

Kenya



Summary of Findings

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

According to the Kenya Tobacco Control Regulations (TCR) 2014, the Government does not accept, support or endorse any offer for assistance from or in collaboration with the tobacco industry (TI) in setting or implementing public health policies in relation to tobacco control. Per the documents accessed by our research team during the course of our review we found no evidence of infractions against this policy.

2. INDUSTRY CSR ACTIVITIES

In November 2022 the government unveiled a National Drought Response Committee in which BAT Kenya's Managing Director was named as part of the committee. The Tobacco Control Regulations 2014 prohibits public officials from endorsing, supporting and/or forming partnerships with and/or participating in activities of the TI described as corporate social responsibility. The contributions of BAT Kenya do not adhere to the provisions of those regulations, and information as to how much BAT Kenya has contributed into the national drought response kitty could not be obtained.

3. BENEFITS TO THE INDUSTRY

The President of Kenya, during his visit to the Republic of South Korea in November 2022, promoted tobacco and tobacco products as among the products that South Korea could import from Kenya. This was the second time in the same year that a sitting President of Kenya was promoting trade in tobacco and tobacco products overseas as during his address at the Expo 2020 Dubai in Dubai UAE on 15th February 2022, the then President of Kenya Uhuru Kenyatta mentioned tobacco products as one of the commodities that UAE could source from Kenya at competitive prices

After initially ordering the removal of oral nicotine pouches named LYFT (BAT) from the market and demanding their full compliance with the Tobacco Control Act 2007 and Tobacco Control Regulations 2014, the government later allowed the re-entry of the pouches under the name VELO. This was in spite of their non-compliance with certain tobacco control laws such as the inclusion of graphic health warnings.

4. UNNECESSARY INTERACTION

The Tobacco Control Regulations 2014 Section 22. (1) states, "Any interactions between public authorities or public officers and the tobacco industry shall be limited to the extent strictly necessary for effective tobacco control and enforcement of relevant laws." Despite this, the Cabinet Secretary for National Treasury was the Chief Guest at the Financial Reporting (FIRE) 2022 Awards Ceremony at which BAT Kenya dominated. Again, at an event organized by the Kenya Association of Manufacturers (KAM) which is one of the front groups of BAT Kenya, senior government officials from the Ministry of Energy were in attendance.

5. TRANSPARENCY

Tobacco Control Regulations (TCR) 2014 sets out the procedure for all interaction between the government officials and the TI. Despite the existence of this procedure information regarding meetings between public officials and the TI is not readily accessible owing to bureaucracy. Information on the interactions is mostly heard through the media, with no details on compliance to the requirements of TCR 2014.

6. CONFLICT OF INTEREST

A number of those in the Board of Directors of BAT Kenya are also either currently serving in a number of boards of government agencies or had previously served in key government positions. A BAT Independent Non-executive Chairperson is also a member of the Board of Kenya Vision 2030, the country's development plan.

7. PREVENTIVE MEASURES

Tobacco Control Regulations (TCR) 2014 requires any public officer participating in any interaction with the TI to prepare a formal record of the interaction and submit it to the relevant public authorities including the Cabinet Secretary. However, there is no implementing procedure in place to disclose all records of interactions as envisaged. Furthermore, the government is yet to formulate a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry as required by TCR 2014.

Recommendations

A number of recommendations made in the previous Kenya Tobacco Industry Interference Index Report are yet to be implemented. Tobacco Control Regulations (TCR) 2014 Part V provides a detailed and robust framework and guidelines in the spirit of Article 5.3 of the WHO FCTC. However, a number of implementation mechanisms and instruments for the effective implementation and compliance monitoring and reporting of Part V of the TCR 2014 are yet to be developed.

1. This report notes that a number of provisions in the Tobacco Control Act 2007 and the Tobacco Control Regulations 2014 are being implemented. Priority should be given to developing the required implementation instruments envisaged Part V of the TCR 2014, which would go a long way to countering TI interference in Kenya.
2. There is a need to increase awareness on TI interference tactics for all public officers, agencies and departments at all levels of government-both national and local. The 2021 Kenya Tobacco Industry Interference Index indicates that there is general lack of awareness of Kenya's obligations under Article 5.3 of the WHO FCTC amongst public officers and government departments including the presidency.
3. To discourage public officers from unnecessary interaction with tobacco industry, there is need for increased public awareness, enhanced monitoring of tobacco industry interference and stringent action against the tobacco industry and those who represent its interests. It is important to expose action taken on those engaging or facilitating tobacco industry interference.