



**Friday 22<sup>nd</sup> October 2021, 10am Nairobi**

**LAUNCH OF**  
**KENYA 2021 TOBACCO INDUSTRY INTERFERENCE INDEX REPORT**  
**PRESS STATEMENT**  
**TOBACCO INDUSTRY'S GRIP SLOWING DOWN IMPLEMENTATION OF PUBLIC**  
**HEALTH POLICIES IN KENYA**

Tobacco use is now the top most preventable cause of death and one of the four risk factors raising the burden of Non communicable diseases (NCDs) in Kenya. More than 50% of the hospital admissions are due to NCDs and on average 80% of premature deaths are related to the use or exposure to tobacco.

The 2021 Kenya Tobacco Industry Interference Index is part of the Global Tobacco Industry Interference Index. The Global Tobacco Industry Interference Index (Global Tobacco Index) is a review of how governments are responding to influences from the tobacco industry and protecting their public health policies from commercial interests as required under the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) Article 5.3.

This is the third report for Kenya, the first report was released in 2019. This year, a regional Tobacco Industry Interference Report for Africa will be prepared by the African Tobacco Control Alliance (ATCA). The regional report will be released on the 27<sup>th</sup> of October 2021 while the global report will be released on 2<sup>nd</sup> November 2021. In 2019, Kenya scored 33, while in 2020 Kenya scored 40. This year 2021, Kenya has scored 39. It should be noted that the lower the score, the over-all lower level of tobacco industry

interference. This means that compared to 2019, the tobacco industry in Kenya is tightening its grip in ensuring that tobacco control policies in Kenya are not effectively implemented. This is despite the fact that the Supreme Court gave a go ahead for the full implementation of the Tobacco Control Regulations 2014 in November 2019 after a protracted court battle following a petition by BAT (K) Ltd in 2015. Part V of the Tobacco Control Regulations 2014 prescribes the terms and conditions for interaction between public officers and the tobacco industry so as to minimize tobacco industry interference in the development and implementation of public health policies.

Notable in this report is that even in the midst of the COVID-19 pandemic, with aggressive marketing and Corporate Social Responsibility (CSR) activities, which are all forbidden in law as far as tobacco products are concerned and coupled with the backdoor introduction of its oral nicotine pouches product LYFT and the inclusion of tobacco and tobacco products in the list of essential products during the pandemic BAT Kenya posted a 41 per cent growth in profit in 2020 being Ksh.5.5 billion from Ksh.3.9 billion in 2019.

As the Kenya 2021 Tobacco Industry Interference Index Report is being released today, a report by a global tobacco industry watchdog STOP titled “Buying Influence and Advantage in Africa: An Analysis of British American Tobacco’s Questionable Payments”<sup>1</sup> has also been published in September 2021. The report exposes how BAT has been using its deep pockets in 10 countries in Africa including Kenya to influence policy in its favor and sabotage competitors. This in simple terms is corruption and bribery and must be stopped if public health policies are to be effectively implemented.

Tobacco industry interference remains the biggest threat to the development and implementation of effective public health policies in Kenya. Even after the Supreme Court of Kenya ruled in December 2019 that the Tobacco Control Regulations 2014 was developed according to the Constitution of Kenya 2010 thereby thrashing the petition filed by British American Tobacco (BAT) Kenya Ltd, we are yet to see the full implementation of the provisions of the regulations by government due to the big pockets of the tobacco industry. With corruption fast becoming the tobacco industry

---

<sup>1</sup> <https://bat-uncovered.exposetobacco.org/wp-content/uploads/2021/09/Buying-Influence-Advantage-in-Africa.pdf>

*modus operandi* in Kenya, it is not surprising that the Kenya 2021 Tobacco Industry Interference Index Report findings highlights are an indication of impunity by the tobacco industry and complacency on the part of certain public officers. The bribery claims by BAT of key politicians in 2015 and the petition to the Ethics and Anti-corruption Commission (EACC) and Parliament by tobacco control civil society organisations is yet to be investigated and a report released by the authorities.

A summary of the key findings of the Kenya 2021 Tobacco Industry Interference Index Report are as follows:-

### **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 Tobacco Control Regulations 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, British American Tobacco (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 new smokeless oral tobacco product by the name LYFT, a nicotine pouch placed under the lip. 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 their nicotine pouches dispensed in automatic vending machines during the COVID-19 pandemic without stringent regulations and to make huge profits.

#### **4. UNNECESSARY INTERACTION**

Whereas the Tobacco Control Regulations 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 their headquarters in Nairobi in BAT’s activities to mark the 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**

Tobacco Control Regulations (TCR) 2014 sets out the procedure for all interaction between the government officials and the tobacco industry. However, despite the existence of this procedure, information on meetings between public officials and tobacco industry is not readily accessible owing to bureaucracy. Information on the interactions are 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

Tobacco Control Regulations (TCR) 2014 requires any public officer participating in any interaction with 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,

Among the positive strides noted by the report during the period under review, is that on 4 May 2020, the government of Kenya ratified the Protocol to Eliminate Illicit Trade in Tobacco Products. Kenya had signed the Protocol in 2013. This is a big step forward in the government's effort to address smuggling of tobacco products according to international standards, which clearly indicates the tobacco industry has no part in the regulation.

We conclude this statement by recommending the full implementation of the provisions of the Tobacco Control Regulations 2014, consistency and adherence to the provisions of the Tobacco Control Act 2007 and Tobacco Control Regulations 2014 across government, in-depth and speedy investigations into the bribery claims of public officers and politicians by BAT and prosecutions and a stock taking by the relevant authorities of the laws flouted with regard to tobacco control during the COVID-19 pandemic, the culprits and appropriate action thereafter. As we head for the Framework Convention on Tobacco Control (FCTC) Conference of Parties (COP) 9 from 8 – 13 November 2021, we do look forward to the government keeping tobacco industry out of these crucial meeting as well.

For more information, please contact the undersigned on Tel. +254722441191 or email. [cinfkenya@yahoo.com](mailto:cinfkenya@yahoo.com) or [samuel@consumerupdate.org](mailto:samuel@consumerupdate.org)

The Kenya 2021 Tobacco Industry Interference Index Report landing site is <https://kenyatiii2021.consumerupdate.org/>

Penalists herewith today are:-

Joel Gitali, Chairman, Kenya Tobacco Control Alliance (KETCA) Tel. +254722458281

Celine M. Awuor, Chief Executive Officer, International Institute for Legislative Affairs (IILA) Tel. +254721359669

Samuel Ochieng, Chief Executive Officer, Consumer Information Network (CIN) Tel. +254722441191



Samuel Ochieng, CEO

Consumer Information Network



### **About Consumer Information Network (CIN)**

CIN is an independent national consumers' organisation founded and registered in Kenya with a primary objective of protecting consumer rights and promoting consumer responsibility. CIN works on four thematic areas namely health, food, trade and environment. CIN is a member of the Kenya Tobacco Control Alliance (KETCA) and focuses on Tobacco Industry Accountability on matters tobacco control in Kenya.