

# Tobacco Industry Interference in Kenya: Exposing the tactics

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**"Tobacco industry tactics  
to undermine tobacco  
control must be exposed  
and resisted."**

WHO

World No Tobacco Day, 31 May  
[www.who.int/tobacco](http://www.who.int/tobacco)



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# **“TOBACCO INDUSTRY INTERFERENCE IN KENYA: Exposing the tactics”**

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## Tobacco Industry Interference in Kenya

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# Table of Contents

Foreword	4
Acknowledgements	5
Acronyms and abbreviations	6
List of pictures, figures and Tables	7
Executive summary	8
<b>Section One:</b>	
1.0 Background	11
1.1 Objectives	12
1.2 Methodology	12
<b>Section Two:</b>	
2.0 Tobacco Entities and Products	13
2.1 Tobacco farming	13
2.2 Manufacture of tobacco products	15
2.3 Tobacco Products	16
2.4 Tobacco Business impact in the Economy	21
<b>Section Three:</b>	
3.0 Tobacco Industry activities/ tactics and targets	24
3.1 Activities/ Tactics	24
3.2 Tobacco Industry targets and messengers	29
<b>Section Four:</b>	
4.0 Article 5.3 Implementation	30
4.1 Tobacco control partners/allies and their role	30
4.2 Definition of Tobacco Industry within Government sectors	32
<b>Section 5:</b>	
5.0 Conclusion and Recommendations	36
5.1 Conclusion	36
5.2 Recommendations	36
Annex 1: Questionnaire	38

## Foreword

To market their deadly products, tobacco companies use their enormous wealth and influence both locally and globally, using a wide range of tactics to circumvent tobacco control efforts and interfere with tobacco control.

The WHO recognizes that tobacco companies use strategies such as direct and indirect political lobbying, financing of research, attempting to affect the course of regulatory and policy machinery and engaging in social responsibility initiatives as part of public relations campaigns. The preamble and Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO- FCTC) address the protection of tobacco control policies from Tobacco Industry (TI) interference. Article 5.3 further urges parties to protect their public health policies relating to tobacco control from commercial and other vested interests of the tobacco industry in accordance with national law.

In order for countries to be able to achieve this, awareness on Industry interference needs to be built in all stakeholders including policymakers & bureaucrats, politicians, Civil Society Organizations (CSOs) as well as the general public. In particular stakeholders must be alert to new and manipulative tactics used by tobacco companies and their allies to circumvent tobacco control efforts.

It is important to know which companies are present, how and where they operate, the types and quantities of products sold, and marketing tactics used to sell their products. By being informed about all aspects of the tobacco industry, stakeholders will be better equipped to fight the tobacco industry and its allies on multiple levels.

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## Acronyms and Abbreviations

AL	Alternative Livelihoods
AOTK	Alliance One Tobacco Kenya
BATK	British American Tobacco Kenya
CoP	Conference of Parties
CSR	Corporate Social Responsibility
CTCA	Center for Tobacco Control in Africa
DRC	Democratic Republic of Congo
FCTC	Framework Convention on Tobacco Control
ILA	International Institute for Legislative Affairs
ISO	International Organization for Standardization
KEBS	Kenya Bureau of Standards
KNBS	Kenya National Bureau of Statistics
KRA	Kenya Revenue Authority
MoPHS	Ministry of Public Health and Sanitation
MTK	Mastermind Tobacco Kenya
SPS	Sanitary and Phyto- Sanitary
TBT	Technical Barriers to Trade
TI	Tobacco Industry
WHO	World Health Organization
WNTD	World No Tobacco Day
WTO	World Trade Organization

# List of Figures, Pictures and Tables

Figure 1: Production of cigars and cigarettes

Figure 2: Real and Nominal prices of sportsman and affordability of cigarettes

Figure 3: Cigarette tax revenue

Figure 4: Ministry of Health Tobacco Control implementation structure

Picture 1: Children in tobacco growing areas preparing tobacco leaf

Picture 2: Common locally manufactured cigarette brands in Kenya

Picture 3: Sample of imported smoke products found in Kenya

Picture 4: Examples of non-compliant imported smoke products

Picture 5: Examples of smokeless products found in Kenya

Picture 6: Typical home of a tobacco farmer

Picture 7: Examples of TAPS

Picture 8: TI opposition to tax policy

Picture 9: Smuggled cigarettes being destroyed

Table 1: Estimated number of tobacco farmers in Kenya

Table 2: Current cigarette prices

Table 3: Inventory of imported smoke products found in Kenya

Table 4: Tobacco Control Actors in Kenya

Table 5: TI representation in Government Bodies

## Executive Summary

The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) in its preamble recognizes '*...the need to be alert to any efforts of the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of the activities of the tobacco industry that have a negative impact on tobacco control efforts.*' In Article 5.3 the FCTC goes on to urge parties to protect public health policies relating to tobacco control from commercial and other vested interests of the tobacco industry in accordance with national law.

This report is the first step for Kenya towards achieving the spirit of the FCTC in relation to the tobacco industry. The overall objective of this assessment is to better understand the TI presence, operations and tactics in Kenya as well as the policies and structures that exist in relation to countering tobacco industry interference.

Section one of the report provides a background with a brief situational analysis of the status of the country in so far as tobacco control is concerned. It recognizes that the country signed and ratified the FCTC and domesticated the same through the Tobacco Control Act of 2007, and has gone ahead to develop a National Tobacco Control Action Plan (NTCAP) for the period 2010- 2015. These are clear indications of the Government's commitment to tobacco control. This section then provides a brief on the objectives of this assessment and the methodology used to collect the data.

Section two gives an outline of tobacco farming, manufacture & trade and their impact on the country. We get to see that the total acreage covered by tobacco represents only 0.5% of the total arable land in Kenya. We also find out the estimated numbers of tobacco farmers and how they are linked to the tobacco companies as well as the socio- economic impact of tobacco farming including poverty, child labour and the health complications arising from tobacco farming.

Under manufacture the report indicates that while there is an increase in the overall production, the dominance previously enjoyed by the British American Tobacco Kenya Limited (BATK) has been broken with the entry and growth of Mastermind Tobacco Kenya Limited (MTK). We also see that the consumer market in Kenya is continuously being flooded with locally manufactured tobacco products as well as imports in equal measure. These products range from smoke to non smoke and their real (as opposed to nominal) prices are actually reducing making them more affordable and accessible to the greater population; especially the youth who are the main targets of the industry.

We also get to understand the contribution of this business to the country's Gross Domestic Product (GDP) and revenues collected.

Section three interrogates the activities/ tactics and targets of the tobacco industry including Tobacco Advertising Promotion & Sponsorship (TAPS), Corporate Social Responsibility (CSR), interference with policy and legislative processes, intimidation & litigation, use of front groups, smuggling and illicit trade of tobacco products.

In section four we get to understand the FCTC Article 5.3 implementation in the country by looking at the stakeholders in tobacco control and their specific roles, existing Government structures that address TI interference and the efforts that have been put in place to hold the industry accountable to its activities. It is clear from this section that TI information is inaccessible and sharing of the same is done on an *ad hoc* basis, creating a challenge in countering the industry tactics both by the Government and the other relevant stakeholders.

Finally section five provides some conclusions and recommendations to the Government and other stakeholders for better understanding of the Tobacco Industry that will facilitate countering of their activities and effective implementation of Tobacco Control in Kenya.

# SECTION ONE:

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## 1.0 Background

The World Health Organization Framework Convention on Tobacco Control (WHO-FCTC) is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The Convention presents regulatory strategies for reducing demand and supply of tobacco and its products. Kenya signed and ratified the FCTC in 2004 and domesticated it through the Tobacco control Act 2007 which provides for critical provisions such as smoke free public places, progressive graphic health warnings provision, comprehensive ban on Tobacco Advertising Promotion and Sponsorship, tax and price measures, Alternative livelihoods, Public awareness and education. The country has also developed a National Action Plan for 2010-2015. In 2011, the Government of Kenya in collaboration with the WHO conducted a tobacco control capacity assessment to identify key priority areas for tobacco control in Kenya.

The WHO recognizes that tobacco companies use a wide range of tactics to interfere with tobacco control. Such strategies include direct and indirect political lobbying and campaign contributions, financing of research, attempting to affect the course of regulatory and policy machinery and engaging in social responsibility initiatives as part of public relations campaigns<sup>1</sup>.

The WHO-FCTC preamble and Article 5.3 address the protection of tobacco control policies from Tobacco Industry (TI) interference, which may take place anywhere along the chain of tobacco production, manufacturing and use with the purpose of frustrating tobacco control efforts. Article 5.3 particularly urges parties to protect their public health policies relating to tobacco control from commercial and other vested interests of the tobacco industry in accordance with national law. Further, guidelines to Article 5.3 provide guidance on how Governments can achieve this.

In order to raise awareness on the dangers of Industry interference and to publicly support governments keen on implementing Article 5.3 of the FCTC, the theme for the World No Tobacco Day (WNTD) 2012 was “**Tobacco Industry Interference**”.

In line with the above, the Ministry of Public Health and Sanitation (MoPH&S) in collaboration with the International Institute for Legislative Affairs (ILA) and with support

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<sup>1</sup> Tobacco Industry interference with Tobacco Control.WHO, 2008

from the Centre from Tobacco Control in Africa (CTCA) conducted a rapid Assessment of the Tobacco Industry in Kenya. The results of this assessment will contribute to the planned CTCA surveillance and response system aimed at monitoring and responding to tobacco industry activities in the long- term. The assessment will also lead to the development of national TI profiles to enable the understanding of the TI presence and how the TI operates to circumvent and influence Tobacco Control policy.

## 1.1 Objectives

The overall objective of this assessment is to better understand the TI presence, operations and tactics in Kenya as well as the policies and structures that exist in Kenya in relation to countering tobacco industry interference.

The **specific objectives** were to:

- Identify all TI forces (leaf companies, manufactures, international, local and joint ventures) and their involvement in tobacco growing, manufacture and consumption in Kenya.
- Take inventory of the products on the market by each company.
- Map out the tobacco industry activities and tactics and the targets for these activities.
- Determine the contribution of the tobacco industry to the national economy.
- Map out the tobacco control policies; including those relating to tobacco industry interference in line with Article 5.3 of the Framework Convention on Tobacco Control (FCTC).

## 1.2 Methodology

- Desk review of available information on the TI in Kenya; including Government and Civil Society reports.
- Observation; including visits and observations at different retail places such as formal supermarkets and stores as well as informal places such as roadside venders to determine the availability and prices of different products.
- Media monitoring of coverage of tobacco, tobacco control and the tobacco industry in print and electronic media.
- Interviews– using a questionnaire developed by the CTCA which was administered to the key Ministries and agencies; including the Ministry Health, Agriculture, Finance/ KRA and the Kenya National Bureau of Statistics (KNBS).The questionnaire is in Annex one of this report.

## SECTION TWO:

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### 2.0 Tobacco entities and products

Various tobacco entities exist in Kenya and are involved in farming and production of an array of products both for local consumption and for export. The country also imports tobacco products.

#### 2.1 Tobacco farming in Kenya

Tobacco cultivation was initiated in the 1960's by British American Tobacco (BATK) in Meru and Kuria Districts as part of Government effort to increase farm incomes among smallholder farmers. Tobacco growing in Kenya is mainly through contract farming and involves three main players namely Alliance One Tobacco Kenya (AOTK) (which is part of the global Alliance One International leaf tobacco merchants<sup>2</sup>), Mastermind Tobacco Kenya (MTK) and BATK. The three companies contract close to 40,000 farmers with AOTK having about 15,000 small scale independent farmers.

**Table I: Estimated number of Tobacco farmers in Kenya**

	LEAF COMPANY	NO. OF FARMERS
1	BAT (K)	5,000
2	Mastermind (K)	10,000
3	Alliance One	16,000
4	Independent Farmers	5,000
	<b>TOTAL</b>	<b>36,000</b>

*Figures from the Ministry of Agriculture.*

The area under cultivation increased to about 15,000ha in 2009 from 12,586ha in 2008 and currently stands at 20,000ha<sup>3</sup> and covers Nyanza (Kuria, Migori, Suba, Homabay and Rachuonyo Districts); Western (Bungoma, Busia, Teso and Mt Elgon Districts); Central (Kirinyaga, Murang'a and Thika Districts) and Eastern Provinces (Meru, Kitui and Machakos Districts)<sup>4</sup>. The total acreage covered by tobacco represents only 0.5% of the total arable land in Kenya<sup>5</sup>, and tobacco growing is not among the ten leading products that contribute a large proportion to agricultural sector marketed production<sup>6</sup>.

2 <http://www.aointl.com/au/worldwidelocations.asp>

3 Ministry of Agriculture figures

4 Kenya Tobacco Control Country Profile. GoK, 2011

5 Situational Analysis of Tobacco Control in Kenya: report of the baseline assessment. The kenya tobacco control situational analysis consortium, 2008

6 Economics of Tobacco Taxation in Kenya. International Institute for Legislative Affairs, 2011

## Tobacco Industry Interference in Kenya

Tobacco growing in Kenya is a contract based activity under tight control of the tobacco companies who determine the grading system and prices, as well as the cost of farm inputs and extension services provided to the farmers in form of credit. This erodes from the final income from tobacco farming and ensures that the farmers are perpetually indebted to the industry. The growing is done simultaneously with other crops and represents an average of 2% of the farmers' field; while maize occupies 47%, sugarcane 16%, coffee 4% and the rest 31%<sup>7</sup>.

### 2.1.1 TI involvement in tobacco farming and processing in Kenya

Typically in Kenya, tobacco companies sign contracts with farmers, although reportedly, the vast majority of the farmers – who are frequently limited in their level of literacy – do not understand them. In particular, the contracts set the buying price of the tobacco and the points of sale. Inputs such as seeds, fertilizers and pesticides are loaned to farmers by the tobacco companies. The costs, often priced high above the normal shop price, are deducted by the company when the farmers sell their leaf back to them.<sup>8</sup>

The TI's relationship with farmers has been reported to be complex and strained. In tobacco-growing areas, farmers have complained of exploitation by the tobacco companies. Other complaints include lack of provision of protective gear; poor grading system; poor quality inputs; harassment when crop fails (because of drought or hailstorms) and the farmer cannot repay a loan in full; and a lack of insurance for the curing barns, which often catch fire during the curing process. Finally, labor organization have reported that BATK has been fighting any meaningful union representation that would give tobacco farmers collective bargaining powers.

Tobacco farming being a family oriented activity, leads to various negative social-economic impacts; including:

- i) **Effect on Child labour and women:** In order to cut down on the cost of production and therefore

**Pic I: Children in tobacco growing areas preparing tobacco leaf**



<sup>7</sup> Situational Analysis of Tobacco Control in Kenya: report of the baseline assessment. The Kenya tobacco control situational analysis consortium, 2008

<sup>8</sup> Tobacco Control in Africa: People, politics and policies. Jeffrey Droke. Ed. 2011

increase earnings, farmers resort to having underage members of their families assist in farm operations and therefore leading to high instances of school drop outs and in some instances child labour<sup>9</sup>.

Women also suffer in tobacco production as together with the children they do most of the farm work, only for the male head of household to collect and squander the resulting income. Men are also known to marry multiple wives during the planting season to meet the demand for cheap labor.

- ii) **Low returns/ incomes leading to poverty:** The Tobacco growing regions are some of the poorest in the country. This is mostly due to the unfair practices of the industry that keep the farmers indebted for life with paltry profit if any to show for their trouble. In addition the TI has been known to employ under hand deals such as the abrupt suspension of purchase of leaf and fighting farmer representation through unions.<sup>10</sup> Additionally studies have shown that tobacco farmers can get substantially higher returns with less input by switching to alternative crops and livelihoods such as soybean, pepper, passion fruits and sugarcane.<sup>11</sup>
- iii) **Effect on health:** Health issues affecting tobacco farmers include exposure to large amounts of chemicals needed as well as handling of raw tobacco leaf, often times with no protective gear. During harvest season hospitals in tobacco growing areas report upto 60% of tobacco related deaths; with a significant increase in unexplained miscarriages.<sup>12</sup>

## 2.2 Manufacture of Tobacco Products

Tobacco products manufacture, like farming, is dominated by BATK and MTK. Total production between 2007 and 2010 was 12.2 billion, 12.17 billion, 11.01 billion and 12.17 billion sticks respectively<sup>13</sup>. It is estimated that BATK controls 70% of the Market and exports its products to 17 countries in the region; MTK controls 29% of the share market and the remaining 1% is shared between the other manufacturers and importers<sup>14</sup>. This is a change from the year 2000 when BATK controlled over 92% of the market share; leaving MTK and Japan Tobacco to share the remaining 8%; and 2002 when BATK share dropped to 71% while MTK share rose to 23%. Other players at the time included Cut Tobacco<sup>15</sup>.

<sup>9</sup> Ochola and Kosura, 2004 and Asila, 2004

<sup>10</sup> Kapiyo and Asila, 2004

<sup>11</sup> Case study on tobacco cultivation and possible alternative crops. Institute for Natural Resources and Technology Studies (INRS) and WHO, 2007.

<sup>12</sup> Situational Analysis of Tobacco Control in Kenya: report of the baseline assessment. The kenya tobacco control situational analysis consortium, 2008

<sup>13</sup> Statistical abstract 2011. KNBS

<sup>14</sup> Kenya Tobacco Control Country Profile. GoK, 2011

<sup>15</sup> Situational Anlysis of Tobacco Control in Kenya: report of the baseline assessment. The kenya tobacco control situational analysis consortium, 2008

## Tobacco Industry Interference in Kenya

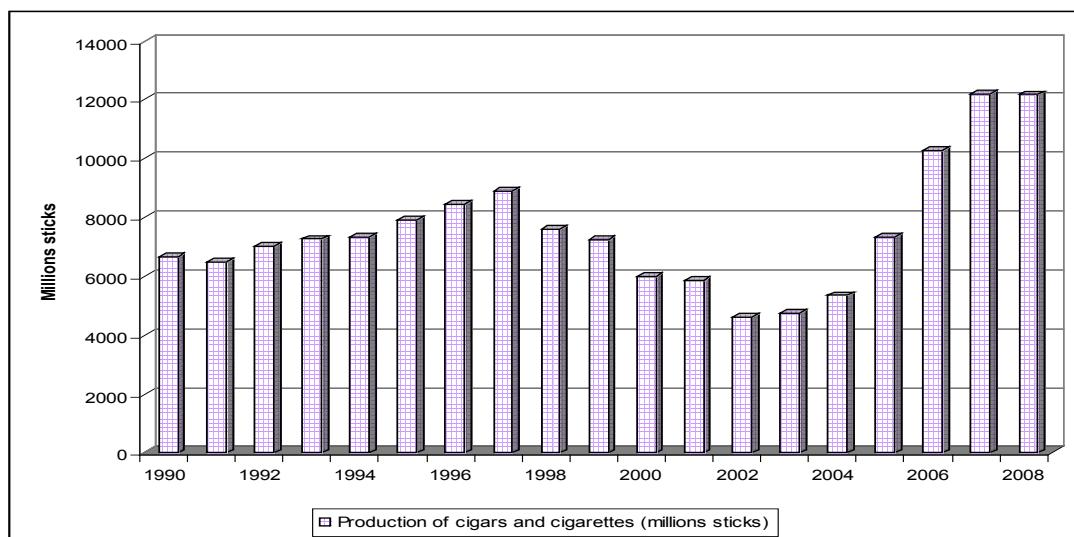
The market share for imported tobacco products is also growing, with both smoke products (cigarettes, cigars and cigarillos) and smokeless products becoming increasingly available in the Kenyan market.

### 2.3 Tobacco products

#### 2.3.1. Smoked tobacco products

In 2007, Kenya produced 12.2 billion sticks of cigars and cigarettes compared to about 6.6 billion sticks in 1990. The number of sticks has stabilized at around 6 billion between 2007 and 2010<sup>16</sup>. For the most part of the 1990's, tobacco production increased substantially due mainly to two initiatives. First, Mastermind succeeded in developing export markets in countries such as South Africa and the Democratic Republic of Congo. Second, BATK closed their manufacturing operations in Uganda and Tanzania and centralized them in Nairobi. Third, Cut tobacco also joined the market in 1999. However, beginning 1997, production continually shrunk from 8.5 billion sticks to settle at 4.8 billion in 2003. Since 2003, volume has maintained an upward trend expanding by 156% between 2003 and 2008<sup>17</sup>. In 2010 over 12 billion sticks of cigarettes and cigars were produced<sup>18</sup>.

**Figure 1: Production of cigars and cigarettes**



Source: *Economics of Tobacco Taxation in Kenya. ILA, 2011*

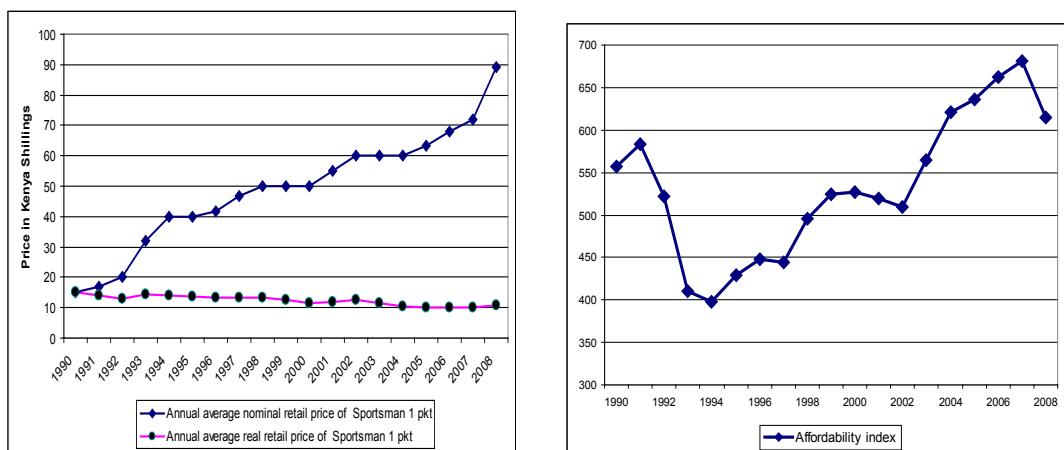
<sup>16</sup> Custom and Excise figures through the KNBS

<sup>17</sup> Economics of Tobacco Taxation in Kenya. International Institute for Legislative Affairs, 2011

<sup>18</sup> Statistical abstract 2011. KNBS

**Pic 2: Common locally manufactured cigarette brands in Kenya**

In terms of prices and affordability, studies have shown that even though the nominal prices of cigarettes shows an upward trend, the real price has reduced. This coupled with increased consumer incomes has made cigarettes more affordable and therefore accessible even to the youth. Moreover cigarettes in Kenya are still sold in single sticks even though this is a violation of section 18 of the Tobacco Control Act 2007.

**Figure 2: Real and Nominal prices of sportsman and affordability of cigarettes**

Source: Economics of tobacco taxation in Kenya, ILA. 2010

## Tobacco Industry Interference in Kenya

The table below shows the current prices of cigarettes sold in Kenya today.

**Table 2: Current cigarette prices**

		Price of a pack of 20 cigarettes in local currency - Ksh (US dollars)	Price of a pack of 10 cigarettes in local currency (US dollars)	Price of a stick local in currency (US dollars)	Tobacco Company (or Affiliate) Manufacturing the product
1.	Embassy Kings	140 (USD 1.7)	N/A	7 (USD 0.08)	BATK
2.	Embassy lights	140 (1.7)	N/A	7 (0.08)	BATK
3.	Sportsman	90 (1.08)	N/A	5 (0.06)	BATK
4.	Dunhill Red	140 (1.7)	70 (0.84)	7 (0.08)	BATK
5.	Dunhill Lights	140 (1.4)	70 (0.84)	7 (0.08)	BATK
6.	Safari Kings	78 (0.93)	N/A	4 (0.05)	BATK
7.	Safari Menthol	78 (0.93)	N/A	4 (0.05)	BATK
8.	SM	90 (1.08)	N/A	5 (0.06)	BATK
9.	Rooster	60 (0.72)	n/a	4(0.05)	BATK
10.	Supermatch Kings	60 (0.72)	n/a	4 (0.05)	MTK
11.	Supermatch Menthol	60 (0.72)	n/a	4 (0.05)	MTK

*\*(US Dollar equivalents in brackets; at exchange rate of Ksh. 83 to a dollar)*

These prices are well below the average prices of cigarettes in the developed world which range between £5-7 in Europe and from \$5 in the United States of America for a pack of twenty cigarettes.

In addition, tobacco manufacturers have been on the fore front of the fight against the use of tax and price policies to control tobacco consumption as recommended by the WHO through Article 6 of the FCTC.

### 2.3.2 Imported smoke products

The Kenyan market is continuously being infiltrated by imported smoke products, including cigarettes, cigars & cigarillos (little cigars) and more recently electronic cigarettes which in some instances are being used erroneously as nicotine replacement therapy. Some of the products are not found in the mainstream retail areas such as supermarkets and kiosks; but are available in middle to high end hotels, clubs and other entertainment areas.

The table below is an inventory of imported smoke products available in the Kenyan market. The list may not be exhaustive and a picture of a sample of the products is also below.

**Table 3: Inventory of imported smoke products found in Kenya**

		Price of a pack of 20 cigarettes in local currency (US dollars)	Price of a pack of 10 cigarettes in local currency (US dollars)	Price of a stick local in currency (US dollars)	Tobacco Company or Manufacturer or Affiliate
1.	Horseman	60 (0.72)	N/A	N/A	Ken Tobacco Ltd (Uganda )
2.	Marlboro Red	120 (1.45)	n/a	n/a	Philip Morris International (PMI)
3.	Marlboro Gold	160 (1.93)	n/a	n/a	Philip Morris International (PMI)
4.	Villiger Premium No. 8 Sweet Flavoured	n/a	948 (pack of 5) (11.42)		Villiger Sons Cigar Manufacturers, Switzerland
5.	King Edwards Specials	n/a	474 (pack of 5) (5.71)		Swisher International Inc. USA
6.	Swisher Sweets Little Cigars	862 (10.38)	n/a		Swisher International Inc.
7.	Panther Dessert Cigars	n/a	776 (9.35)		Royal Agio Cigars, Netherlands
8.	Constellation Black Slims		517 (Pack of 5) (6.23)		
9.	Henri Winterman Cigars		850 (pack of 5)** (10.24)		Scandinavian Tobacco Groups
10.	Borkum Riff Cigars		1500 (pack of 5)** (18.07)		

\*(US Dollar equivalents in brackets; at exchange rate of Ksh. 83 to a dollar)

**Pic 3: Sample of imported smoke products found in Kenya**



Most of the imported products are not compliant with the requirements of the Tobacco Control Act. For instance some have Health warnings on removable stickers while others are sweetened possibly to target the young women who prefer flavoured tobacco products. Some of the products are also sold in packs of five contravening the law that requires the sale of all tobacco products in units of minimum ten pieces.

**Pic 4: Examples of non-compliant imported smoke products**



The pictures above are of two types of products in the Kenyan market with removable stickers for health warnings. The product in the middle has the sticker on top of a cellophane wrapper which can easily be removed to reveal an attractive metal case.

### 2.3.3 Smokeless tobacco products

A study done in Nairobi in 2007 indicated that the most prevalent mode of tobacco use is smoking (91.7%), followed by snuffing (3%) and combined snuffing and chewing (3.7%)<sup>19</sup>. Apart from the snuff which is mainly made in homes from ground tobacco leaf; other smokeless tobacco products are now available in the Kenyan market, mostly imported from Asian countries. Some of these products are for chewing while others are for sniffing.

**Pic 5: Examples of smokeless tobacco products found in Kenya**



## 2.4 Tobacco business impact in the economy

### 2.4.1 Economics of Tobacco business

According to figures from the Ministry of Agriculture, there are 36,000 tobacco farmers in Kenya with some operating independently. Tobacco is grown on approximately 20,000ha of land with estimated total output of 20 million kilograms of dried leaf worth about Kshs. 2.0 Billion (approx. USD 25 million), with BATK producing more than 2/3rds of the total.

While the TI claims that tobacco is a cash crop that leads to development for the tobacco farmers and subsequently for the country; the tobacco growing districts are some of the poorest in the country with high cases of food insecurity, illiteracy and high levels of poverty. Further, studies have shown that the returns from tobacco growing are not commensurate with the time and effort required, and is much less than alternative crops identified.

<sup>19</sup> Wangai et al. 2007

**Pic 6: Typical home of a tobacco farmer**



#### **2.4.2 Contribution to GDP**

Exact contribution of tobacco business to the GDP is difficult to obtain because in most publicly accessible documents tobacco is usually clumped together with foods and beverages. However the Kenya Association of Manufacturers (KAM) reports that tobacco contributes 7% of the GDP. Meanwhile According to the Kenya National Bureau of Statistics (2012)<sup>20</sup>, the domestic exports of tobacco and tobacco manufactures has increased from Ksh 9.05 billion in 2006 to a provisional amount of Ksh 18.63 billion in 2011, while the Gross Marketed production of tobacco in the country has grown from Ksh 10.73 billion in 2006 to Ksh 19.29 billion in 2010.<sup>21</sup>

#### **2.4.3 Tobacco revenues**

As mentioned earlier in this report tobacco products manufacture is dominated by BATK (approx. 70%) and MTK (approx. 29%) with a total production of 12.17 billion sticks in 2010<sup>22</sup>, both for local consumption and export. In 2008, contract manufacturing for BATK accounted for 63% of its output from the Nairobi factory, which it marketed to up to 17 countries in East and Central Africa, a rise from less than 20% in 2002. The decline in the local market share is perhaps attributable to increasing exports to the region as well as increasing competition in the local market<sup>23</sup>.

The TI prides itself in being one of the leading tax payers in the country; contributing approximately 10.5 billion in tax revenues to the government in 2011<sup>24</sup>. However studies show that there is general decline in excise tax revenues from the TI against an increase of production and consumption. This is indicative of a fault in the design and implementation of excise tax or rising incidences of smuggling and tax evasion, including sales of non-duty products<sup>25</sup>. Additionally in

20 Kenya National Bureau of Statistics (KNBS) (2012). Kenya facts and figures 2012. Nairobi: KNBS

21 Kenya National Bureau of Statistics (KNBS) (2011). Statistical Abstract 2011. Nairobi: KNBS

22 Statistical abstract 2011. KNBS

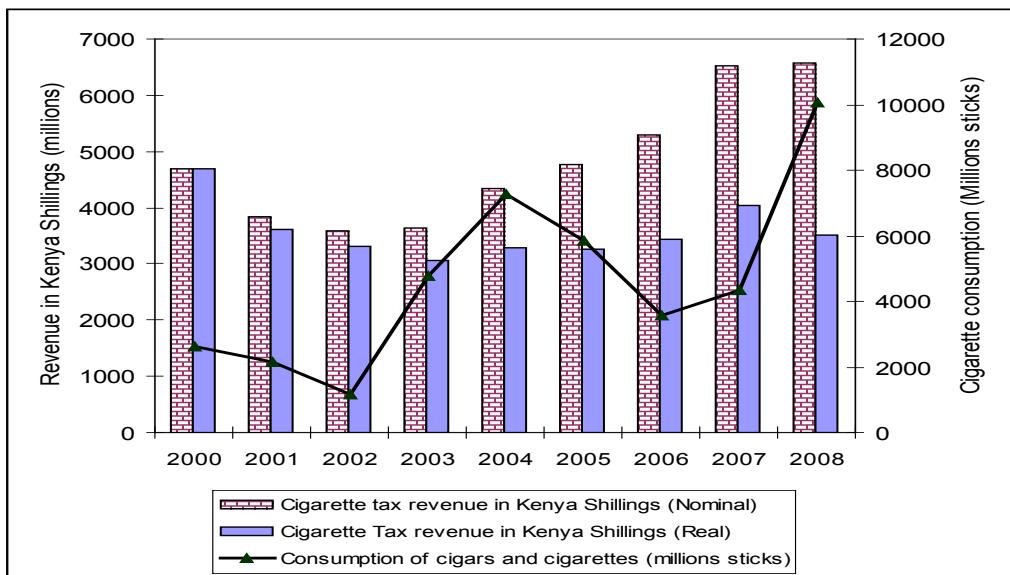
23 Daily Nation, May 12, 2008: smart Company p. 6

24 BATK financial statement for 2011. Published in the Daily Nation, Friday February 24th 2012

25 Economics of tobacco taxation in Kenya. ILA, 2011

comparison to the cost of treating health related complications related to tobacco use (which is estimated at around 3 times more), this amount is insignificant. Also the amount paid by the industry is insignificant when looked at as a proportion of the overall National budget which in 2011/2012 stood at over one trillion Kenya shillings.

**Figure 3: Cigarette tax revenue**



Source: *Economics of tobacco taxation in Kenya, ILA. 2010*

#### 2.4.4 Employment creation

Accurate numbers are difficult to account for as labour in tobacco farms and primary processing are usually seasonal yet they form part of the industry numbers. Figures by BAT show that the numbers of permanent staff declined from 840 in 1995 to 462 in 2002 and that of farmers increased from 14,094 in 1995 to over 19,000 in 1997 and then dropped to a low level of 6,800 in 2002 due to a number of factors including early retirement and hiring of external services for certain categories of operations<sup>26</sup>. However figures from World Bank reports as well as those from the Ministry of Planning of Kenya imply that that figures quoted by the TI account for only 0.06% of the total workforce in Kenya.

According to the Kenya National Bureau of Statistics (2012)<sup>27</sup>, the domestic exports of tobacco and tobacco manufactures has increased from Ksh 9.05 billion in 2006 to a provisional amount of Ksh 18.63 billion in 2011, while the Gross Marketed production of tobacco in the country has grown from Ksh 10.73 billion in 2006 to Ksh 19.29 billion in 2010<sup>28</sup>.

26 Golden leaf? Debunking the myths about the economic effects of tobacco in Kenya. KTS, 2010

27 Kenya National Bureau of Statistics (KNBS) (2012). Kenya facts and figures 2012. Nairobi: KNBS

28 Kenya National Bureau of Statistics (KNBS) (2011). Statistical Abstract 2011. Nairobi: KNBS

## SECTION THREE:

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### 3.0 Tobacco industry Activities/ Tactics and Targets

The Tobacco Industry and its allies in Kenya, as with the rest of the world has thrived by using various strategies to oppose Tobacco Control in order to delay and where possible completely stop implementation. Some of the strategies used include Tobacco Advertising Promotion & Sponsorship (TAPS), Corporate Social Responsibility (CSR), interference with policy and legislative process, intimidation and litigation, use of front groups, smuggling and illicit trade of tobacco products and voluntary agreements with different ministries and departments of Government. These are elaborated below.

#### 3.1 Activities/ Tactics

##### 3.1.1 Advertising Promotion and Sponsorships (TAPS; including Corporate Social Responsibility (CSR))

Tobacco Advertising Promotion and Sponsorship (TAPS) is prohibited in Kenya through the tobacco control Act which defines an advertisement as:

- i. Any statement, communication, representation or reference aimed at the public and designed to promote and publicize a tobacco product or encourage its use, or draw attention to the nature, properties, advantages or uses of the product;
- ii. The use in any advertisement or promotion aimed at the public, of a tobacco product manufacturers company name where the name or any part of the name is used as, or is included in a tobacco product trade mark;
- iii. Product stacking and product displays of any kind or size.

It also defines promotion as “*a representation, including an advertisement, whether direct or indirect, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behavior about the product or service, or that is intended to, or has the effect of inducing consumers to use tobacco products, under estimate the dangers of tobacco consumption, or create recognition or goodwill for the tobacco manufacturer.*”

The Act goes ahead to prohibit false/ misleading, deceptive promotion, Advertising/ promotion through testimonials or endorsement, Promotion by advertisement and Promotion by sponsorship.

Despite the existence of the law, there are some instances of violations both in direct and subtle ways, some of which are depicted below:

**Pic 7: Examples of TAPS**

BRITISH AMERICAN TOBACCO KENYA LIMITED	
RECOMMENDED RETAIL PACK PRICES EFFECTIVE 1 <sup>ST</sup> JANUARY 2011	
PRICE CHANGE	
BRAND	PRICE (KSHS)
SM	90.00 A PACK OF 20 CIGARETTES
SPORTSMAN	70.00 A PACK OF 20 CIGARETTES
NO PRICE CHANGE	
BRAND	PRICE (KSHS)



i. Price adverts in the print media

ii. A poster announcing a shisha palour in Nairobi



iii. BATK staff participating at a public event with branded merchandize



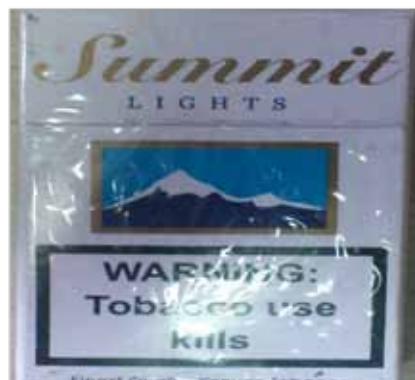
iv. Kiosks with an uncanny resemblance to the brand identity



- v. Some walls that were once branded in Tobacco brand elements have now been repainted in compliance with the Tobacco Control Act 2007



vi. Point of sale advertising and product stacking



vii. A poster announcing an event sponsored by summit brand of cigarettes



viii. Marlboro brand recently introduced in the Kenyan market. These attractive cards were found inside the carton containing smaller multiple packages.

In addition to the above examples, the tobacco industry has continued to sponsor events and programs through CSR initiatives:

- MTK has been involved in sponsoring the Mater heart run<sup>29</sup> as a major sponsor. <http://www.materkenya.com/index.php/mater-heart-run/partners/partners.html>
- BATK contributed 10 million shillings in 2011 for the Kenyans4Kenya charity initiative that sought to raise funds to feed those affected by the famine raging across parts of the country. [http://www.diasporamessenger.com/index.php?option=com\\_k2&view=item&id=812:kenyans4kenya-charity-hits-sh490m-video&Itemid=124&lang=en](http://www.diasporamessenger.com/index.php?option=com_k2&view=item&id=812:kenyans4kenya-charity-hits-sh490m-video&Itemid=124&lang=en)
- In 2010, BAT Kenya with two insurance companies (UAP Insurance Kenya and Chancery Wright) launched a crop insurance to cover contracted tobacco farmers from perennial losses.

### 3.1.2 Interference with policy and legislative process

The TI has numerously made attempts; sometimes successfully to influence tobacco control in Kenya. The Act took close to thirteen (13) years to go through parliament before it was finally passed and enacted into law in 2007. This was due to the Industry's manipulation of the parliamentarians; including providing lavish holidays in the guise of building their capacity on the legislation.

#### Pic 8: TI Opposition to tax policy

More recently, in 2011 the Industry has been openly opposing and privately lobbying against the use of price and tax measures to control Tobacco consumption by opposing proposals to increase excise tax rates for tobacco products.

The TI is also using international trade arguments to lobby against specific tobacco control strategies such as Article 9 and 10 of the FCTC on tobacco products regulation and disclosures. This has been done through the Ministry of Trade- led World Trade Organization Technical Barriers to Trade (WTO TBT) committee.



<sup>29</sup> The Mater Heart run is an initiative of the Mater Hospital in Nairobi to raise funds for heart surgery for children from poor families

## Tobacco Industry Interference in Kenya

In October 2012, the industry through the Kenya Association of Manufacturers (KAM) hosted a 'stakeholders' meeting to develop a common position for the upcoming COP5. The meeting was opposed to the FCTC process and claimed that tobacco farmers were not represented in the discussions. They also criticized FCTC proposals, their domestication and implementation in the country, claiming the proposals are discriminatory and infringe on the rights of other sectors. The sentiments were captured in the media. <http://allafrica.com/stories/201210020024.html>

### 3.1.3 Litigation

The industry has used the courts to challenge tobacco control in Kenya. Prior to the enactment of the Tobacco Control Act in 2007, the Minister of Health introduced the Public Health (Tobacco Products control) Rules aimed at ensuring smoke free places in the country through Legal Notice No. 44 of 2006. BATK and MTK challenged the Government in a court of law, claiming they were not consulted in the development of the rules<sup>30</sup>. (Miscellaneous Civil Application No. 278 of 2006). This led to their suspension.

Similarly, on the enactment of the Tobacco Control Act in 2007, MTK challenged the law through a high court petition (N0. 416 of 2008), arguing that the law contravenes fundamental human rights and freedoms by criminalizing an otherwise lawful activity. Some of the specific areas that the industry argued were unconstitutional include Tax and price measures, Alternative livelihoods, some labeling provisions, display of signs in retail outlets, prohibition of use of vending machines, prohibition of sale in single sticks and TAPS provisions. This matter is still pending in court with the main reason for this delay being the unpreparedness of the Petitioner to proceed. However implementation of the Tobacco Control Act 2007 is still fully in force.

On the other hand, litigation against the Industry has been minimal; with the most notable action being a court case brought forth against BATK by a peasant farmer, seeking compensation from BATK after his right leg was amputated following 48 years of heavy smoking. The court has recently ruled in favour of the farmer.

### 3.1.4 Front groups

The Tobacco Industry sometimes uses its allies and front groups to get their message across. In Kenya the hospitality industry was initially opposed to tobacco control. however once this group was convinced that Tobacco Control would not affect their profit margins, many hotels, restaurants and other entertainment spots are complying with the Tobacco control Act by putting up notices and warning against smoking in the public areas in their premises. Some have provided designated smoking areas to separate the smokers from non-smokers.

<sup>30</sup> Kenya Tobacco Control situational analysis consortium. Situational analysis of tobacco control in Kenya: Report of the Baseline Assessment. 2008

Other groups that have at some point resisted tobacco control efforts include the Kenya Tobacco Farmers Association (KETOFA) a tobacco farmers' organization which has participated at the TBT committee opposing the guidelines to Article 9 and 10 of the FCTC on regulation of content and product disclosures. KETOFA is the Kenyan Member of the International Tobacco Growers Association (ITGA) a global pro-tobacco lobby group heavily funded by the tobacco industry.

### 3.1.5 Smuggling

Cigarette smuggling is detrimental to health policy and the WHO Framework Convention on Tobacco Control (FCTC) emphasizes the importance for combating illicit trade. Smuggling undermines tax revenue and promotes corruption; by lowering price, consumption is increased<sup>31</sup>.

Even though this assessment was not able to get any physical products in the Kenyan market intended for export, there is evidence to show that tobacco products intended for the export market do sometimes end up in the local market; especially through port and border towns such as Mombasa, Busia and Eldoret. Recently, police nabbed 580 bundles and 23 cartons of counterfeit and uncustomed supermatch cigarettes being returned into the country from Uganda as well as 956 bundles and 28 cartons of Ugandan supermatch cigarettes estimated to be worth Ksh. 881, 595 (USD 10,622). Mastermind's popular supermatch cigarettes are currently the most targeted brand for smuggling<sup>32</sup>.

**Pic 9: smuggled cigarettes being destroyed**



## 3.2 Targets and Messengers

TI activities are generally used to intimidate and influence processes, positions and opinions and the major targets are policy makers and politicians, bureaucrats in positions of influence, farmers, current and potential consumers as well as the general public.

31 Blood cigarettes: cigarette smuggling and war economies in Central and Eastern Africa. Titeca K., Joossens L., Raw M. 2010

32 'cigarette smuggling in Kenya'. The star newspaper, Wednesday March 7th 2012

## SECTION FOUR:

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### 4.0 Article 5.3 Implementation

Article 5.3 of the FCTC obligates Parties to protect the development and implementation of public health policies that touch on tobacco Control from commercial and other vested interests of the tobacco industry.

#### 4.1 Tobacco Control Partners/Allies and their role

Tobacco Control in Kenya is a multi- disciplinary, multi- stakeholder process involving both Government and Non Government players. Their Roles can be summarized as below:

*Table 4:Tobacco Control Actors in Kenya*

<b>Agency</b>	<b>Tobacco control responsibilities</b>
Ministry of Public Health and Sanitation (Division of Non Communicable diseases, Division of occupational health, Tobacco Control Board)	Leadership & coordination, implementation and enforcement of law, progressive development of TC policy and law
Ministry of Finance (Kenya Revenue Authority)	Development and implementation of Economic and Tax policies and illicit trade control as well as generation of statistics
Ministry of Trade	Articulate Trade policy relating to tobacco control
Ministry of Industrialization(Kenya Bureau of Standards- KEBS)	Standard development, packaging and labeling, product of testing
Ministry of Agriculture	Alternative cropping/ livelihoods
Ministries of Basic and Higher Education	School health programmes and research
Ministry of Internal Security (Police)	Law Enforcement
National Agency for the Campaign Against Drug Abuse Authority (NACADA) (NACADA)	Tobacco is included as part of drug abuse policies, especially cessation, communication and information
Ministry of Local government	Implementation and enforcement of tobacco control measures
Kenya Medical Research Institute	Health research
Attorney General	Legal advice e.g. on interpretation of the law
World Health Organization (WHO) Kenya country office	Technical and other support to Government
Civil Society Organizations	Policy research, lobby and advocacy, public education

Generally, there is political and administrative support for Tobacco control from the Ministry of public health. Some other Ministries and Government Departments such as the Kenya Revenue Authority (KRA) have also been supportive. However more needs to be done by the greater Ministry of Finance, Ministry of Agriculture, and Ministry of Trade in order to have the same message from the Government. All the mentioned ministries have a role to play as stipulated in the Tobacco control Act 2007. There is also support from the World Health Organization (WHO) country office as well as from Civil Society who have supported tobacco control in Kenya through financial, human and technical support to the work being done by the Government, through the Ministry of Health.

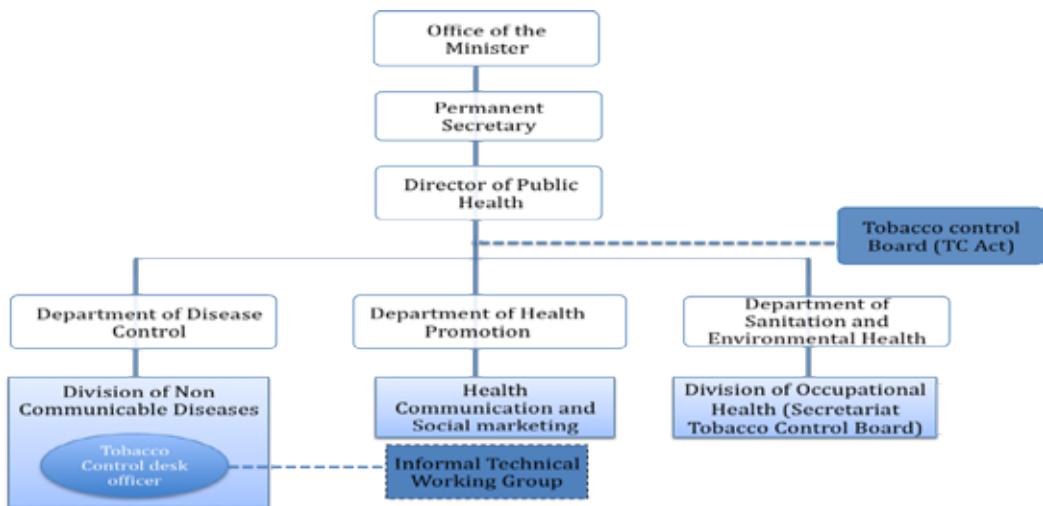
#### **4.1.1 Government structures that address areas of interest to the TI**

As mentioned earlier in this report the WHO FCTC recognizes “*...the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts...*” and urges parties to protect their public health policies with respect to tobacco control, from commercial and other vested interests of the tobacco industry in accordance with national law. Guidelines to Article 5.3 of the FCTC were adopted by the 3<sup>rd</sup> Conference of the Parties (COP) to FCTC in Durban South Africa in 2008.

In Kenya, the National TC program is coordinated by the Ministry of Public Health through the Division of Non Communicable Diseases (NCDs). Implementation is coordinated by the Division of Environmental Health; with the Chief Public Health Officer being the secretary to the Tobacco Control Board (TCB). The TCB provides overall coordination of tobacco control in the country and advises the minister on different tobacco control issues. The figure below presents a summary of the Tobacco control implementation structure at the Ministry of Health and highlights the key departments/ divisions and agencies.

## Tobacco Industry Interference in Kenya

**Figure 4: Ministry of Health Tobacco Control implementation structure**



Adopted from the Draft Report of the Joint Capacity Assessment on the implementation of effective tobacco control policies in Kenya, June 2011

The tobacco control Act prohibits the involvement of any one affiliated with the TI in the tobacco control board. However the country is yet to develop guidelines to guide government interaction with the TI.

## 4.2 Definition of “tobacco industry” within government sectors

While Kenya does not have an ‘official government definition’ of the tobacco Industry; from the tobacco control perspective, the working definition of the tobacco industry is in line with the FCTC definition that includes ‘...manufacturers, wholesale distributors and importers of tobacco products’; recognizing also that there are other entities, including front groups which though are not the industry itself serve to propagate the industry’s agenda and therefore need to be monitored as well.

While the Tobacco Control Act prohibits involvement of the Tobacco Control Board members with the ‘tobacco industry or its subsidiaries’, attitudes towards the industry differs within the different parts of government with some ministries such as trade being friendly to the Industry.

### 4.2.1 Holding the TI accountable and liable for damaging practices

There has been little effort towards proactively holding the industry to account in Kenya. This is due to the immense political and economic power that the industry wields; slow

judicial process as well as ignorance on the rights and opportunities available towards this goal. There has however been a notable court case in Kenya brought forth against BATK by a former smoker who had his limbs amputated due to negative effects of smoking. The case took several years to be concluded and in September 2012 the court ruled in favor of the applicant and held that the company was liable for the injury caused to the former smoker.

In addition to the above example, the Constitution of Kenya 2010 comprehensively provides for and protects fundamental human rights including human dignity, equal protection of the law and non-discrimination, economic and social rights including the right to quality healthcare, consumer rights, and the right to a clean environment. The Constitution also avails an opportunity and makes it easier for any person to go to court to enforce any of fundamental human rights that the person feels is denied, violated or infringed, or is threatened. This is an opportunity for action to hold the industry accountable for actions that violate their rights as stipulated in the constitution.

#### **4.2.2 Mandatory disclosures**

The country does not yet have provision for mandatory disclosures for contents & emissions as well as for expenditures on TAPS as required for effective implementation of Article 5.3 of the FCTC. However the regulations currently being drafted by the tobacco control board are expected to provide for this.

#### **4.2.3 Access to TI information**

Access to information on the Tobacco Industry if extremely difficult. This is because the Industry will not openly share it while Government agencies that have access to this information are prohibited by existing laws for availing certain information to the public. However Article 35 of the Constitution of Kenya 2010 provides for the right to access public information and calls for a review of legislation to ensure that information that is of public interest is accessible. This is bound to be an opportunity to push for access to TI relate information.

#### **4.2.4 Mechanism of the exchange of TI information**

Information existing between pro tobacco control stakeholders in government and Civil society is shared on ad hoc basis as there is no formal system for sharing of this information. Information is also shared between different government ministries and departments for enforcement purposes.

## **Tobacco Industry Interference in Kenya**

Within Government Circles usually, the Permanent Secretary (PS) will communicate to other PS' via a formal letter and this is communicated down the chain to the relevant officer(s) in the recipient Ministry.

### **4.2.5 Legal action against the tobacco industry in Kenya**

As explained earlier in this report, the most notable action has been a court case brought forth against BATK by a peasant farmer who was seeking compensation from BATK after his right leg was amputated following 48 years of heavy smoking.

In addition to that, there are several cases in courts at different levels (Industrial and Commercial, as well as the City Council courts) mostly dealing with violations of the law by various actors including retailers and distributors of tobacco products.

### **4.2.6 Consultations and/or MOUs/ Agreements between TI and Government**

Access to information about any such consultations and or agreements is hard to come by; especially when it concerns non-health ministries/ departments of Government. It is however known that the industry has severally attempted to have joint positions with Government on international tobacco policy formulation process and implementation for instance in run up to WHO Conferences of Parties. Most of these consultative meetings are convened by the Industry through the Kenya Association of Manufacturers or relevant Government Committees such as the WTO TBT committee.

- In March 2012, the Technical Barriers to Trade (TBT) Committee of the Ministry of Trade comprising of different stakeholders convened a workshop ostensibly bringing together all the tobacco stakeholders in Kenya to discuss tobacco issues relating to World Trade Organization TBT agreement and to “develop a coherent policy, regulatory guidelines and country positions on the trade issues for presentations to the WTO TBT meetings in Geneva.” This workshop was in follow-up to discussions already held at the TBT committee stage, where the industry opposed the guidelines to Article 9& 10 of the FCTC on regulation of the contents of tobacco products and tobacco product disclosures. The Ministry of Public Health Publicly boycotted this meeting. <http://www.the-star.co.ke/news/article-26252/ministries-clash-over-bat-sponsored-forum>
- In October 2012, the industry through the Kenya Association of Manufacturers (KAM) hosted a ‘stakeholders’ meeting to develop a common position for the upcoming COP5. The meeting was opposed to the FCTC process and claimed that tobacco farmers were not represented in the discussions. They also criticized FCTC proposals, their domestication and

implementation in the country, claiming the proposals are discriminatory and infringing on the rights of other sectors. The sentiments were captured in the media. <http://allafrica.com/stories/201210020024.html>. Again the Ministry of Public Health boycotted this meeting.

#### **4.2.7 TI public position/stand on the FCTC and/or TC policies**

As the Ministry of Health of Kenya continues to develop a harsh stance against the TI, the companies now seem to be targeting non-health related Ministries and Agencies which have little or no perspective on health when it comes to tobacco matters. These include Ministries of Agriculture, Trade and Finance. Some examples of these have been discussed in sub-section 4.2.6 above as well as in other sections of the report. In addition to that, some government Ministries and Departments are open to consultations with the TI and have come out publicly about this. Further, the TI is actively lobbying at the highest policy and political level to ensure that existing tobacco control measures are not implemented and others not developed.

Through some of these interactions, the TI has managed to secure strategic positions in bodies that have some form of role in tobacco and tobacco control. Some of these that are in the table below:

**Table 5:TI representation in Government Bodies**

Name of Government Body	Role in Tobacco Control	TI affiliation to the Govt. body
Technical Barriers to Trade Committee (TBT),	Formulate trade related policies and national positions relating to the two World Trade Organization (WTO) agreements. Some of the issues discussed at the TBT And SPS touch on tobacco products	Member of the KAM, which is a member of the committee
Sanitary and Phyto Sanitary (SPS committee		
Kenya Bureau of standards (KEBS)- technical committee on tobacco and tobacco products	Development of tobacco products standards	Members of the committee (through KAM). Additionally BATK has for a number of years been sponsoring the KEBS (Kenya Bureau of Standards) representative to ISO (International Organization for Standardization) technical committee meeting discussing international tobacco product standards.

## 5.0 Conclusion and Recommendations

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### 5.1 Conclusion

Kenya is a regional hub for tobacco manufacture. This has ensured a strong presence of the Tobacco Industry throughout the tobacco growing, manufacture, trade and consumption chain. The tobacco market is growing at a worrying trend with both locally manufactured products and imports, and tobacco products are becoming more and more accessible over the years especially to the youth.

The economic might enjoyed by the Industry has facilitated their influence in political and policy processes. Lack of clear guidelines for interaction between the industry and the government has exacerbated the situation.

Kenya signed and ratified the FCTC and is therefore bound by the guidelines to Article 5.3 of the FCTC which call for caution in Government Industry interactions in order to protect public health policies from commercial and other vested interests of the tobacco industry.

There lacks a common understanding of tobacco control by the relevant ministries and agencies/ Departments of Government; with some still viewing tobacco trade and by extension the tobacco industry as a useful contributor to the National economy. This lack of awareness extends to key policy makers, politicians as well as the general public. The industry has used this lack of awareness to lobby against tobacco control measures and in many instances violate the existing law.

### 5.2 Recommendations

Some of the key recommendations from the Assessment include:

- I. The Government should develop regulations on interaction with the industry if and when such interaction is necessary and prohibit any interaction that may lead to undue influence and or interference. These regulations should be in line with the WHO FCTC guidelines on implementation of Article 5.3 of the FCTC and should guide all government officers and other relevant stakeholders on how to interact with the industry in a manner that protects public health policies

in relation to tobacco control from commercial and other vested interests of the industry. Health interests of Kenyans must always take precedence over the Tobacco Industry and/ or any other interests.

2. In addition to the above, there should be greater transparency in Government interaction with the Industry. For example where possible meetings with the Industry should be held in public or at the very least minutes and or reports of such meeting should be publicly accessible.
3. The Government should support Tobacco farmers to move to alternative livelihoods to reduce their over-reliance on the tobacco industry. This includes the development and implementation of a policy on Alternative Livelihoods (AL) and subsequent support that the farmers may need in order to facilitate a smoother transition.
4. Awareness programs should be run for non-health Ministries such as Finance, Trade and Agriculture in order to build their capacity on tobacco control and the Industry. Awareness creation is also necessary for specific policy makers, politicians as well as the general public.
5. All stakeholders should be alert to Industry activity in order to identify instances of tobacco industry interference. The Civil Society in particular should monitor and expose interference activities.
6. Collaboration between Civil Society and Government should be strengthened in order to improve surveillance, reporting and enforcement mechanisms
7. Enforcement of existing law should be enhanced in order to promote compliance. For example majority of imported tobacco products do not comply with the labeling provisions of the Tobacco Control Act

# Annex I: Questionnaire



## TOBACCO INDUSTRY MAPPING

### TIM Tool/Reporting Form

#### *Part One: Mapping of TI entities/allies and their products*

1. Who are those that represent the commercial and other vested interest of the TI in your country?

#### **A. TI Entities involved in growing tobacco**

Name of the entities	Description of the role played by the entities How do they weaken TC policy development? How do they support TI?
e.g Leaf buying and processing companies	

#### **B. TI Entities involved in manufacturing tobacco**

Name of the entities	Description of the role played by the entities How do they weaken TC policy development? How do they support TI?
e.g State-owned national, multinational tobacco companies, subsidiaries and representatives	

#### **C. TI Entities involved in distributing tobacco**

Name of the entities	Description of the role played by the entities How do they weaken TC policy development? How do they support TI?
e.g distributor bodies, importers, exporters, duty free distributors	

#### **D. TI Entities and Allies involved in selling tobacco**

Name of the entities	Description of the role played by the entities How do they weaken TC policy development? How do they support TI?
e.g retailers' associations, duty free retailers,	

#### **E. Other TI allies, front group**

Name of the entities	Description of the role played by the entities How do they weaken TC policy development? How do they support TI?
e.g Tobacco Industry founded tobacco association, ITGA members,etc	

**2. Please fill in the Table below with information on the percentage of the TI entities total market share for the last five years (2007 to 2011):**

<b>A. Multinational/Transnational tobacco products manufacturing Companies.</b>						
		Percentage of total market share				
Name of the company	Year of implementation in the country	2007	2008	2009	2010	2011

<b>B. State-owned or Privately owned national /local manufacturing companies</b>						
		Percentage of total market share				
Name of the company	Year of implementation in the country	2007	2008	2009	2010	2011

<b>C. Privately owned national /local manufacturing companies</b>						
		Percentage of total market share				
Name of the company	Year of implementation in the country	2007	2008	2009	2010	2011

**3. What tobacco products are sold on the market in your country?**

For each product, please provide pictures of packages of these tobacco products

**A. Please enter in the Table below the inventory of the cigarettes manufactured locally for local consumption and sold on the market in your country?**

	Brand Name	Price of a pack of 20 cigarettes in local currency (US dollars)	Price of a pack of 10 cigarettes in local currency (US dollars)	Price of a stick local in currency (US dollars)	Tobacco Company (or Affiliate) manufacturing the product
1					
2					

**B. Please enter in the Table below the inventory of other smoke- tobacco products (cigar, cigarillo, etc.) manufactured locally for local consumption and sold on the market in your country?**

	Brand Name	Price of lowest quantity of the products sold in local currency (US dollars)	Price of medium quantity of the products sold in local currency (US dollars)	Price of highest quantity of the products sold in local currency (US dollars)	Price of the unit local of the products sold in local currency (US dollars)	Tobacco Company (or Affiliate) manufacturing the product
1						
2						

## Tobacco Industry Interference in Kenya

C. Please enter in the Table below the inventory of imported (not manufactured locally) cigarettes sold on the local market in your country?

	Brand Name	Price of a pack of 20 cigarettes in local currency (US dollars)	Price of a pack of 10 cigarettes in local currency (US dollars)	Price of a stick local in currency (US dollars)	Tobacco Company (or Affiliate) manufacturing the product
1					
2					

D. Please enter in the Table below the inventory of other imported (not manufactured locally) smoke-tobacco products (cigar, cigarillo, etc.) sold on the market in your country?

	Brand Name	Price of lowest quantity of the products sold in local currency (US dollars)	Price of medium quantity of the products sold in local currency (US dollars)	Price of highest quantity of the products sold in local currency (US dollars)	Price of the unit local of the products sold in local currency (US dollars)	Tobacco Company (or Affiliate) manufacturing the product
1						
2						

E. Please enter in the Table below the inventory of smokeless tobacco products manufactured locally sold on the market in your country?

	Brand Name	Measuring unit for sale	Price of the smokeless product	Date of appearance in the local market	Tobacco Company or Manufacturer or Affiliate
1					
2					

F. Please enter in the Table below the inventory of smokeless tobacco products imported and sold on the market in your country?

	Brand Name	Measuring unit for sale	Price of the smokeless product	Date of appearance in the local market	Tobacco Company or Manufacturer or Affiliate
1					
2					

### 4. Which tobacco products are manufactured in your country for export?

For each product, Please provide pictures of each pack product listed

A. Please enter in the Table below the inventory of the cigarettes manufactured locally in your country but intended for export?

	Brand Name	Price of a pack of 20 cigarettes in US dollars	Price of a pack of 10 cigarettes in US dollars	Price of a stick local in US dollars	Tobacco Company (or Affiliate) manufacturing the product
1					
2					

- B. Please enter in the Table below the inventory of other smoke- tobacco products (cigar, cigarillo, etc.) manufactured locally in your country but intended for export?**

	Price of lowest quantity of the products sold in local currency (US dollars)	Price of medium quantity of the products sold in local currency (US dollars)	Price of highest quantity of the products sold in local currency (US dollars)	Price of the unit local of the products sold in local currency (US dollars)	Tobacco Company (or Affiliate)manufacturing the product
1					
2					

- C. Please enter in the Table below the inventory of smokeless tobacco products manufactured locally in your country but intended for export?**

	Brand Name	Measuring unit for sale	Price of the smokeless product	Date of appearance in the local market	Tobacco Company or Manufacturer or Affiliate
1					
2					

- 1. Please describe, briefly the tobacco business impact on the economy – revenue and expenditures, if known, what is the % GDP that comes from the tobacco sector, no of farmers/ area under acreage, % of tax coming from tobacco taxes etc?**
  
  
  
  
  
- 2. Please describe TI involvement in tobacco farming and processing in your country? If your country produce tobacco**

## Tobacco Industry Interference in Kenya

### Part 2: Mapping of TI activities/tactics and target groups

- 3. Which type of activities/tactics is used by the tobacco companies to market their products, and/or themselves? According to the activities/tactics of the TI in your country, which group is their target? Please provide details/examples and pictures.**

	Type of activities or tactics	Target Group	Please provide details and examples
1	Advertisements	Direct advertisements Indirect advertisements Cross-border advertising	
2	Promotions	Promotional activities	
3	Sponsorships	Event sponsorships	
4	Corporate Social Responsibility	supporting environmental projects, supporting farmers, others Scholarships and Youth Smoking Prevention (YSP) programs	
5	Intimidation		
6	Litigation		
7	Philanthropy		
8	Consultancy		
9	Creating alliances and front groups, smokers' right groups		
10	Smuggling		
11	Volunteer agreements with governments/voluntary self-regulation as an alternative to legal, binding regulations, Joint manufacturing and licensing agreements		
12	Other specific	e.g individual shareholders, support provided to customers, Political funding, Funding research,etc	

### Part Three: Assessment of country's implementation of Article 5.3

**Please describe the country's capacity to counter industry interference?**

#### A. Identify tobacco control partners and allies

Name of the TC partners and allies	Description of the role played by the TC partners/allies <i>How do they support TC policy development?</i>
e.g National TC program, Inter ministerial committee, TC Board, CSO, Research institutions,	

**B. List the government structures that address areas of interest to the TI**

Name of government structures	Description of the role played by the structures
e.g Finance, Trade, Labour, Industry, Agriculture authorities	

**C. Do you know any organization, body, group or institution interested in working or cooperating in tobacco control that has any affiliation to or link with the tobacco industry?**

Name of institution interested in working or cooperating in tobacco control	Please provide details on the affiliation to or link with the tobacco industry
e.g	

- A.** Are you aware of any **former tobacco industry officials** being hired by your government? If yes please provide details.
- B.** Are you aware of any **former government officials being hired by the tobacco industry**? If so, please provide details.
- C.** Is there any routine mechanism for screening efforts from the tobacco industry to undermine or subvert tobacco control and for getting information on tobacco industry activities in your country? Please provide details?
- D.** What are the definitions of "tobacco industry" within government sectors (beyond health sector)?
- E.** Does the tobacco control agenda in your country include holding the tobacco industry accountable and liable for any damaging practices? If yes, please provide details and examples.
- F.** Has your government introduced measures that require the tobacco industry to provide mandatory disclosure of contents and emissions of tobacco products? If yes, please provide details and examples.
- G.** Are there existing measures that promote public access to a wide range of information on the tobacco industry? If yes, please provide details.
- H.** Does the tobacco industry disclose its expenditure on advertising, promotion and sponsorship in your country? Are these figures available to the public? If yes, please provide details and examples.
- I.** Is there any existing legal mechanisms dealing with civil and criminal liability; is there any existing legal action against the tobacco industry? If yes, please provide details and examples.
- J.** Is there any existing mechanism of the exchange of information on practices of the tobacco industry and cultivation of tobacco? If yes, please provide details and examples.
- K.** Has your government entered into any partnerships or agreements or MOUs with tobacco corporations, subsidiaries, affiliates or agents? If so, what part of the government, with what tobacco corporation, and for what stated purpose? Please provide an inventory of the pro tobacco policies or MOU in your country?
- L.** Has the TI taken a public position/stand on the FCTC and/or TC policies in your country? If so, what is its position? How has the industry communicated this position?

## Tobacco Industry Interference in Kenya

- M.** Is your government holding consultations with tobacco entities or anyone acting on their behalf? If so, are these consultations open to the public or private? Is information about them publicly available?
- N.** Are tobacco corporations represented in any government bodies (eg agricultural, environmental, economic....) responsible for tobacco control or public health? If so, please fill in the chart below.

Name of Government Body	Role in Tobacco Control/public health	Name and affiliation of tobacco industry representative

Thanks for your participation

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