

UGANDA

TOBACCO INDUSTRY INTERFERENCE INDEX 2019



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The information from this report will form part of the Global Tobacco Industry Interference Index, a global survey of how public health policies are protected from the industry's subversive efforts, and how governments have pushed back against this influence.

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This study was made by Ms. Neima Hellen, a Tobacco Control Legal consultant based in Uganda with support from a Regional and National Tobacco Control partner namely;

- Center for Tobacco Control in Africa
- Uganda Health Communication Alliance
- Uganda National Health Consumers' Organisation
- The Center for Health, Human Rights and Development
- Kahill Insights

Uganda: 2019 Tobacco Industry Interference Index

Introduction

Uganda signed the WHO Framework Control on Tobacco Control on 5th March 2004, and ratified it on 20th June, 2007¹, becoming a party to the convention and partaking an obligation to domesticate the FCTC through relevant policies and laws without reservations². The process to domesticate the FCTC started as early as 2007³ with raising awareness among stakeholders including government departments and civil society on the FCTC and the need for a national law on the same.⁴

Uganda's commitment to tobacco control and the legislative process was met with consistent opposition from the tobacco industry and those who further their interests by tactics to undermine the UTCB including; attempting to "blackmail" politicians,^{5,6} Misrepresenting the spirit of the proposed TC law⁷ inter alia⁸

Recognizing that tobacco industry interference is the single greatest threat to her national tobacco control efforts and that there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests⁹, the Government of Uganda devised measures to embed the letter and spirit of Article 5.3 of the WHO FCTC in its National legislation and policy process in order to protect these TC policies with respect to tobacco control from commercial and other vested interests of the tobacco industry and finally on 28th July 2015, the Parliament of Uganda passed a comprehensive, WHO FCTC compliant Tobacco Control law with a whole Part (viii) in favour of Article 5.3.^{10,11}

This Index is a civil society report on how the government has responded to or addressed the tobacco industry's tactics and promotion of its business as outlined in FCTC Article 5.3 guidelines. Information in this report was collected from publicly available sources, including official websites, news reports, tobacco company reports and other verifiable

¹ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=_en

² World Health Organisation Framework Convention on Tobacco Control, p.(v)

³ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang=_en#top

⁴ Dr. Ndyabangi Sheila TC focal person and Uganda's representative at the WHO FCTC negotiations

⁵ J. Doward, Tobacco giant 'tried blackmail' to block Ugandan anti-smoking law, The Guardian, 12 July 2014, accessed November 2015

⁶ Letter from BATU to Honourable Chris Baryomunsi

⁷ Tobacco Industry Presentation, Tobacco Industry Key Concerns: The Tobacco Control Bill 2014, 11 April 2014

⁸ See annexed table of TII during the bill making process.

⁹ Article 5.3 Guiding principle 1,

¹⁰ Parliamentary Hansard reports for 28th July 2015

¹¹ The Tobacco Control Law (Part Viii)

reports. A standardised questionnaire developed by the Southeast Tobacco Control Alliance (SEATCA) was used. The survey covers a period of between January 2017 and December 2018. The lower the score the better the defence against interference.

Summary findings

- I. Level of industry participation in implementing public health policies in relation to tobacco control
On 10th January 2017, the Ministry of Trade and Cooperatives (MoT) provided sponsorship licenses to 6 tobacco companies and vouched its support in launching 2017 a tobacco season.
- II. Tobacco related CSR activities
Despite the Uganda TCA prohibiting CSRs.¹² in 2017-2018, when the ILO discussed a review of its Public Private Partnership programme on collaboration with the tobacco industry – whether to end its collaboration – Uganda spoke up (on behalf of the Afro region) for the need to continue the collaboration with the TI and its sponsored CSR activities.
- III. Benefits to the industry
The government of Uganda when amending her Excise Duty Act in 2017 gave preferential treatment to locally manufactures tobacco products against all imported tobacco products. This was in contravention of the national TCA.
- IV. Forms of unnecessary interaction
The Speaker of parliament (Hon. Kadaga Rebecca) officiated the opening of a new tobacco factory in Masese, Jinja, on 11 October 2018 where she committed to amend the TCA to suit the tobacco industry’s investors unfounded concerns.
- V. Transparency
The TCA calls for transparency in instances where interactions with the industry are necessary. A similar requirement is in The Constitution of Uganda 1995, and the Access to Information Act, 2005.
- VI. Conflict of interest
There is no evidence available of a retired senior officer is a position such as or equivalent to Prime Minister, Minister, Attorney General who is part of the tobacco industry. However, there index shows an instance of a former Government official who has ties with the TI including when it (The TI) sued the government of Uganda.
- VII. Preventive measures

¹² Section 21,22 and Schedule 3, paragraphs 16 and 18 of the TCA 2015

- All nominated members of the TC Committee signed a declaration of interest form before being appointed.
- A code of conduct exists and is only for the internal use of the committee.
- The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry.
- TCA and the sixth schedule require the tobacco industry to periodically submit information.
- There is a draft tobacco control communication plan to raise awareness on tobacco control issues.

Recommendations

1. There is a need to create awareness on the provisions of the Tobacco Control Act and ensure all departments are aware of the limits when interacting with the tobacco industry.
2. Diplomatic Missions must be made aware of the TCA so that the law is applied to officials overseas and those who represent the country at international meetings.
3. Duty free sale of cigarettes/cigars/tobacco for international travellers should be halted.

QUESTIONNAIRE: Uganda

INDICATORS	0	1	2	3	4	5
Level of Industry Participation in Policy-Development						
1. The government ¹³ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ¹⁴ in setting or implementing public health policies in relation to tobacco control ¹⁵ (Rec 3.1)		1				
<p>On 10th January 2017, the Ministry of Trade and Cooperatives (MoT) provided sponsorship licenses to 6 tobacco companies and vouched its support in launching 2017 a tobacco season.¹⁶</p> <p>The Minister responsible for Ministry of Trade, Industry and Cooperatives on this day at the Ministry Boardroom, said in her speech: “I commend the Association of Sponsors and Exporters of Tobacco in Uganda (ASETU) for the <u>increased collaboration</u> with the Ministry and for improved sanity in the Tobacco subsector. For this reason, the Ministry calls upon all Tobacco Licensed Companies to join ASETU to promote the spirit of self-regulation in the subsector the Tobacco subsector.” The TCA is clear about non-collaboration with the tobacco industry and does not support self-regulation.</p> <p>This was immediately objected by CSO with support from MoH who responded with a legal notice¹⁷ reminding the MoT how this endorsement is a violation of the Tobacco Control Act (TCA) with specific reference to sections 5,14,16, 18, 19, 21,23 and the 3rd schedule paragraph 8, 16 and 18.</p> <p>The Speaker of the Parliament made a statement that she will soon consider amendments to the TCA with help of the tobacco industry, will present a Private Members Bill.</p>						
2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)	0					

¹³ 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

¹⁴ The term, “tobacco industry” includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

¹⁵ “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

¹⁶ <http://mtic.go.ug/2016/index.php?/Current-News/launch-of-tobacco-season-2017/>

¹⁷ see attached legal notice by CEHURD to MoT

INDICATORS	0	1	2	3	4	5
<p>The TCA¹⁸ protects public health policies related to tobacco control from commercial and other vested interests of the tobacco industry therefore MoH cannot recognize the tobacco industry as a stakeholder in its regulation drafting process.</p>						
<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 Never 5 Yes</p>		1				
<p>Section 3 of the TCA Establishes a TC advisory and regulatory body known as the tobacco control committee that has a membership not inclusive of the tobacco industry. Section 3(5) specifically prohibits a member of this committee from having any affiliation with the tobacco industry or any entity furthering its interests.</p>						
<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)¹⁹ (Rec 4.9 & 8.3)</p>		1				
<p>The TCA prohibits the tobacco Industry to be part of any tobacco control policy formulation and implementation process including prohibition of sponsorship by the tobacco industry.²⁰</p>						
<p>So-called CSR activities</p>						
<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) B. The government (its agencies and officials) receives contributions²¹ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4) <i>NOTE: exclude enforcement activities as this is covered in another question</i></p>				3		

¹⁸ see attached a copy of the TCA with specific reference to Sections 5(d) and 21(d)

¹⁹ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

²⁰ See Section 14, 19, 21, 22 and Schedule 3, paragraphs 16 and 18 of the TCA 2015

²¹ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

INDICATORS	0	1	2	3	4	5
<p>The Uganda TCA prohibits CSRs.²² However in 2017-2018, when the ILO discussed a review of its Public Private Partnership programme on collaboration with the tobacco industry – whether to end its collaboration – Uganda spoke up (on behalf of the Afro region) for the need to continue the collaboration with the TI and its sponsored CSR activities. Uganda’s statement included:</p> <p>“We seem to have moved from cooperation with, to annihilation of the industry”</p> <p>“We note with regret that para 34 of the document No.GB.332/POL/5 provides for unsolicited proposal by the office to embark on prescribing alternate livelihood for people in member states against the freewill of self-determination. Prescribed alternate livelihood is imposition and while this is not the ILO mandate, it would be regretful to take this path.”</p> <p>Uganda is obligated to implement FCTC Article 17 which calls for Parties to promote economically viable alternatives for tobacco workers, growers and individual sellers.</p>						
Benefits to the Tobacco Industry						
<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>	0					
<p>The TI filed a temporary injunction for the postponement of the enforcement of the TCA pending the hearing of their Case^{23, 24} against several sections of the Law including four issues²⁵ from part VIII of the law that are a reflection of the letter and spirit of Article 5.3 of the WHO FCTC. This injunction was dismissed²⁶ on grounds that it had no justification as the TCA includes a commencement date²⁷ which already gave the tobacco industry time to adjust (six months).</p> <p>The government of Uganda (Judiciary) preserved through this court challenge and remained committed with the commencement date.</p>						
<p>7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)</p>		+1				

²² Section 21,22 and Schedule 3, paragraphs 16 and 18 of the TCA 2015

²³ See attached a copy of the petition

²⁴ <http://www.monitor.co.ug/News/National/Government-defends-law-regulating-tobacco-consumption/688334-3878744-amvj61z/index.html>

²⁵ Issues 8,9,10,11

²⁶ <https://ctc-africa.org/index.php/news/374-bat-uganda-loses-court-case-as-the-tc-act-2015-becomes-fully-operational>

²⁷ Section 1 of the TCA

INDICATORS	0	1	2	3	4	5
<p>The government of Uganda amended her Excise Duty Act in 2017²⁸ giving preferential treatment to locally manufactures tobacco products against all imported tobacco products. This was in contravention of the national TCA²⁹ and inconsistent with Uganda’s obligations under the East African treaty, customs union protocol and the common markets protocol³⁰ whose purpose among others is to create a common market within the East African region with no customs discriminations.</p> <p>This move was greatly opposed both locally by MoH, tobacco control advocates³¹ and regionally by BAT filing a suit against the government of Uganda in the East African Count of Justice. ³² In January 2018 the court granted an interim injunction restraining Government of Uganda from collecting Excise Duty from BAT Uganda.³³ The government appealed against the injunction and on 26th March 2019 lost the case to BAT Uganda.³⁴</p> <p>International travellers can bring 200 sticks of cigarettes into the country.</p>						
Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister ³⁵) 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)			2			
<p>The Speaker while officiating at the opening of a new tobacco factory in Masese, Jinja, on 11 October 2018 said Parliament will soon consider amendments to the Tobacco Control Act, 2015. She was responding to remarks by Rob Kelsall, the Director, Nilus Group Company that the Act does not allow them to deal directly with farmers.</p> <p>Hon. Paul Mwiru who was to bring a Private Members Bill to review the TCA said, “With the help of the tobacco industry, I will present a Private Members Bill to amend the highlighted issues that have been raised here. We shall work hand in hand with the stakeholders to improve on the Bill,” ³⁶</p>						

²⁸<https://ulii.org/system/files/legislation/act/2017/11/Excise%20Duty%20Amendment%20ACT%2011%202017.pdf> Section 2

²⁹ Section 23, 14 and Schedule 3 Paragraph 18 of the TCA

³⁰ 6(d) and (e), 7(1)(c), 75(1), (4) and (6) and 80(1)(f) of the treaty. Article 15(1) and (2) of the customs union protocol and Article 4,5,6 and 32 of the common markets protocol

³¹ See notice to Ministry of Finance

³² See attached BAT Case and judgment by the East African Count of Justice

³³ Press Release. *East African Community*. 28 January 2018 <https://www.eac.int/press-releases/966-court-grants-interim-injunction-restraining-government-of-uganda-from-collecting-excise-duty-from-british-american-tobacco-u-ltd>

³⁴ See attached BAT Case and judgment by the East African Count of Justice

³⁵ include immediate members of the families of the high-level officials

³⁶ <https://www.parliament.go.ug/news/2819/tobacco-act-be-amended>

INDICATORS	0	1	2	3	4	5
<p>This was a grave misrepresentation of the letter and spirit of the TCA because it does not seek to stop direct dealings between the tobacco industry and farmers but rather inter alia, control the demand, supply and production of tobacco products.³⁷</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 government does not accept 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 minor.</p>						
<p>10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) <i>NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i></p>		1				
<p>On 10th January 2017, the Ministry of Trade and Cooperatives (MoT) provided sponsorship licenses to 6 tobacco companies and vouched its support in launching 2017 a tobacco season.³⁸</p>						
<p>Transparency</p>						
<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>		-1 -1 -1 +1 +1	+2			
<p>SPECIFIC RECOMMENDED ADJUSTMENTS: +2 if the meeting is not strictly necessary -1 if minutes were taken during the meeting (Please see Attachment the minutes taken on behalf of MoT's Minister Amelia Kyambadde)³⁹ -1 if champions/advocates were asked to be present during the meeting. NO. Champions were not present. -1 if the meeting takes place in a public office (The meeting took place in the Ministry's</p>						

³⁷ See the Act's Object and Preamble

³⁸ <http://mtic.go.ug/2016/index.php?/Current-News/launch-of-tobacco-season-2017/>

³⁹ See attached Meeting notes for the Launch

INDICATORS	0	1	2	3	4	5
<p>boardroom)⁴⁰ +1 if photos were taken, Yes, as seen on the Ministry Website ⁴¹ +1 if high level officials were involved (Yes, the Permanent secretary of Ministry of Trade)⁴² -1 if a mechanism or rule is available for disclosure of tobacco meetings (Yes, the TCA calls for transparency in instances where interactions with the industry are necessary. ⁴³</p> <p>The Constitution of Uganda also provides for this. “Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.”⁴⁴</p> <p>And the Access to Information Act, 2005)⁴⁵</p>						
<p>12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists</p>		-1 -1		3		
<p>The TCA provides a non- conclusive list of items/ guide that the tobacco industry and those who further their cause shall use to report to the tobacco control committee ⁴⁶</p>						
<p>Conflict of Interest</p>						
<p>13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11) 1 Never 5 Yes</p>		1				
<p>The TCA prohibits contributions from the TI. Please refer to the TCA⁴⁷</p>						
<p>14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)</p>		1				
<p>There is no evidence available of a retired senior officer is a position such as or equivalent to Prime Minister, Minister, Attorney General who is part of the tobacco industry.</p>						

⁴⁰ Ibid 30

⁴¹ <http://mtic.go.ug/2016/index.php?/Current-News/launch-of-tobacco-season-2017/>

⁴² Ibid 32

⁴³ Section 20(2)

⁴⁴ Article 41(1)

⁴⁵ <https://moj.gov.ug/sites/default/files/laws/The%20Access%20to%20Information%20Act.pdf>

⁴⁶ Section 43 and Schedule Six

⁴⁷ Section 25

INDICATORS	0	1	2	3	4	5
Nevertheless, Ms. Maggie Kigozi, formerly served as the Executive Director of the Uganda Investment Authority during which time (2013-2017), she also acted as a Non-Executive director at BAT ⁴⁸ It should be noted that BAT sued government of Uganda in 2016 yet she was in BAT and she was formally employed by the government.						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)	0					
No incident.						
The TCA in part VIII prohibits government officials who contribute or may contribute to the formulation, implementation, administration, enforcement or monitoring of public health policies related to tobacco control to engage in any occupational activity with the tobacco industry ⁴⁹ including consultancy position. In light of this, there is no evidence available of Current government officials (who contribute or may contribute to the formulation, implementation, administration, enforcement or monitoring of public health policies related to tobacco control) and their relatives who hold positions in the tobacco business including consultancy positions						
Preventive Measures <i>SCORING for this section: 1. Yes, 2. Yes but partial only, 3. Policy⁵⁰/ Program being developed 4. Committed to develop such a policy/ program 5. None</i>						
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)					4	
This is covered in the draft regulations for the implementation of part VIII of the TCA yet to be passed and adopted by government.						
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)			2			
All nominated members of the TC Committee signed a declaration of interest form before being appointed. This committee shall be guided by a code of conduct to guide its dealings with the TI.						

⁴⁸ <http://web.monitor.co.ug/Supplement/2017/batu30112017.pdf>

⁴⁹ Section 3(5) and Section 25

⁵⁰ Section 25 of the TCA

INDICATORS	0	1	2	3	4	5
The code of conduct exists and is only for the internal use of the committee ⁵¹						
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)		1				
Yes, Section 43 of the TCA and the sixth schedule 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 ⁵²						
19. The government has a program / system/ plan to consistently ⁵³ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)					4	
There is a draft TC communication plan to raise awareness on TC issues as they exist or as may arise including awareness on Article 5.3 of the WHO FCTC and Part VIII of TC This plan is made by MoH with support from TC national stakeholders.						
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				
Yes. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry including offers of assistance, policy drafts, or study visit invitations, etc. Please refer to the TCA ⁵⁴						
TOTAL 29						

⁵¹ Source: Dr. Hafsa Lukwata- TC Focal Person MoH / TCC secretariat.

⁵² Section 43 and the sixth schedule of the TCA

⁵³ 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.

⁵⁴ Section 21, 22 and Paragraphs 7,8,9,16,17 and 18 of the Third schedule.