

South Africa

Overall score:

58

Summary of Findings

1. Industry participation in policy development

The development of public health policies in relation to tobacco control continue to be led by the Ministry of Health (MOH), the National Department of Health (NDOH) and other government departments which deal with non-health-related tobacco issues like taxation, customs, excise, revenue, production, trade and industry, environmental affairs and tourism. The Department for Rural Development and Land Reform (DRDLR) continued with an existing contract with the NGO, MASDT (funded by British American Tobacco South Africa [BATSA]) and the Eastern Cape local government continued to accept assistance for agriculture and skills development from the tobacco industry. However, the government fully implements Recommendations 4.9 and 8.3 of the Article 5.3 Guidelines¹ of the WHO Framework Convention for Tobacco Control (FCTC) by excluding tobacco industry representatives in the government delegations to the FCTC Conference of the Parties (COP) and its related meetings.

2. Industry CSR activities

The current Tobacco Products Control Act bans CSR contributions from the tobacco industry. However, charitable contributions are permitted provided they are not for the purpose of advertising [Section 3(2)]. This is a loophole in the current Tobacco Products Control Act that will be removed, should the new Tobacco Bill be passed in its current form.

Some government departments and officials continue to be engaged in activities that are funded by the tobacco industry. The tobacco industry also continues to form partnerships with non-governmental organizations and in so doing, indirectly supports government initiatives like the renovation of schools, and support to early childhood development centers and teacher development programs. Two academic institutions were also funded by the tobacco industry in this reporting period.

3. Benefits to the industry

The tobacco industry applied various tactics to delay government efforts for tobacco control. Tobacco industry interference resulted in the South African Revenue Services (SARS) extending the deadline on the all-important tender for the Track and Trace (TT) system once and thereafter the tender was delayed even further after apparent pressure from tobacco manufacturers. The close of the tender was effectively delayed from April to October 31, 2019.

Further tactics to oppose the Bill include the commissioning of a study by the now-defunct Tobacco Institute of South Africa (TISA) to show that if the government curbed illicit trade, there would be no need for the draft Bill nor would tobacco taxes have to be raised.

Although a special tax unit was re-established in SARS to focus on tax evasion and excise duties, the increases in tobacco taxation in 2019 are still lower than the WHO's recommendation of a minimum tax of 70% of retail price. There was no evidence in this reporting period to show that the South African tax system is to be revised and aligned in accordance with Article 6 of the FCTC. Industry efforts and misinformation have continued to misdirect government attention on the illicit trade of tobacco products.

In the 2019 Medium Term Budget Policy Statement, the tobacco industry made submissions for inclusion in the Tax Bill and argued that if tobacco taxes are increased, people will switch to cheaper illicit cigarettes and the government will therefore receive less revenue. The Parliamentary Standing Committee on Finance rejected these submissions and argued that tax evasion was an enforcement issue, not a tax issue. However, although excise tax and VAT were increased in February 2019, the industry absorbed these increases and did not increase the retail selling price of tobacco products.

4. Unnecessary interaction

Meetings and interactions may have taken place but there were no reports published in this period, aside from the meeting between the chairperson of the parliamentary Portfolio Committee on Health and the BATSA representatives about new proposed Control of Tobacco Products and Electronic Delivery Systems Bill (2018).

The draft Code of Conduct (in accordance with FCTC Article 5.3) for politicians and government officials in South Africa is still to be finalized, approved and implemented. Some government departments and local authorities continue to interact with the industry through previous agreements/Memorandum of Understanding (MOU) and through partnerships with NGOs that are funded by the industry.

5. Transparency

The government does not disclose meetings and/or interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. In contrast, the government does accept assistance from the tobacco industry and the tobacco industry continues to publicly announce its partnership with government. This was illustrated in the partnership with government and municipal officials in the "cigarette butt" and "beach clean-up" campaigns in Cape Town and the Eastern Cape Development Corporation (ECDC) farmers project in the Eastern Cape Province.

6. Conflict of interest

The status quo remains about the government not having a policy to prohibit contributions from the tobacco industry and does not require a full disclosure of such contributions.

The provisions of the current Public Funding of Represented Political Parties Act (103 of 1997) remain valid, until such time that the new Political Party Funding Act is promulgated. This new Act will force political parties to disclose private funding. The Electoral Commission held public hearings on the Regulations to administer the new Political Party Funding Act and began with hearing submissions from various parties. It is envisaged that the law would be operational by the time the local government elections take place in 2021. There was also no record in this period of any retired government official(s) forming part of the tobacco industry.

7. Preventive measures

The status quo remains with the government having no protocols or policies in place to record interactions with the tobacco industry. There are no formal procedures to disclose and record interactions (such as agendas, attendees' registers or meeting minutes) with the tobacco industry and its representatives, that are in accordance with the recommendations of FCTC Article 5.3. The draft code of conduct on Article 5.3 guidelines for public officials was discussed; however, to date, no further progress has been noted and this continues to work in favor of the tobacco industry.

The current Tobacco Products Control Act empowers the Minister to request information on, inter alia, ingredients and additives in tobacco products. However, regulations for FCTC Articles 9 and 10 have not yet been developed and implemented. Although SARS requires the tobacco industry to submit information on production, manufacture, market share, expenditures and revenue, it does not require information on lobbying, philanthropy or political contributions. The government does not have a dedicated program to raise awareness within government departments on policies relating to guidelines on FCTC Article 5.3.



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Recommendations

The government must fully implement the guidelines of WHO FCTC Article 5.3:

1. Advocate for the new proposed Control of Tobacco Products and Electronic Delivery Systems Bill (2018), to be urgently passed by parliament.
2. Ban all forms of contributions (CSR and political) from the tobacco industry.
3. Develop a robust tobacco taxation policy in accordance with FCTC Article 6's price and tax measures to reduce the demand for tobacco.
4. Develop and implement a code of conduct for government officials and political leaders to limit interactions with the tobacco industry to only when strictly necessary.
5. Ratify the Protocol to Eliminate Illicit Trade in Tobacco Products which was signed by the government in 2012.

¹ Guidelines for implementation for Article 5.3: Recommendation 4.9 and 8.3 refer to not allowing the tobacco industry to be a member of any government body or form part of a delegation to any meetings of the Parties.