

OPEN LETTER

H.E. Uhuru M. Kenyatta,

President of the Republic of Kenya and Commander in Chief of the Defense Forces of the Republic of Kenya.

ALARM OVER STATE OF TOBACCO INDUSTRY INTERFERENCE AND INFLUENCE IN KENYA DURING COVID-19 PANDEMIC

Your Excellency, we wish to draw your attention to the blatant abuse of the people of Kenya and our legal frameworks for commercial interests. These include the Constitution, Tobacco Control Act 2007 and Tobacco Control Regulations 2014¹ as well as the provisions of the World Health Organization Framework Convention of Tobacco Control (FCTC) and the Protocol to Eliminate Illicit Trade in Tobacco Products to which Kenya is a Party. Tobacco use and exposure to tobacco smoke cause cancer, cardiovascular diseases, and chronic respiratory diseases. It is sad to note, Your Excellency that this barefaced and now rampant violation of the provisions of national legislations and the Constitution of Kenya which are meant to promote socio-economic and environmental wellbeing of Kenyans, including saving lives is being occasioned by state officers', state agencies' and tobacco industry's disregard of the law.

These legal obligations were adopted with the blessing of the whole of government including the National Assembly and the Senate representing the interest of our citizens.

Your Excellency, due to Kenya's visibility as a global and regional leader in tobacco control, prevention of Non-communicable Diseases and health policy leader in general, we wish to highlight the following:-

(1) BAT(K) Donation to COVID-19 Emergency Response Fund kit

Your Excellency, you established the COVID-19 Emergency Response Fund on 1st April 2020, and appointed Ms. Jane Karuri as Chairperson, with the noble

¹ http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/169-Tobacco_Control_Regulations_2014

objective of mobilizing resources to help curb and stop the spread and impact of the pandemic in our nation. This noble public initiative is now firmed up by the Public Finance Management (COVID-19 Emergency Response Fund) Regulations 2020, under Section 24 of the Public Finance Management Act. A number of well-wishers have made donations to the kitty. We join you in thanking genuine well-meaning Kenyans and institutions who have made donations to this kitty.

Your Excellency, to the shock and utter disbelief of the tobacco control fraternity in Kenya and the world over, the COVID-19 Emergency Response Fund recently accepted a donation of Kshs.10.6m from BAT Kenya Limited, contrary to and in contravention and total disregard of:-

Provisions of the Tobacco Control Act 2007, the Tobacco Control Regulations 2014, and the WHO Framework Convention on Tobacco Control:

- i. Article 30 (c) which states that “A public authority shall not accept, support or endorse partnerships, sponsorships, services and any monetary or non-monetary assistance from the tobacco industry except for compensations due to legal settlements or as mandated by applicable law;”
- ii. Part V of the Tobacco Control Regulations, Article 22 (1) which states that “Any interaction 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”
- iii. Article 5.3 of WHO FCTC, which states that “In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”
- iv. Section 21 of the WHO FCTC Article 5.3 Implementation Guidelines further states that “The tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies, given that its interests are in direct conflict with the goals of public health.”

Your Excellency, as tobacco control advocates, we have walked a treacherous road in collaboration with the Ministry of Health in getting our nation where it is in matters of tobacco control and public health. It is saddening and most unfortunate that public officers in government in partnership with the tobacco industry are now presiding over the erosion of these gains. Tobacco Industry in Kenya has been on a spirited onslaught against tobacco control measures and efforts thereby obstructing the attainment of the right to life and the right to health, to the extent of dragging your government all the way to the Supreme Court.

Your Excellency, this fight has been fierce and has continued, despite the fact that Tobacco harms the health, the treasury, and the spirit of Kenya. Every year, more than 8,100 Kenyans are killed by tobacco-caused disease. Still, more than 18,000 children (10-14 years old) and 2,116,000 adults (15+ years old) continue to use tobacco each day. Complacency in the face of the tobacco epidemic insulates the tobacco industry in Kenya and ensures that tobacco's death toll continues to grow every year. Furthermore, the direct economic costs of tobacco use in Kenya amount to KES 2,978 million. This includes direct costs related to healthcare expenditures and indirect costs related to lost productivity due to early mortality and morbidity. If BAT (K) wishes to mitigate public health and socio-economic consequences of their business in Kenya, they should donate an equivalent of KES. 2,978 million to be used in accordance with the provisions of existing legal frameworks in the country.

Engagement of tobacco industry in the fight against a public health pandemic such as COVID-19 is not only against the spirit of the law - national and international - for which Kenya is a Party but also callous, immoral and an insult to the efforts Kenya has put in and more so the millions of people who annually fall victims of the tobacco industry. It has been scientifically proven that tobacco products, when consumed as intended by the manufacturer will surely kill half of its users prematurely. In addition, tobacco users are at a higher risk of developing severe forms of Covid-19 infection. We cannot expect an industry that has for centuries engaged in the trade of deadly products that have serious public health ramifications including death to be in the frontline of addressing the same. This is the biggest mockery of our times. The Government of Kenya is not and should not be that desperate!

(2) BAT (K) marking of the World Environment Day in collaboration with NEMA

Your Excellency, again, in total disregard of provisions of the Tobacco Control Act 2007, Tobacco Control Regulations 2014 and provisions of the WHO Framework Convention on Tobacco Control (FCTC) for which Kenya is a Party, State Officials led by Nairobi County Director of Environment, Mr. Anthony Saisi were hosted at the BAT (K) company head office in Nairobi to mark the World Environment Day 2020 on the 5th June 2020². At the event, BAT Kenya's managing director disclosed how BAT Kenya has been "Working closely with NEMA, we have strived to champion the country's afforestation agenda, improve our energy efficiency,

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[http://www.batkenya.com/group/sites/bat_b4alxz.nsf/vwPagesWebLive/DOB4AMFD/\\$FILE/medMDBQAJZD.pdf?openelement](http://www.batkenya.com/group/sites/bat_b4alxz.nsf/vwPagesWebLive/DOB4AMFD/$FILE/medMDBQAJZD.pdf?openelement)

and reduce our waste." Your Excellency, the National Environment Management Authority (NEMA) sits on the Tobacco Control Board (TCB) and officers of NEMA cannot plead ignorance of Part V of Tobacco Control Regulations 2014 and Article 5.3 of the WHO FCTC treaty and the Guidelines for Implementation thereof.

(3) Tobacco and Nicotine products listed as essential commodities during COVID-19 crisis

Your Excellency, we are equally concerned that Kenya, through the Ministry of industrialization, has listed tobacco products among essential commodities. According to the World Health Organization, besides killing more than 8 million people each year globally, tobacco smoking is a known risk factor for many respiratory infections and increases the severity of respiratory diseases³. COVID-19 is an infection that primarily affects the lungs and tobacco use impairs the lungs making it harder for the body to fight off the Coronavirus and other diseases. Health experts also warn that smokers are at a higher risk of developing severe complications from the COVID-19.

Your Excellency, we believe that the listing of these deadly tobacco products as essential commodities, will render the fight against COVID-19 pandemic counterproductive. We see these products as death-traps whose consumption will continue to strain the health system and increase the health burden in Kenya.

Your Excellency, we are worried that some senior officers in your government are conspiring with big tobacco and are fast ravaging tobacco control gains in Kenya and putting public health at risk. This direction by state authorities and officers, that appears sanctioned by your administration, is unacceptable. The history of tobacco industry tactics in interfering with tobacco control efforts including bribing of public officials in Kenya is well documented.

We call upon Your Excellency to:-

1. Direct a whole-of-government and whole-of-society approach to tobacco control and health in general. More specifically, that all government Ministries and agencies comply with national and international laws;
2. Return the donation of Kshs.10.6m to BAT Kenya;
3. Demand that the Ministry of Industry, Trade and Cooperatives, the Ministry of Interior and Coordination of National Government, the Ministry of Health and the National Treasury to **DE-LIST** tobacco and alcohol from the list of essential commodities;

³ <https://www.who.int/news-room/detail/11-05-2020-who-statement-tobacco-use-and-covid-19>

4. Assure Kenyans that your administration genuinely supports tobacco control and is aware of her obligations under national and international law;
5. Ensure that state agencies and state officers strictly adhere to tobacco control legislations, regulations and measures regarding tobacco advertising promotion and sponsorships (TAPS) including at point of sale where there is an increase in tobacco industry branding and display of products, and interaction with tobacco industry;
6. Ensure that stringent action is taken against state officers helping the tobacco industry circumvent the law thus putting the lives of Kenyans at risk;
7. Ensure that tobacco industry players not adhering to the provisions of the law of the land are denied permits to operate in Kenya;
8. Make a public pronouncement on this matter to put to rest the 'rat chase' with tobacco industry in regard to circumvention of the law and irreconcilable conflict of interest between public health and commercial interests.

Signed:



Den of Hope Youth Group

