

TOBACCO INDUSTRY INTERFERENCE INDEX NEPAL REPORT 2019



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Nepal: Tobacco Industry Interference Index

Background

Nepal lies between two economic giants India and China. Although a small country, it is diverse in terms of caste, ethnicity, culture, language, religion, ecology and biodiversity. Despite being rich in natural resources, it is one of the least developed countries. Nepal is ranked 149 (0.556 HDI medium human development) in terms of human development. Nepal has been reducing poverty, yet the achievement has not been as expected. As of now, about 21.6 percent people are below the poverty line. The situation reflected by multi-dimensional poverty indices is even worse, 28.6 percent. Its economic growth rate was 6.64 percent in the last fiscal year. Primary, secondary and tertiary sectors of economy cover 28.2 percent, 14.2 percent and 57.2 percent respectively. Per capita income is about US\$ 1,004 (MOF 2018) and national economy is heavily dependent on remittance (31 percent).

The year 2017 has been the historical year of Political transition in Nepal. More than two decades of local units without elected representative had affected development initiatives at local level. The success of bringing Terai (Southern Plain area) based political parties to the main political stream and successfully conducting local, Provincial and national parliamentary election in 2017 is another milestone of Political stability in Nepal. The union of Nepal Communist Party (UML) and Nepal Communist Party (centre) into one party has got peoples strong mandate in these elections and hence the chairperson of recently united Nepal Community Party has been unanimously elected new Prime Minister of Nepal. In this period of 1 year of the new popularly elected government, some positive outcomes are the drafting of Right to Food and Food sovereignty, Right to Education and Public Health Services bills.

However, it appears the implementation of the Tobacco Control Law and Directives is not a priority of the government. Although the government has more than 2/3 majority in the parliament the country has not experienced stronger measures to control tobacco production, marketing and use. Instead, the Industry, Commerce and Supplies Minister appears to be advocating the re-start of a State owned Janakpur Cigarette Factory despite of public pressure against it.

Nepal banned advertisement of tobacco products in the electronic media in 1997. After ratification of WHO FCTC in 2006 stronger domestic legislations and directives came into force with the implementation of increasing excise duty every year and a ban on tobacco and alcohol in duty-free shops but due to industry interference the selling of tobacco and alcohol products continued after some time.

Policy decisions on tobacco control law was postponed many times due to tobacco industries interference. Finally, 4-years after WHO FCTC ratification, Tobacco Control and Regulation Act 2011, a primary law governing tobacco control in Nepal was passed by the parliament.

The 2014 Directive on Pictorial Health Warning on Tobacco Product requires warning to cover 75% of total area of display. The government soon increased the warnings from 75% to 90% of the principal display areas which is a big achievement for Nepal in the international platform. Thus, Nepal has been recognized as number one country having the largest pack warning covering 90% of the surface area. But reports indicate that implementation has not been comprehensive as domestic tobacco companies have not implemented on all their products.

Smoking is prohibited in all indoor workplaces, public places and public transport; however, it's not well implemented.

The law prohibits all tobacco advertising, promotion and sponsorship such as domestic TV and radio, domestic newspaper & magazines, print media such as pamphlets, leaflets, flyers, posters & signs and outdoor advertisements (billboards and posters). This has been successful.

Ministry of Health has launched the Tobacco Control Strategy-2030 with the objective of reducing the tobacco consumption.

Tobacco industry interference has been a huge challenge in Nepal's public health policy. We have seen over time the tobacco industry interferes in the policy-making by intimidating practices. Policy decisions to strengthen tobacco control were postponed time and again. A total of 11 law suits filed by the industries and their allies against the Nepalese government's move to strictly enforce Tobacco Control Regulation Law 2011.

Tobacco tax increase as best buy intervention that has significant public health impact and is highly cost-effective, inexpensive and feasible to implement (WHO). However, Nepal has lowest tobacco tax compare to South Asian countries, which comes to 33.7 percent. The non-compliance of domestic tobacco company towards 90% pack warning is another example of Industry interference.

Government action is urgently needed to implement the WHO FCTC Article 5.3 to protect public health policies from commercial and vested interest of tobacco industry. There is fundamental conflict between the tobacco industry interest and public health. This report has been developed to strengthen public health and halt tobacco Industry interference.

Much more needs to be done for tobacco control and to overcome new emerging challenges. Tobacco products are being sold openly in market with attractive showrooms while the provision related to banning of smoking in public space is not effectively implemented. It will require continuous advocacy and capacity building at the central and local level using research-based evidences.

Some facts on tobacco and Nepal:
Nepal has high smoking rate. Moreover, it has the fourth highest rate of women smokers.

- 27,137 Nepali people die annually from tobacco n related causes.
- The overall tobacco use prevalence among adults (aged 10 and over) was 33%. 27% men and 6 % Women. Use of Cigarettes has decreased slightly during 5 years, from 39% to 33 %.
- The overall smoking prevalence was estimated at 39.2% for rural areas and 29.3% for urban areas of Nepal.
- Among the three ecological regions the overall tobacco use prevalence is the highest in the mountain region 68.2%, followed by the Terai 42.2% and mid hills 40.9%.
- Among the smokers 98 % are well informed about hazards of smoking.
- Nepal passed Tobacco product Control and Regulation Act 2011.

Source: WHO Nepal

Summary findings of Tobacco Industry Interference

- I. **Level of Industry Participation in Policy-Development:** There is no evidence of tobacco industry participation in policy development nor the government accepting any offer of assistance from the tobacco industry. The government does not accept or endorse any policies or legislation drafted by or in collaboration with the tobacco industry. The government does not invite the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy.
- II. **Tobacco related CSR activities:** There is no formal agreement between the government and Tobacco Industry in tobacco related CSR activities. However informally during the

natural disaster (such as earthquake in 2015) some tobacco companies are involved directly in relief operation.

- III. **Benefits to the tobacco industry:** The tobacco industry in Nepal has still not fully implemented the 90% pack warning despite a letter from the Health Ministry. The "incubation period" of 3 years between the 2011 Tobacco Control and Regulation Act implementation with the Directive on Pictorial health Warning in 2014, benefited the industry by giving it plenty of time. The slow implementation of the Law is an example of Tobacco Industry interference to delay the process.
- IV. **Forms of unnecessary interaction:** Surya Nepal Pvt. Ltd. (SNPL) tobacco company received "Best Tax Payers" award from the government. SNPL is an Indo-Nepal-UK joint venture, a subsidiary of ITC Ltd, India.
- V. **Transparency:** There is no record of formal meeting between the government and Tobacco Industry in the last two years, but one to one informal meeting between government and industry representative are evident. Although the Constitution guarantees "Right to Information", there is no transparent information sharing on these informal meetings. There is no procedure to disclose meetings. There is no requirement for the registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf.
- VI. **Conflict of interest:** Political Party are not required to disclose their sources of income. There are no incidents of retired officials joining the industry or current officials holding positions in the industry.
- VII. **Preventive measures:** The government has not put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. While the government has formulated a policy however a code of conduct has not been developed yet. There is no system in place for the government to regularly monitor the tobacco industry's dealings with the government. Article 5 sub clause 48 of Tobacco Control Directives prohibits any government official to receive any gift/donation from a tobacco company. However, the enforcement is lacking so this is not effective. While the government has a policy to raise awareness however it is poorly and inadequately implemented.

Recommendations

While Nepal has made progress in tobacco control, the government must protect public health and the Tobacco Control and Regulation Act from being undermined. These actions are needed:

- A code of conduct to guide government officials when interacting with the tobacco industry;
- Information the public when the government is meeting with the tobacco industry to ensure transparency;
- Tobacco companies should be asked to provide details of their business such as their expenditure on marketing, revenue, production and other aspects of their business.
- Paying taxes is a legal requirement; tobacco companies should not be awarded for paying their dues as required by law.
- Weak governance lead to none implementation of 90% pack warning to all domestic products.
- Govern focal person for law implementation at district level Asstt. Chief District Office should be given more power, authority and resources
- Civil Society movement has to be strengthen with more resources.

COUNTRY: NEPAL

INDICATORS	0	1	2	3	4	5
Level of Industry Participation in Policy-Development						
1. The government ¹ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ² in setting or implementing public health policies in relation to tobacco control ³ (Rec 3.1)	0					
<i>There is no evidence of tobacco industry participation in policy development nor accepts any offer from tobacco industry.</i>						
2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)	0					
Please refer to Annex C for policy features and typical tobacco industry positions as well as a scoring guide to ensure that the severity of influence by the tobacco industry is reflected in a consistent manner among countries.						
<i>The government does not accept or endorse any policies or legislation drafted by or in collaboration with the tobacco industry.</i>						
3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8) 1 Never 5 Yes		1				
<i>Evidence to support your choice. If this is by law, cite the relevant legislation</i>						
<i>The government does not invite the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. There is no any provision to enroll as a member or invite to any policy formulation meetings.</i>						
4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) ⁴ (Rec 4.9 & 8.3)		1				
<i>For evidence: http://www.who.int/fctc/en/ click on "Conference of the Parties", "COP Sessions", select relevant COP, click "Documentation", "List of Participants"</i>						
<i>The government delegation to the COP or its related meetings does not include any representative from the tobacco industry.</i>						
So-called CSR activities						
5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized			2			

¹ The term "government" refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority

² The term, "tobacco industry" includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

³ "Offer of assistance" may include draft legislation, technical input, recommendations, oversees study tour

⁴ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

INDICATORS	0	1	2	3	4	5
<p>by the tobacco industry. (Rec 6.2)</p> <p>B. The government (its agencies and officials) receives contributions⁵ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)</p> <p><i>NOTE: exclude enforcement activities as this is covered in another question</i></p>						
<p><i>There is no formal agreement between the government and Tobacco Industry but informally during the natural disaster (such as earthquake in 2015) some tobacco companies are involved directly in relief operation.</i></p> <p><i>More recently NPLV has aligned its CSR activities “under the government of Nepal promotion of Small and Medium sized Enterprises as the mainstay of the country’s socio-economic development.” Reference: https://www.snpl.com.np/content/csr.html</i></p>						
Benefits to the Tobacco Industry						
<p>6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)</p>			2			
<p>Please provide a list of tobacco control laws (national level) and the number of days given for implementation or if a postponement was allowed, for how long. Please provide a separate list for local legislation or policies. Evidence to support your choice can include news articles or meetings where decision was made</p> <p>SCORING: For each incident, provide a base score of 3 if there is a policy that remains pending due to tobacco industry efforts. Do not place a score if there is no proposed or pending policy at all (Place N/A: Instead of a 0 score, this question will be disregarded when comparing with other countries)</p> <p><i>The tobacco industry in Nepal still not fully accepted 90% pack warning despite letter from the Health Ministry and has not applied the warnings to all tobacco products. Besides the "incubation period" of 4 years between the ratification of FCTC (2006) and Tobacco Control and Regulation Act 2011, and the 3 years for the Law implementation with the Directive on Pictorial health Warning in 2014, is also example of Tobacco Industry interference to delay the process, which benefited the industry.</i></p> <p><i>Tax increase is another issue which shows industry interference. Nepal has lowest tobacco tax compared to its neighbouring countries. Besides this year Surya Nepal (SNPL), largest tobacco manufacturer and market share, the company received "Best Tax Payers" award</i></p>						
<p>7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)</p>				3		
<p>Conduct a comprehensive search of all sources of relevant fiscal, trade, agricultural, investment or related policies as listed in ANNEX A, using key words such as “except,” “exempt,” “grant,” “shall not apply” to name a few. At the minimum, please list all exemptions found in the Bureau/ Office/ Ministry of Investments and all exemptions provided to any company similarly situated as the tobacco industry by the Ministry of Finance or internal revenue/tax office.⁶ A desk research of policy issuances on exemptions that are likely given or available to tobacco industry can be provided even if actual evidence of exemptions</p>						

⁵ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

⁶ Examples of benefits include: reduced income tax rates or property tax exemption, duty free imports of machineries and capital assets, subsidies for tobacco production, delayed implementation of excise tax increase, other incentives granted to foreign investors, duty free tobacco distribution in government owned facility or shop.

INDICATORS	0	1	2	3	4	5
<p>actually granted cannot be found.</p> <p>SCORING: For each incident/incentive/benefit, provide a base score of 3.</p> <p>SPECIFIC RECOMMENDED ADJUSTMENTS:⁷</p> <p><i>Subject</i> +1 if the incentive is specific to the tobacco company/ industry (not to all investors or general group of business)</p> <p><i>Term/Period</i> +1 if the term of the benefit extends beyond the usual term of elected officials/term of office or if the term of the benefit is permanent or an indefinite period</p> <p><i>Granting Authority</i> -1 if the grant is granted by local government</p> <p><i>Type</i> +1 if exemption refers to excise tax or duty free + if a subsidy is involved</p> <p>FINAL SCORE:</p> <p>After computing the average of the scores for each incident, follow the rules on final scoring as indicated on the instruction page</p> <p><i>No privileges, incentives or tax exemptions were provided by the government to Tobacco Industry. Every year the government organize big events to recognize best taxpayer and Surya Nepal received "Higher Tax Payer Award" among all the tax payer companies. Surya Nepal is the largest Tobacco company in Nepal and also readymade and garment producer. Surya Nepal has been a top taxpayer twice in the past.</i> 17 Nov 2018 - Finance Minister Dr Yuvraj Khatiwada honoured the top companies in 15 categories amidst a programme organized by the Inland Revenue Department. Ref: https://thehimalayantimes.com/kathmandu/surya-nepal-siddhartha-shumsher-highest-taxpayers/</p> <p><i>"Although the law says all tobacco packs must carry a health warning occupying 90% of the pack surface, however there are still some packs that are not compliant and no punitive action taken against the companies (manufacturers) concerned. There are no penalties for wholesalers and retailers who sell packs with only 75% pack warning."</i> Ref: https://www.tobaccocontrolaws.org/legislation/compare/packwarning/195</p>						
Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister ⁸) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)			2			
<p><i>Last year Surya Nepal Pvt. Ltd. (SNPL) tobacco company received "Best Tax Payers" award. SNPL is an Indo-Nepal-UK joint venture, a subsidiary of ITC Ltd, India.</i> Ref: https://www.snpl.com.np/content/award-and-certificates.html</p> <p>Nepal's cigarette market is estimated to be worth around Rs 20 billion per annum. SNPL controls around 80 percent market share. Ref: http://kathmandupost.ekantipur.com/news/2014-03-15/surya-nepals-tanahu-plant-to-start-</p>						

⁷ Use this recommended adjustment instead of the "Standard" one listed in the instruction page

⁸ include immediate members of the families of the high level officials

INDICATORS	0	1	2	3	4	5
ops-in-a-month.html						
<i>The present Industry, Commerce and Supplies Minister Mr. Matrika Yadav is in favour of re-starting state owned "Janakpur Cigarette Factory" (ref: Kathmandu Post, Jan 28, 2019)</i>						
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)	0					
<i>No reports of such activities. Because of the open boarder with India, there is high chance of Tobacco Smuggling and Illegal trade. But government says the state machinery is quite competent to control this. No evidences of smuggling recorded so far.</i>						
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) <i>NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i>	0					
<i>No reports of such activities. No formal agreement signed so far. It is against "Law and Directives". The government last week organized "Investment Summit". There is high chance that Surya Nepal may invest in other sector.</i>						
Transparency						
11. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)						5
<i>There is no formal meeting with Tobacco Industry in the last two years, but one to one informal meeting between government and Industry representative is quite evident. Although the Constitution guarantees "Right to Information", there is no transparent information sharing on these informal meetings.</i>						
12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists				3		
<i>Not legal provision of providing information to the public.</i>						
Conflict of Interest						
13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11) 1 Never 5 Yes						5
<i>Political parties receive donation from Private sector especially during Party meetings and election campaign. Political Party are not required to disclose their sources of income.</i>						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)	0					
No reported incident						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)	0					

INDICATORS	0	1	2	3	4	5
<i>No. No high level government officer joined any tobacco company.</i>						
Preventive Measures						
<i>SCORING for this section: 1. Yes, 2. Yes but partial only, 3. Policy/ Program being developed 4. Committed to develop such a policy/ program 5. None</i>						
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)						5
There is no such system in place						
17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)					4	
<p><i>While the government has formulated a policy however a code of conduct has not been developed yet. There is no system in place for the government to regularly monitor the tobacco industry's dealings with the government.</i></p> <p><i>As per article 5 sub clause 48 of Tobacco Control Directives prohibit any government official to receive any gift/donation from Tobacco Company. There is no separate "Code of Conduct".</i></p>						
18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (5.2)						5
<p><i>There is no evidence that tobacco companies were asked to submit reports. The Tobacco Industry normally does not submit any periodical report and hence there is no legal authority to take action so far. But Assistant Chief District Officer being main responsible person to implement the Tobacco Control and Regulation Law can ask the Industry for such report.</i></p>						
19. The government has a program / system/ plan to consistently ⁹ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)			2			
<p><i>Ministry of Health has allocated budget for this to raise awareness on Article 5.3. However, it is not clear how the programme is being carried out; nor on the utilization of government fund including external grant has not been disclosed publicly.</i></p> <p><i>However this year civil society initiative completed Interaction Session on Tobacco Control Law & Directives with the analysis of possible Tobacco Industry Interference in all 7 Provinces where Chief Minister, Ministries, member of Provincial Assembly, Mayors, Deputy Mayors and Local government officials participated. This process will continue in future also as per need arises.</i></p>						
20. The government has put in place a policy to disallow the acceptance of		1				

⁹ For purposes of this question, "consistently" means: a. Each time the FCTC is discussed, 5.3 is explained. AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

INDICATORS	0	1	2	3	4	5
all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)						
<i>Yes the government policy is not to accept every gift or reward or honour from Tobacco Industry but monitoring and enforcement is very poor so this is not effective.</i>						
TOTAL 41						