

DECISION

FCTC/COP10(13) Implementation of Article 19 of the WHO FCTC: Liability

The Conference of the Parties (COP),

Acknowledging that issues relating to liability, as determined by each Party within its jurisdiction, are an important part of comprehensive tobacco control;

Recalling decisions FCTC/COP5(9), FCTC/COP6(7), FCTC/COP7(11) in relation to implementation of Article 19 of the WHO FCTC on liability, as well as decision FCTC/COP8(18) encouraging Parties to promote national and international cooperation to enhance implementation of Article 5.3 of the WHO FCTC in relation to Article 19 of the WHO FCTC;

Further recalling that decision FCTC/COP8(18) emphasized that “tobacco industry interference remains one of the greatest obstacles to the implementation of the Convention and undermines tobacco control efforts at the global, regional and country levels, particularly exacerbating the challenges faced by developing countries and countries with economies in transition”;

Recognizing the principle embodied in the Guidelines for implementation of Article 5.3 of the WHO FCTC that Parties “should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent”;

Recalling decision FCTC/COP9(10), in which the Conference of the Parties noticed “with increasing concern the recent acquisitions by tobacco transnational corporations of pharmaceutical companies that could complicate and hinder tobacco control implementation”;

Reiterating that human rights treaties such as the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child are recalled by the WHO FCTC, and acknowledging that the deaths and harms caused by tobacco undermine human rights;

Recalling that the Conference of the Parties may consider issues related to liability, taking into account the work being done in relevant international fora;

Recognizing the work of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, and the development, under its mandate, of a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, in particular regarding issues related to liability;

Recognizing the devastating environmental consequences of tobacco consumption and exposure to tobacco smoke and the potential use of liability in protecting the environment from tobacco harms;

Recalling the reports of the Convention Secretariat on “Implementation of Article 19 of the Convention: ‘Liability’”, as contained in documents FCTC/COP/4/13 and FCTC/COP/5/11, including possible approaches through which the Conference of the Parties could support Parties in taking legislative action or promoting their existing laws to deal with civil liability pursuant to Article 19 of the WHO FCTC;

Further recalling the reports of the expert group on “Implementation of Article 19 of the Convention: ‘Liability’”, as contained in documents FCTC/COP/6/8 and FCTC/COP/7/13, including available options for developing legislation for Parties to consider, in particular in the context of civil liability, as well as options for technical support, international cooperation and the exchange of information for the effective implementation of Article 19 of the WHO FCTC,

1. REMINDS Parties of their obligations under Article 19 of the WHO FCTC;
2. URGES Parties:
 - (a) to apply to the tobacco industry the highest standards and best practices of holding businesses liable for their conduct;
 - (b) to require that the tobacco industry and those working to further its interests operate and act in a manner that is accountable and transparent;
 - (c) to consider legislative development or reform to strengthen liability regimes, including to facilitate compensation where appropriate, as part of a comprehensive tobacco control policy;
 - (d) to establish and apply, in accordance with their national law, criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions in order to enforce the liability of the tobacco industry;
 - (e) to exchange information on means of enforcement of liability of the tobacco industry, including sanctions and penalties, or compensation where appropriate;
 - (f) to ensure policy coherence in relation to tobacco industry liability at the national and global levels, including in international and regional organizations in which Parties are represented, as well as among non-State actors, particularly those working on Sustainable Development Goals and noncommunicable diseases, and on the environmental agenda;
 - (g) to call upon international and regional organizations in which Parties are represented to ensure that the work undertaken in these international fora, including in relation to the environment and regulation of business conduct, supports tobacco control and does not undermine it;
 - (h) to closely monitor transactions, such as acquisitions of or investments by transnational tobacco corporations in pharmaceutical and other health-related companies that could interfere with and undermine public health policy;

3. DECIDES:

(a) 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);

(b) to mandate the expert group:

(i) to review and collect information in respect of the practice that has evolved at Party level, taking into account the work being done in relevant international fora, and support Parties, as relevant, to strengthen their criminal and civil liability regimes, including administrative measures, to ensure accountability and deterrence, improve access to justice, and allow for effective remedies for those affected by tobacco harms, on a voluntary basis and upon request by the Parties;

(ii) to provide options for Parties to detect and counter tobacco industry efforts to evade applicable liability regimes or to undermine tobacco control, including through corporate reorganization or investments;

(iii) to explore the possible development of a methodology that estimates or quantifies the health care costs borne due to tobacco use, in order to support Parties in collecting evidence to be used in tobacco-related litigation;

(iv) to report on its work at the Eleventh session of the Conference of the Parties;

4. REQUESTS the Convention Secretariat:

(a) under the guidance of the Bureau, to set out the terms of reference of the expert group in accordance with the above mandate and to facilitate the establishment of the expert group, to be composed of:

(i) up to 12 members, with appropriate technical experience relevant to the mandate of the expert group and ensuring regional balance to as great an extent as possible; and

(ii) up to two observers with relevant expertise that represent civil society organizations that are accredited observers to the COP;

(b) to make the necessary arrangements, including budgetary arrangements, for the expert group to complete its work using electronic means of communication to as great an extent as possible;

5. FURTHER REQUESTS the Convention Secretariat:

(a) to continue to raise awareness about Article 19 of the WHO FCTC and the tools available for Parties to strengthen its implementation;

(b) to participate in global fora to promote policy coherence between tobacco industry liability and the development of international law in relation to the environment, human rights and regulation of business conduct;

(c) to include an item on liability in the provisional agenda for each regular session of the Conference of Parties, to be considered by the Conference of the Parties in accordance with its Rules of Procedure.

(Seventh plenary meeting, 10 February 2024)

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