



ARTICLE 19: ADVANCING TOBACCO CONTROL, HOLDING BIG TOBACCO ACCOUNTABLE

PARTIES SHOULD ESTABLISH A WORKING GROUP TO HARNESS THE POWER OF LIABILITY

ONE ARTICLE, DOUBLE THE IMPACT

For decades, the tobacco industry has been lying to the public, pushing more harmful and addictive products and manipulating policymakers in order to block and undermine public health policies that would curb its abuses. The global tobacco treaty contains a powerful provision, Article 19 on liability, which Parties can use to hold the tobacco industry legally liable for its abuses *and* advance all of the lifesaving measures enshrined in the Framework Convention on Tobacco Control (FCTC).

Parties should establish a working group at the Sixth Conference of the Parties (COP6) to elaborate guidelines, including model laws, to give Parties the tools they need to implement Article 19. Until effective and actionable guidelines are in place, Article 19 will remain a powerful but underutilized provision.

WHAT DOES THE EXPERT GROUP RECOMMEND?

The Parties established an expert group at the Fifth Conference of the Parties (COP5) to give governments the legal tools, information, and technical resources they need in order to advance the implementation of this powerful article of the treaty.

The expert group report recommends the Secretariat:

1. Encourage the voluntary sharing of relevant information among Parties through a protected website,
2. Develop a database of legal and scientific experts, and
3. Prepare and make available to Parties a comprehensive list of existing resources.

RECOMMENDATION:

GIVEN THE IMPORTANCE OF ARTICLE 19 AS A TOOL FOR EFFECTIVE TOBACCO CONTROL & IN ORDER TO PROVIDE ADEQUATE GUIDANCE TO PARTIES, A WORKING GROUP COMPOSED OF PARTIES WITH THE PARTICIPATION OF EXPERTS NEEDS TO BE ESTABLISHED AT COP6.

THE WORKING GROUP SHOULD:

- Have full participation of the existing experts and additional criminal and international expertise needed.
- Complete research into the remaining areas, including criminal liability & options for international liability.
- Elaborate guidelines, including model laws, which will provide Parties with the necessary guidance and tools to advance Article 19 implementation.



Photo credit: John Duricka

Twenty years ago, CEOs of seven major US-based transnational tobacco corporations swore under oath that nicotine was not addictive (pictured here). Legal action by 46 US state attorneys general is what finally brought these corporations to justice.

ARTICLE 19 NEEDS GUIDELINES

The expert group's report is an important step forward, but not the end of the road, and lacks critical information on criminal liability and options for international liability. These issues merit additional research. Most importantly, the report lacks tangible guidance to support Parties in implementing Article 19.

The expert group's report states that the COP may wish to consider developing "further guidance to support Parties."

Article 19 is one of the few Articles of the treaty that lacks guidelines. Not surprisingly, very few Parties have actually implemented Article 19's obligations. In fact, guidelines are widely recognized as the most valuable tool in furthering implementation of treaty Articles.

HOW DOES ARTICLE 19 ADVANCE THE TREATY?

1. *Compensate for harms and generate additional resources:* Success in litigation can secure compensation for the social and economic costs of suffering and/or health care resulting from tobacco-related disease. In addition, compensation obtained through litigation can help to finance further litigation or be put toward national implementation of tobacco control measures or international FCTC implementation.
2. *Punish wrongdoing and wrongdoers:* In addition to providing compensation for harms, some punitive penalties or damages are simply aimed at punishing wrongdoing.
3. *Expose, deter, and/or stop abuses:* Success in litigation can expose the industry's abuses in the media, deter abuses through penalties, and stop them outright through injunctions.
4. *Denormalize the industry:* Implementing media strategies to expose the tobacco industry's conduct and worst abuses to the public can serve to shift public views on tobacco and the tobacco industry. This, in turn, increases the political will for strong tobacco control measures.
5. *Acquire confidential information:* Another benefit of litigating against the tobacco industry can be the acquisition of significant confidential information in the process of discovery that will serve to inform further tobacco control action and subsequent litigation or legislation.
6. *International cooperation and mutual legal assistance:* Use of this information can help in other legal cases against the industry and can be shared with other Parties to the FCTC who are considering action against the industry.
7. *Discourage tobacco consumption:* Obtaining compensation from tobacco manufacturers can have the effect of increasing tobacco prices, thereby discouraging tobacco consumption.

ARTICLE 19 OF THE FCTC IS VISIONARY

Article 19 envisions a world where governments hold the power to protect people from harmful products like tobacco, can recover the costs of treating tobacco-related disease from the tobacco industry, and can use their legal systems to ensure their right to do so. For too long, the tobacco industry has used legal threats to intimidate governments into abandoning the implementation of the treaty's boldest measures. It is time to shift the burden of tobacco onto the industry—the driver of the world's largest preventable epidemic—and force it to respect the rule of law and pay for the harms caused by its products in countries across the globe.

WHY SUPPORT ARTICLE 19?

- It is one of the most powerful but underutilized articles of the treaty.
- It lacks guidelines to assist Parties with implementation.
- Successful legal actions against the tobacco industry could deter abusive behavior worldwide.
- Experience shows that implementation can:
 - o Force the tobacco industry to reveal millions of internal documents containing its tactics to undermine health;
 - o Provide much-needed resources to implement tobacco control policies; and
 - o Create the public climate and political will to pass and enforce the lifesaving measures enshrined in the FCTC.
- It would give Parties the guidance necessary to adopt laws and policies that hold the tobacco industry liable for violations of all tobacco control measures.



For more information, email FCTC@stopcorporateabuse.org and visit www.StopCorporateAbuse.org/COP6