

**KENYA**

2021

TOBACCO  
INDUSTRY  
INTERFERENCE  
INDEX

## Acknowledgements

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The Kenya Tobacco Industry Interference Index is part of the Global Tobacco Interference Index. This Kenya Report has been prepared by Consumer Information Network (CIN), CIN is grateful to all those who supported the preparation of this report in one way or another. Special thanks go to Bloomberg Philanthropies for the financial support, GGTC for technical support, Africa Tobacco Control Alliance (ATCA) for the technical support and coordination, Kenya Tobacco Control Alliance (KETCA) and the International Institute for Legislative Affairs (IILA) for the review of information and validation. We can't forget the CIN technical team which worked tirelessly to gather and collate the information. It was great working together on this for another year despite the challenges

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## Introduction

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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.<sup>1</sup> The World Health Organization (WHO) put overall prevalence of tobacco use at 11.8% in 2018.<sup>2</sup> Tobacco Industry interference has been identified as the largest barrier and greatest threat to the implementation of the World Health Organisation (WHO) Framework Convention for Tobacco Control (FCTC) treaty. Kenya ratified the WHO FCTC treaty in 2004 and has domesticated several provisions of the treaty through national legislation including the Tobacco Control Act 2007 and the Tobacco Control Regulations 2014.

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).

British American Tobacco (BAT) Kenya remains the dominant tobacco company in Kenya. In 2018, BAT Kenya held an estimated 78.8% of the cigarette market share according to Euromonitor International, Company Shares – Kenya, 2018. Their manufacturing hub in Kenya also exports to at least 17 other countries in the region. The other tobacco manufacturer in Kenya is Mastermind Tobacco Kenya (MTK) who controlled around 16% of the market share in 2019.<sup>3</sup>

BAT Kenya has been expanding its range of tobacco products to attract more users especially young people. In 2019, BAT Kenya launched smoke free nicotine pouches trading by the name LYFT into the Kenyan market.<sup>4 5</sup> Typical of tobacco industry tactics to interfere with tobacco control measures, BAT Kenya completely bypassed the Tobacco Control Act 2007 and got approval and licensing of this new product from a different government agency. Rather than applying for registration and approval from the Tobacco Control Board (TCB), BAT Kenya sought and obtained registration of their new product from the Pharmacy & Poisons Board (PPB). In a letter to the Pharmacy and Poisons Board, the health minister Mutahi Kagwe accused it of violating several provisions of the law when it licensed

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<sup>1</sup> <https://www.health.go.ke/tobacco-use-leading-cause-of-preventable-death/>

<sup>2</sup> <https://www.who.int/publications/i/item/who-global-report-on-trends-in-prevalence-of-tobacco-use-2000-2025-third-edition>

<sup>3</sup> <https://tobaccotactics.org/wiki/kenya-country-profile/>

<sup>4</sup> <https://web.archive.org/web/20191119094852/https://allafrica.com/stories/201907220197.html>

<sup>5</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DO9T5KLN](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5KLN)

LYFT. Among other things, the licensing of the product by PPB led to the product being dispensed in automatic vending machines, contravening the law.<sup>6</sup> This was a classic case of BAT Kenya violating the law and co-opting a government agency which is also responsible for protection of public health, in this case the Pharmacy and Poisons Board (PPB) in its mischief. The PPB experience makes it clear that there is a need to step-up awareness of the TI's tactics among the various government departments and agencies.

During COVID-19 pandemic, BAT Kenya continued with its production and marketing of cigarettes business as usual. While it conducted pandemic related CSR charity, claiming to care for health of the people, it simultaneously upgraded packaging of its cigarette brands (Figure 1) touting it as “transformation” but to keep smokers smoking. Cigarettes remain the core business and profits of the company. However, 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 also propelled the BAT Kenya profits. In 2020, BAT Kenya posted a 41 per cent growth in profit to Ksh.5.5 billion from Ksh.3.9 billion in 2019.<sup>7</sup>

Figure 1: BAT Kenya upgraded packaging of its cigarette brands



Source: BAT Kenya 2020 HY Results Investor Brief; <https://bit.ly/32kw8oL>

Among the positive strides noted during the period under review, on 4 May 2020, the government of Kenya ratified the Protocol to Eliminate Illicit Trade in Tobacco Products.<sup>8</sup> 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.

Kenya's score for the year 2021 is 39, which is one point better than the score for the year 2020.

<sup>6</sup> <https://www.reuters.com/article/kenya-british-american-idUSL8N2GY2SR>

<sup>7</sup> BAT Kenya. <https://bit.ly/3mTnlxU>

<sup>8</sup> UN Treaty Collection. 4.a. Protocol to eliminate illicit trade in tobacco products. Seoul 12 Nov 2012. <https://bit.ly/3smfLIX>



## Summary Findings

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### **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.

### **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.

### **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.

### **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

### **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.

### **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.

### **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,

### **Recommendations**

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A number of recommendations made in the Kenya 2020 Tobacco Industry Interference Index Report are yet to be implemented. Key among the recommendations in the 2020 report was the full implementation of the provisions of the Tobacco Control Regulations (TCR) 2014 with specific emphasis to Part V more so now that the Supreme Court of Kenya dismissed the petition by BAT (Kenya) Ltd against Tobacco Control Regulations (TCR) 2014.

It is recommended that action be taken on tobacco industry and public officials who flout the provisions of the law with regard to tobacco industry interference such as Part V of Tobacco Control Regulations (TCR) 2014, Tobacco Control Act 2007 and Article 5.3 of the WHO FCTC to which Kenya is a Party. Such action would serve as a deterrent and indication of government commitment to stop tobacco industry interference.

The Ministry of Health and the entire tobacco control fraternity should embark on a massive awareness campaign targeted at all government departments and officials right from the Presidency on existence of tobacco control statutes and their provisions in regard to protecting public health from tobacco industry interference and the obligations and duties of state organs and public officials thereof. This should be with a view to ensuring coherence within government on safeguarding public health from tobacco industry interference.

There is an urgent need for more independent research to counter misinformation by the tobacco industry on the safety of emerging products such nicotine pouches. As the safety of such products is yet to be established, it is recommended that the industry be stopped from making claims that the products are a safer alternative and that the precautionary principle approach be applied meaning that the products are removed from the market.



## 2021 Tobacco Industry Interference Index Results and Findings

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| <b>INDICATOR 1: Level of Industry Participation in Policy-Development</b>  |   |   |   |   |   |   |
| 1. The government <sup>9</sup> accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry <sup>10</sup> in setting or implementing public health policies in relation to tobacco control <sup>11</sup> (Rec 3.1)  | 0 |   |   |   |   |   |
| <p>According to the Kenya Tobacco Control Regulations 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<sup>12</sup></p> <p>There was no evidence of incidence against this regulation during the period under review.</p> |   |   |   |   |   |   |
| 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 |   |   |   |   |   |
| <p>In accordance with the Tobacco Control Regulations, the government does not accept, support or endorse any policy or legislation drafted by or in collaboration with the tobacco industry.</p> <p>There was no evidence of incidence against this regulation during the period under review.</p>  |   |   |   |   |   |   |
| 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 |   |   |   |   |
| <p>Interaction allowed with conditions / restrictions</p> <p>Tobacco Control Regulations 2014, 30 (g) restrict involvement of tobacco industry in the development of tobacco control policies and laws except in public forums where the industry is presenting its views to the public authority on relevant tobacco control laws</p>   |   |   |   |   |   |   |

<sup>9</sup> 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

<sup>10</sup> The term, “tobacco industry’ includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

<sup>11</sup> “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

<sup>12</sup> Kenya Tobacco Control Regulations 2014: [http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/169-Tobacco\\_Control\\_Regulations\\_2014](http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/169-Tobacco_Control_Regulations_2014)

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| and policies;   |   |   |   |   |   |   |
| (h) not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.  |   |   |   |   |   |   |
| 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) <sup>13</sup> (Rec 4.9 & 8.3)   |   | 1 |   |   |   |   |
| <p>Government does not nominate persons representing the tobacco industry to be part of the COP delegation. Previous COP8 (2018) delegation<sup>14</sup> included: Amb. C. Mailu, Amb. A. Kihurani, Dr. P. Cherutich, Mr P. Tum, Dr H. Kabiru, Ms D. Kiptui, Mr C. Ngeywo, Dr. G. Gathecha, Ms M. Afandi, Mr J. Njagi, Hon. C. Njagagwa, Hon. G. Tongoyo, Hon. G. Cheruiyot, Mr C. Korir, and Ms C. Odhiambo who are all government officials.</p> <p>This is consistent with the Tobacco Control Regulations – No.29 which states that a “person working for the tobacco industry or any setting working to further the interests of the tobacco industry shall not serve on Kenyan delegations to meetings of the Conference of Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.”</p> |   |   |   |   |   |   |
| <b>INDICATOR 2: Industry CSR activities</b>   |   |   |   |   |   |   |
| 5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)   |   |   |   | 3 |   |   |
| B. The government (its agencies and officials) receives contributions <sup>15</sup> (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)  |   |   |   |   |   |   |
| <p>The Tobacco Control Regulations 2014 in 30(f) does not allow public officials to endorse, support, form partnerships with or participate in activities of the tobacco industry described as corporate social responsibility;</p> <p>BAT 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 and distributed sanitisers to counties in partnership with Kenya Pipeline Company besides providing masks to farmers and running water to over 4,500 families during the year 2020 as part of their CSR activities during the COVID-19 pandemic.<sup>16 17</sup></p>  |   |   |   |   |   |   |

<sup>13</sup> Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

<sup>14</sup> [https://www.who.int/fctc/cop/sessions/cop8/LOP\\_Final.pdf](https://www.who.int/fctc/cop/sessions/cop8/LOP_Final.pdf)

<sup>15</sup> political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

<sup>16</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOBRP2M/\\$FILE/2020\\_Half\\_Year\\_Results\\_Presentation.pdf?openelement](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOBRP2M/$FILE/2020_Half_Year_Results_Presentation.pdf?openelement)

<sup>17</sup> [http://www.batkenya.com/group/sites/bat\\_b4alxz.nsf/vwPagesWebLive/DOB4AMDW/\\$FILE/medMDBX98PD.pdf?openelement](http://www.batkenya.com/group/sites/bat_b4alxz.nsf/vwPagesWebLive/DOB4AMDW/$FILE/medMDBX98PD.pdf?openelement)

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| <b>INDICATOR 3: Benefits to the Tobacco Industry</b>  |   |   |   |   |   |   |
| 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)  |   | 1 |   |   |   |   |
| <p>In a letter dated 18<sup>th</sup> February 2021 addressed to the Health Cabinet Secretary, BAT (Kenya) Ltd requested to be allowed a transitional period of 9 – 12 months to sell LYFT' a nicotine pouch marketed by BAT (Kenya) Ltd as an alternative to cigarettes for addicted smokers, stocks equivalent of 400,000 cans before it could fully implement a directive to have LYFT fully comply with the provisions of the Tobacco Control Act 2007 and the Tobacco Control Regulations 2014. At the time of compiling this report, LYFT was not yet back in the market and we could not confirm whether government had allowed the request from BAT (Kenya) Ltd.</p>   |   |   |   |   |   |   |
| 7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)  |   |   |   | 3 |   |   |
| <p>The Government listed tobacco products as part of the essential products under Foods and Beverages during the COVID-19 pandemic.<sup>18 19 20</sup></p> <p>However, in a revision of the listing of Essential Services and Products issued on 29<sup>th</sup> March 2021 through a Special Issue of The Kenya Gazette Supplement No. 50 Legal Notice No. 37, the Government dropped tobacco products from the list, [ We have the PDF copy of the Gazette Notice but are yet to get the link]</p> <p>In 2019, BAT (Kenya) Ltd launched new smokeless oral tobacco product LYFT, a nicotine pouch placed under the lip.<sup>21 22</sup> Government went ahead and registered LYFT under the Pharmacy and Poisons Board (PPB) thereby classifying LYFT as a drug thereby shielding LYFT from being regulated as a tobacco product in Kenya.<sup>23</sup> This gave BAT (Kenya) Ltd room to market and sell their nicotine pouches dispensed in automatic vending machines<sup>24</sup> during the COVID-19 pandemic without stringent regulations and to make huge profits which enabled BAT (Kenya) Ltd to make huge profit in the Financial Year 2020 while other companies were making loses during the same year because of the pandemic<sup>25</sup>.</p> |   |   |   |   |   |   |

<sup>18</sup> <https://www.industrialization.go.ke/images/downloads/frequently-asked-questions-for-business.pdf>

<sup>19</sup> <https://sdgkenyaforum.org/content/covid/essential-product-list.pdf>

<sup>20</sup> <https://www.the-star.co.ke/news/2020-04-08-kenya-lists-alcohol-tobacco-among-essential-products/>

<sup>21</sup> <https://www.businessdailyafrica.com/corporate/companies/BAT-to-build-Sh2-5bn-nicotine-pouch-plant/4003102-5463238-voclhz/index.html>

<sup>22</sup> <https://www.the-star.co.ke/health/2019-09-08-nicotine-pouches-in-kenya-must-carry-health-warnings-board/>

<sup>23</sup> <https://www.the-star.co.ke/health/2020-06-02-board-wants-nicotine-regulated-under-tobacco-control-act/>

<sup>24</sup> Reuters. Kenya's Health Minister questions licensing of BAT's LYFT nicotine pouches. 7 Oct 2020

<https://www.reuters.com/article/kenya-british-american-idU5L8N2GY2SR>

<sup>25</sup> <https://www.businessdailyafrica.com/bd/corporate/companies/bat-profit-hits-sh5-5bn-on-exports-cost-cutting-3296302>

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| <p>However, following interventions by tobacco control advocates, the Government has in April 2021 put the nicotine product LYFT under regulation as a tobacco product.<sup>26 27</sup></p> <p>In a media article in September 2020, BAT (Kenya) Ltd stated that they were in talks with the treasury and Kenya Revenue Authority (KRA) to have the nicotine pouches LYFT exempted from excise duty for two to three years.<sup>28</sup> BAT (Kenya) Ltd said the tax holiday would help it start manufacturing LYFT locally and set up distribution networks for local sales and exports in six-nation East African Community and 21-member COMESA markets. Tobacco control advocates responded to this matter through several media activities including press briefing and articles.<sup>29 30 31</sup> At the time of compiling this report, we have not received information on whether this request had been or would be granted.</p> <p>In January 2019, BAT (Kenya) Ltd was awarded the Energy Compliance Certificate for its factory in Nairobi and Thika GLT plant by the Energy Regulatory Commission (ERC), which it promoted as endorsement of it being a “responsible corporate citizen”.<sup>32</sup> This certificate is valid for three years (December 2021).</p> |   |   |   |   |   |   |
| <b>INDICATOR 4: Forms of Unnecessary Interaction</b>  |   |   |   |   |   |   |
| <p>8. Top level government officials (such as President/ Prime Minister or Minister<sup>33</sup>) 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)</p>   |   |   |   | 3 |   |   |
| <p>To mark the World Environment Day 2020, a team from the National Environment Management Authority (NEMA) led by the Nairobi County Director of Environment, Mr. Anthony Saisi joined BAT (Kenya) Ltd at their headquarters in Nairobi in BAT’s activities to mark the day.<sup>34</sup> BAT’s publicity press release refers to its collaboration with the county government on another activity of Migori on a project to plant 200,000 trees.</p> <p>The Tobacco Control Regulations 2014 Section 22. (1) 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.</p>  |   |   |   |   |   |   |
| <p>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</p>   | 0 |   |   |   |   |   |

<sup>26</sup> <https://www.businessdailyafrica.com/bd/markets/market-news/state-0-bat-nicotine-pouches-as-tobacco-products-3300512>

<sup>27</sup> <https://nation.africa/kenya/business/ministry-bat-agree-on-nicotine-product-3347990>

<sup>28</sup> <https://www.businessdailyafrica.com/bd/corporate/companies/bat-eyes-tax-holiday-for-nicotine-pouches-2301640>

<sup>29</sup> <https://www.the-star.co.ke/news/2020-10-04-lobbies-protest-bats-push-for-tax-holiday-on-nicotine-pouches/>

<sup>30</sup> <https://www.the-star.co.ke/health/2020-09-29-granting-tax-holiday-for-bat-nicotine-pouch-plant-a-bad-idea/>

<sup>31</sup> <https://www.standardmedia.co.ke/business/article/2001388782/anti-tobacco-lobbies-warn-against-agreeing-to-bat-tax-break-request>

<sup>32</sup> BAT Kenya. BAT Kenya awarded the ERC Energy Compliance Certificate. January 25, 2019 <https://bit.ly/3geuygl>

<sup>33</sup> Includes immediate members of the families of the high-level officials

<sup>34</sup> [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)

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| to minors. (including monetary contribution for these activities) (Rec 4.3)   |   |   |   |   |   |   |
| <p>The Tobacco Control Regulations 2014 forbids the government from accepting any assistance from the tobacco industry on any enforcement activities.</p> <p>BAT (Kenya) Ltd website states, “As a key stakeholder in the tobacco industry, we fully support local governments, regulators and government agencies including Kenya’s Inter-Agency Anti-Illicit Working Group and the Anti-Counterfeit Agency, regional bodies including the EAC and COMESA as well as international organisations such as the World Trade Organization and World Health Organization, in seeking to eliminate all forms of illicit tobacco trade.”<sup>35</sup> While there is no specific information on what kind of support BAT (Kenya) Ltd is offering the local governments and regulators this will not be the case as in May 2020 Kenya, ratified the Protocol to Eliminate Illicit Trade in Tobacco Products. The Protocol clearly mentions Parties need to protect their policy from tobacco industry interference.<sup>36</sup></p>                 |   |   |   |   |   |   |
| 10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1)<br>NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.  | 0 |   |   |   |   |   |
| <p>The Tobacco Control Regulations forbids the government from entering into any partnership or agreements with the tobacco industry. No evidence were recorded for this reporting period.</p>  |   |   |   |   |   |   |
| <b>INDICATOR 5: Transparency</b>  |   |   |   |   |   |   |
| 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)  |   |   |   | 3 |   |   |
| <p>Tobacco Control Regulations 2014 Section 22 sets out the procedure for all interaction between the government officials and the tobacco industry:</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ A minimum of two public officers shall be present in any interactions with the tobacco industry.</li> <li>▪ Before commencing any interaction with the tobacco industry, the public officers shall state, in writing, that the interaction does not imply an endorsement of tobacco industry practices and that that no relationship, collaboration or partnership shall be construed whatsoever from the interaction.</li> </ul> <p>However, despite the existence of this regulation, information on meetings between public officials and TI is not readily accessible owing to bureaucracy. Information on the</p> |   |   |   |   |   |   |

<sup>35</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJU](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJU)

<sup>36</sup> <https://bit.ly/3dqe9DN>

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| interactions are mostly heard through the media with no details on compliance to the requirements of Section 22 of The Tobacco Control Regulations 2014. Furthermore, a number of public officers seem not aware of this regulation and hence keep no records.   |   |   |   |   |   |   |
| 12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)  |   | 1 |   |   |   |   |
| <p>The Tobacco Control Regulations 2014, in Part III; Section 13 requires the tobacco manufacturer to, at the end of every calendar year, to submit a report to the Cabinet Secretary information, including, (e) affiliated organizations and its agents or persons acting on its behalf.<sup>37</sup> However this has not been fully implemented. TI provides some information required under this regulation through their annual reports and also for other legal requirements. However some information such as that on requirement (e) could not be established.</p>  |   |   |   |   |   |   |
| <b>INDICATOR 6: Conflict of Interest</b>   |   |   |   |   |   |   |
| 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 |   |   |   |   |
| <p>Tobacco Control Regulations 2014 Section 34 states that “Every public authority involved in tobacco control shall at the end of every calendar year, prepare and submit an annual report on the implementation of this Part to the Board 2) A report prepared and submitted pursuant to paragraph (1) shall specify-</p> <ul style="list-style-type: none"> <li>(a) the measures undertaken during that period to implement this part;</li> <li>(b) the achievements and shortcomings relating to implementation of this part and actions proposed to improve performance in furtherance of this part;</li> <li>(c) any lobbying, philanthropy, political contributions and all other activities by the tobacco industry;</li> <li>(d) any business and non-business partners and supporters of tobacco industry involved with the public authority”</li> </ul> <p>However, this has not been implemented. We could not locate any template of mechanism established to enforce this provision of the Tobacco Control Regulations 2014.</p> |   |   |   |   |   |   |
| 14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)  |   |   | 2 |   |   |   |

<sup>37</sup> The Tobacco Control Act 2014 [http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/169-Tobacco\\_Control\\_Regulations\\_2014](http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/169-Tobacco_Control_Regulations_2014)

|   | 0 | 1 | 2 | 3 | 4 | 5 |
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| Martin Oduor Otieno, Board Member BAT (Kenya) Ltd <sup>38 39</sup> was a former Permanent Secretary Ministry of Finance 1999 – 2001, <sup>40</sup> served as part of the Dream Team appointed by President Moi to turn around the Kenyan Economy. Martin also served as the Chief Executive Officer of the Kenya Commercial Bank (KCB) between 2007 and 2012 <sup>41</sup> . KCB is a fully Government owned bank. <sup>42</sup>  |   |   |   |   |   |   |
| 15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)  |   |   |   |   | 4 |   |
| <p>Rita Kavashe was appointed the Independent Non-executive Chairperson of British American Tobacco (Kenya) Ltd in September 2020. She is also a member of the Board of Kenya Vision 2030, the country’s development plan from 2008 to 2030 which was launched on 10 June 2008 by the President. The Vision is to be implemented in 5-year plans and transform Kenya into “a newly-industrialising, middle income country providing a high quality of life to all its citizens in a clean and secure environment”.<sup>43 44</sup> She sits in a number of Government Committees. She is also the Chairperson of the Kenya Roads Board and a member of the board of National Transport and Safety Authority (NTSA).</p> <p>Carol Musyoka<sup>45</sup> is a current independent non-executive director of BAT(Kenya) Ltd<sup>46</sup> since February 2011<sup>47</sup> while also the Chairperson of the Board of Directors of Business Registration Services (BRS)<sup>48</sup> which is a department under the Office of the Attorney General whose mandate is to oversee the operations of the Companies Registry, Movable Property Security Rights Registry (Collateral Registry), Insolvency (Official Receivers) Registry and the Hire Purchase Registry. Carol is also currently a board member of Industrial &amp; Commercial Development Corporation (ICDC).<sup>49</sup> ICDC is a state corporation mandated to facilitate promotion of the industrial and economic development of Kenya including and not limited to development financing. Carol previously served as a board member of Competition Authority of Kenya (CAK).<sup>50</sup></p> <p>Samson Macharia Irungu, a member of the BAT (Kenya) Ltd Board of Directors since 2019<sup>51</sup> is also the current Managing Director of Kenya Pipeline Company (KPC)<sup>52</sup>. KPC is 100% owned by the Government and complies with the provisions of the State Corporations Act (Cap 446) of 1986.<sup>53</sup></p> |   |   |   |   |   |   |

<sup>38</sup> Board of BAT [https://en.wikipedia.org/wiki/Martin\\_Oduor-Otieno](https://en.wikipedia.org/wiki/Martin_Oduor-Otieno)

<sup>39</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86)

<sup>40</sup> Permanent Secretary Ministry of Finance <https://bit.ly/3w1dWxc>

<sup>41</sup> [https://en.wikipedia.org/wiki/Martin\\_Oduor-Otieno](https://en.wikipedia.org/wiki/Martin_Oduor-Otieno)

<sup>42</sup> [https://en.wikipedia.org/wiki/KCB\\_Group#Overview](https://en.wikipedia.org/wiki/KCB_Group#Overview)

<sup>43</sup> <https://vision2030.go.ke/board/rita-kavashe/>

<sup>44</sup> <https://kenyanwallstreet.com/rita-kavashe-appointed-to-the-board-of-bat-kenya/>

<sup>45</sup> <https://biography.omicsonline.org/kenya/east-african-breweries-ltd/carol-musyoka-592227>

<sup>47</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86)

<sup>48</sup> <https://brs.go.ke/board.php>

<sup>49</sup> <http://icdc.co.ke/index.php/about-us/who-we-are/current-board-of-directors/item/ms>

<sup>50</sup> <https://www.cak.go.ke/sites/default/files/annual-reports/FY%202017-2018%20CAK%20Annual%20Report.pdf>

<sup>51</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86)

<sup>52</sup> <https://www.kpc.co.ke/directors/>

<sup>53</sup> <https://www.kpc.co.ke/about/>

|   | 0 | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|---|
| The Tobacco Control Act 2007 clause 26 states that, “A public officer who has or has had a role in setting public health policies with respect to tobacco control shall not engage in such occupational activity within a period of three years from the time the persons ceases being a public officer.”   |   |   |   |   |   |   |
| <b>INDICATOR 7: Preventive Measures</b>   |   |   |   |   |   |   |
| 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)   |   |   |   |   | 4 |   |
| Tobacco Control Regulations 2014 Section 22(4) states that “Any public officer participating in any interaction with tobacco industry shall prepare a formal record of the interaction and submit to the relevant public authorities including the Cabinet Secretary on request,” However, there is no implementing procedure in place to disclose all records of interactions as envisaged by Tobacco Control Regulations 2014.  |   |   |   |   |   |   |
| 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 |   |
| Part V. Section 24 of Tobacco Control Regulations 2014 provides:<br><br>The Cabinet Secretary shall prescribe a code of conduct prescribing standards for any public officer including service providers, contractors consultants involved in setting or implementing public health policies for tobacco control.<br><br>The Code of Conduct is yet to be developed even after the BAT (Kenya) Ltd petition challenging the implementation of the Tobacco Control Regulations 2014 was dismissed by the Supreme Court in November 2019 paving the way for the implementation of the provisions of the regulations. We could not establish the reasons for the delay by the time of compiling this report. |   |   |   |   |   |   |
| 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)  |   |   |   |   | 4 |   |
| Part III of Tobacco Control Regulations 2014 specifies the information to be provided by the manufacturers. This includes information on composition and quality of tobacco products, market share, sales and revenue earned and information on affiliate organisations and agents. However, information on marketing expenditure, lobbying, philanthropy, political contributions are not listed as information needed to be provided for by manufacturers,  |   |   |   |   |   |   |



|   | 0 | 1 | 2 | 3         | 4 | 5 |
|---|---|---|---|-----------|---|---|
| According to the 2016 report submitted by the government to the COP, “The Ministry of Health would have an inventory of the reports from Tobacco Industry and this would be accessible to the public upon request. Maybe in the recommendations we could in future establish a repository that can be readily available for access to the public.” <sup>54</sup> As at the time of compiling this report there is no progress in developing the inventory.  |   |   |   |           |   |   |
| 19. The government has a program / system/ plan to consistently <sup>55</sup> raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)  |   |   |   | 3         |   |   |
| <p>The Tobacco Control Regulations 2014 Section 30(b) requires public authority to adopt mechanisms to raise awareness within its mandate about the interference and vested interests of tobacco industry with the development and enforcement of tobacco control legislations and policies.</p> <p>The government has reported, in line with the WHO FCTC Article 5.3 guidelines, that it provides access to a wide range of information on the tobacco industry to the general public.<sup>56</sup> However, there is no record of the existence of a mechanism to raise awareness according to the Tobacco Control Regulations 2014.</p>                   |   |   |   |           |   |   |
| 20. The government has put in place a policy to disallow the acceptance of 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)   |   | 1 |   |           |   |   |
| <p>Tobacco Control Regulations 2014 section 31 prohibits government officials to accept all forms of contributions/ gifts from the tobacco industry. Specifically, (1) Any entity which is part of the tobacco industry shall not grant any monetary and non-monetary payments, gifts and services to public authorities or a public officer. (2) A public authority or officer shall not receive any monetary or non-monetary payment, gift or favour from tobacco industry. (3) A public authority or officer who contravenes this Regulation commits an offence. There is no publicly available information on whether this provision was contravened.</p> |   |   |   |           |   |   |
| <b>TOTAL</b>  |   |   |   | <b>39</b> |   |   |

<sup>54</sup> Kenya 2016 report the COP [https://untobaccocontrol.org/impldb/wp-content/uploads/reports/kenya\\_2016\\_report\\_final.pdf](https://untobaccocontrol.org/impldb/wp-content/uploads/reports/kenya_2016_report_final.pdf)

<sup>55</sup> 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.

<sup>56</sup> [https://untobaccocontrol.org/impldb/wp-content/uploads/Maldives\\_2018\\_report.pdf](https://untobaccocontrol.org/impldb/wp-content/uploads/Maldives_2018_report.pdf)



## ANNEX A: SOURCES OF INFORMATION

### TOBACCO INDUSTRY ACTIVITY

#### LOCAL TOBACCO COMPANIES

| Top 5 Tobacco Companies/distributors | Market Share and Brands  | Source  |
|--------------------------------------|--|---|
| British American Tobacco (BAT) Kenya | 78.8% <ul style="list-style-type: none"> <li>• Dunhill</li> <li>• Rothmans</li> <li>• Embassy</li> <li>• Sportsman</li> <li>• SM</li> <li>• Safari</li> <li>• Roosters</li> <li>• LYFT</li> </ul>  | Euromonitor International Company Market Share – Kenya<br><br><a href="https://africanfinancials.com/company/ke-bat/#tab-2dc58bed77c7a91c4a9">https://africanfinancials.com/company/ke-bat/#tab-2dc58bed77c7a91c4a9</a> |
| Mastermind Tobacco Kenya (MTK)       | 16% <ul style="list-style-type: none"> <li>• Supermatch Kings</li> <li>• Supermatch Menthol</li> <li>• Rocket</li> <li>• Supermatch Kings HLP</li> <li>• Ralli</li> <li>• Ralli Menthol</li> <li>• Comet</li> <li>• Superman</li> <li>• Rally Kings</li> <li>• Summit Lights</li> <li>• Super</li> </ul> | Euromonitor International Company Market Share – Kenya<br><br><a href="https://www.mastermindkenya.co.ke/ourbrands">https://www.mastermindkenya.co.ke/ourbrands</a>   |

#### TOBACCO INDUSTRY FRONT GROUPS

| Top 5 Tobacco Industry Representative     | Type (Front Group/ Affiliate/ Individual)  | URL  |
|---|--|--|
| Joseph Wanguhu<br>Chief Executive Officer | Kenya Tobacco Farmers Association (KETOFA) | <a href="https://web.facebook.com/ketofa/?_rdc=1&amp;_rdr">https://web.facebook.com/ketofa/?_rdc=1&amp;_rdr</a><br><br><a href="https://ke.linkedin.com/in/joseph-wanguhu-60967a29">https://ke.linkedin.com/in/joseph-wanguhu-60967a29</a> |

## NEWS SOURCES

| Top 5 Newspaper/Dailies | Type<br>(Print/Online) | URL   |
|-------------------------|------------------------|---|
| The Star Newspaper      | both                   | <a href="https://www.the-star.co.ke/">https://www.the-star.co.ke/</a>                   |
| The Standard Newspaper  | both                   | <a href="https://www.standardmedia.co.ke/">https://www.standardmedia.co.ke/</a>         |
| Business Daily Africa   | both                   | <a href="https://www.businessdailyafrica.com/">https://www.businessdailyafrica.com/</a> |
| Reuters                 | online                 | <a href="https://www.reuters.com/">https://www.reuters.com/</a>                         |
| Nation                  | both                   | <a href="https://nation.africa/">https://nation.africa/</a>                             |



### **About STOP (Stopping Tobacco Organizations and Products)**

STOP is a global tobacco industry watchdog whose mission is to expose the tobacco industry strategies and tactics that undermine public health. STOP is a partnership between The Tobacco Control Research Group at the [University of Bath](#), [The Global Center for Good Governance in Tobacco Control \(GGTC\)](#), [The Union](#) and [Vital Strategies](#).



### **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.