

Nepal

Overall score:

43

Summary of Findings

1. Industry participation in policy development

The government has not taken any kind of support from the tobacco industry in relation to the enforcement of the Tobacco Control Law.¹ The Ministry of Health and Population (MoHP) and the Ministry of Home Affairs are the concerned officers for the implementation of the Tobacco Control Law. The main work of MoHP is to make laws related to tobacco control, and conduct awareness programs against tobacco products. The Assistant Chief District Officer of the District Administration Office under the Ministry of Home Affairs has the right to conduct necessary investigations, levy fines and inquiries in the case of use of tobacco products in public places or if there is a complaint in this regard.²

The Tobacco Control and Regulation Act has prohibited the government from taking any kind of help or contribution from the tobacco industry. Rule 48 of Article 5 of Tobacco Products Control and Regulation Directive 2071 have prohibited giving and receiving gifts, free items or cash from the tobacco industry. The concerned officers of the government are well aware of this legal issue. Therefore, in relation to law enforcement on Tobacco Control, the government has not taken any support from any of the tobacco industries. It is unlikely for the government to think of getting any support from the tobacco industries for they have been campaigning to stop the consumption and production of tobacco products.³

The Former Secretary of MoHP, Dr. Pravin Mishra, who had played a leading role when passing the Tobacco Control and Regulation Act in the parliament, says, "This Act would not have been made if the government had not been caught up in the greed of the tobacco industries." Dr. Mishra

explains that he is unaware of what is going on for the implementation of the Act anymore for he has retired from government service.⁴

After the enactment of the Act, the government may not have received any direct support from the tobacco industry. Jyoti Bania, one of the advocates who wrote the draft of the Act claims that the official of the MoHP, Komal Acharya, Deputy Secretary of the Law Section, felt that he was being influenced by the industry indirectly when the Act was being made. At that time, Acharya was in favor of the tobacco industry proposing programs, but according to him, there was no such arrangement in the Act. The tobacco industry could not come together in an organized way at that time. Therefore, the temptation of small amounts of finances did not work.

The government does not enforce the policy prepared by the tobacco companies and has not done it so far. Apart from the Tobacco Control and Regulation Act passed by the parliament elected by the people, directives to print warning messages and pictures on caskets, packets, wrappers, boxes and parcels, and Tobacco Products Control and Regulation Directive 2071, the government neither recognizes nor applies the policies made by any company or anyone.⁵

Former Chairman of Nepal Cancer Relief Society, Karna Shakya, says that the government officials have not accepted the policies made by the tobacco industry but it is doubtful that the government must have supported the policy of the tobacco industry in some or any manner because the government had taken a long time to prepare the Act. According to him, the Act was introduced on 2068 after the pressure of the voice of consumers and rights activists could not be stopped, who supported the Act being regulated on 2060.⁶

Rights activist Jyoti Baniya has claimed that the policies made by the tobacco industry affected the

government officials; however, the government has not accepted its policies. According to him, the tobacco industry had a huge impact on government officials for having no preparations for the directive for three years. Due to which the directive was prepared only after three years of enactment. Government officials were influenced by the tobacco industry. Tobacco Products Control and Regulation Directive 2071 came after three years, after the Act came into effect on 2068 B.S. The tobacco entrepreneurs could have slowed down the directive while passing the tobacco products act affecting the Health Minister Rajendra Mahato.⁷

The government has not invited any representatives from the tobacco industry or anyone belonging to the tobacco industry in the government committee constituted for public health policy. The health policy focuses more on how to control harmful substances for the health of the people, so there is no reason to consult the tobacco industry." The representatives of the tobacco industry have not been invited to form public health policy, as MoHP and all the concerned bodies are well aware of the various provisions in the Tobacco Control and Regulation Act.⁸

According to Puskar Raj Nepal, Undersecretary, Law Section under MoHP and Member Secretary of Tobacco Products Control and Regulation Committee, the government has not appointed officials from the tobacco industry as members of the Nepali delegation to the Conference of the Parties (COP) of the World Health Organization (WHO) in Geneva. He said, "As far as I know, no."

Tobacco Industry Representative and COPs

Mr. Puskarraj Nepal, Undersecretary, Law Section under MoHP and Member Secretary of Tobacco Products Control and Regulation Committee says that he is unaware of high government officials attending the meetings, ceremonies and parties organized by the tobacco industry. They may have been involved before the Tobacco Products Control and Regulation Act was made. Nepal says that the tobacco industry has not done much work in the social sector in previous years.

But with the billions in revenue generated from tobacco products and the thousands of jobs being created, the new Ministers of Industry also express their views in favor of the tobacco industry. Last year, Former Minister for Industry, Commerce and Supplies, Matrika Yadav, had expressed the hope that the Janakpur cigarette factory would be reopened. Five foreign investment sections were interested in reviving the Janakpur cigarette

factory.⁹ There were news articles reported in the business pages of newspapers and online.

Mr. Pushkar Raj Nepal, Undersecretary, Law Section under MoHP, claims that the government has not obtained any assistance from the tobacco industry to stop the black market or smuggling of tobacco products. Dr. Bikash Devkota, the spokesperson of the Health Ministry also stated that he has not heard of such reports. Dr. Devkota claims such things are unlikely to occur after the enactment of the Tobacco Products Control and Regulation Act.

The Undersecretary, Law Section under MoHP and Member Secretary of the Tobacco Products Control and Regulation Committee, Mr. P.R. Nepal claimed that the government has not signed any letter of cooperation or agreement with the tobacco industry. Health journalist Mr. Atul Mishra states that the Minister of Industry expresses public support to reopen the tobacco industry from time to time due to the influence of the industries. The Minister of Health and Population and the officials are knowledgeable about the health problems caused by tobacco and because the Ministry of Health is responsible for the health of the people, the Health Minister refuses to give a statement in favor of the industry, states journalist Mishra.

2. Industry CSR activities

Puskarraj Nepal, Undersecretary, Law Section under MoHP and Member Secretary of the Tobacco Products Control and Regulation Committee, claims that MoHP has not participated in any CSR event organized by the tobacco industry (prize distribution, donations, etc.).¹⁰ Similarly, Secretary of the Ministry of Industries Chandra Ghimire also insists that high government officials are not involved in such events. Secretary Ghimire claims that the high government officials are knowledgeable about the Tobacco Control Act and hence they don't take part in such events. He says, "I had the opportunity to work for five months last year as a secretary in MoHP. I had the opportunity to learn, understand and apply a lot about the Tobacco Control Act in that period. I am very aware regarding this subject in the Ministry of Industry."¹¹

Puskar Raj Nepal, Undersecretary, Law Section under MoHP and Member Secretary of the Tobacco Products Control and Regulation Committee claims that the government has not taken any kind of support for the political, social, educational, community welfare, technical support or training of the country from the tobacco industry. He says, "Nobody under MoHP has taken any support." Consumer rights activist Jyoti Bania says that these statements from government officials cannot

be fully trusted. The officials of the Health Ministry may not take the support directly but we cannot be confident that indirect help is not being taken. However, except for the Health Ministry, officials from other ministries might have taken indirect support. Moreover, the police administration here also cannot be completely trusted." Bania says.

Tobacco-related CSR Activities

According to the MoHP, the government has not had any formal or informal conversations with the tobacco industry. "We haven't had any conversations," says Puskarraaj Nepal, Undersecretary, Law Section under MoHP, and Member Secretary of the Tobacco Products Control and Regulation Committee.

Dr. Bikash Devkota, the spokesperson of MoHP said that the government has not kept records of the people or organizations who favor or lobby for the tobacco industry. Whatever was done before the Tobacco Control and Regulation Act and Directive is not known. But after the enactment of the Act and the directive, no records have been kept.

There has been speculation that Japan Tobacco International (JTI) supported participants of the Junior Tennis Tournament. As per our interview with Mr. Manohar Das, Gen. Secretary of the Nepal Tennis Association and Administrative Officer Mr. Jaydep Hada, they did not receive any support from JTI or other tobacco companies. The coach was sponsored by the Association whereas all six (three boys and three girls) were sponsored by their parents; all the costs in Japan were provided by the Japanese Tennis Association. Hence, there is no support from the Japanese tobacco industry.

It was observed that Surya Tobacco Company is still using its logo in various CSR activities in Nepal which includes awareness-raising activities for women, the Surya Golf Tournament, tree plantings and health services for people with disabilities. But the government showed its ignorance about these initiatives.

3. Benefits to the industry

Dr. Bikash Devkota, the spokesperson of MoHP, claims that the government did not accept the appeal from the tobacco industry to delay the tobacco control law or other related laws. He says that the government brought up the laws related to control of tobacco products concerning the health of the public more than the influence or pressure of the tobacco industry. Dr. Devkota says it is a universal truth that it takes time for any law to be made, adjusted and implemented; it is not always the influence of the tobacco industry that is responsible for the directive being delayed after the enactment of the tobacco product act.

He says, "The Government of Nepal finalized the directive within three years of the Tobacco Control Act. It takes time to come up with other rules as well. It has been two years since the enactment of the Reproductive Health Right Act but the directive has not been made."¹²

However, the Consumer Rights Activist Jyoti Bania does not agree with spokesperson Devkota's statement. According to Bania, the tobacco industry unified to face the government in opposition after the enactment of the Tobacco Control and Regulation Act and it took three years to prepare the directive due to the direct or indirect pressure and influence made on the officials of Health Ministry involved in making the law. The then-Minister of Health, Rajendra Mahato, believes that the delay for the directive to come up was due to the influence of the officials of the tobacco industry. He says, "The then-Minister of Health, Rajendra Mahato, did not even try to bring the Act. But he pursued it due to the force the then-Chief Secretary, Lilamani Poudel, and Secretary of the Ministry of Health Dr. Pravin Misra."¹³

Mr. Vivek Acharya, Internal Revenue Department Officer, says that taxes are being raised every year for tobacco-related products rather than providing any facilities to them. The government has levied a 33% tax on the sales and distribution of tobacco products. He said the tax rate is sure to increase in the coming years, as tobacco products are hazardous to public health. Various organizations working in the field of tobacco control, such as Resource Centre for Primary Health Care, Nepal Cancer Relief Society and Action Nepal, are demanding that the government raise the tax on tobacco products and that amount to be spent on treating diseases caused by tobacco products and on raising public awareness.¹⁴ Puskarraaj Nepal, Undersecretary, Law Section under MoHP and Member Secretary of the Tobacco Products Control and Regulation Committee also said that the Ministry of Health has not provided any facilities to the tobacco industry. Dr. Prakash Neupane, a cancer expert, however, expressed the possibility that the finance ministry official might be connected with the tobacco industrialists in some way. He fears that there must be some confidential reason behind the small percentage of tax increase when the tax should have been increased to 100%.¹⁵

Rs. 7 billion was collected from tax on tobacco products last year. Of the taxes collected, Rs. 400 billion was received by the MoHP. The Ministry has allocated the majority of the proceeds to the Cancer Hospital. Only 10 million has been spent on public awareness programs. Most of the share of the amount received by the ministry has been spent on the Cancer Hospital. On the other hand, there

are Tobacco Products Control and Regulation Act and Directives, but it has a weak implementation phase. The World Health Organization has urged its member countries to levy up to 70% tax on tobacco products. Only 33% tax is collected on the production and sale of these products in Nepal. The tax was raised to 33% after 2003.¹⁶

4. Unnecessary interaction

The government has not had any meeting or interaction with the tobacco industry. It would have been publicized if there had been any meeting.¹⁷

Rule 48 of Article 5 of Tobacco Products Control and Regulation Directive 2071 prohibits giving and receiving presents, free items or cash from any tobacco industry. It is mentioned that the government official should not consult with the officials of the tobacco industry and should not take presents. The MoHP has not made any code of conduct.¹⁸ Jyoti Bania, advocate and general secretary of Forum for Protection of Consumers' Rights, says that there is no separate code of conduct hence one should be prepared now.

The tobacco industry does not submit reports on the production and trade of tobacco every month to the government. No arrangements have been made to provide the details of the product.¹⁹ No rights have been provided to the Ministry of Health to take action for not submitting. That right has been provided to the Assistant Chief District Officer and Supervisor.

Raising awareness for employees has been done from time to time. According to Dr. Bikash Devkota, the spokesperson of MoHP, he interacts with the chief ministers, ministers, state lawmakers, city chiefs, deputy chiefs and local officials every year. Dr. Devkota informed to continue this in the future.²⁰

The government has no separate policy on any kind of support provided by the tobacco industry. However, the Tobacco Products Control and Regulation Directive has arranged to not accept any kind of presents or honors from the industry. This is some kind of policy of the government. Rule 48 of Article 5 of Tobacco Products Control and Regulation Directive 2071, has prohibited receiving presents or free items and cash from any tobacco industry.²¹

5. Transparency

The government has not had any meetings with the tobacco industry for the last three years. However, there is also no mechanism to verify or disclose these meetings, if they happened. There is no statutory requirement for the disclosure.

The government has no record of meeting with affiliated organizations and individual lobbyists or representatives of the tobacco industry.

6. Conflict of interest

MoHP has done nothing on this issue. After the enactment of the Act, no tobacco industry has financially supported any political party's interests in a transparent manner. Pushkarraj Nepal, Undersecretary of Law Section, says the "tobacco industry does not appear to have supported the political party directly. It is unknown if done indirectly." But it cannot be assumed that political parties and their leaders have not receive donations or assistance from the industrialists during the elections. He says, "It is like an open secret during elections. But there is no evidence as to who received or provided anything."²²

The available report indicates that the Prime Minister and the Attorney General have so far not been involved with any tobacco industry. However, retired employees of the Ministry of Finance and Industry may be working, hiding their names and addresses. According to the officer, Jyoti Bania, the retired employee should have hidden their real name and address. This topic needs deep investigation.²³ Apparently, no government employee is working transparently. So, it is unknown.²⁴

7. Preventive measures

No disclosure of interaction or related systems is in place. There is a policy prohibiting the acceptance of gifts or rewards from the tobacco industry. However, the lack of proper monitoring from the government provides a conducive environment for the tobacco industry to target groups and interfere.

There is no code of conduct for public officials which sets standards when dealing with the tobacco industry. However, the government regularly organizes orientation trainings to government employees on the Tobacco Control and Regulation Law as well as the moral ethics of civil servants. Article 48 (Chapter 5) of the Tobacco Control and Regulation Law prohibits government officials and employees from receiving any gifts in terms of objects or money from the tobacco industry or its representatives.

The Nepal Health Education, Information and Communication Centre of the Ministry of Health is responsible for providing trainings to government officers and raising public awareness through print, TV, radio and social media. There is sufficient budget allocated for this purpose.

¹ Interview with Puskarraj Nepal, Undersecretary, Law Section under Ministry of Health and Population (MoHP) and Member Secretary of Tobacco Products Control and Regulation Committee, 2076 Chaitra 1

² Tobacco Control and Regulation Act 2068

³ Interview with Sunil Sharma, Director of the National Health Education, Information and Communication Center, 2076 Falgun 28

⁴ Interview with Former Health Secretary Dr. Praveen Mishra, 2076 Chaitra 2

⁵ Interview with Puskarraj Nepal, Undersecretary, Law Section under MoHP and Member Secretary of Tobacco Products Control and Regulation Committee, 2076 Chaitra 1.

⁶ Interview with Karna Shakya, Former Chairman of Nepal Cancer Prevention Association

⁷ Interview with Jyoti Baniya

⁸ Interview with Dr. Gunraj Lohani, Director of Policy Planning Division, 2076 Chaitra 2

⁹ According to Ajit Tiwari, Kathmandu Post Daily, Janakpur, January 28, 2019

¹⁰ Interview with Nepal Chaitra 1

¹¹ Telephone conversation with Chandra Ghimire, Secretary of the Ministry of Industry, 2076 Falgun 28

¹² Conversation with Dr. Bikash Devkota, Spokesperson of the MoHP, 2076 Falgun 27

¹³ Conversation with Consumer Rights Activist Bania

¹⁴ News published on various dates in daily newspapers, Kantipur, Nagarik, Annapurna, Gorkhapatra, Naya Parika, etc.

¹⁵ Conversation with Dr. Prakash Tobacco Products Control and Regulation Neupane, 2076 Falgun 23

¹⁶ News published on swasthyakhabar.com on 2076 Mangsir 11

¹⁷ (Conversation with Pushkaraj Nepal, Chief of Law Section of MoHP)

¹⁸ Conversation with Pushkaraj Nepal, Chief of Law Section of MoHP)

¹⁹ Conversation with Pushkaraj Nepal, Chief of Law Section of MoHP)

²⁰ Conversation with Dr. Bikash Devkota, Spokesperson of the MoHP, 2076 Falgun 27)

²¹ Conversation with Pushkaraj Nepal, Chief of Law Section of MoHP)

²² Chief Prof. Chiranjibi Khanal, Head of Journalism Department, Tribhuvan University

²³ Conversation with Interview with Right Activist Bania, Falgun 28, 2076

²⁴ Conversation with Dr. Bikash Devkota, Spokesperson of the Ministry of Health and Population

Recommendations

1. Adopt a code of conduct for all government officials when interacting with the tobacco industry, limited to only when strictly necessary.
2. Require the tobacco industry to submit reports on its production, revenue, expenditure on marketing and philanthropy.
3. Implement government directive requiring 90% pictorial health warning on all tobacco packages, including chewing tobacco.