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Industry Strategies to Undermine Alcohol Policies in Sri Lanka

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Abstract: The National Authority on Tobacco and Alcohol (NATA) was established by the Government of Sri Lanka during the year 2006 for the implementation of the NATA Act that was passed in parliament during the same year with the aim of controlling the problem of alcohol and tobacco use, which at present is a burning issue in the country. The NATA Act prohibits the sale of alcohol and distribution to minors, the advertisement and free distribution of these products, and the smoking of cigarettes in places to which the public have access.

However, due to various reasons, the proper implementation of the Act has not yet been achieved due to various reasons. In order to study the extent to which the NATA Act is adhered to across the country, Foundation for Innovative Social Development (FISD) and Healthy Lanka Alliance for Development (HLAD), conducted a study in nine districts in Sri Lanka during the months of June to September in 2012. The study focused specifically on the sale of alcohol and tobacco to persons below the age of twenty one, which is prohibited under Section 31 of the NATA Act.

The methodology of the study involved sending young volunteers from the districts to randomly selected sales outlets to make purchases of alcohol and tobacco products. Responses received by the volunteers in each outlet were then recorded. Findings of the study revealed that approximately seventy nine percent of the outlets visited sold cigarettes and approximately ninety eight percent outlets sold alcohol products to the volunteers. The study further revealed fourteen ways in which the NATA Act is undermined so that its proper implementation is hampered. For instance, when legal action is taken against the violators of the law, representatives from the industries appear on behalf of the accused and lawyers hired by the industries present challenges which the government is less effective to counteract due to the lack of resources. It was also revealed that the NATA institution has been made completely defunct as the government has not allocated sufficient man power and resources for its maintenance. Following the study, a meeting was organized by FISD and HLAD with the participation of several experts working in the field of alcohol and drug prevention at which a list of ten recommendations was prepared through discussion. The list was eventually submitted to the Minister of Health for further action.

Introduction

Strategies towards undermining actions against the actions taken to prevent alcohol use in Sri Lanka are as old as the preventive actions themselves. The first initiative towards preventing the sale and use of alcohol in the country were taken during the latter stages of the British Colonial rule which lasted from 1796 - 1948. Though Sri Lanka was more or less alcohol free prior to European colonization, the situation began to change gradually with colonization which began in 1515 with the arrival of the Portuguese, who were followed by the Dutch and finally, the British. Throughout the centuries of European rule, alcohol became a part of life, even a passion, especially among the Sri Lankan elite. It was during the British rule that the use of alcohol began to spread throughout the country to reach a broader segment of the population. The introduction of the Excise Act in 1912 which despite claiming to regulate the sale of liquor, in actuality facilitated the proliferation of liquor sales outlets by providing traders throughout the

country with licenses to buy and sell alcohol legally. At the very outset, it became obvious that public health was not an area of concern in this venture and that the Excise Act was intended mainly for the purpose of collecting revenue for the government.

Early national level campaigns opposing the trade of alcohol in the country began in the final stages of the British colonial period. While the Excise Act was still on the agenda of the British rulers, a section of the elite of Sri Lanka (then Ceylon) united to form a campaign in protest of its implementation. Then thus formed Temperance Movement backed by Buddhism and anti-colonialism which also became a frontline movement of the National Independence movement, a larger movement taking place during the time demanding independence from Britain. The Temperance Movement, which resulted in a significant reduction in the number of taverns throughout the country, was seen by the governing British as a direct attack on their imperialist regime which benefited greatly from the revenue generated by the alcohol industry. Activists involved in the Movement, including the first Prime Minister of Sri Lanka, Honourable D. S. Senanayake, faced severe opposition which on the part of the British backed by institutions working to their benefit such as the police force. Activists if caught met with serious consequences that often consisted of imprisonment lasting up to six months. Activists were also attacked physically during demonstrations and many were killed. The early temperance movement was somewhat successful in drawing attention to the need for action towards preventing alcohol and tobacco use. Activists in the field of alcohol prevention in the latter half of the 20th century were of the opinion that the work of the Temperance Movement was slow when taken in a more contemporary context and requested the organizing of a new, more active movement. In response to this request, President Ranasinghe Premadasa, then President of Sri Lanka, appointed a special committee to inquire into the need for the prevention of alcohol and tobacco use during the year 1992. The action of this committee came to an abrupt end with President Premadasa's unfortunate sudden demise.

The succeeding President of Sri Lanka, Mrs. Chandrika Kumaratunga, appointed a new committee in 1997 to continue the work of the previous committee. The report submitted by this committee received approval from the Cabinet of Ministers and the prevention of alcohol, tobacco, and other drugs became a component of the national policy. An act to enforce the policy directives was prepared by then Minister of Justice and Constitutional Affairs and a gazette to this effect was published though there was no further processing took place. There is evidence to prove that the lack of action that followed the initial enthusiasm and the treating of alcohol as a matter of low priority on the part of the government was the result of interference and manipulation from the alcohol and tobacco industries. It was revealed that industry giants such as the biggest shareholder of the alcohol industry in Sri Lanka, the chairman of the Sri Lanka Distilleries Company and the Chairman of the Sri Lanka Tobacco Company personally influenced higher officers of the Government into following a course of action favourable to them. The alcohol and tobacco industries also presented shares to family members of the ruling dynasty through whom it was possible to manipulate the government.

Following a prolonged period in which alcohol, tobacco and drug prevention received scant attention at national level, in the year 2005, a Member of Parliament, Dr. Rev. Omalpe Sobitha brought a bill with the same content as the aforementioned act addressing the enforcement of policy directives. This bill met opposition almost immediately from the alcohol and tobacco industries taking quick action to undermine it by filing petitions against the bill on the grounds that it infringes on the rights of the industries guaranteed by the provisions of the Constitution of Sri Lanka. The actions taken by the industries were however quashed by the Supreme Court of Sri Lanka with some amendments to the bill. At this juncture, the Minister of Health took the responsibility of presenting a new bill on the prevention of alcohol and tobacco, with the new amendments added, before the parliament. When the new bill was included in the gazette for public information in accordance with the law, the industries took legal action again claiming that some of its provisions did not conform to the guarantees assured by the Constitution of Sri Lanka and placed activists as intervenient petitioners for the case. Though the Supreme Court nullified the petition on the grounds that the provisions of the act did not infringe the rights of industries and individual users, the process of the case was by no means smooth. It was noted that though the original bill defined an alcohol as any beverage containing at least 1% alcohol, when the Minister presented the bill in parliament, the permissible alcohol content had risen to 4% thereby exempting beer and other drinks with low alcohol content from being subject to legal action. This was undoubtedly a result of manipulation of the Minister of Health on the part of the Alcohol industry. This misguided interpretation of alcohol appearing in the amended bill was pointed out to the Supreme Court and corrective measures were taken.

National level action on alcohol, tobacco, and drug prevention continued since then and as a result, the National Authority on Tobacco and Alcohol (NATA) was established under the purview of the Ministry of Health and the act pertaining to the authority, the NATA Act No. 27 of 2006, was passed in parliament in the year 2006. As indicated in its preamble, the NATA Act was intended as an act that provided for the identification of the policy protecting public health for the elimination of tobacco and alcohol related harm. As stated clearly in its preamble, the NATA Act aims at the elimination of tobacco and alcohol related harm through the assessment and monitoring of the production, marketing, and consumption of tobacco and alcohol products and making provisions to discourage individuals, especially children, from using these products by curtailing their access to them. This paper discusses the national level policies towards the prevention of alcohol and tobacco use, particularly the NATA Act, focusing on the strategies employed by the alcohol and tobacco industries towards undermining this Act.

The National Authority on Tobacco and Alcohol and the NATA Act

The National Authority on Tobacco and Alcohol, or NATA, is composed of fourteen members, six of whom represent the Ministries of Health, Justice, Education, Media, Trade, Sports, and Youth Affairs. Other members of NATA consist of the Chairman of the National Dangerous Drugs Control Board, a representative of the Commissioner General of Excise, a representative of the Inspector General of the Police, and five other members appointed by the Minister of Health from among persons with experience and knowledge in the field of medicine, and other fields related to alcohol and tobacco products. The NATA has been given the authority to conduct several functions such as the appointment of officers and servants necessary for the implementation of the NATA Act. Much to the dismay of all interested parties however, no such officer or servant has been appointed yet making the authority almost dysfunctional. Though there is no direct evidence to prove this, circumstantial evidence shows that the failure to appoint officers and servants to the NATA is a result of the influence of the alcohol and tobacco industries on the responsible senior officials.

The NATA Act consists of thirteen provisions covering the prevention and elimination of both alcohol and tobacco, four of which focus specifically on tobacco products. While one of these provisions concentrates solely on alcohol in relation to the Motor Traffic Act, eight provisions deal with both alcohol and tobacco products while four others deal with tobacco products.

Section 31 of the Act prohibits the sale, the offer for sale, and the permission and promotion of the sale of alcohol and tobacco products to persons below 21 years of age. This provision is envisaged to reduce the chances of youngsters accessing these products towards the ultimate objective of bringing about the delay in the initiation of the use of alcohol and tobacco.

Section 32 of the NATA Act prohibits the installing of vending machines for dispensing alcohol and tobacco products. This section aims at further restricting the availability of these products especially among children and adolescents which in turn is expected to result in the delay in the initiation of the use of alcohol and tobacco as well as the reduction of the use of these substances among the existing users. It must be noted however that neither the alcohol nor the tobacco industries have ventured to install vending machines in the country to date and that Section 32 is more or less a precautionary measure.

Section 35 of the NATA Act, dealing with the prohibition of the advertising of alcohol and tobacco, is a measure taken towards minimizing the promotion of these products in the country. This section describes advertisements as any form of distinctive writing (still or moving), pictures, signs, and symbols or other visual images, audible messages, or combination of the aforementioned methods that promote or are intended to promote the purchase and consumption of alcohol and tobacco products. The section also covers the use of symbols registered as trademarks representing alcohol or tobacco products or brand names of these products or the names of their manufacturers.

Section 36 of the NATA Act prohibits the obtaining of sponsorships from the manufacturers of alcohol and tobacco products with the aim of avoiding activities that promote alcohol through educational, social, cultural, or sporting events. It is expected that this action would play a part in tarnishing the image of alcohol as perceived by the audience and organizing committees as supportive materials for special events. The provision targets the human tendency to become linear towards sponsors whom they perceive as making special events possible which is in turn acts as an indirect form of advertising for alcohol and tobacco products.

Section 37 of the Act prohibits the free distribution of alcohol and tobacco products. The prohibition is effective for the direct distribution of these products by the traders themselves as well as for subsequent distribution through other parties. Free distribution may also take place at the events described in Section 36 and within military motor cross events. Such indirect promotions are yet another example of the shrewd undermining strategies employed by the alcohol and tobacco industries.

Section 38 of the NATA Act deals with offences committed pertaining to trademarks, characteristic symbols, distinctive logos, or brand names of tobacco and alcohol products. This section prohibits the sale of products (that are not tobacco and alcohol products) that bear the trademarks, characteristic symbols, logos, or brand names of the latter, aiming at further restricting the indirect advertising of tobacco and alcohol products. Examples of the products referred to in Section 38 include T-shirts, hats, caps shirts, bags, etc, that bears the aforementioned symbols and marks of tobacco and alcohol products.

The above description of the NATA Act proves that it is as a whole a far reaching act that aims at eliminating the use and trade of alcohol and tobacco products as well as one that takes precautionary measures to prevent the direct and indirect promotion and the availability of these products. The Act is in itself comprehensive and could bring about significant positive changes if properly implemented. It has been found however that there have been several lapses and discrepancies in the implementation of the NATA Act. This is discussed further in the following sections.

Implementation of the NATA Act

The organizations HLAD and FISS are currently in the process of undertaking studies to assess the efficacy of the implementation of the provisions of the NATA Act and to identify the subtle strategies employed by the industry to undermine the implementation of the Act. The first of these studies was conducted by these two organizations from June to September 2012 exploring the extent to which Sub-sections I and II of Section 31 of the NATA Act, concerning the sale of alcohol and tobacco to persons below 21 years of age, are implemented. The study aimed at addressing concerns that regarding discrepancies in the implementation of this section based on reports of alcohol and tobacco products being sold to all customers regardless of age. FISS and HLAD conducted the study in many districts across the country from which samples of sales outlets for alcohol and tobacco products were selected.

Both organization surveyed total of 95 alcohol selling outlets and total of 507 tobacco selling outlets. A group of youth, all males below the age of 21 years, was used as decoys to purchase relevant products. These decoys were volunteers working with the two organizations for the cause of the reduction of supply and demand of alcohol and tobacco products. The data shows that an overwhelming majority of the outlets sold tobacco and alcohol products to the decoys thus revealing major drawbacks in the implementation of the NATA Act. The findings of FISS's and HLAD's studies are described below.

Findings of the Studies

The study Conducted by FISS revealed that out of the total 213 outlets in the sample, 169 outlets sold cigarettes to decoys. This data shows that on average 98.7 % of the outlets sell alcohol and 79.32 % of the outlets sell tobacco products, namely cigarettes to persons below the age of 21 years.

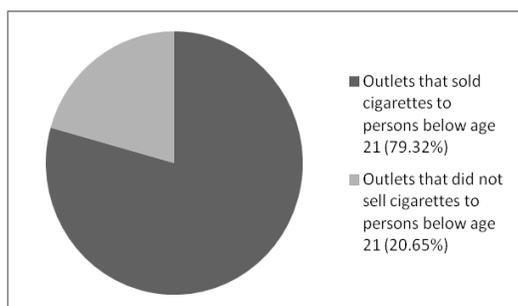


Chart 1: The sale of cigarettes to minors. (FISS)

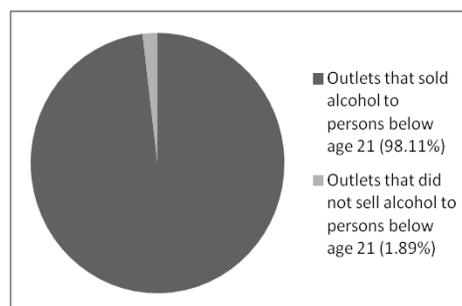


Chart 2: The sale of alcohol to minors. (FISS)

Survey data of HLAD visualize a similar trend with only slight variation. HLAD’s findings indicate that 93.3 % of outlets sell alcohol and 77.32 % of cigarette selling outlets sell tobacco products, namely cigarettes to persons below the age of 21 years.

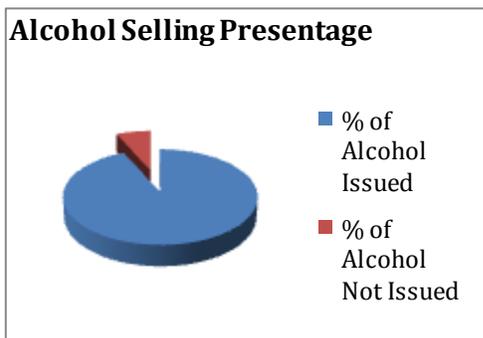


Chart 3: The sale of alcohol to minors. (HLAD)

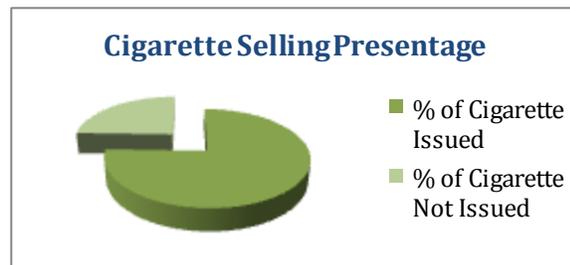


Chart 4: The sale of cigarettes to minors (HLAD)

The data shows an alarming rate of ineffectivity of the implementation of the law relating to the section 31 of the NATA Act.

The findings of the studies were used to develop a discussion on the implementation of the NATA Act with other civil society representatives and relevant parties. Through the discussion FIRD and HLAD were successful in revealing fourteen (14) ways in which the Act is undermined.

Undermining Strategies of the Industry

There are several hidden yet highly efficient strategies adapted by the industry to weaken or nullify the successful implementation of the NATA Act. Some of those strategies are as follows.

1. Filing cases against the enactment of laws and against the revisions of laws in the country arguing some sections of such acts infringes the rights of the industry in particular and the economy of the country in general.

When the first bill for the NATA act was submitted to the Order Paper of the Parliament of Sri Lanka, the alcohol and tobacco industries and some distributors filed cases challenging the enactment of the Act on the grounds that it infringes their rights guaranteed under statute 10, 12 (1) and 14 (1) (g) of the Constitution of Sri Lanka. As per Statute 10, “Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice”. The industries argued that freedom of thought and conscience were infringed upon. However, the Supreme Court of Sri Lanka decided otherwise. Statute 12 (1) states that “All persons are equal before the law and are entitled to the equal protection of the law”. Arguments based on this statute put forward by the industries were also quashed by the Supreme Court of Sri Lanka. Statute 14 (1) (g) states that “Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise”. Supreme Court of Sri Lanka did not accept the arguments made by the industries under this statute as well. Supreme Court held that all such work will be possible to the extent that public health will not be jeopardized. Interesting feature during these cases was that the both alcohol and tobacco industries were working together in presenting these arguments.

A perfect example of the undermining strategies used by the alcohol and tobacco industries is seen in the tactics used against the printing of pictorial warnings of cigarette packs. Following the enactment of the NATA Act which contains provisions for the minister to bring about regulations through a gazette notification, the Minister of Health issued a gazette stating that pictorial warnings should be printed covering 80% of the surface area of all packs of cigarettes sold in the country. The tobacco industry filed a petition opposing this gazette at the administrative division of the Court of Appeal, This resulted in a long series of legal proceedings which delayed the implementation of pictorial warnings. During this period it was clearly visible that the alcohol and tobacco industries were working in support of each other. This became even more obvious when it was noted that lawyers representing the alcohol industry were also present among lawyers representing the tobacco industry at court hearings regarding the printing of pictorial warnings. Delaying tactics, for example filing appeals at the Supreme Court and the Court of appeal regarding trivial matters and technical issues, were also used by the industries to prolong the legal proceedings thereby delaying the printing of pictorial warnings. However, it became obvious that the alcohol industry was observing the tobacco industry's actions and failings carefully and learning from them.

2. Providing legal assistance to violators of the law provisions during the hearing of cases.

The authorised officers responsible for the implementation of the NATA Act are not experts on legal systems, evidence law, the penal code, the criminal procedure code etc, all of which are required in successfully arguing a case in the court. At every attempt made by these authorities in taking legal action against perpetrators of the NATA Act however, the alcohol and tobacco industries take steps to jeopardize the prosecuting officers by employing leading lawyers to represent the violators of the NATA Act. Another dramatic tactic employed by the industries was to hire a group of lawyers to compile a book of misleading and hence with false interpretations of the NATA Act whilst posing as independent lawyers. This book was then published and distributed before the audience similar to any other book that could be released resulting in general public, the judiciary, and the prosecuting officers becoming suspicious towards the NATA Act. At this time, the NATA was also in the process of compiling a book of guidelines in implementing the NATA Act. The industries bought over the more active lawyers among those hired by NATA to include false interpretations and distort the existing information in the book so that the resulting publication contained more errors than the previous book released by the industries.

FISD and HLAD worked relentlessly towards undoing the damage caused by these actions conducting training programmes on proper legal procedures for prosecuting officers and awareness programmes on the NATA Act to educate the general public. Both organizations also provide assistance to any implementing officer seeking to file a case against violators of the Act.

3. Raising objections in court based on trivial grounds by lawyers employed by the alcohol and tobacco industries claiming that Public Health Inspectors and Food and Drug Inspectors who were Minister appointed authorised officers cannot prosecute actions on the NATA act without the participation of the police officers or Excise officers and vice versa.

The alcohol and tobacco industries have been known to attempt to make use of any linguistic ambiguities in the NATA Act, interpreting it to their advantage. Objections were raised in courts as stated above by creating an argument on a grammatical error in Sinhala Language version of the printed Act and making objections of the validity of a raid conducted by one category of officers. Fortunately, most of the judges of the Magistrate Courts made judgements citing the preamble of the Act in which its purpose is indicated as the prevention and reduction of the supply and demand of alcohol and tobacco while preventing the access to these products by persons below 21 years of age.

4. Misinterpreting the provisions of the NATA Act through industry sponsored lawyers.

One misinterpretation of the Act presented by lawyers sponsored by the industries was that as per section 43 (4) of the NATA Act a letter from the chairperson of NATA was a compulsory requirement

for officers and servants of the authority who frame charges against violators. Contrary to these claims however, it was made clear that all authorised officers appointed under section 16 of the act are public officers as defined by Statute 170 of the Constitution of Sri Lanka and Establishment Code of Sri Lanka for State Officers and hence these public officers have the power to file a case at the Magistrate Court as provided in sub Section 136 (1) of the Criminal Procedure Court of Sri Lanka.

HLAD and FISD are in the process of clarifying such misinterpretations to authorised officers and improve their confidence to implement the law.

5. Installing notices at sales outlets indicating the prohibition of selling of alcohol and tobacco products to persons below the age of 21 years of age.

These notices had the hidden motive of attracting the attention of youth by making alcohol and tobacco symbolic of adulthood. It was expected that through these notices youngsters would be deceived into perceiving the use alcohol and tobacco products as a daring feat and viewing those who attempt it as being at a psychological advantage over other non-using youngsters of the same age group. Awareness programmes especially targetting youth are thus become an important component of FISD's and HLAD's prevention programmes.

6. Providing alcohol free of charge and offering sponsorships for events such as motor cross races organized by the military forces.

Although the providing of sponsorships and the distribution of alcohol free of charge at social events were stopped almost completely following the initiation of the NATA Act, the alcohol industry still play a major role in the motor cross events organized by the security forces i.e. the Army, the Navy, and the Air Force. It is very rare that an authorised officer attends this type of event and takes legal actions against the organizers within a military premise. This is again a cowardly, undermining strategy of the industry to sponsor and advertise their products.

7. Getting the support of the artists such as the producers of TV Serials and films to include scenes depicting the use of alcohol so as to develop positive expectations on it in their productions claiming that such scenes are essential in maintaining the quality of the production.

While TV serials and films often contain scenes depicting alcohol and tobacco use, some may not show such scenes directly but would instead contain words or sentences generally associated with occasions at which alcohol is generally consumed.

Although the direct advertising of alcohol and tobacco products are curtailed by the provision under section 35 of the NATA Act, the application of this in films and television dramas is yet to be seen. This has given rise to an argument between artists and activists. Certain TV seiries and films are funded by the industries so as to promote their products among viewers using popular artists. The industry also influences TV stations to televise programmes that target children such as cartoons, that depict alcohol use positively. This is yet another example of the subtle advertising strategies used by the alcohol and tobacco industries at present.

8. The infiltration of lawyers on the payroll of the alcohol and tobacco industries into the panel of lawyers appointed by NATA to provide training on the NATA Act to the implementing authorities. The infiltrating lawyers discourage those receiving training from filing cases concerning violations of the Act.
9. The influencing of some senior officials to take steps towards making the NATA Authority defunct.

As a result of these actions no support staff have been recruited to the NATA to date. The authority also receives limited funding to conduct its activities. Though an office premises has been purchased,

the premises remains closed and unused. Also noticeable is the absence of officials representing the NATA Act despite there being provisions for such officials in the Act. Leading activists in the country therefore made to think that such negligence on the part of the responsible senior officials may be a result of manipulation on the part of the alcohol and tobacco industries even going against the Government's policy on intoxicants which states in short as "Fullstop to Intoxicants" as appeared in the "Mahinda Chinthana – Future Vision".

10. The buying over of some of those in the panel of authors appointed by NATA responsible for compiling the book of guidelines on the implementation of the NATA Act. The panelists under the influence of the industries included false and misleading information in the book that would result in the misinterpretation of the NATA Act.
11. Lobbying with the Ministry of Finance towards ensuring that increases in the price of alcohol would not exceed the increase in the cost of living thereby maintaining the cost of alcohol at a relatively cheap price.
12. Developing an image of the NATA Act among the authorities and the general public, as weak and containing errors. This has created a disadvantageous situation for those filing cases against violators of the NATA Act. The industry has been successful in influencing senior officials responsible for activities pertaining to the NATA using this image to create a reluctance among them to act on the provisions in the NATA Act. Senior officials have been led to believe that the NATA Act is weak and ineffective when in reality it is strong and powerful, and they therefore treat it as a matter of low priority. Implementing officers are thus unable to file cases under the NATA Act as a result of inaction on the part of their superiors.
13. The setting up of branches of "Machang", a supposedly affordable chain of pubs especially targeting youth.

Machang is a recently established chain of pubs that has branches emerging in suburban areas surrounding Colombo. The attractive advertizing that claims to offer alcohol and high quality food at very reasonable prices and emphasizes the "convenient" location of the pubs clearly indicate that Machang targets the middle class residing in suburban areas. Promotions of the pubs also boast a predominantly male setting in which smoking is allowed freely. Though evidence has emerged revealing that the chain of pubs is owned by one of the leading Breweries in the country, which is a major company belonging to the local alcohol industry, the industry itself maintains a notorious silence on Machang's ownership.

14. Organizing events under proxy organizations at which alcohol is freely distributed.

It has come to be known that the alcohol industry is actively involved with hotels and other major companies in organizing events targeting highly commercialized international holidays such as Valentine's Day and Oktoberfest. The organizers of these events offer special packages, for example tickets priced at LKR5,000 with which special benefits including for example, two complimentary bottles of beer are offered. When inquiries are made from the organizers taking into account the NATA Act's prohibition of the free distribution of alcohol at public events, the response is always that the cost of the ticket is inclusive of the alcohol and that the latter is therefore not distributed free.

Policy Advocacy

The findings of FISSD's and HLAD's studies shown above were then conveyed to the Honourable Minister of Health with the participation of one Member of Parliament, and the Chairman of the NATA. Also included were the recommendations of the two organizations compiled through a forum spearheaded by local communities with whom the organizations worked towards reducing the use of alcohol, tobacco and other drugs. The Minister of Health accepted the recommendations favourably and promised to work with FISSD and HLAD in fulfilling the requirements indicated in the alcohol policy on alcohol, tobacco and drug prevention as well as in implementing the

laws and regulations with respect to the prevention and reduction in the supply and demand of the alcohol, tobacco, and other drugs.

The recommendations submitted to the Honourable Minister of Health are as follows.

1. The implementation of the provisions of the act and prosecution of violators of the provisions appears to occupy a relatively low priority in the list of official duties of the authorised officers appointed under the section 16 of the NATA Act. As such, it has become imperative to change this existing situation, and therefore it is recommended that steps be taken by the authority to issue orders, to make this activity a priority in the job descriptions of these officers, and to devise a methodology to monitor the progress of implementation of the NATA Act especially regarding litigation in courts.

This lack of interest in the implementation of NATA act is due to the fact that the authorised officers are not officers of the NATA but rather, belong to 3 external agencies. While the Public Health Inspectors (PHIs) and Food and Drug Inspectors (FDIs) are under the purview of the Director of Health Services, the excise officers come under the Commissioner General of Excise, and police officers come under the Inspector General of Police. These officers therefore do not bear a sense of ownership concerning the NATA Act and therefore treat it as secondary to their other responsibilities which they see as more important. It is therefore necessary to develop a mechanism so as to improve the sense of ownership of the NATA Act among these officers and to give priority to its implementation among authorized officers as appearing in section 16 of the Act.

2. As indicated above, officials responsible for enforcing the NATA Act belong to several departments and ministries as there is no group primarily responsible for its implementation. As a result, there is reluctance among all departments and institutions concerned to bear total responsibility for implementing the NATA Act. This was further hampered by the delay in recruiting the officers and servants necessary for the proper functioning of the NATA. It is therefore necessary to take action to curb this situation by strengthening the NATA. Until then, it is recommended that special units in each department be established dedicated to the implementation of the NATA Act (units similar to for example, the environment special units set up at all police stations to work exclusively in matters related to environment).
3. Officers and servants could be appointed to act on Section 15 (d) and Section 21 of the NATA Act. This process may however, be time consuming. Therefore, it is recommended that public sector officials be appointed as specified in the Act. The officers thus appointed could take legal action in cases concerning the violations mentioned in the Act with the powers vested in them through a written statement issued by the relevant authorities as per Section 43 – (4). This could be done by employing Development Officers from among the experienced graduates recently recruited to the public sector who are currently working in various government offices including offices under the purview of the Ministry of Health.
4. It is often reported that when a case of violations concerning alcohol or tobacco is taken up in courts, on many occasions the industry sponsors lawyers to represent the defendants (violators) and that these lawyers make objections to the charges on technical reasons thereby postponing or refuting the case. While it is necessary to arrange for the relevant officers to receive the knowledge required in presenting counter objections to the objections made by the opposing party, an organized process should be established at particular departments where authorised officers get the necessary advice from the Attorney General's Department as quickly as possible whenever they require assistance.
5. While a system to encourage and promote officers and provide incentives should be established, a secure environment should also be created in order to enable these officers to carry out their duties without any fear of opposition.

In fact, provisions for protection of authorised officers were included in the bill. The provision under Section 25 is short titled in the bill as “Protection for action taken under this act or on the direction of the Authority” which reads as follows.

- (1) No action or prosecution shall be instituted –
 - (a). against the authority, for any act, which in good faith is done by the authority under this act; or
 - (b). against any member, officer or servant of the authority for any act which in good faith is done or purported to be done by him under this act or on the direction of the authority.
- (2) Any expenses incurred by any such person as is referred to in sub section (1), in any action or prosecution instituted against him in respect of any act which is done by him under this act or on the direction of the authority shall be paid out of the fund of the authority, if the Court holds that such act was done in good faith.

However, when the final bill was submitted to the parliament, only subsection (2) was included with the omission of sub section (1). In addition, it was noted that another protection provision included under Section 26 of the previous bill is also omitted in the final bill. The provision is short titled in the previous bill as “No writ to be issued against a member, officer or servant of the authority” and reads as follows:

“No writ against the person or property shall be issued against any member of the authority or any officer or servant of the authority in any action brought against the authority. “

It is possible that these omissions are an undermining strategy of tobacco and alcohol industries involving by influencing the relevant officers engaged in the preparation of the NATA Act. The omissions negatively affect the successful implementation of the Act as authorized officers are reluctant to take action against offenders due to inadequate protection provisions included in it.

Sections 25 and 26 in fact do not protect authorised officers who are not members, officers or servants of the authority although they were appointed by the Minister of Health to implement the NATA Act. Therefore, it has become necessary to include additional sections to the Act that include such authorized officers into the description.

6. In studying the required facts to take legal action against those who violate certain sections of the NATA Act especially in violations concerning the sale of alcohol and tobacco products to persons below the age of 21 years it was necessary to use decoys. This shows a necessity for children and youth trained in prevention activities and in investigating the implementation of preventive measures. It is therefore essential to form child and youth groups under the relevant offices at which personnel authorized to implement the NATA Act. Prevention activities should be initiated through these groups.
7. While much advocacy has been carried out for the National Authority on Tobacco and Alcohol Act No. 27 of 2006, it may be said that the Act is as a whole, fairly strong. Nevertheless, various forces are involved in spreading the idea that it is a weak act and publicizing the false unfounded notion that it is incapable of strongly imposing effective legal action. This image is spread especially by industry sponsored lawyers due to whom the authorities responsible for taking action become discouraged. While there is evidence to show that the alcohol and tobacco companies were involved in putting together a petition to be presented at the Supreme Court against the NATA Act when a draft of the Act was presented to the parliament, it has also been reported that officers engaged on the preparation of laws and their superiors in command have occasionally faced threats of various forms for which the alcohol and tobacco industries are undoubtedly responsible. It is therefore essential to strongly establish the Act and provide the necessary motivation to implement the relevant laws effectively. FIRD and HLAD are currently working towards this by conducting training and awareness programmes for the authorised officers.
8. The Ministry of Health must take steps to revise the existing act looking for and correcting the errors within it, for example such as sub Section 17 (9) and sub Section 38 (1), with the help of the parliament. Steps should also be taken to include provisions such as provisions that ensure protection to those responsible for implementing the Act. This would greatly help to boost the NATA and strengthen the NATA Act. It must be noted that though action in this direction was taken in the past, the efforts were unsuccessful. Once

again, this was most probably the result of undermining tactics on the part of the alcohol and tobacco industries.

9. The Honorable Minister of Health should publicly request from the legislative, relevant departments, traders unions and other commercial unions, via the mass media, that the prevention of alcohol and tobacco be considered a legal, health and religious issue and that the sale of these substances in any form to persons below the age of 21 be avoided expressing that the participation of the public is important in implementing the political will in the country.
10. The Minister of Health should take leadership in enforcing the NATA Act, making Sri Lanka an example to other countries in alcohol and tobacco control activities.

Conclusion

Over the years since the NATA Act was introduced, it has become clear that the alcohol and tobacco industries have made and continue to make constant effort to search for ways and means to undermine its implementation. Industry strategies expand from weakening the enactment of the laws and regulations to creating obstacles to their implementation. The industries have to date, filed cases on two occasions during the enactment of the NATA Act when the government inserted the bill concerning alcohol, tobacco and drug prevention into the order paper of the Parliament of Sri Lanka. The Ministry of Health, with the assistance of the Attorney General's Department and activists' organizations, vehemently works to nullify the arguments brought before the Supreme Court by the industries and fortunately. The stance of the Supreme Court has so far been in favour of the objectives of the NATA Act.

HLAD and FISS continue to scrutinize and peruse the Act carefully and have discovered some errors and omissions some of which indicated above. The two organizations are in the process of forwarding these lapses to the relevant authorities. Further, FISS and HLAD continue to work tirelessly to make the communities aware of the industry strategies to undermine the implementation of the NATA Act. This is done by keeping the communities abreast of the new trends introduced by the industries from time to time and raising their awareness of the real harm of alcohol to health, to the economy, and to personal as well as family happiness. The organizations also strive to make communities aware of the social injustices of alcohol use in society. Guidance is also being given to the communities towards unlearning the commonly accepted beliefs on alcohol and viewing alcohol as it is in reality, an unpleasant and tasteless substance. Whilst the above steps are being taken at community level, at national level there is a necessity to strengthen the NATA by appointing relevant officers and servants and allocating adequate funds to implement the law more effectively than at present while facing and defeating undermining strategies and actions of the alcohol and tobacco industries.

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