☐

I do not know ☐

13.1 If yes, please describe your answer with examples and explanations.

13.2 If no, what changes do you think could effectively contribute to the goal of fairly determining civil or criminal liability against the tobacco industry?

Questions regarding avoidance tactics by the tobacco industry

14. In your country or region are you aware of attempts by the tobacco industry to evade liability?

Yes ☐

No ☐

I do not know ☐

14.1 If yes, please describe those attempts and any ways you think that Parties may be able to counter-act them.

Questions regarding costs of tobacco related harm

15. Have there been any attempts to estimate the costs of tobacco-related harm in your country, including health care-related costs?

Yes ☐



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No <input type="checkbox"/> I do not know <input type="checkbox"/>	
15.1 If yes, please give details of the studies and any citations if available.	
16. Does your judicial system or relevant legislation allow for the use of statistics or epidemiology to establish causation in health care cost recovery cases or in other liability cases? Yes <input type="checkbox"/> No <input type="checkbox"/> I do not know <input type="checkbox"/>	
16.1 If yes, please provide details and examples.	
16.2 If no, please explain if there is a legal impediment, a reluctance from the judiciary on the acceptance of this type of evidence, or some other barrier for the use of such sciences in liability cases.	
Questions on resources available and other ways of implementing Article 19* <i>*The following list is not intended to be exhaustive.</i>	
17. Do you believe Parties and civil society organizations not affiliated with the tobacco industry are aware of the resources and training programs available to help them implement Article 19 and bring criminal or civil claims against those involved in the manufacture, supply and marketing of tobacco products? In particular: (You may choose more than one)	
a. The WHO FCTC's Online Article 19 Civil Liability toolkit (https://extranet.who.int/fctcapps/civil-liability-toolkit#/)	<input type="checkbox"/>
b. The WHO FCTC Knowledge Hub on Legal Challenges to Implementation – McCabe Centre for Law and Cancer (WHO FCTC Knowledge Hub on Legal Challenges WHO FCTC)	<input type="checkbox"/>
c. Truth Tobacco Industry Documents Library: The University of California- San Francisco's online repository of 14 million internal tobacco industry documents detailing their knowledge of the harms caused by tobacco use, their marketing strategies, and lobbying efforts aimed at preventing or delaying the introduction of tobacco control laws. (https://www.industrydocuments.ucsf.edu/tobacco/)	<input type="checkbox"/>
d. Tobacco Control Laws: The International Legal Consortium at Campaign for Tobacco-Free Kids' tobacco control litigation database documenting cases brought against the tobacco industry around the world (https://www.tobaccocontrolaws.org/)	<input type="checkbox"/>

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e. Tobacco Tactics: Tobacco Tactics is a knowledge exchange platform, established by the Tobacco Control Research Group at the University of Bath. It is a unique resource detailing key issues in tobacco control and providing rigorous academic research and monitoring findings in an accessible format. (https://tobaccotactics.org/)	<input type="checkbox"/>
f. The WHO FCTC Knowledge Hub on Article 5.3 of the WHO FCTC – Thammasat University and Mahidol University https://portal-uat.who.int/fctcapps/fctcapps/fctc/kh/TIInterference	
g. Global Center for Good Governance in Tobacco Control: The Global Center for Good Governance in Tobacco Control (GGTC) collaborates with advocates, governments, and institutions worldwide to tackle the single greatest obstacle in tobacco control implementation: tobacco industry interference. https://ggtc.world/knowledge	<input type="checkbox"/>
h. STOP: STOP is a network of academic and public health organizations operating globally as part of the Bloomberg Initiative to Reduce Tobacco Use. STOP connects experts in all aspects of the tobacco industry's business to expose and counter its relentless efforts to sell harmful, addictive products. https://exposetobacco.org/	<input type="checkbox"/>
i. Right to Health Policy Hub: The International Legal Consortium at the Campaign for Tobacco-Free Kids and the Global Health Advocacy Incubator's repository of human rights documents from international human rights treaty bodies and UN mechanisms that support the advancement of public health policies related to food & nutrition and tobacco control. https://righttohealthpolicyhub.org/	<input type="checkbox"/>
j. Expert database for Article 19 https://extranet.who.int/fctcapps/fctcapps/fctc/who-fctc-databases/article19experts	<input type="checkbox"/>
17.1 If you have any feedback on the usefulness of these resources, and/or how they could be better utilised, please provide below.	
18. What other resources do you think Parties could and would use to assist them implement Article 19?	
Other potential ways of implementing Article 19 of the WHO FCTC	
19. Does your country have any other measures providing for administrative liability for tobacco-related harm (e.g., the imposition of non-criminal penalties or charges or other forms of adjudicatory bodies and compensation mechanisms not listed above)? If yes, please describe.	
Yes <input type="checkbox"/>	
No <input type="checkbox"/>	



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I do not know ☐

20. Has your country implemented measures to address liability for environmental damage caused by tobacco production and use? If yes, please describe.

Yes ☐

No ☐

I do not know ☐

21. Has your country implemented any measures related to liability for human rights abuses perpetrated by the tobacco industry? If yes, please describe.

Yes ☐

No ☐

I do not know ☐

22. Has your country implemented any other measures intended to implement Article 19 other than those listed in this survey? If yes, please describe.

Yes ☐

No ☐

I do not know ☐

Support from the Convention Secretariat

23. What further steps could the WHO FCTC Secretariat take to assist Parties to implement Article 19?