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How can people living with NCDs make tobacco companies pay?

Tobacco use has been established as the cause of various noncommunicable diseases (NCDs), including respiratory and cardiovascular diseases, diabetes and cancer. Tobacco use is the result of tobacco companies' aggressive strategies to sell deadly products, marketing them in the most deceptive manners. Tobacco companies employ fraudulent practices to ensure that they hook consumers at an age where they are unable to resist the addiction,¹ resulting in long-term effects including cognitive damage and chronic disease.²

Recognize the fact that tobacco companies are liable for harms.

- Tobacco companies are responsible for numerous harms to people, the environment and development, including 8 million deaths per year³ and 36.1 million years lived with disability (YLD), contributing an overall disease burden of 230 million measured in disability-adjusted life years (DALYs).⁴ Costs of the harms caused by the tobacco industry is found [here](#).
- By continuing to manufacture products that are known to cause disease and death, tobacco companies violate people's right to life and health as enshrined in human rights laws.^{5, 6, 7, 8}
- Many countries have used existing laws to make tobacco companies liable for these harms, such as tort law, consumer protection laws, product liability laws and fraud/corruption laws. Some have created special laws (the Health Care Costs Recovery law, Canada) or used State-led court proceedings (Brazil, Korea, U.S.) to hold the tobacco industry liable for costs.
- Governments have yet to make the tobacco industry pay to compensate for actual harms caused,⁹ such as for damages suffered by the victims or their families, including for diseases, addiction, deaths, child labor, aggravation of poverty and public deception.

Utilize global commitments & human rights principles to help victims claim compensation.

- Through the United Nations Sustainable Development Goals (UN SDGs) to beat noncommunicable diseases (Target 3.a), governments have affirmed their commitment to implement the World Health Organization Framework Convention on Tobacco Control (WHO FCTC).¹⁰
- The WHO FCTC, which has been ratified in over 180 countries, requires governments to cooperate to deal with tobacco industry liability including compensation (Article 19, Liability).¹¹
- The WHO FCTC requires governments to protect public health policy from tobacco industry interests, and particularly to “require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent” (Article 5.3 Guidelines).¹²
- In the UN Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power,¹³ governments recognize that victims of crime are entitled to access to justice and fair treatment,¹⁴ compensation, assistance and restitution,¹⁵ including for substantial harms to the environment.¹⁶
- When compensation is not fully available from the offender or other sources, governments should endeavor to provide financial compensation to the victims and the families.¹⁷
- The UN Declaration encourages the establishment of national funds to compensate victims.¹⁸

Look into practices in holding Big Tobacco liable.

Lawsuits can be filed against tobacco companies. Cases that have been filed typically allege known facts such as concealment of evidence regarding the link between smoking and cancer, the addictive nature of smoking, the dangers of passive smoking, the misleading marketing of “light/mild” cigarettes as safer products and advertising and promotion aimed at youth.

- Victims can file lawsuits against tobacco companies. For example, a class of about 60,000 flight attendants filed a case and won a settlement that allowed them to establish a research fund and facilitate individual claims. This case contributed to the adoption of inflight smoking bans.^{19, 20, 21}
- State prosecutors can file health care recovery suits against tobacco companies. For example, U.S. State Attorneys General filed a suit and entered into a legal settlement for five tobacco companies to pay about US \$206 billion over 25 years.²² In 2019, the Brazilian government filed a lawsuit against Philip Morris and British American Tobacco to recover costs and moral damages related to the top 26 diseases proven to be linked with smoking.²³ In Canada, victims have filed class suits arising from the Health Care Costs Recovery Act, where the claims have reached about \$120 billion.²⁴
- In some jurisdictions, the justice

department can file a special case of fraud against tobacco companies. For example, the U.S. Department of Justice (DOJ) filed a case against tobacco companies for violating the Racketeer Influenced and Corrupt Organizations Act (RICO) where they were held liable for violating RICO by fraudulently covering up the health risks associated with smoking and for marketing their products to children.²⁵

Governments can charge tobacco companies certain amounts on the basis of the “polluters pay” principle or other related means and earmark the proceeds to pay for costs.

- Governments can impose a surcharge in addition to the usual tobacco taxes. Thailand required tobacco companies to pay a 2% surcharge that goes into a health promotion fund which pays for tobacco control programs to empower civil society, including victims, to counter tobacco industry tactics.²⁶
- Governments can impose significantly high taxes for health care expenses. In the Philippines, tobacco tax is increased and earmarked to fund the country’s universal health care program and alternative livelihood of farmers,²⁷ consistent with the FCTC and its guidelines.^{28, 29}

Governments can impose taxes and dedicate proceeds for health programs, including for victims. Forty-three (43) countries are dedicating proceeds or parts of taxes (including surcharges and fees)³⁰ to health programs or tobacco control.^{31, 32}

Learn from practices in other sectors.

Laborers, public utility users, vaccine recipients and vehicle or road users in many parts of the world enjoy facilitated access to some form of compensation for those who are injured.³³ Funds are often administered by governments and financed with government charges on the pertinent activity or the industry concerned.³⁴ Some examples of government-facilitated funds to facilitate victims' claims for compensation include:

- Motor Vehicle Accident Fund (New Zealand): Financed with the country's gas/diesel levy and administered by a government body.³⁵
- Mesothelioma Fund/Financial Services Compensation Scheme (FSCS) (U.K.): Funded with a levy from insurance companies and disbursed by the FSCS.³⁶
- Vaccine Injury Compensation Trust Fund (U.S.): Financed with a small amount of tax per vaccine sold to compensate anyone who is injured from it.³⁷

Excerpt from Issue Brief: Tobacco Industry

Accountability and Liability in the time of COVID-19, authored by Global Center for Good Governance for STOP.³⁸

Assert the right to demand compensation from tobacco companies.

Where feasible, people (as well as their families or beneficiaries) with diseases that can be attributable to tobacco should pursue lawsuits against tobacco companies. In places where lawsuits are not practical, they must advocate for governments to protect the rights of victims by:

- Securing a compensation fund for victims that is financed through tobacco sources.
- Strengthening national laws to facilitate access to justice against tobacco companies.

People suffering from NCDs have a higher risk of developing severe illness especially when combined with COVID-19 infection.³⁹

Studies have shown that smoking is linked to the increased severity of disease and death among those diagnosed with COVID-19.⁴⁰ Smoking impairs lung function, making it more difficult for the body to fight off disease, especially COVID-19 which primarily attacks the lungs.⁴¹

Acknowledgements and Authorship

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Endnotes

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14. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 18. 1985. Available from: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> (accessed 4 February 2021). - B. Victims of abuse of power 18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights." International means of recourse and redress should be developed where national channels may be insufficient, including the right of individual and group petition for harm suffered or likely to be suffered. As recommended by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, an international fund for victims should be established to be used by victims of transnational offences where there is a conflict of jurisdictions or where access to other remedies is lacking. Coordinated international assistance should be rendered to prevent victimization and provide redress to the victims as an essential tenet of justice and responsibility, especially in post-conflict reconstruction and transition to democracy.
15. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 8 and 9. 1985. Available from: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> (accessed 4 February 2021) - In restitution: "8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights." "9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions."
16. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 10. 1985. Available from: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> (accessed 4 February 2021) - "10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community." Several jurisdictions require individuals or enterprises undertaking projects that involve any appreciable risk to the environment take out insurance that would cover possible losses or otherwise deposit a sum of money that would be used to cover possible losses. Proposals have also been made for restitution by corporate entities for any damage, including environmental damage, inflicted through criminal conduct or a special tax or surcharge for the damage inflicted ("polluter pays").
17. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 12. 1985. Available from: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> (accessed 4 February 2021) - "12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization."
18. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 13. 1985. Available from: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> (accessed 4 February 2021) - "13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm."
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About STOP (Stopping Tobacco Organizations and Products)

STOP is a global tobacco industry watchdog whose mission is to expose the tobacco industry strategies and tactics that undermine public health. STOP is funded by Bloomberg Philanthropies and comprised of a partnership between the Tobacco Control Research Group (TCRG) at the [University of Bath](#), [The Global Center for Good Governance in Tobacco Control \(GGTC\)](#), the [International Union Against Tuberculosis and Lung Disease \(The Union\)](#) and [Vital Strategies](#). For more information, visit exposetobacco.org.





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