

**KENYA**

2020

TOBACCO  
INDUSTRY  
INTERFERENCE  
INDEX

## Executive Summary

The 2020 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). This Global Tobacco Index, originally initiated by the Southeast Asia Tobacco Control Alliance (SEATCA), is produced by the Global Centre for Good Governance in Tobacco Control (GGTC) as part of the STOP (Stopping Tobacco Organizations and Products) global tobacco industry watchdog. GGTC, based at the School of Global Studies, Thammasat University, is a joint initiative with SEATCA. It has been designated as the WHO FCTC Knowledge Hub on Article 5.3 and its activities focus on addressing obstacles to the tobacco control from the tobacco industry and in empowering governments to advance tobacco control.<sup>1</sup>

The Tobacco Industry (TI) Interference Index is therefore a report on how countries are implementing the WHO Framework Convention on Tobacco Control (FCTC) Article 5.3 guidelines. A questionnaire based on Article 5.3 guidelines has been developed and is used to prepare a national report. Information needed to fill this questionnaire is sourced from news reports, tobacco industry reports and website and relevant government reports and other publicly available materials.

The 2020 Kenya Tobacco Industry Interference Index has been prepared by Consumer Information Network (CIN). This is the second report for Kenya, the first report being that for 2019. It should be noted that whereas considerable effort has been made to include all publicly available information on tobacco industry interactions with the public officers and authorities, there is still information not available to us and we would appreciate sharing such information and documents. We take this early opportunity to thank all those who have contributed to the development of the survey and the development of this report.

This report gives an insight into the Kenya Government implementation of the FCTC Article 5.3 Implementation Guidelines. From the report, and reading it together with the 2019 report, you will notice that there are a number of areas in which the Kenya Government has done considerably well. However, you will also notice that despite the ruling by the Supreme Court of Kenya in November 2019 against the petition by British American Tobacco (BAT) Kenya that then paved way for full implementation of the Tobacco Control Regulations 2014 which, among other things, provides for the domestication and implementation of WHO Framework Convention on Tobacco Control Article 5.3 Guidelines, a number of public officers and authorities still violate the regulations in their interaction with

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<sup>1</sup> <https://globaltobaccoindex.org/about>

tobacco industry. It is also sad to note that a number of provisions of the Tobacco Control Act 2007 including those on Tobacco Advertisement Promotion and Sponsorship (TAPS) have been violated by the tobacco industry and public officers and authorities especially during the current COVID-19 pandemic. Specifically, the donation of BAT(K) 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 the listing of tobacco under the essential products list during in the COVID-19 containment measures have eroded the Government efforts and determination and exposed another tobacco industry tactic especially during such times.

Overall, Kenya scores quite well in existence of laws enacted to address tobacco industry interference but dismally in the implementation of the provisions of the laws as far as implementation of WHO FCTC Article 5.3 in concerned.

The Kenya Tobacco Industry Interference Index will be updated annually to show scores on how well Kenya controls:

- The industry's level of participation in policy development
- Tobacco related corporate social responsibility activities
- Benefits to the tobacco industry
- Forms of unnecessary government-industry interaction
- Ensure transparency
- Conflicts of interest
- Measures that prevent industry influence.

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**CHIEF EXECUTIVE OFFICER**

**CONSUMER INFORMATION NETWORK**

**Nairobi, Friday 14<sup>th</sup> August 2020**

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## Background and Introduction

Smoking remains a major public health issue in Kenya. Kenya has the highest recorded smoking prevalence in Sub-Saharan Africa.<sup>4</sup> In 2014 an estimated 11.6% of the adult population (2.5 million adults) used tobacco products, and ten percent of 13-15-year-olds (12.8% of boys and 6.7% girls).<sup>56</sup> By 2017, Euromonitor International estimated that the total smoking population had reached 3 million (2.7 million men and 1.3 million women), and while overall smoking prevalence had fallen slightly to 11%, the total number of smokers in the country continues to rise.<sup>2</sup>

The Tobacco Control Act was passed in 2007 and in 2014 the Tobacco Control Regulations was enacted. However the tobacco industry has been a major problem thwarting government efforts and interfering in the implementation of the Tobacco Control Regulations 2014. This has been well documented.<sup>3</sup> In 2015, British American Tobacco (BAT) challenged the constitutionality of Kenya's 2014 Regulations in the High Court and then the Court of Appeal. Four years later, in November 2019, the Supreme Court ruled to uphold the regulations.<sup>4</sup>

The tobacco industry in Kenya is dominated by just two companies (Figure 1), BAT controlling more than 70% of cigarette market share and second company, Mastermind Tobacco Kenya Ltd. (MTK) which sells brands such as Supermatch Menthol, Rocket, Supermatch. In January 2019, it was reported that MTK was in talks to sell its majority stake to Philip Morris International (PMI).<sup>5</sup> This deal will enable PMI to expand its presence in Africa, which at the moment is only concentrated in North Africa.

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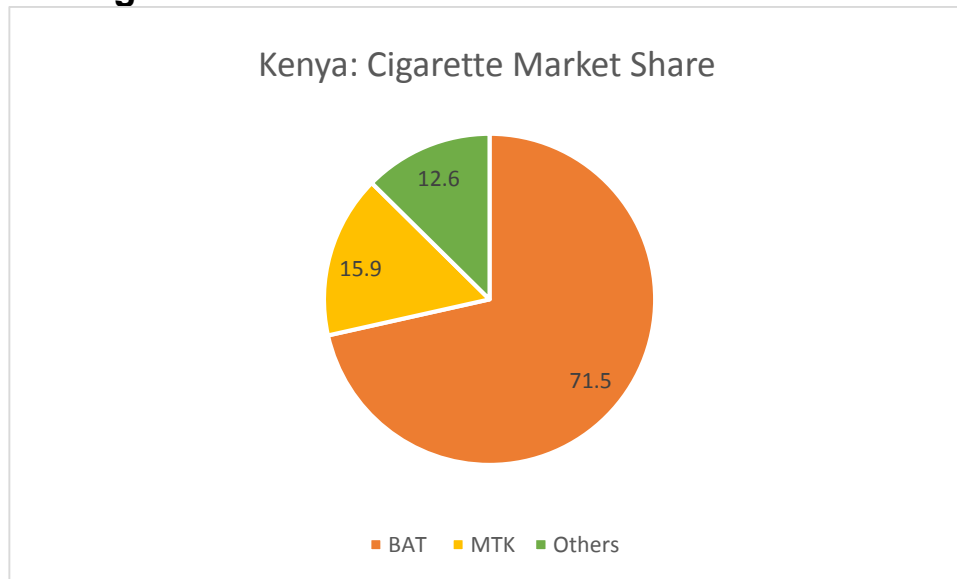
<sup>2</sup> <https://tobaccotactics.org/wiki/kenya-country-profile/>

<sup>3</sup> TobaccoTactics. <https://tobaccotactics.org/index.php?title=Kenya-Timeline:IndustryInterferencewiththeTobaccoControlRegulations2014>

<sup>4</sup> ATCA Press Release. Supreme Court Upholding of Tobacco Control Regulations in Kenya 16 November 2019 <https://www.docdroid.net/wSaphW7/atca-statement-kenya-tc-regulations-pdf>

<sup>5</sup> The Kenyan Wallstreet, Mastermind Tobacco in Talks to Sell Majority Stake to an American Cigarettes Manufacturer; 26 Jan 2019 <https://kenyanwallstreet.com/mastermind-tobacco-in-talks-to-sell-majority-stake-to-an-american-cigarettes-manufacturer/>

**Figure 1**



BAT expanded its reach in the country in 2019. It sells its cigarettes through 50,000 retailers. It expanded 4,000 additional retail outlets resulting in a 4% growth in 2019 compared to 2018. In 2019 it launched LYFT, which is an oral nicotine pouch placed under the lip and the nicotine is absorbed through the gum.

The WHO Framework Convention on Tobacco Control (FCTC) Article 5.3 empowers the government to protect itself from tobacco industry interference. This report reviews on how the government is implementing Article 5.3 guidelines. It uses the questionnaire on Tobacco Industry Interference Index developed by the Southeast Asia Tobacco Control Alliance.<sup>6</sup> This report is based on publicly available evidence. Incomplete information is acknowledged as a limitation. This is the second report for Kenya. Kenya has a total score of 40, which is a deterioration from last year in which Kenya scored 33.

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<sup>6</sup> Assunta M. Dorotheo E.U. SEATCA Tobacco Industry Interference Index: a tool for measuring implementation of WHO Framework Convention on Tobacco Control Article 5.3; Tob Control <http://dx.doi.org/10.1136/tobaccocontrol-2014-051934>

## **Summary Findings**

### **1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT**

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. Kenya's delegation to the COP meetings do not include any representatives from the tobacco industry.

### **2. INDUSTRY CSR ACTIVITIES**

Government officials do not endorse, accept or participate in tobacco related CSR activities. However, BAT made a donation of Kshs.10.6m (US\$100,000) to the COVID-19 Emergency Response Fund, a fund that was established by the President of Kenya H.E. Uhuru Kenyatta

### **3. BENEFITS TO THE INDUSTRY**

In 2017 the Treasury Cabinet Secretary proposed legislation that reverts from single tax system (enacted through the Excise Duty Act, 2015) to the tiered system which benefits the tobacco industry. The delay in fully implementing the Tobacco Control Regulations works to benefit the tobacco industry. However, in 2019 Kenya increased excise tax on tobacco by 20 percent. BAT described this tax increase as "excessive and unpredictable" which increases and threatens the sustainability of tobacco businesses. However, on another front, The Government listed tobacco products as part of the essential products under Foods and Beverages during the COVID-19 pandemic

### **4. UNNECESSARY INTERACTION**

The Tobacco Control Regulations forbids the government from accepting any assistance from the tobacco industry on any enforcement activities or entering into any partnership with it. In 2019, BAT was awarded the Solid Rock Commendation (Lifetime Achievement) for Exporter of the Year Award through a project of Kenya Export Promotion Council (EPC) which is a state agency. The Deputy President of Kenya attended the event along with a number of Cabinet Secretaries and other government officials.

### **5. TRANSPARENCY**

The Tobacco Control Regulations sets out the procedure for all interactions between the government officials and the tobacco industry. The Regulations requires full disclosure of political contributions from the tobacco industry. A report must be prepared and submitted to the Board: (c) "any lobbying, philanthropy, political contributions and all other activities by the tobacco industry." However, there is no publicly available record of how this is being implemented.

## **6. CONFLICT OF INTEREST**

The Tobacco control Act requires that any affiliation to the tobacco industry by a member of the tobacco control board must be declared for purposes of determining any potential conflict of interest.

This report nevertheless also finds that a member of the Board of Directors of BAT(K) is also the Chairperson of the Board of Directors of Business Registration Services (BRS) which is a department under the Office of the Attorney General.

## **7. PREVENTIVE MEASURES**

Overall there has been no progress in implementing preventive measures since 2018. While the Tobacco Control Regulations requires a procedure to be put in place to disclose all records of interactions, however the implementing procedure is not ready. The Cabinet Secretary has to prescribe a code of conduct for public officer including service providers, contractors, consultants involved in setting or implementing public health policies for tobacco control, however this has not been developed yet.

As of 2019 there is no progress in establishing a repository of reports from the tobacco industry that can be readily available for access to the public.



## Recommendations

The Tobacco Control Regulations 2014 should be implemented in full forthwith especially now that the Supreme Court has made it's ruling on the petition by the tobacco industry and in particular:-

1. There is blatant abuse and violation of Part V of the Tobacco Control Regulations 2014 by public officers including high level ranking public officers at the national and county governments. The Cabinet Secretary Ministry of Health should develop the code of conduct envisaged in Section 24 of Tobacco Control Regulations 2014 and effectively implement the same. It is also important that the Ministry of Health creates awareness among all sectors of government on the code.
2. Tobacco Control Regulations requires a procedure to be put in place to disclose all records of interactions, this procedure should be developed and implemented. Section 34 of the Tobacco Control Regulations 2014 in particular requires every public authority involved in tobacco control to prepare and submit annual reports on Part V (PUBLIC-TOBACCO INDUSTRY INTERACTIONS) to the Tobacco Control Board. The report is to include, among others, any lobbying, philanthropies, political contributions and all other activities of the tobacco industry and any business and non-business partners and supporters of tobacco industry involved with the public authority. These reports should be prepared and made public.
3. Inventory on the tobacco industry – to establish a repository that can be readily available for access to the public on information about the tobacco industry.
4. The Government should ensure strict adherence to the Tobacco Control Regulations 2014, Tobacco Control Act 2007, The Constitution of Kenya 2010 and the article 5.3 of the WHO Framework Convention on Tobacco Control (FCTC) even in times of pandemics such as the current pandemic of COVID-19.

## Kenya: 2020 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>7</sup> accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry <sup>8</sup> in setting or implementing public health policies in relation to tobacco control <sup>9</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>10</sup></p> <p>BAT's 2019 annual report also states: "In 2019, we continued engaging with various government departments in pursuing a balanced and predictable regulatory and fiscal environment for our business."<sup>11</sup> But there is no record to substantiate this from the government.</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>						
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 30 (g) restrict involvement of tobacco industry in the development of tobacco control policies and laws except in public forums</p>						

<sup>7</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>8</sup> The term, "tobacco industry" includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

<sup>9</sup> "Offer of assistance" may include draft legislation, technical input, recommendations, oversees study tour

<sup>10</sup> Kenya 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)

<sup>11</sup> BAT Annual report pg 52

[http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOBQ6B6A/\\$FILE/BAT\\_Kenya\\_Annual\\_Report\\_2019.pdf?openement](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOBQ6B6A/$FILE/BAT_Kenya_Annual_Report_2019.pdf?openement)

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where the industry is presenting its views to the public authority on relevant tobacco control laws 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>12</sup> (Rec 4.9 & 8.3)		1				
Tobacco Control Regulations – No.29 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.						
<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)  B. The government (its agencies and officials) receives contributions <sup>13</sup> (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)						5
The Tobacco Control Regulations 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;  BAT 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. <sup>14 15</sup>  We are yet to establish which other donations BAT has made directly to counties and to other government agencies including schools and hospitals but we can						

<sup>12</sup> Please annex a list since 2009 so that the respondent can quantify the frequency,  
<http://www.who.int/fctc/cop/en/>

<sup>13</sup> political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

<sup>14</sup> <https://www.pd.co.ke/news/national/kenya-covid-19-emergency-fund-receives-sh1-29-billion-33750/>

<sup>15</sup> <https://www.the-star.co.ke/news/2020-04-21-list-of-organisations-with-biggest-donations-to-covid-19-fund/>

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report that Migori County through their Governor H.E. Zachary Obado receive some donation towards fighting COVID-19 from BAT.<sup>1617</sup>

One of the BAT friendly Counties where BAT derives most of the tobacco leaf and where BAT has continued to hold poor farmers hostage through what so called CSR activities is Migori County. Our findings while developing this report reveal that the Governor of Migori County who is currently facing corruption charges in handling County Government funds used to live in a rented BAT house<sup>18</sup> before he moved into a palatial home built by County Government funds. DISCLAIMER: We have not been able to obtain documents on the agreements and payments between the County Government of Migori and BAT reasons as to why it was the BAT house that the Governor had to stay in.

### INDICATOR 3: Benefits to the Tobacco Industry

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				
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The Tobacco Control Regulations though enacted in 2014 in Article 1, was given 6 months to be implemented. However it was only until 26<sup>th</sup> November 2019 that the Government was given a go ahead to fully implement the provisions of the Tobacco Control Regulations 2010 following a protracted court battle. To date therefore, the provisions of the Tobacco Control Regulations 2014 have not been fully implemented due to tobacco industry interference.<sup>19</sup>

While there is no publicly available evidence of the tobacco industry asking for more time but the implementation of the TC Regulations has been delayed. In 2015, the regulations were contested in Court by British American Tobacco (BAT). On 17 February 2017, the Court of Appeal Kenya<sup>20</sup> at Nairobi upheld the High Court of Kenya's dismissal of BAT's legal challenge. BAT moved to the Supreme Court seeking to overturn the ruling of both the High Court and the Court of Appeal and it was only until 26<sup>th</sup> November 2019 after numerous

<sup>16</sup> <https://www.migorinews.co.ke/news/county-news/lake-victoria-south-and-bat-donates-to-migori-covid-19-mobilisation-kitty/>

<sup>17</sup> <https://twitter.com/GovernorObado/status/1265593933079478273>

<sup>18</sup> <https://www.nation.co.ke/kenya/news/fit-for-a-king-the-splendour-of-homes-built-by-county-bosses-100590>

<sup>19</sup> TobaccoTactics. Kenya – Country Profile [https://www.tobaccotactics.org/index.php?title=Kenya-Country\\_Profile](https://www.tobaccotactics.org/index.php?title=Kenya-Country_Profile)

<sup>20</sup> <https://www.tobaccocontrollaws.org/litigation/decisions/ke-20170217-british-american-tobacco-ltd-v>

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<p>postponements that the judgement was delivered<sup>21</sup> BAT holds 71.5% of the cigarette market share in Kenya.<sup>22</sup> The industry's continuous appeals on the case through the court ranks is a clear delay tactic, hence postponing implementation of the Regulations.</p> <p>There are a number of pending bills mainly at the county level such as the Nairobi City County Tobacco Control Bill 2018 and the Baringo County Tobacco Control Bill among others. Tobacco Industry tries to defer enactment and implementation through other was such as lobbying and court action but we have not come across a case where the state has granted extended implementation period during this report's review period.</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>23</sup>. When listed as an essential product during the COVID-19 pandemic, then the workers and providers of logistics of those sectors are provided protection and special permits and transport during lockdown. The list of essential products and services was supposed to be only the products and services which are essential to the sustenance and lives and hence the need to guarantee their provision and access during this time of COVID-19 pandemic.</p> <p>In 2019, BAT launched new smokeless oral tobacco product LYFT, a nicotine pouch placed under the lip.<sup>24</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>26</sup></p> <p>The Tobacco Control Regulations(TCR) 2014 states in 32- A public authority shall not grant incentives, privileges, benefits or any other preferential treatment to the tobacco industry to establish or run their businesses. Kenya increased</p>						

<sup>21</sup> <http://kenyalaw.org/caselaw/cases/view/185959/>

<sup>22</sup> <https://citizentv.co.ke/business/bat-kenya-losing-market-share-blames-counterfeit-cigarettes-244951/>

<sup>23</sup> <https://www.the-star.co.ke/news/2020-04-08-kenya-lists-alcohol-tobacco-among-essential-products/>

<sup>24</sup> <https://www.businessdailyafrica.com/corporate/companies/BAT-to-build-Sh2-5bn-nicotine-pouch-plant/4003102-5463238-voclhz/index.html>

<sup>25</sup> <https://www.the-star.co.ke/health/2019-09-08-nicotine-pouches-in-kenya-must-carry-health-warnings-board/>

<sup>26</sup> <https://www.the-star.co.ke/health/2020-06-02-board-wants-nicotine-regulated-under-tobacco-control-act/>

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excise tax on tobacco by 20% in 2019. <sup>27</sup> BAT described this tax increase in its annual report as “excessive and unpredictable” which increases and threatens the sustainability of tobacco businesses.						
<b>INDICATOR 4: Forms of Unnecessary Interaction</b>						
8. Top level government officials (such as President/ Prime Minister or Minister <sup>28</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)						5
<p>In 2018, Cabinet Secretary for Youth and Gender Prof. Margaret Kobia attends an event to award BAT Kenya Best Employer of the Year Award. The event is also sponsored by BAT.<sup>29</sup> <sup>30</sup></p> <p>Deputy President of The Republic of Kenya Dr. William Ruto graced the Gala Dinner for the award of winners of the Kenya Exporter of the Year Awards 2019 at which British American Tobacco (BAT) Kenya Limited was awarded the Solid Rock Commendation (Lifetime Achievement) award<sup>31</sup>. Alongside the Deputy President Dr. William Ruto, the CS Ministry of Industry, Trade and Cooperatives, Hon. Peter Munya, EPC Chief Executive Officer, Mr. Peter Kibet Biwott were also in attendance amongst other government officials.<sup>32</sup> The Kenya Exporter of the Year Award is a project of Kenya Export Promotion Council (EPC) which is a state agency.</p> <p>The Chief Administrative Secretary Ministry of Petroleum and Mining Eng John Mosonik represented Government at the 2019 Kenya Manufacturers Association (KAM) Energy Management Awards event at which BAT Kenya was the Best Company in Electricity Savings, Water Savings &amp; Sustained High Performance Award and recognised as the second overall winner.<sup>33</sup></p> <p>The Tobacco Control Regulations 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>						

<sup>27</sup> BAT Annual Report. Pg 8

[http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOBQ6B6A/\\$FILE/BAT\\_Kenya\\_Annual\\_Report\\_2019.pdf?openelement](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOBQ6B6A/$FILE/BAT_Kenya_Annual_Report_2019.pdf?openelement)

<sup>28</sup> Includes immediate members of the families of the high-level officials

<sup>29</sup> Business Daily. BAT feted as Kenya's best employer; 25 Sep 2018 <https://ntv.nation.co.ke/news/2720124-4772280-yin6xq/index.html> <https://www.youtube.com/watch?v=n4s68ifpSzc>

<sup>30</sup> Standard Digital BAT Kenya recognised as top employer twice in a row; 5 Oct 2018 <https://www.standardmedia.co.ke/article/2001298106/bat-kenya-recognised-as-a-top-employer>

<sup>31</sup> <https://www.capitalfm.co.ke/business/2019/07/best-performing-exporters-recognized-at-epc-awards/>

<sup>32</sup> <https://www.netfund.go.ke/netfund-awards-exemplary-local-export-businesses-by-mapesa-okumu/>

<sup>33</sup> <https://kam.co.ke/kenya-breweries-is-the-most-energy-efficient-industry-in-2019/>



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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 to minors. (including monetary contribution for these activities) (Rec 4.3)	0					
<p>The Tobacco Control Regulations forbids the government from accepting any assistance from the tobacco industry on any enforcement activities.</p> <p>BAT's website mentions, "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>34</sup> However there is no specific information on what kind of support BAT is offering the local governments, regulators and all the other agencies listed therein.</p>						
10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) <i>NOTE: This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i>	0					
<p>The Tobacco Control Regulations forbids the government from entering into any partnership or agreements with the tobacco industry.</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)		1				
<p>TC Regulations in 22 sets out the procedure for all interaction between the government officials and the tobacco industry:</p> <p>(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. (2) A minimum of two public officers shall be present in any interactions with the tobacco industry.</p> <p>(3) Before commencing any interaction with the tobacco industry, the public officers shall state, in writing, that the interaction does not imply an endorsement</p>						

<sup>34</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJU](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJU)

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of tobacco industry practices and that that no relationship, collaboration or partnership shall be construed whatsoever from the interaction.						
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				
The Tobacco Control Regulations 2014, in Part III; 139e) requires the tobacco manufacturer to, at the end of every calendar year, to submit a report to the Cabinet Secret information, including, (e) affiliated organizations and its agents or persons acting on its behalf. <sup>35</sup> However this has not been implemented.						
<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>TCR 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)</p> <p>shall specify-</p> <p>(a) the measures undertaken during that period to implement this part;</p> <p>(b) the achievements and shortcomings relating to implementation of this part and actions proposed to improve performance in furtherance of this part;</p> <p>(c) any lobbying, philanthropy, political contributions and all other activities by the tobacco industry;</p> <p>(d) any business and non-business partners and supporters of tobacco industry involved with the public authority”</p> <p>However this has not been implemented.</p>						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)			2			

<sup>35</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)



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Martin Oduor Otieno, Board Member BAT (K) <sup>36</sup> was a former Permanent Secretary Ministry of Finance 1999 – 2001, <sup>37</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>38</sup> . KCB is a fully Government owned bank. <sup>39</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)				3		
<p>Ruth Ngobi has since been replaced as the BAT (K) Company Secretary by Ms. Waeni Ngea. Ms. Ngea was already working for BAT (K) at hence it's an internal promotion.</p> <p>Carol Musyoka<sup>40</sup> is a member of the Board of Directors of BAT(K)<sup>41</sup> while also the Chairperson of the Board of Directors of Business Registration Services (BRS)<sup>42</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 Musyoka also served as a Board Member of Competition Authority of Kenya (CAK)<sup>43</sup> during the period under review.</p> <p>The Tobacco Control Act, No.26 A public officer who has or has had a role in setting public health policies with respect to tobacco control (b) shall not engage in such occupational activity within a period of three years from the time the persons ceases being a public officer.</p>						
<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	

<sup>36</sup> Board of BAT [https://en.wikipedia.org/wiki/Martin\\_Oduor-Otieno](https://en.wikipedia.org/wiki/Martin_Oduor-Otieno)

<sup>37</sup> Permanent Secretary Ministry of Finance  
<https://nairobinews.nation.co.ke/featured/why-every-bank-wants-a-piece-of-oduor>  
<https://www.nation.co.ke/lifestyle/1190-344908-ffcembz/index.html>

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

<sup>39</sup> [https://en.wikipedia.org/wiki/KCB\\_Group#Overview](https://en.wikipedia.org/wiki/KCB_Group#Overview)

<sup>40</sup> <https://biography.omicsonline.org/kenya/east-african-breweries-ltd/carol-musyoka-592227>

<sup>41</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86)

<sup>42</sup> <https://brs.go.ke/board.php>

<sup>43</sup> <https://www.cak.go.ke/sites/default/files/annual-reports/FY%202017-2018%20CAK%20Annual%20Report.pdf>

	0	1	2	3	4	5
<p>Tobacco Control Regulations (TCR) 2014 in 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,”</p> <p>However, there is no implementing procedure in place to disclose all records of interactions as envisaged by TCR 2014.</p>						
<p>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)</p>					4	
<p>Part V No.24 provides: 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.</p> <p>The Code of Conduct is yet to be developed.</p>						
<p>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)</p>					4	
<p>Part III of TCR 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,</p> <p>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>44</sup></p>						

<sup>44</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)

	0	1	2	3	4	5
As of 2019 there is no progress on this inventory and the government's plan has not made any progress.						
19. The government has a program / system/ plan to consistently <sup>45</sup> raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)				3		
The TC Regulations requires public authority in 30(b) 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;  There is no record of the existence of a mechanism to raise awareness according to the TC Regulations.						
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				
TCR 31. (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.						
<b>TOTAL</b>				<b>40</b>		

<sup>45</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.



### **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](#).

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### **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.