

**KENYA**

2023

TOBACCO

INDUSTRY

INTERFERENCE

INDEX

## Acknowledgements

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The Tobacco Industry Interference Index is originally an initiative of the Southeast Asia Tobacco Control Alliance (SEATCA). The Index expanded to a global report produced by Global Centre for Good Governance in Tobacco Control (GGTC) the international arm of SEATCA. GGTC's activities focus on WHO FCTC Article 5.3 and addressing obstacles to tobacco control from the tobacco industry and in empowering governments to advance tobacco control.

The Kenya Tobacco Industry Interference Index is part of the Global Tobacco Interference Index. This Kenya Report has been prepared by Consumer Information Network (CIN). CIN is a national consumers' organisation operating in Kenya with a focus of on health, food, trade and environment. CIN has been actively involved in tobacco control on tobacco industry monitoring for over two decades.

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## Introduction

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According to the World Bank, Kenya smoking rate stood at 11.10 percent in 2020 which was a 0.4 percent decline from the 2019 smoking prevalence rate.<sup>1</sup> Smoking prevalence is the percentage of men and women ages 15 and over who currently smoke any tobacco product on a daily or non-daily basis. It excludes smokeless tobacco use. While smoking prevalence is seen to decline and projected to further decline globally, novel and emerging tobacco products such as oral nicotine pouches and other smokeless tobacco are fast getting traction especially amongst young people. This is depicted by the tobacco industry annual financial reports and the vigor in which they, including British American Tobacco (BAT) Kenya Limited, are expanding their manufacturing of the novel and emerging tobacco products. The fast recruitment of young people into consuming these products as been compounded by unproven claims of harm reduction by the tobacco industry and their front groups.

Tobacco use remains the top most preventable cause of death and one of the four behaviour risk factors raising the burden of Non communicable diseases (NCDs) in Kenya. More than 50% of the hospital admissions are due to NCDs and on average 80% of premature deaths are related to the use or exposure to tobacco.<sup>2</sup> Tobacco Industry interference has been identified as the largest barrier and greatest threat to the implementation of the World Health Organisation (WHO) Framework Convention for Tobacco Control (FCTC). Kenya ratified the WHO FCTC in 2004 and has domesticated several provisions of the treaty through national legislation including the Tobacco Control Act 2007 and the Tobacco Control Regulations 2014.

In 2022, there was no Kenya Tobacco Industry Interference Index Report developed. The 2021 Kenya Tobacco Industry Interference Index Report was instead updated to take into account any new evidence that had come into force. The 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 WHO FCTC Article 5.3. This is the fourth report for Kenya, the first report was released in 2019. Kenya's score for the year 2023 is 48 points. Given that Kenya's score after the update of the 2021 Kenya Tobacco Industry Interference Index Report last year was at 39, the score this year indicates a deterioration meaning increased/enhanced tobacco industry interference during the period under review compared to the previous years.

There is also a regional Tobacco Industry Interference report for Africa which is prepared by the African Tobacco Control Alliance (ATCA). The Kenya Tobacco Industry Interference Index Report will now be produced -once every two years.

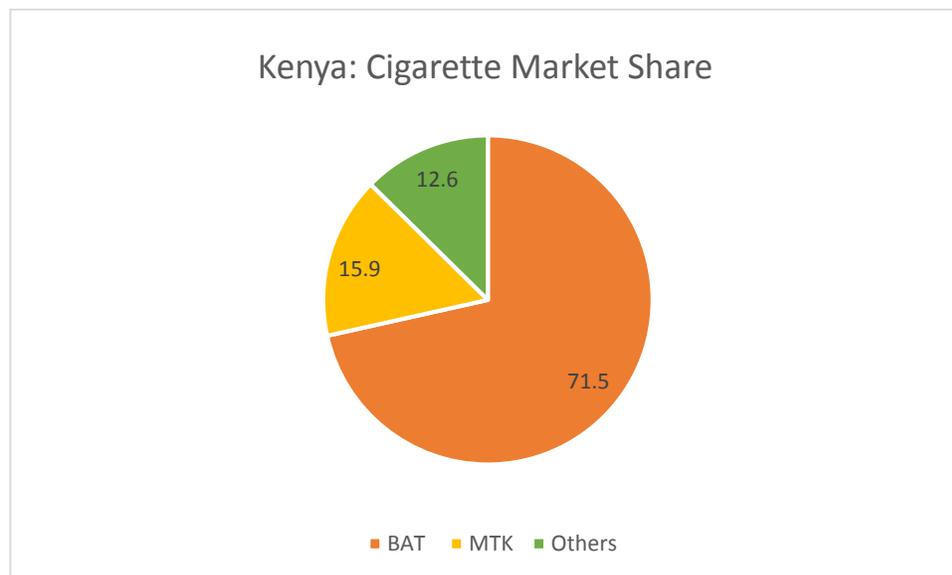
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<sup>1</sup> <https://www.macrotrends.net/countries/KEN/kenya/smoking-rate-statistics>

<sup>2</sup> <https://www.health.go.ke/tobacco-use-leading-cause-of-preventable-death/>

BAT Kenya remains the dominant tobacco company in Kenya. In 2018, BAT Kenya held an estimated 78.8% of the cigarette market share according to Euromonitor International, Company Shares – Kenya, 2018.

**Figure 1.**



Their manufacturing hub in Kenya also exports to at least 17 other countries in the region. The other tobacco manufacturer in Kenya is Mastermind Tobacco Kenya (MTK) who controlled around 16% of the market share in 2019.<sup>3</sup> In early 2019, MTK entered into negotiations to sell a majority stake to Philip Morris, the world's largest tobacco company by sales.<sup>4 5</sup> By the time of compiling this report, we didn't have any further information on how the buy-out talks had progressed.

BAT Kenya has been expanding its range of tobacco products to attract more users especially young people. In 2019, BAT Kenya launched smoke free nicotine pouches trading by the name LYFT into the Kenyan market.<sup>6 7</sup> Typical of tobacco industry tactics to interfere with tobacco control measures, BAT Kenya completely bypassed the Tobacco Control Act 2007 and got approval and licensing of this new product from a different government agency. Rather than applying for registration and approval from the Tobacco Control Board (TCB), BAT Kenya sought and obtained registration of their new product from the Pharmacy & Poisons Board (PPB). In a letter to the Pharmacy and Poisons Board, the health minister Mutahi Kagwe accused it of violating several provisions of the law when it licensed LYFT. Among other things,

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

<sup>4</sup> [http://www.dyerandblaironline.com/research\\_web/Company%20Updates/BAT%20Kenya%20Company%20Update%202020.pdf](http://www.dyerandblaironline.com/research_web/Company%20Updates/BAT%20Kenya%20Company%20Update%202020.pdf)

<sup>5</sup> <https://www.businessdailyafrica.com/bd/news/mastermind-billionaire-in-buyout-talks-with-us-firm-2236232>

<sup>6</sup> <https://web.archive.org/web/20191119094852/https://allafrica.com/stories/201907220197.html>

<sup>7</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DO9T5KLN](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5KLN)

the licensing of the product by PPB led to the product being dispensed in automatic vending machines, contravening the law.<sup>8</sup>

This was a clear case of BAT Kenya violating the law and co-opting a government agency responsible for protection of public health, in this case the Pharmacy and Poisons Board (PPB) in its mischief. The PPB experience makes it clear that there is a need to step-up awareness of the TI's tactics among the various government departments and agencies. Whereas the oral nicotine pouches by the brand LYFT was withdrawn from the market and ordered to comply with the provisions of Tobacco Control Act 2007 and Tobacco Control Regulations 2014 including graphic health warnings, BAT Kenya has since introduced a new brand of nicotine pouches in the market by the name VELO in very unclear circumstances and without complying to the relevant tobacco control provisions.<sup>9</sup> BAT Kenya is now rushing to have standards specifications developed for these new products at the Kenya Bureau of Standards (KEBS) with different name proposals. To undercut the normal lengthy detailed standards specification development process that could take years, KEBS has opted to fast track the process through a Kenya National Workshop Agreement in the development of the nicotine pouches standards.

At the time of writing this report, there is a new government in Kenya which took over following the August 2022 general elections. There had been allegations of bribery by BAT Kenya of some key persons in the current government in the past.<sup>10</sup> The current Prime Cabinet Secretary also lifted the ban of public smoking when he was Minister for Local Government in 2008, hardly a year after Kenya passed the Tobacco Control Act 2007 which banned smoking in public places.<sup>11</sup> It remains to be seen how the public officials whose alleged interaction and soft spot for the tobacco industry before would engage with the tobacco industry during their current tenure.

BAT Kenya is also enhancing its corporate social responsibility activities despite a ban on such activities as provided for in the provisions of the Tobacco Control Act 2007. A glaring example is the launch of a Kshs. 10 million Rural Women Development Programme (RuWDeP) during the 2023 International Women's Day.<sup>12 13</sup> Besides such direct or indirect sponsorships, BAT Kenya is also rolling out other promotional activities targeting the youth in Kenya taking advantage of the lax regulatory environment. Such initiatives include the NexGen programme in which BAT Kenya is working with the National Industrial Training Authority (NITA), Kenyatta University (KU) and the Jomo Kenya University of Agriculture & Technology (JKUAT) which are all public institutions to "mentor leaders of tomorrow".<sup>14</sup> The other programme through which BAT Kenya is trying to appeal to the youth in Kenya is their Battle of Minds.<sup>15</sup>

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<sup>8</sup> <https://www.reuters.com/article/kenya-british-american-idUSL8N2GY2SR>

<sup>9</sup> <https://www.theeastafrican.co.ke/tea/science-health/nicotine-pouches-blow-smoke-over-anti-tobacco-laws-4210426>

<sup>10</sup> <https://radiojambo.co.ke/habari/2015-12-01-moses-wetangula-accused-of-accepting-bribes-from-bat-in-bbc-investigator/>

<sup>11</sup> <https://nation.africa/kenya/news/ministry-and-city-council-differ-on-smoking-ban--565362>

<sup>12</sup> <https://businessnow.co.ke/bat-kenya-rolls-out-kshs-10-million-rural-womens-development-programme/>

<sup>13</sup> <https://businesstoday.co.ke/bat-kenya-rolls-out-ksh10-million-rural-womens-development-programme/>

<sup>14</sup>

[https://www.batkenya.com/group/sites/bat\\_b4alxz.nsf/vwPagesWebLive/DOB4AMFD/\\$FILE/medMDCE4CXE.pdf?openelement](https://www.batkenya.com/group/sites/bat_b4alxz.nsf/vwPagesWebLive/DOB4AMFD/$FILE/medMDCE4CXE.pdf?openelement)

<sup>15</sup> <https://competition.bat-battleofminds.com/>

The appointment of BAT Kenya's Managing Director to the 15-member National Steering Committee on Drought Response by the President through an Executive Order No. 2 of 2022 published on November 21, 2022 was another diversion from the spirit and intent of Tobacco Control Act 2007 and Tobacco Control Regulations 2014.<sup>16</sup> The committee is set to serve for one year. The contribution of BAT Kenya into the Drought Response kitty has never been made public on the official website of the Office of the President also shying away from listing the Managing Director of BAT Kenya as a member of the committee following complaints from tobacco control civil society organisation in the media. Some recent tracking of news from the Office of the President on the activities of the committee in which the Managing Director of BAT Kenya is now not listed as a member of the committee even though he has not resigned or been removed.<sup>17 18</sup>

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<sup>16</sup> <https://nation.africa/kenya/news/safaricom-boss-to-head-drought-response-committee-4027896>

<sup>17</sup> <https://www.president.go.ke/drought-response-committee-raises-sh542-million-for-famine-hit-kenyans/>

<sup>18</sup> <https://www.president.go.ke/president-ruto-appoints-drought-response-team/>

## Summary Findings

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### **INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT**

According to the Kenya Tobacco Control Regulations (TCR) 2014, the Government does not accept, support or endorse any offer for assistance by or in collaboration with the tobacco industry in setting or implementing public health policies in relation to tobacco control. At the time of compiling this report and as per documents accessed by our research team, there was no evidence of incidence against this regulation during the period under review.

### **INDUSTRY CSR ACTIVITIES**

In November 2022, the government unveiled a National Drought Response Committee in which the current BAT Kenya Managing Director was named part of the committee. This is contrary to the provisions of Tobacco Control Regulations 2014 which prohibits public officials from endorsing, supporting and/or forming partnerships with and/or participating in activities of the tobacco industry described as corporate social responsibility. Information as to how much BAT Kenya has contributed into the national drought response kitty could however not be obtained as at the time of writing this report.

### **BENEFITS TO THE INDUSTRY**

The President of Kenya during his visit to the Republic of South Korea in November 2022, promoted tobacco and tobacco products as among the products that South Korea could import from Kenya. This was the second time in the same year that a sitting President of Kenya was promoting trade in tobacco and tobacco products overseas as during his address at the Expo 2020 Dubai in Dubai UAE on 15<sup>th</sup> February 2022, the then President of Kenya Uhuru Kenyatta mentioned tobacco products as one of the commodities that UAE could source from Kenya at competitive prices

After initially ordering the removal of oral nicotine pouches named LYFT from the market and demanding their full compliance with the Tobacco Control Act 2007 and Tobacco Control Regulations 2014, the government later allowed the re-entry of the pouches under the name VELO, despite their non-compliance with certain tobacco control laws such as the inclusion of graphic health warnings

### **UNNECESSARY INTERACTION**

The Tobacco Control Regulations 2014 Section 22. (1) states that “Any interactions between public authorities or public officers and the tobacco industry shall be limited to the extent strictly necessary for effective tobacco control and enforcement of relevant laws.” Despite of this, the Cabinet Secretary for National Treasury was the Chief Guest at the Financial Reporting (FIRE) 2022 Awards Ceremony at which BAT Kenya dominated. Again at an event organized by the Kenya Association of Manufacturers (KAM) which is one of the front groups of BAT Kenya, senior government officials from the Ministry of Energy were in attendance.

## **TRANSPARENCY**

Tobacco Control Regulations (TCR) 2014 sets out the procedure for all interaction between the government officials and the tobacco industry. However, despite the existence of this procedure, information on meetings between public officials and tobacco industry is not readily accessible owing to bureaucracy. Information on the interactions are mostly heard through the media with no details on compliance to the requirements of TCR 2014.

## **CONFLICT OF INTEREST**

A number of those in the Board of Directors of BAT Kenya are also either currently serving in a number of boards of government agencies or had previously served in key government positions.

## **PREVENTIVE MEASURES**

Tobacco Control Regulations (TCR) 2014 requires any public officer participating in any interaction with tobacco industry to prepare a formal record of the interaction and submit to the relevant public authorities including the Cabinet Secretary. However, there is no implementing procedure in place to disclose all records of interactions as envisaged. Furthermore, the government is yet to formulate a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry as required by TCR 2014,

## Recommendations

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A number of recommendations made in the previous Kenya Tobacco Industry Interference Index Report are yet to be implemented. Tobacco Control Regulations (TCR) 2014 Part V provides a detailed and robust framework and guidelines in the spirit of Article 5.3 of the WHO FCTC. However, a number of implementation mechanisms and instruments for the effective implementation and compliance monitoring and reporting of Part V of the TCR 2014 are yet to be developed.

1. This report notes that a number of provisions in the Tobacco Control Act 2007 and the Tobacco Control Regulations 2014 are being implemented. If priority would also be given to developing the required implementation instruments envisaged Part V of the TCR 2014, then that would go a long way to countering tobacco industry interference in Kenya.
2. **Increase awareness in Article 5.3:** There is also need to escalate awareness on tobacco industry interference tactics and the necessity of all public officers, agencies and departments at all levels of government (both national and local) and ministries to help counter the same. This and the previous Kenya Tobacco Industry Interference Report indicate that there is general lack of awareness of Kenya's obligations under Article 5.3 of the WHO FCTC amongst public officers and government departments including the presidency.
3. **Increase tobacco industry monitoring and expose those who promotes its interests:** To discourage public officers from unnecessary interaction with tobacco industry, there is need for increased public awareness, enhanced monitoring of tobacco industry interference and stringent action against tobacco industry players and those who represent its interests. It is important to expose action taken on those engaging or facilitating tobacco industry interference.

## 2023 Tobacco Industry Interference Index Results and Findings

	0	1	2	3	4	5
<b>INDICATOR I: Level of Industry Participation in Policy-Development</b>						
<p>I. The government<sup>19</sup> accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry<sup>20</sup> in setting or implementing public health policies in relation to tobacco control<sup>21</sup> (Rec 3.1)</p>	<b>0</b>					
<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>22</sup> There was no evidence of incidence against this regulation during the period under review.</p> <p>However the tobacco industry has been trying to make advances to influence tobacco control policy development and implementation in Kenya. The BAT Kenya website states that “We want to be part of the debate: Our experience and expertise means that we have much to offer governments and regulators when it comes to helping develop policies around tobacco. Some regulations can have unwelcome and unexpected consequences. For example, sudden and significant hikes in excise rates can result in price disparities between neighbouring countries, spurring illicit trade in tobacco products and loss of government revenue.”<sup>23</sup></p> <p>Kenya banned nicotine pouches in 2020.<sup>24 25 26</sup> An August 2022 news report says, “In less than 24 months, nicotine pouches are back on the Kenyan market after British American Tobacco (BAT), the biggest manufacturer in Kenya, lobbied government authorities for their reintroduction.”<sup>27</sup> Health Cabinet Secretary reportedly took action in favour of the industry to reverse a previous ban on nicotine pouch in October 2020 with BAT announcing that they had agreed with the Ministry of Health (MoH) to reintroduce the nicotine pouches into the market.<sup>28</sup></p>						

<sup>19</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>20</sup> The term, “tobacco industry’ includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

<sup>21</sup> “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

<sup>22</sup> Kenya Tobacco Control Regulations 2014: [http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/169-Tobacco\\_Control\\_Regulations\\_2014](http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/169-Tobacco_Control_Regulations_2014)

<sup>23</sup> [https://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJ8](https://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJ8)

<sup>24</sup> <https://www.standardmedia.co.ke/health/health-science/article/2001389220/health-cs-kagwe-bans-nicotine-pouches-lyft>

<sup>25</sup> <https://www.dialadrinkkenya.com/blog/lyft-banned-in-kenya>

<sup>26</sup> <https://www.businessdailyafrica.com/bd/corporate/health/blow-bat-kagwe-declares-lyft-illegal-2459642>

<sup>27</sup> The Africa Report. BAT reverses ban to relaunch nicotine pouches in Kenya. 31 August 2022.

<https://www.theafricareport.com/234861/bat-reverses-ban-to-relaunch-nicotine-pouches-in-kenya/>

<sup>28</sup> <https://nation.africa/kenya/business/ministry-bat-agree-on-nicotine-product-3347990>

	0	1	2	3	4	5
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>The government prohibits any support or endorsement of any policy or legislation drafted with the tobacco industry in accordance with Tobacco Control Regulations 2014.</p> <p>There was no evidence of incidence against this regulation during the period under review.</p>						
3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8)		1				
<p>Interaction allowed with conditions / restrictions</p> <p>Tobacco Control Regulations 2014, 30 (g) restrict involvement of tobacco industry in the development of tobacco control policies and laws except in public forums where the industry is presenting its views to the public authority on relevant tobacco control laws and policies;</p> <p>(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.</p> <p>In spite of the above provisions in Law, in November 2022, the government unveiled a National Drought Response Steering Committee in which BAT Kenya Managing Director was named as part of the committee.<sup>29</sup> At the time of compilation of this report, we have not been able to obtain information on the contribution of BAT Kenya into the national drought response kitty even though a number of the committee members have made their contributions.</p>						
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>30</sup> (Rec 4.9 & 8.3)		1				
<p>Looking at the attendance list from FCTC COP 9 which was held in November 2021 in Geneva but with most delegates attending virtually, the Kenyan delegation<sup>31</sup> did not have in her delegation persons from the industry neither was there sponsorship of the delegation by the industry as per information available in the public domain. The delegation as per the COP participants list consisted of Dr. A. Mulwa (Director of Preventive and Promotive health as Head of Delegation/Chief Delegate), Dr E. Maree (Head /Department of Non Communicable Diseases as Deputy Chief Delegate), Dr C. Mailu (Ambassador/ Permanent</p>						

<sup>29</sup> <https://nation.africa/kenya/news/safaricom-boss-to-head-drought-response-committee-4027896>

<sup>30</sup> Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

<sup>31</sup> <https://untobaccocontrol.org/downloads/cop9/additional-documents/COP9-List-of-Participants.pdf>

	0	1	2	3	4	5
<p>Representative Kenya Mission to the United Nations in Geneva), Ms D. Kiptui (Head, Tobacco Control Unit), Dr G. Gathecha (Deputy Head, Department of Non Communicable Diseases), Ms A. Kendagor (Programme Officer, Division of Tobacco Control), Ms Y. Olando (Director, Public Education Advocacy and Rehabilitation, National Authority for the Campaign Against Alcohol and Drug Abuse - NACADA), Ms N. Gachoka, Acting Chair (Tobacco Control Board), Dr. P. Mutuma (Health Attaché, Kenya Mission to the United Nations in Geneva), Ms. C. Sang (Administrator, Tobacco Control Board), Ms. M. Olando (Senior State Counsel, Office of the Attorney General) Ms E. Akware (Senior State counsel, Office of the Attorney General), Ms. ,L. Mbevi (Chair Technical Commmittee Tobacco Control Board), Mr J. Ngugi (Member, Tobacco Control Board), Ms. J. Twala, Manager (Treatment and Rehabilitation, NACADA) Mr. A. Njenga (Technical officer, Policy and Administration, NACADA) and Ms. K. Muthaura (Excisable Goods Management System, Kenya Revenue Authority)</p> <p>This is consistent with the Tobacco Control Regulations – No.29 which states that a “person working for the tobacco industry or any setting working to further the interests of the tobacco industry shall not serve on Kenyan delegations to meetings of the Conference of Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.”</p>						
<b>INDICATOR 2: Industry CSR activities</b>						
<p>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)</p> <p>B. The government (its agencies and officials) receives contributions<sup>32</sup> (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)</p>		1				
<p>The Tobacco Control Regulations 2014 in 30(f) does not allow public officials to endorse, support, form partnerships with or participate in activities of the tobacco industry described as corporate social responsibility; See also Q. 11</p>						
<b>INDICATOR 3: Benefits to the Tobacco Industry</b>						
<p>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)</p>					4	
<p>In a letter dated 18<sup>th</sup> February 2021 addressed to the Health Cabinet Secretary, BAT (Kenya) Ltd requested to be allowed a transitional period of 9 – 12 months to sell LYFT’ a nicotine pouch marketed by BAT (Kenya) Ltd as an alternative to cigarettes for addicted smokers,</p>						

<sup>32</sup> political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

stocks equivalent of 400,000 cans before it could fully implement a directive to have LYFT fully comply with the provisions of the Tobacco Control Act 2007 and the Tobacco Control Regulations 2014. At the time of compiling this report, LYFT was not yet back in the market but there was another nicotine pouch product by the name VELO which seemingly has replaced LYFT. VELO in terms to the graphic health warnings has not complied to the requirements of the Tobacco Control Act 2007 and the Tobacco Control Regulations 2014 and we could not confirm whether and on what grounds government had allowed the replacement of LYFT with VELO both from BAT (Kenya) Ltd.

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)

5

In his visit to South Korea in November 2022, the President of the Republic of Kenya H.E. Dr. William Ruto signed a bilateral trade agreement that included includes tobacco and tobacco products as among the products that South Korea could import from Kenya. This was a way of marketing and giving privilege to the tobacco industry given so many other potential services and commodities that he could entice the citizenry of the Republic of South Korea to be interested in from Kenya. The deal also included the Kenya National Chamber of Commerce and Industry (KNCCI). The deal promotes public-private partnership.



Ref: <https://www.the-star.co.ke/in-pictures/2022-11-23-photos-kenya-south-korea-sign-trade-bilateral-agreement/>

However, following interventions by tobacco control advocates, the Government has in April 2021 put the nicotine product LYFT under regulation as a tobacco product.<sup>33 34</sup>

<sup>33</sup> <https://www.businessdailyafrica.com/bd/markets/market-news/state-0-bat-nicotine-pouches-as-tobacco-products-3300512>

<sup>34</sup> <https://nation.africa/kenya/business/ministry-bat-agree-on-nicotine-product-3347990>

	0	1	2	3	4	5
<p>It is important to highlight that instead of LYFT adhering to the stipulations outlined in the Tobacco Control Act 2007 and Tobacco Control Regulations 2014, BAT discontinued LYFT and introduced a new oral nicotine pouch product called VELO, which also fails to meet the requirements set by Tobacco Control laws.</p> <p>During his address at the Expo 2020 Dubai in Dubai UAE on 15<sup>th</sup> February 2022, the then President of Kenya Uhuru Kenyatta mentioned tobacco products as one of the commodities that UAE could source from Kenya at competitive prices<sup>35</sup>. This was a direct promotion of tobacco and tobacco products from a sitting head of state.</p>						
<b>INDICATOR 4: Forms of Unnecessary Interaction</b>						
<p>8. Top level government officials (such as President/ Prime Minister or Minister<sup>36</sup>) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)</p>						5
<p>The Kenya Association of Manufacturers (KAM) to which BAT Kenya is a member and who has been a supporter of BAT Kenya in a number of forums, runs the KAM Energy Management Award programme for which BAT has been awarded a number of years. During the 18th KAM Energy Management Awards 2022 at which BAT was again awarded one of the top prizes, the award ceremony was graced by top government officials including Senior Deputy Director of Renewable Energy, Ministry of Energy, Paul Mbuti and Energy and Petroleum Authority (EPRA) Director General, Daniel Kiptoo.</p> <p>Further, in the Financial Reporting (FIRE) 2022 Awards on 15<sup>th</sup> December 2022, another programme for which BAT Kenya has had dominance, the chief guest was Professor Njunge Ndung'u, the Cabinet Secretary for National Treasury.</p> <p>In September 2021, BAT participated in World Clean-up Day, under the theme: We are Smart! by conducting a clean-up exercise by its Green Leaf Threshing plant and the waste was subsequently collected by the local County government for segregation, recycling and proper disposal.<sup>37</sup></p> <p>BAT Kenya is a patron member of the National Chamber of Commerce and Industry (KNCCI).<sup>38</sup> In July 2022, the Cabinet Secretary for Health, Hon. Mutahi Kagwe, EGH was the chief guest at a Breakfast Roundtable meeting hosted by the KNCCI. BAT Kenya was the main sponsor of that event.<sup>39</sup> The Cabinet Secretary thanked the KNCCI for sponsorship in 2020-2021 where the KNCCI conducted a programme with the Ministry of Health through</p>						

<sup>35</sup> <https://www.youtube.com/watch?v=MgjcJmXCdqg>

<sup>36</sup> Includes immediate members of the families of the high-level officials

<sup>37</sup>

[https://www.batkenya.com/group/sites/bat\\_b4alxz.nsf/vwPagesWebLive/DOB4AMFD/\\$FILE/medMDC8X9XF.pdf?openelement](https://www.batkenya.com/group/sites/bat_b4alxz.nsf/vwPagesWebLive/DOB4AMFD/$FILE/medMDC8X9XF.pdf?openelement)

<sup>38</sup> <https://www.kenyachamber.or.ke/membership/our-members/>

<sup>39</sup> <https://www.kenyachamber.or.ke/2022/07/25/kncci-holds-members-consultative-roundtable-breakfast-meeting/>

	0	1	2	3	4	5
<p>KEMSA to support the development and manufacturing of 7.5 million PPEs as an incentive to promote local manufacturers and producers of fabric.</p> <p>The Tobacco Control Regulations 2014 Section 22. (1) Any interactions between public authorities or public officers and the tobacco industry shall be limited to the extent strictly necessary for effective tobacco control and enforcement of relevant laws.</p>						
<p>9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)</p>	0					
<p>The Tobacco Control Regulations 2014 forbids the government from accepting any assistance from the tobacco industry on any enforcement activities.</p> <p>BAT (Kenya) Ltd website states, “As a key stakeholder in the tobacco industry, we fully support local governments, regulators and government agencies including Kenya’s Inter-Agency Anti-Illicit Working Group and the Anti-Counterfeit Agency, regional bodies including the EAC and COMESA as well as international organisations such as the World Trade Organization and World Health Organization, in seeking to eliminate all forms of illicit tobacco trade.”<sup>40</sup> While there is no specific information on what kind of support BAT (Kenya) Ltd is offering the local governments and regulators this will not be the case as in May 2020 Kenya, ratified the Protocol to Eliminate Illicit Trade in Tobacco Products. The Protocol clearly mentions Parties need to protect their policy from tobacco industry interference.<sup>41</sup></p>						
<p>10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</p>	0					
<p>The Tobacco Control Regulations forbids the government from entering into any partnership or agreements with the tobacco industry. No evidence were recorded for this reporting period.</p>						
<b>INDICATOR 5: Transparency</b>						
<p>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)</p>				3		

<sup>40</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJU](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DO9T5KJU)

<sup>41</sup> <https://bit.ly/3dqe9DN>

Tobacco Control Regulations 2014 Section 22 sets out the procedure for all interaction between the government officials and the tobacco industry:

- Any interactions between public authorities or public officers and the tobacco industry shall be limited to the extent strictly necessary for effective tobacco control and enforcement of relevant laws.
- A minimum of two public officers shall be present in any interactions with the tobacco industry.
- Before commencing any interaction with the tobacco industry, the public officers shall state, in writing, that the interaction does not imply an endorsement of tobacco industry practices and that that no relationship, collaboration or partnership shall be construed whatsoever from the interaction.

However, despite the existence of this regulation, information on meetings between public officials and TI is not readily accessible owing to bureaucracy. Information on the interactions are mostly heard through the media with no details on compliance to the requirements of Section 22 of The Tobacco Control Regulations 2014. Furthermore, a number of public officers seem not aware of this regulation and hence keep no records.

BAT claims to have lobbied the government<sup>42</sup> (see Q1) but there is no information on details of the lobbying.

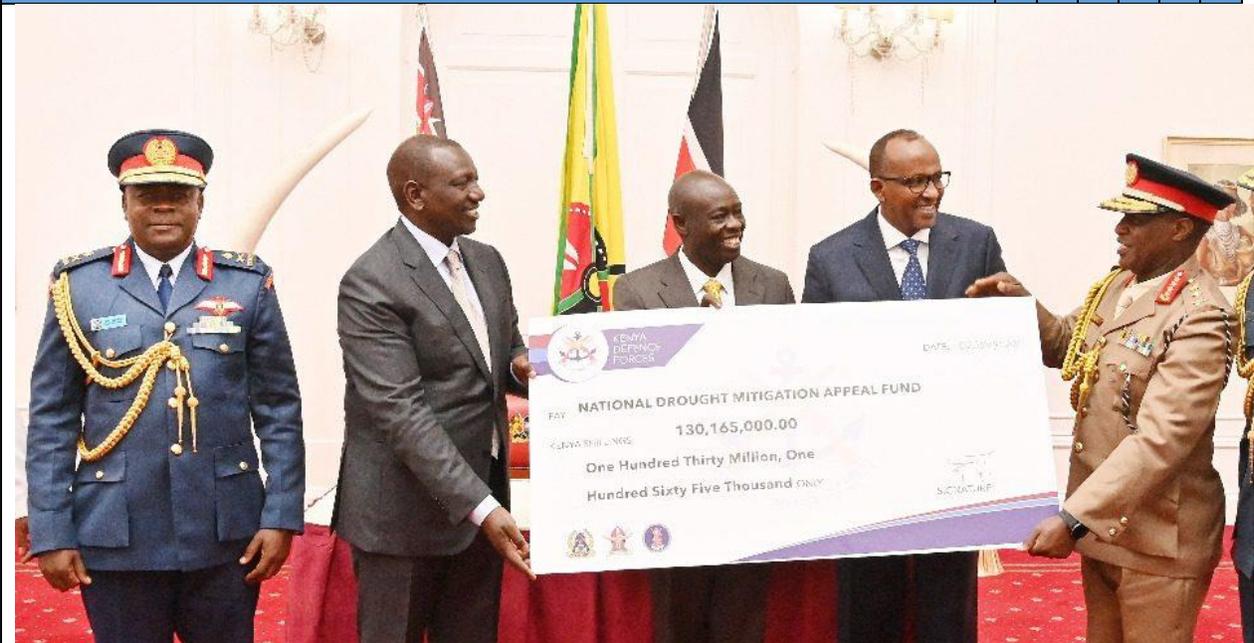
Health Cabinet Secretary reportedly “had numerous talks with the tobacco manufacturers” however these were not made public.

The involvement of BAT's Managing Director as a member of the Kenya National Drought Response Committee, and the fact that President Ruto received a significant contribution of over Kshs. 542 million on December 2nd, 2022, primarily from organizations led by committee members, highlights the lack of public disclosure regarding the specific contributions made by BAT and other committee members. With BAT Managing Director having being named as a member of the Kenya National Drought Response Committee<sup>43</sup> and with President Ruto received over Kshs. 542 million into the kitty on 2<sup>nd</sup> December 2022 from various organisation with leading contributors being committee members, the contribution of BAT alongside other committee members has never been made public.<sup>44</sup>

<sup>42</sup> The Africa Report. 31 August 2022. <https://www.theafricareport.com/234861/bat-reverses-ban-to-relaunch-nicotine-pouches-in-kenya/>

<sup>43</sup> <https://nation.africa/kenya/news/safaricom-boss-to-head-drought-response-committee-4027896>

<sup>44</sup> <https://www.president.go.ke/drought-response-committee-raises-sh542-million-for-famine-hit-kenyans/>



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)

3

The Tobacco Control Regulations 2014, in Part III; Section 13 requires the tobacco manufacturer to, at the end of every calendar year, to submit a report to the Cabinet Secretary information, including, (e) affiliated organizations and its agents or persons acting on its behalf.<sup>45</sup> However this has not been fully implemented. TI provides some information required under this regulation through their annual reports and also for other legal requirements. However some information such as that on requirement (e) could not be established. Some of the TI affiliate identified during this report writing include Tobacco Harm Reduction- Kenya<sup>46</sup>, the Foundation for Consumer Freedom Advancement<sup>47</sup> and the Kenya Association of Manufacturers.

**INDICATOR 6: Conflict of Interest**

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)

5

<sup>45</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)

<sup>46</sup> <https://thrkenya.org/>

<sup>47</sup> <https://thefca.org/>

	0	1	2	3	4	5
<p>Tobacco Control Regulations 2014 Section 34 states that “Every public authority involved in tobacco control shall at the end of every calendar year, prepare and submit an annual report on the implementation of this Part to the Board 2) A report prepared and submitted pursuant to paragraph (1) shall specify-</p> <ul style="list-style-type: none"> <li>(a) the measures undertaken during that period to implement this part;</li> <li>(b) the achievements and shortcomings relating to implementation of this part and actions proposed to improve performance in furtherance of this part;</li> <li>(c) any lobbying, philanthropy, political contributions and all other activities by the tobacco industry;</li> <li>(d) any business and non-business partners and supporters of tobacco industry involved with the public authority”</li> </ul> <p>However, this has not been implemented. We could not locate any template of mechanism established to enforce this provision of the Tobacco Control Regulations 2014. Furthermore the Elections Campaign Act No. 42 of 2013 [Revised 2017] Part IV <sup>48</sup> does not isolate tobacco industry funding as unacceptable sources of campaign financing despite the fact that there have been allegations of political players in Kenya being financed by BAT Kenya.</p>						
<p>14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)</p>	0					
<p>One of the current board members served in senior government position more than two decades ago. No evidence of latest incidence identified by current report.</p>						
<p>15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)</p>					4	
<p>Rita Kavashe was appointed the Independent Non-executive Chairperson of British American Tobacco (Kenya) Ltd in September 2020. She is also a member of the Board of Kenya Vision 2030, the country’s development plan from 2008 to 2030 which was launched on 10 June 2008 by the President. The Vision is to be implemented in 5-year plans and transform Kenya into “a newly-industrialising, middle income country providing a high quality of life to all its citizens in a clean and secure environment”.<sup>49 50 51 52</sup> She sits in a number of Government Committees. She is also the Chairperson of the Kenya Roads Board and a member of the board of National Transport and Safety Authority (NTSA).</p>						

<sup>48</sup> <https://www.iebc.or.ke/uploads/resources/SrIIWVeBVMH.pdf>

<sup>49</sup> <https://www.the-star.co.ke/business/kenya/2020-09-01-bat-appoints-rita-kavashe-as-chair/>

<sup>50</sup> <https://www.businessdailyafrica.com/bd/corporate/companies/bat-appoints-isuzu-boss-rita-kavashe-as-new-board-chair-2300016>

<sup>51</sup> <https://vision2030.go.ke/board/rita-kavashe/>

<sup>52</sup> <https://kenyanwallstreet.com/rita-kavashe-appointed-to-the-board-of-bat-kenya/>

	0	1	2	3	4	5
<p>Carol Musyoka<sup>53</sup> is a current independent non-executive director of BAT(Kenya) Ltd<sup>54</sup> since February 2011<sup>55</sup> while also the Chairperson of the Board of Directors of Business Registration Services (BRS)<sup>56</sup> which is a department under the Office of the Attorney General whose mandate is to oversee the operations of the Companies Registry, Movable Property Security Rights Registry (Collateral Registry), Insolvency (Official Receivers) Registry and the Hire Purchase Registry. Carol is also currently a board member of Industrial &amp; Commercial Development Corporation (ICDC).<sup>57</sup> ICDC is a state corporation mandated to facilitate promotion of the industrial and economic development of Kenya including and not limited to development financing. Carol previously served as a board member of Competition Authority of Kenya (CAK).<sup>58</sup></p> <p>The Tobacco Control Act 2007 clause 26 states that, “A public officer who has or has had a role in setting public health policies with respect to tobacco control shall not engage in such occupational activity within a period of three years from the time the persons ceases being a public officer.”</p>						
<b>INDICATOR 7: Preventive Measures</b>						
<p>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)</p>					4	
<p>Tobacco Control Regulations 2014 Section 22(4) states that “Any public officer participating in any interaction with tobacco industry shall prepare a formal record of the interaction and submit to the relevant public authorities including the Cabinet Secretary on request,” However, there is no implementing procedure in place to disclose all records of interactions as envisaged by Tobacco Control Regulations 2014.</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. Section 24 of Tobacco Control Regulations 2014 provides:</p> <p>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 Kenya Government 2018 Report to FCTC states that the Government has developed regulations governing the interaction of public officers with tobacco industry and its affiliates,</p>						

<sup>53</sup> <https://biography.omicsonline.org/kenya/east-african-breweries-ltd/carol-musyoka-592227>

<sup>55</sup> [http://www.batkenya.com/group/sites/BAT\\_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86](http://www.batkenya.com/group/sites/BAT_B4ALXZ.nsf/vwPagesWebLive/DOB4AM86)

<sup>56</sup> <https://brs.go.ke/board.php>

<sup>57</sup> <http://icdc.co.ke/index.php/about-us/who-we-are/current-board-of-directors/item/ms>

<sup>58</sup> <https://www.cak.go.ke/sites/default/files/annual-reports/FY%202017-2018%20CAK%20Annual%20Report.pdf>

	0	1	2	3	4	5
requiring nominees to the Tobacco Control Board to declare any conflict of interest prior to being inaugurated as members. The report writers had not accessed the regulations as at the time of compiling this report.						
18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (5.2)					4	
<p>Part III of Tobacco Control Regulations 2014 specifies the information to be provided by the manufacturers. This includes information on composition and quality of tobacco products, market share, sales and revenue earned and information on affiliate organisations and agents. However, information on marketing expenditure, lobbying, philanthropy, political contributions are not listed as information needed to be provided for by manufacturers,</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>59</sup> As at the time of compiling this report there is no progress in developing the inventory.</p>						
19. The government has a program / system/ plan to consistently <sup>60</sup> raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)				3		
<p>The Tobacco Control Regulations 2014 Section 30(b) requires public authority to adopt mechanisms to raise awareness within its mandate about the interference and vested interests of tobacco industry with the development and enforcement of tobacco control legislations and policies.</p> <p>The government has reported, in line with the WHO FCTC Article 5.3 guidelines, that it provides access to a wide range of information on the tobacco industry to the general public.<sup>61</sup> However, there is no record of the existence of a mechanism to raise awareness according to the Tobacco Control Regulations 2014. This means that although there is an existing policy indicating good intentions, there is a lack of comprehensive implementation across various government departments during the reporting period.</p>						

<sup>59</sup> Kenya 2016 report the COP [https://untobaccocontrol.org/impldb/wp-content/uploads/reports/kenya\\_2016\\_report\\_final.pdf](https://untobaccocontrol.org/impldb/wp-content/uploads/reports/kenya_2016_report_final.pdf)

<sup>60</sup> For purposes of this question, “consistently” means: a. Each time the FCTC is discussed, 5.3 is explained. AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

<sup>61</sup> [https://untobaccocontrol.org/impldb/wp-content/uploads/Maldives\\_2018\\_report.pdf](https://untobaccocontrol.org/impldb/wp-content/uploads/Maldives_2018_report.pdf)

	0	1	2	3	4	5
20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)		1				
<p>Tobacco Control Regulations 2014 section 31 prohibits government officials to accept all forms of contributions/ gifts from the tobacco industry. Specifically, (1) Any entity which is part of the tobacco industry shall not grant any monetary and non-monetary payments, gifts and services to public authorities or a public officer. (2) A public authority or officer shall not receive any monetary or non-monetary payment, gift or favour from tobacco industry. (3) A public authority or officer who contravenes this Regulation commits an offence. There is no publicly available information on whether this provision was contravened.</p>						
<b>TOTAL</b>						<b>48</b>

## ANNEX A: SOURCES OF INFORMATION

### LOCAL TOBACCO COMPANIES

Top 5 Tobacco Companies/distributors	Market Share and Brands	Source
British American Tobacco (BAT) Kenya	78.8% <ul style="list-style-type: none"> <li>• Dunhill</li> <li>• Rothmans</li> <li>• Embassy</li> <li>• Sportsman</li> <li>• SM</li> <li>• Safari</li> <li>• Roosters</li> <li>• LYFT</li> </ul>	Euromonitor International Company Market Share – Kenya  <a href="https://africanfinancials.com/company/ke-bat/#tab-2dc58bed77c7a91c4a9">https://africanfinancials.com/company/ke-bat/#tab-2dc58bed77c7a91c4a9</a>
Mastermind Tobacco Kenya (MTK)	16% <ul style="list-style-type: none"> <li>• Supermatch Kings</li> <li>• Supermatch Menthol</li> <li>• Rocket</li> <li>• Supermatch Kings HLP</li> <li>• Ralli</li> <li>• Ralli Menthol</li> <li>• Comet</li> <li>• Superman</li> <li>• Rally Kings</li> <li>• Summit Lights</li> <li>• Super</li> </ul>	Euromonitor International Company Market Share – Kenya  <a href="https://www.mastermindkenya.co.ke/ourbrands">https://www.mastermindkenya.co.ke/ourbrands</a>
Cut Tobacco (K) Limited	Deals in cigars and tobacco	<a href="https://www.businesslist.co.ke/company/77460/cut-tobacco">https://www.businesslist.co.ke/company/77460/cut-tobacco</a>

### TOBACCO INDUSTRY FRONT GROUPS

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

Chief Executive Officer	Tobacco Harm Reduction Kenya	<a href="https://thefcfa.org/">https://thefcfa.org/</a> <a href="https://thefcfa.org/team/edam-shem/">https://thefcfa.org/team/edam-shem/</a>
Adam Shem, Kenyan Affairs Manager	Foundation for Consumer Freedom Advancement	<a href="https://web.facebook.com/KenyaAssociationofManufacturers/posts/bat-kenya-is-committed-to-contribute-to-the-countrys-recovery-for-a-better-tomor/10158188222495874/?_rdc=1&amp;_rdr">https://web.facebook.com/KenyaAssociationofManufacturers/posts/bat-kenya-is-committed-to-contribute-to-the-countrys-recovery-for-a-better-tomor/10158188222495874/?_rdc=1&amp;_rdr</a>
	Kenya Association of Manufacturers	

#### NEWS SOURCES

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



### **About 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.