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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 by or in collaboration with the tobacco industry in setting or implementing public health policies in relation to tobacco control. There was no evidence of incidence against this regulation during the period under review.

2. Industry CSR activities

Contrary to the provisions of TCR 2014 which prohibits public officials from endorsing, supporting and/or forming partnerships with and/or participating in activities of the tobacco industry described as corporate social responsibility (CSR), British American Tobacco (BAT) (Kenya) Ltd made a donation of Kshs.10.6m (US \$100,000) to the COVID-19 Emergency Response Fund, a fund that was established by the President of Kenya H.E. Uhuru Kenyatta.

3. Benefits to the industry

The government included tobacco products in the list of essential products under Foods and Beverages during the COVID-19 pandemic. This meant that tobacco and tobacco products could be transported freely and easily accessed even with several COVID-19 containment measures.

BAT (Kenya) Ltd launched a new smokeless oral tobacco product by the name LYFT, a nicotine pouch placed under the lip. The government went ahead and registered the

product under the Pharmacy and Poisons Board (PPB) thereby shielding it from being regulated as a tobacco product in Kenya. This gave BAT (Kenya) Ltd room to market and sell its nicotine pouches in automatic vending machines during the COVID-19 pandemic without stringent regulations and to make huge profits.

4. Unnecessary interaction

Whereas the TCR 2014 Section 22. (1) states that: "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," a team from the National Environment Management Authority (NEMA) led by the Nairobi County Director of Environment joined BAT (Kenya) Ltd at its headquarters in Nairobi in BAT's activities to mark World Environment Day 2020. BAT's publicity press release also refers to its collaboration with the county government of Migori on a project to plant 200,000 trees.

5. Transparency

TCR 2014 sets out the procedure for all interaction between government officials and the tobacco industry. However, despite the existence of this procedure, information on meetings between public officials and the tobacco industry 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

One retired senior government official and a number of current government officials also double up as members of the BAT (Kenya) Ltd Board of Directors.

7. Preventive measures

TCR 2014 requires any public officer participating in any interaction with the tobacco industry to prepare a formal record of the interaction and submit 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 Kenya Global Tobacco Industry Interference Index 2020 report are yet to be implemented. Key among the recommendations in the 2020 report was the full implementation of the provisions of the TCR 2014 with specific emphasis on Part V more so now that the Supreme Court of Kenya dismissed the petition by BAT (Kenya) Ltd against TCR 2014.

It is recommended that action be taken on tobacco industry and public officials who flout the provisions of the law with regard to tobacco industry interference such as Part V of TCR 2014, Tobacco Control Act 2007 and Article 5.3 of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) to which Kenya is a Party. Such action would serve as a deterrent and indication of government commitment to stop tobacco industry interference.

The Ministry of Health and the entire tobacco control fraternity should embark on a massive awareness campaign targeted at all government departments and officials right from the Presidency on existence of tobacco control statutes and their provisions in regard to protecting public health from tobacco industry interference and the obligations and duties of state departments and public officials thereof. This should be with a view of ensuring coherence within the government on safeguarding public health from tobacco industry interference.

There is an urgent need for more independent research to counter misinformation by the tobacco industry on the safety of emerging products such as nicotine pouches. As the safety of such products is yet to be established, it is recommended that the industry be stopped from making claims that the products are a safer alternative and that the precautionary principle approach be applied meaning that the products are removed from the market.