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Tobacco, Alcohol
and Gambling
Advisory, Advocacy
and Action Group



Global Center for
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in Tobacco Control

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FOREWORD

Most industries have skeletons in their closets; the tobacco industry is no exception. In South Africa, and globally, the tobacco industry has a long history of behaving unethically and unlawfully. Over a period of decades, the tobacco industry has misled the public about the dangers of smoking and the addictiveness of their products. They have used illegal means to break into markets and to actively stimulate and support illicit trade. They have paid billions of dollars in fines for misdemeanours of the past.

The tobacco industry claims that it has changed; that it is not the cavalier industry of the 1950s, 1960s and 1970s. While it may be true that it is more careful and considered, especially in high-income countries, that is certainly not the case in South Africa.

Recent revelations at the Nugent Commission of Inquiry about the implosion of SARS, and the book *Tobacco Wars* by Johann van Loggerenberg, shine light on some of the recent shenanigans that South African tobacco companies, big and small, have been up to in recent years. Through structures like the Anti-Illicit Trade Tobacco Task Team, British American Tobacco have used state institutions to fight their competitors. In *Tobacco Wars*, Van Loggerenberg argues that the tobacco industry, and especially the large players, have been instrumental in the destruction of the special investigative units at SARS. These units were targeting the tobacco industry, for good reason. With these impediments gone, the tobacco industry had free reign to do as they pleased. In 2019, illicit cigarettes comprise more than 30% of the total cigarette market in South Africa.

In April 2019 SARS issued a call for tenders to implement a Track & Trace system that will monitor tobacco products from the point of manufacture to the point of retail. If successful, it will greatly decrease the illicit trade in cigarettes in South Africa. The tobacco industry, especially the large companies strongly oppose the system. If they have nothing to hide, why are they opposing a Track & Trace system?

There is an irreconcilable conflict of interest between the tobacco industry and public health. The tobacco industry has no meaningful contribution to make to public health since they sell products that kill people. If the industry was serious about improving public health, as they claim with new generation products, they would stop selling cigarettes altogether. The tobacco industry in South Africa, and globally, tries to weaken, dilute, and slow down tobacco control measures to protect their profits.

Through social corporate investment, the tobacco industry tries to buy goodwill and favour with the public and policy makers. Is it not admirable that the tobacco industry gives something back to the community by building a school, helping with a national disaster or sponsoring a choir? No. Such support, even though it looks harmless and well-meant, provides a veneer of respectability to an industry that produces a deadly product that has caused, and continues to cause, untold harm to millions of people.

This report aims to categorise the various dimensions of how the South African tobacco industry has interfered with policy makers, government departments and society at large. The report is part of a wider collaboration across multiple countries to monitor the actions of the tobacco industry. It shows that the industry has tentacles in many dimensions of government and society. The government and society would do well to take cognizance of this and to be aware that, despite its slick attempts to come across as a reasonable “partner”, the tobacco industry is anything but that.

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South Africa: 2019 Tobacco Industry Interference Index

Introduction

Prior to the 1990s, the tobacco industry used its cordial relations with government to prevent tobacco control measures. When the ruling political party, African National Congress (ANC) came into power in 1994, there was a major turnaround in the tobacco control policy in the country.

The Tobacco Products Control Act 83 of 1993 is the primary tobacco control law in South Africa. In 1999, the Act was amended to include bans on tobacco advertising and sponsorship (excluding display at point of sale), partial ban of smoking in indoor public places (25% of the floor area can be enclosed and designated for smoking) and the sale of tobacco to minors.

There have been significant advances in the battle against tobacco use in Africa, with achievements that include the ratification of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) and the passing of tobacco control legislation. South Africa was also an active participant in the development of the WHO FCTC and subsequently ratified this international treaty in 2005. As such, South Africa is required to take proactive measures to protect health policy from the vested interests of the tobacco industry and to submit periodic reports to the Convention Secretariat on the efforts undertaken to implement Article 5.3.

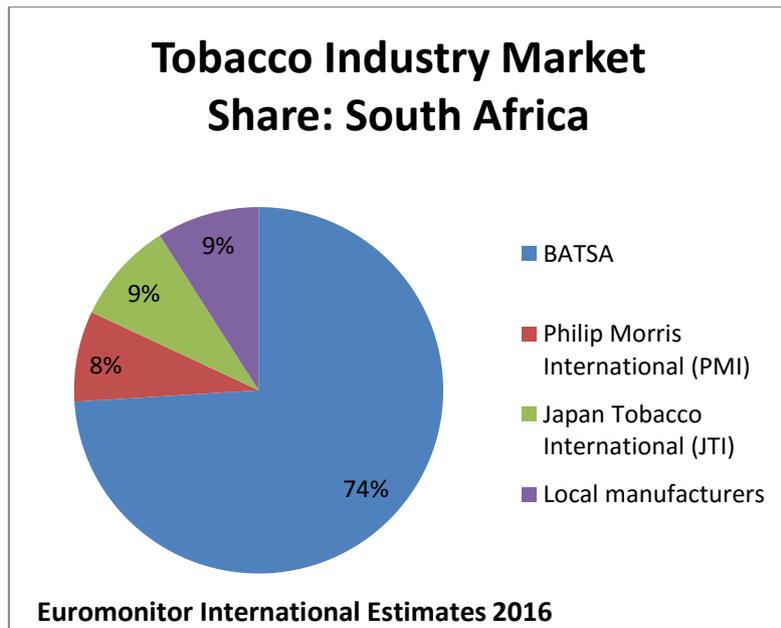
Although South Africa was a tobacco control leader in the 1990s and early 2000s, today the country is arguably falling behind¹. There have been several amendments over the years, however many loopholes persist, amongst others, tobacco products are displayed at point of sale, indoor public places are not yet 100% smoke free, tobacco products do not include graphic health warnings, electronic delivery systems are not regulated, etc.

The tobacco industry has historically employed a multitude of tactics to shape and influence tobacco control policy. The tobacco industry has used its economic power, lobbying and marketing machinery to influence government efforts to control and prevent tobacco use. However, the tobacco industry continues to inject large philanthropic contributions into social programs worldwide to create a positive public image under the guise of corporate social responsibility.

Currently, in South Africa, British American Tobacco South Africa (BATSA) continues to be the largest tobacco manufacturer and distributor of tobacco products. In 2016, Euromonitor International estimated that BATSA held 74% of market share, followed by Japan Tobacco International (JTI) with 9% and Philip Morris International with 8%. Local manufacturers (such as Gold Leaf Tobacco, Best Tobacco Company, Amalgamated Tobacco Manufacturers and Carnilinx Tobacco Company) have recently entered the market by offering lower priced brands and are steadily gaining market share. To offset the decline of sales due to new entrants, BATSA has focused on introducing more 'cheap' economy brands to the market².

¹ http://tobaccotactics.org/index.php?title=South_Africa- Country Profile

² http://tobaccotactics.org/index.php?title=South_Africa- Country Profile



During the turbulent political landscape of President Zuma tenure, many state owned entities were destabilised and allegedly “captured”, particularly the South African Revenue Services (SARS), which provided a good opportunity for the tobacco industry to boom and for an increase in tax evasion. President Zuma was alleged to have replaced the head of the State Revenue Services with his “friend”, who destabilised SARS by dismissing senior officials and by dismantling a specialised unit that dealt with tobacco revenue, customs, excise and illicit trade. Tobacco manufacturers used this period to evade excise and VAT refunds were illegally withheld to artificially boost revenue income. The tobacco industry partnered with law enforcement agencies to promote their own vested interests³.

The biggest political change came with the election of a new President (Ramaphosa) and the establishment of the Judicial Commission of Inquiry into State Capture, Corruption and Fraud, to uncover the corruption which threatened South Africa’s sovereignty under the previous presidential tenure⁴.

In May 2018, President Ramaphosa appointed a commission of inquiry into tax administration and governance in the South African Revenue Service (SARS), with particular reference to tobacco products⁵. The Minister of Health also published the proposed “*Control of Tobacco Products and Electronic Delivery Systems Bill*” for public comment, in May 2018. The Bill, once approved, will repeal the Tobacco Products Control Act 1993. The new Bill seeks to among other issues, introduce plain packaging; remove designated smoking areas in indoor public areas/ restaurants and make all indoor public places 100% smoke free; ban tobacco use in certain outdoor public areas; ban the display of tobacco products at point of sale; ban cigarette vending machines; and regulate electronic nicotine and non-nicotine delivery systems / e-cigarettes as tobacco products. The tobacco industry has strongly opposed this new draft Bill⁶.

³ <https://www.dailymaverick.co.za/article/2018-07-05-nugent-commission-on-sars-the-numbers-vs-the-moyane-mpofu-sideshow/>

⁴ <https://www.thesouthafrican.com/south-africa-politics-2018-review/>.

⁵ <http://www.thepresidency.gov.za/press-statements>

⁶ [http://tobaccotactics.org/index.php?title=South Africa- Country Profile](http://tobaccotactics.org/index.php?title=South_Africa- Country_Profile)

Summary Findings

Industry Participation in Policy-Development

The tobacco control measures are primarily led and implemented by the Ministry of Health (MOH) /National Department of Health (NDOH). However, the tobacco industry interference continues to occur in many of the non-health government departments. Various consultations and meetings take place between the tobacco industry and the National departments of Treasury/ Finance, South African Revenue Services (SARS), South African Police Services (SAPS), Trade and Industry (DTI) , Department of Agriculture, Forestry and Fisheries (DAFF), etc. However, the government fully implements Recommendation 4.9 and 8.3 of the Article 5.3 Guidelines by excluding tobacco industry representatives in the government delegation to the FCTC COP and its related meetings.

Tobacco industry related CSR activities

The current Tobacco Products Control Act does ban CSR contributions. However, charitable contributions are permitted provided they are not for the purpose of advertising [Section 3(2)]. This is a loophole in the current Tobacco Products Control Act that will be removed, once new Tobacco Bill is introduced.

Politicians, government departments and officials have actively engaged, supported, formed partnerships, participated and received contributions (monetary or otherwise) from “so-called” Corporate Social Responsibility (CSR) activities and programmes organized by the tobacco industry.

Benefits to the tobacco industry

The National Treasury and SARS have not made any significant increases in excise taxes in the past few years (aside from inflation increases). In 2018, the minimum collectable tax rate on a pack of 20 cigarettes was set at R17.85 (about £1 in August 2018), a total tax burden of somewhat more than 52% of the retail price (for the popular brands). This is much lower than the WHO recommendation of a minimum of 70% of retail price. The industry has argued that if tobacco taxes are increased, people will switch to cheaper illicit cigarettes (taxes not paid), and the government will therefore receive less revenue. This argument has worked particularly well in South Africa. During the period of President Zuma’s tenure (state capture), senior officials in SARS who worked on tax, customs enforcement and investigations were dismissed and the specialised units which investigated the illicit trade of tobacco products were disbanded. These changes led to undermining the effectiveness of tax as a public health measure and resulted in the loss of government revenue. Excise revenue collected from tobacco products dropped from R13 billion in the 2015/16 fiscal year to R12.1 billion in 2016/17 and to R10.9 billion in 2017/18. This is a 16% drop over the period and there has been a 20% decrease in the number of declared cigarettes in South Africa over two years, as expressed by tobacco control expert Professor Corné van Walbeek.

Travellers into South Africa still continue to enjoy “Duty-free allowances” on tobacco products in accordance with SARS regulations. Tobacco products may be brought into the country (up to 200 cigarettes, 20 cigars per person, 250g of cigarette or pipe tobacco per traveller) without the payment of customs duty and VAT, as accompanied baggage.

Unnecessary interaction with the tobacco industry

In the absence of a Code of Conduct (in accordance with FCTC Article 5.3) for politicians and government officials in South Africa, high ranking politicians and officials continue to unnecessarily engage with the tobacco industry, for example, the Minister of Water and Sanitation, Nomvula Mokonyane, fostered relations with the tobacco industry by visiting the BATSA factory and met with tobacco industry officials. The Minister heralded the water saving initiative at BATSA Heidelberg factory as one of the best water saving initiatives, in 2017.

Transparency measures

The government does not disclose meetings and or interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. In contrast, the government openly accepts assistance from the tobacco industry, particularly on enforcement issues. The tobacco industry proudly announces its partnership with government and continues to work closely with law enforcement officers, crime intelligence, prosecuting authorities and government officials from SARS and SAPS to raid BATSA's opposition factories, warehouses and places that sell their competitor's cigarettes under the guise that they are assisting the government to curb the illicit trade of tobacco products.

Conflict of interest

Presently the government does not prohibit the tobacco industry from making contributions to political parties/ candidates or political campaigns to further their vested interests. The recipients are also not required to fully disclose such contributions. The media has exposed how some politicians have received substantial contributions from the tobacco industry. Hopefully, the prohibition of all forms of tobacco industry contributions will be banned once the proposed Tobacco Bill is passed by parliament (without major amendments) and the new Political Party Funding Act (that was signed into law) will also provide a further measure for disclosure from politicians, once it is enforced.

Preventive measures

The government has not put in place a protocol or policy to record interactions with the tobacco industry. There are no formal procedures to disclose and record interactions (such as agenda, attendees register, minutes and outcomes) with the tobacco industry and its representatives, in accordance with the recommendations of FCTC Article 5.3. A code of conduct for public officials was drafted and discussed many years ago, however, this was not finalised and approved for implementation.

The current Tobacco Control Act empowers the Minister to request information on, inter alia, on ingredients and additives in tobacco products. However, regulations for FCTC Article 9 & 10 have not yet been developed and implemented. Although SARS requires the tobacco industry to submit information on production, manufacture, market share, expenditures and revenue, it excludes information on lobbying, philanthropy, political contributions and all other activities. There is no plan with a dedicated program to consistently raise awareness within the government departments on policies relating to guidelines on FCTC Article 5.3

Recommendations

The government must fully implement the Guidelines on FCTC Article 5.3:

1. Advocate for the 2018 Tobacco Bill to be urgently passed by parliament with minimum change [inclusive of a ban on all forms of contributions (CSR and political)] from the tobacco industry.
2. Permanently remove all tobacco industry representatives from government / official committees and ban future involvement in decision making platforms and meetings.
3. Develop and implement a policy (for government officials and politicians) with protocols and procedures to record all tobacco industry interactions.
4. Develop and implement an immediate and comprehensive awareness campaign for government officials, decision makers and political leaders on FCTC obligations with a special focus on Guidelines on Article 5.3; tobacco industry tactics and tobacco CSR activities and programmes.
5. Develop a new tobacco taxation policy in accordance with FCTC Article 6.
6. Develop and implement a code of conduct (based Article 5.3 recommendations) for government officials and political leaders.
7. Ratify the Protocol to Eliminate Illicit Trade in Tobacco Products (having signed in 2012).
8. Capacitate SARS to implement an independent and effective track and trace system for all tobacco products in order to address illicit trade issues.

Detailed Findings of Compliance with FCTC Article 5.3

INDICATORS	0	1	2	3	4	5
Level of Industry Participation in Policy-Development						
1. The government ⁷ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry ⁸ in setting or implementing public health policies in relation to tobacco control ⁹ (Rec 3.1)				3		
<p><i>In South Africa, the setting of public health policies in relation to tobacco control is primarily led by the Ministry of Health (MOH) / National Department of Health (NDOH). Other respective government departments deal with specific tobacco issues like taxation, customs, excise, revenue; agriculture; trade and industry; environmental affairs; tourism, etc.</i></p> <p><i>The National Department of Health does not collaborate with the tobacco industry in developing and or implementing public health policies. However, some government Departments and local government agencies have accepted assistance for agriculture and skills development from the tobacco industry.</i></p>						
2. The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry. (Rec 3.4)		1				
<i>No supporting evidence to show otherwise.</i>						
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)						5
<p><i>The National Department of Health (NDOH) never invites the tobacco industry to be members of any committees or groups that sets public health policy. However, some of the other (non-health sector)government departments meet with the tobacco industry with regard to tobacco issues:</i></p> <ul style="list-style-type: none"> <i>The South African Revenue Service (SARS) under The Department of Finance / National Treasury met with the Tobacco Institute of Southern Africa (TISA) and the Fair-trade Independent Tobacco Association (FITA) which represents tobacco growers. The meeting discussed and agreed on collaboration between the bodies to combat illicit trade of tobacco products. Wednesday, August 15, 2018¹⁰</i> <i>SARS reported to the Finance Standing Committee in Parliament (May 2018) that it was currently in the process of reconstituting a stakeholder management forum with FITA and TISA (which was discontinued in 2016/17, due to purported corruption and state capture) to foster collaboration, increase compliance in the sector and enhance information flow with regard to illicit trade of tobacco products.¹¹</i> <i>An example of the misuse of state resources by the tobacco industry is illustrated in the following:</i> <p><i>BATSA adopted an aggressive campaign to support action against the tobacco traffickers in an attempt to address the illicit trade of tobacco products, including spying on their competitors. The campaign ensured securing a seat on the multi-agency Illicit Tobacco Task Team, which includes representatives from the Hawks (Directorate: Priority Crime Investigation), crime intelligence, the State Security Agency (SSA) and the National Prosecuting Authority (NPA). The investigation by SARS into South Africa's R5bn</i></p>						

⁷ 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

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

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

¹⁰ <https://www.sanews.gov.za/south-africa/tobacco-industry-commits-working-sars>

¹¹ <https://pmg.org.za/page/IllicitTobaccoTrade>

INDICATORS	0	1	2	3	4	5
<i>annual illicit tobacco trade exposed extensive infiltration of law enforcement agencies by the multinational tobacco companies^{12, 13}.</i>						
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) (Rec 4.9 & 8.3)		1				
<i>The South African delegation to COP is led by NDOH and to date, the tobacco industry representatives are excluded.</i>						
So-called CSR activities						
5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2) B. The government (its agencies and officials) receives contributions ¹⁴ (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>						5
<p><i>* The current Tobacco Control Act does ban contributions. However, charitable contributions are permitted provided they are not for the purpose of advertising [Section 3(2)]. This is a loophole that is to be removed should the new Tobacco Bill remain unchanged and is passed by parliament. Examples of partnerships with the tobacco industry are listed below:</i></p> <ul style="list-style-type: none"> • A. The <u>Commonwealth Business Council (CBC)</u> was formed in 1997 at the Commonwealth Heads of Government Meeting (CHOGM) in Scotland. The CBC was founded by the current South African President, Cyril Ramaphosa and <u>Lord Cairns</u>, chairman of BAT, at the time. Both Cairns and President Ramaphosa retain advisory roles with the CBC. British American Tobacco (BAT) was the main tobacco company that enjoyed mutually beneficial links with the CBC¹⁵. • A. The Department of Arts and Culture, in partnership with the Nelson Mandela Museum and the Eastern Cape Provincial Department of Sport, Recreation, Arts and Culture, led activities at the Nelson Mandela Museum in Mthatha in the Eastern Cape. Leaders in attendance: Arts and Culture Minister Nathi Mthethwa, Finance Minister Malusi Gigaba, Water and Sanitation Deputy Minister Pamela Tshwete, Eastern Cape Premier Phumulo Masualle and Eastern Cape MEC for Sport Recreation Arts and Culture, Pemmy Majodina¹⁶. BATSA was involved in the above Mandela Day activities which included the handover of a Mandela Legacy Canvas to the Nelson Mandela Museum. The canvas was purchased at an auction by BATSA, in 2011 and the proceeds of sale were donated to the Nelson Mandela Children's Fund. • A. As part of the Nelson Mandela activities BATSA also: <ul style="list-style-type: none"> ✓ provided assistance with 'Million Gardens for Mandela' initiative. The gardening initiative seeks to address food security by providing communities with seeds to start food gardens in Qunu, Eastern Cape led by Africa Rising. Africa Rising has also 						

¹² <https://mg.co.za/article/2014-03-20-big-tobacco-in-bed-with-sa-law-enforcement-agencies>

¹³ <https://uncensoredopinion.co.za/sars-wars-british-american-tobacco-captured-law-enforcement-agencies-sars-onto/>

¹⁴ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

¹⁵ http://tobaccotactics.org/index.php?title=Commonwealth_Business_Council

¹⁶ <https://www.rnews.co.za/article/15420/several-activities-lined-up-in-eastern-cape-for-mandela-day-2017>

INDICATORS	0	1	2	3	4	5
<p>implemented youth empowerment programmes in schools in the Eastern Cape; and</p> <ul style="list-style-type: none"> ✓ partnered with Thula Thula Hout Bay (a non-profit organisation that engages with the community during times of need, like fires) to paint houses with fire-resistant paint in Imizamo Yethu community, Western Cape. BATSA handed over a unique artwork piece made from the handprints of numerous celebrities and politicians, including Ladysmith Black Mambazo, Freshly Ground, Dr Danny Jordaan, Archbishop Desmond Tutu and Minister in the Presidency Jeff Radebe, among others. BATSA also made contributions to HDI Support, a disaster response organisation that distributes essential goods in the aftermath of disasters across the Western Cape^{17,18} <p>A. <i>Dialogue Forum</i> was commissioned by BATSA to revise and develop a road map for its CSI programme. The forum is supporting various initiatives that include functional literacy at foundation phase in schools in partnership with private sector and business conferences with key politicians and leaders.</p> <ul style="list-style-type: none"> ✓ Former Public Protector Thuli Madonsela was the keynote speaker at the Business in Society Conference arranged by the Dialogue Forum^{19, 20} ✓ Mrs G Machel, (wife of the late President Nelson Mandela) delivered the keynote address at the Dialogue Business in Society Conference which focussed on the role of women in socioeconomic development in Africa²¹. ✓ Shirley Raman (Chief Director of Research and NGO Development at the Gauteng Department of Social Development) was one of the panellists on a discussion on the state of how “social licence to operate” could be improved in South Africa, at The Dialogue Business in Society Conference²². • B. BATSA Signature Trust is a donor to the University of the Free State as reported in the Donor Report for 2017.²³ The specific detail on the amount and the actual use thereof is not reported. • B. Economic Freedom Front (EFF – a political party) leader Julius Malema’s family rents a home in a high-security Johannesburg estate owned by cigarette manufacturer Adriano Mazzotti, who says there is nothing untoward about the arrangement. Mazzotti is part-owner of cigarette manufacturing company Carnilinx, which previously donated R200,000 to the EFF²⁴. 						
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>On 9 May 2018, the Minister of Health invited public comment on the proposed Control of Tobacco Products and Electronic Delivery Systems Bill, which will repeal the Tobacco Products Control Act 1993. The time period for public comment was 3 months²⁵ (deadline 9 Aug 2018). To date, the Bill has not been</p>						

¹⁷ <http://www.corporateimage.co.za/british-american-tobacco-south-africa-mandela-day-activities/>

¹⁸ <http://arfoundation.co/africa-rising-kicks-off-coding-project-for-madiba-centennial/>

¹⁹ <https://dialogue.co.za/functional-literacy-at-foundation-phase/>

²⁰ <https://dialogue.co.za/social-justice-not-feel-good-actions/>

²¹ <https://dialogue.co.za/role-women-socio-economic-development-africa/>

²² <https://dialogue.co.za/social-license-operate/>

²³ https://www.ufs.ac.za/docs/librariesprovider37/ia-documents-for-download-documents/ufs-annual-donor-report_dec-2017

²⁴ <https://www.businesslive.co.za/bd/national/2018-12-03-julius-malemas-family-lives-on-estate-owned-by-cigarette-kingpin/>

²⁵ Republic of South Africa, Government Notices-Goewermentskennisgewings. Department of Health: Invitation for Public Comment on the Draft Control of Tobacco Products and Electronic Delivery Systems Bill 2018, Government Gazette Staatskoerant, 9 May 2018.

INDICATORS	0	1	2	3	4	5
<p><i>finalised and resubmitted to parliament. NDOH has not yet completed the review of the Bill for finalisation and resubmission to parliament. This delay is working in the interests of the tobacco industry. The tobacco industry abided by the same deadline and no extension of time was granted to the tobacco industry for their comment. During this period the tobacco industry has used a variety of arguments and tactics to oppose the new Draft Bill. Some of the arguments and tactics used by tobacco industry to oppose the Bill are listed below:</i></p> <ul style="list-style-type: none"> ✓ <i>The tobacco industry’s overall discursive strategy is to exaggerate the potential costs of the proposed policy while simultaneously dismissing potential benefits, or denying them altogether. Hence, the tobacco industry has tried to create an impression that the proposed Bill will be detrimental to the South African economy, society and public health. BATSA, in briefings to the Socio-Economic Impact Assessment (SEIA) commissioned by the Department of Health, has voiced various arguments concerning the costs, for example: the hospitality industry will incur costs by becoming 100% smoke free; loss of business and employment; costs for enforcement; costs to be incurred by retailers; the impact on profits and reduced employment through the proposed ban at point of sale display; the proposed plain packaging will increase illicit trade, decrease tax revenues and increase consumption due to cheaper illicit tobacco and undermine the public health objective of reducing smoking.</i> ✓ <i>The tobacco industry built coalitions with organizations to oppose the proposed tobacco Bill. Some of the key third parties that are active in opposing the proposed Bill, in support of the industry are the <u>Free Market Foundation</u> and the <u>National African Federated Chamber of Commerce and Industry</u> (NAFCOC). These organizations support the tobacco industry through lobbying, media agenda setting (thus swaying public opinion), promoting self-regulation and weakening or fragmenting those that advocate for the proposed legislation. The tobacco industry has actively been involved in co-opting and influencing the media: since 2017, PMI has sponsored a series of workshops across Africa targeted at journalists, and promoting <u>tobacco harm reduction</u> and the view that <u>e-cigarettes</u> and <u>heated tobacco products</u>(HTP) should be allowed to be marketed as a healthier alternative to smoking, since the proposed Bill seeks to restrict the use of these products. On 13 and 14 August 2018, a PMI-sponsored media workshop took place in Johannesburg, South Africa. All Africa chair Amadou Mahta Ba and The Guardian Nigeria Editor-in-Chief Debo Adesigna were reportedly part of a PMI panel, as was Professor of Journalism Anton Harber.</i> ✓ <i>The tobacco industry has also been actively involved in mobilising public support through campaigns: Following the announcement of the new draft Bill, JTI launched the #HandsOffMyChoices campaign to mobilise the public into grass root opposition. The campaign reiterated arguments voiced by BATSA, such as ‘it will increase illicit trade’ and ‘it will negatively impact retailers’ but it’s main argument was that the Bill took away people’s freedom of choice and urged the public to protest against the Bill. The campaign used multiple channels of communication. In June 2018, JTI set up a website (handsoffmychoices.co.za) which urged the public to “fight for your choices” and sign an online petition against the Bill. The campaign strongly featured the so-called ‘Nanny-state argument’, which promotes self-regulation and suggests that the government is treating adults like underage citizens who cannot be trusted to make their own lifestyle choices. The message was also spread via social media (Facebook and Twitter). In August 2018, JTI paid for an advert to be broadcast on several radio stations across South Africa, with the slogan: “What if your loved one got put in jail because they smoke? It is just one step of the bill controlling your lifestyle choices. Join us in saying #HandOffMyChoices [sic]”. In September 2018 it was reported that the Tobacco Institute of Southern Africa (TISA), the association that</i> 						

INDICATORS	0	1	2	3	4	5
<p>represents the interests of tobacco manufacturers, had paid social media influencers to promote a campaign called #TakeBackTheTax. The website (takebackthetax.org) encouraged the public to sign an online petition urging the South African government and law enforcement agencies to “act with urgency and take decisive steps in combating the trade in illegal cigarettes”. Campaign adverts were also published in newspapers and made claims that the tax collected from the sale of legal cigarettes could go towards building 127 000 new homes, recruiting 52 000 new anti-corruption investigators, and solving the country’s electricity crisis. The main argument promoted by the campaign is that illicit trade annually costs South Africa R7 billion in lost tax revenue, and that if the country curbed illicit trade, VAT would not have to be increased as it did in April 2018 (from 14% to 15%). While an independent calculation of lost tax revenue has not been done, an academic of the University of Cape Town’s School of Economics has suggested that TISA’s R7 billion calculation is flawed since less people would smoke if they were paying for more expensive, tax-paid cigarettes²⁶.</p>						
<p>7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)</p>					4	
<p>In 1994, the Minister of Finance announced that he intended to increase the excise tax on tobacco products from 30% (which excluded VAT) to 50% (which included VAT) of the retail price over a number of years. The 50% target was achieved in 1997. In 2004 the targeted tax burden was increased from 50% to 52% of the retail price. Taxation was the main driver of the decrease in tobacco consumption. The method by which the excise tax is calculated depends largely on the tobacco industry’s pricing policy. The tobacco industry over-shifted the tax increases by raising retail prices more than the tax increase. Higher profit margins compensated the industry for the reduction in sales due to higher tax. Between 1994 and 2010, inflation-adjusted tax increased by 377% while the industry increased its net-of-tax price by 173%. This increased both tax revenue and the industry’s profits, despite lower sales. Up to 2010 the annual excise tax increases were driven solely by the tobacco industry’s pricing strategy. Since 2010, new entrants have introduced many low-priced cigarettes to the market, undermining the pricing strategy of the multinational incumbents. As a result, the range of cigarette prices has become much wider, and on average, cigarette prices have increased by less than the inflation rate. The National Treasury has invoked a rule that the excise tax should grow by at least the inflation rate, when the “implied” tax increase (based on pricing and the 52% rule) is less than the inflation rate. In 2018, the minimum collectable tax rate on a pack of 20 cigarettes was set at R17.85 (about £1 in August 2018), a total tax burden of somewhat more than 52% of the retail price (for the popular brands). This is much lower than the WHO’s recommendation of a minimum of 70% of retail price. The industry has argued that if tobacco taxes are increased, people will switch to cheaper illicit cigarettes (taxes not paid) and the government will therefore receive less revenue. This argument has worked particularly well in South Africa²⁷.</p> <ul style="list-style-type: none"> • <i>Duty-free allowances for travellers into South Africa (according to SARS): Goods falling within the following allowances may be brought in without the payment of customs duty and VAT as accompanied baggage:</i> <ul style="list-style-type: none"> ✓ No more than 200 cigarettes and 20 cigars per person ✓ No more than 250g of cigarette or pipe tobacco per person²⁸ 						
<p>Forms of Unnecessary Interaction</p>						

²⁶[http://www.tobaccotactics.org/index.php?title=South Africa: Industry Interference with the Control of Tobacco Products and Electronic Delivery Systems Bill](http://www.tobaccotactics.org/index.php?title=South_Africa:_Industry_Interference_with_the_Control_of_Tobacco_Products_and_Electronic_Delivery_Systems_Bill)

²⁷ [http://tobaccotactics.org/index.php?title=South Africa- Country Profile](http://tobaccotactics.org/index.php?title=South_Africa-_Country_Profile)

²⁸ <http://www.sars.gov.za/ClientSegments/Customs-Excise/Travellers/Pages/Arrival-in-SA.aspx>

INDICATORS	0	1	2	3	4	5
<p>8. Top level government officials (such as President/ Prime Minister or Minister²⁹) 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> <ul style="list-style-type: none"> <i>The Minister of Water and Sanitation, Nomvula Mokonyane, visited the BATSA factory and met with Tobacco industry officials. She heralded the water saving initiative at BATSA Heidelberg factory as one of the best water saving initiatives, in 2017. The Minister commended BATSA for the water recycling process that decreased its fresh water usage by 50% at the factory and therefore decreased the use of municipal resources. BATSA CEO, Soraya Benchikh, said, "We are very proud of our project which was primarily initiated to conserve water, and answering the call from government to partner and find a solution to water shortages³⁰.</i> <i>Gauteng MEC for Economic Development, Lebogang Maile, visited BATSA factory in Heidelberg, in a bid to understand the <u>challenges related to the illicit trade of tobacco products</u>³¹.</i> 					4	
<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> <ul style="list-style-type: none"> <i>The tobacco industry worked closely with government officials from state revenue and the police services. A whistle blower described in detail to Times Select on the alleged industrial espionage activities that he helped run on behalf of BATSA: "We would use SARS and the police to raid BAT's opposition factories, warehouses and places that sold their cigarettes."³²</i> <i>The SAPS involvement with the tobacco industry was reported in the media: Alberton South African Police Services (SAPS), in conjunction with the Tobacco Industry of South Africa (TISA), confiscated illegal cigarettes from three suspects³³.</i> 						5
<p>10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This does <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</p> <ul style="list-style-type: none"> <i>In May 2018, it was reported in the media that the Eastern Cape Development Corporation (ECDC), a government agency, and British American Tobacco South Africa (BATSA) signed a memorandum of understanding to collaborate on a project, in which BATSA funds skills training for emerging farmers and commits to buying their tobacco leaves³⁴.</i> <i>The emerging farmer's initiative in South Africa is funded by BATSA and implemented by a non-profit company (NPC) called Mobile Agri Skills Development and Training (MASDT). This is a one-stop centre for small and medium-sized enterprises in the agricultural sector which provides support to emerging farmers in rural areas. Other partners in the initiative include AgriSA, Limpopo Tobacco Processors and the Tobacco Institute of Southern Africa (TISA) and some government departments. About R50m has been invested in the project, since 2011, which facilitated the tobacco farming and BAT purchases the tobacco leaf from the participating farmers. The Department for Rural Development and Land Reform (DRDLR) contracted MASDT to</i> 						5

²⁹ include immediate members of the families of the high level officials

³⁰http://www.batsa.co.za/group/sites/BAT_A2ELAD.nsf/vwPagesWebLive/DOALAE2

³¹<https://www.enca.com/money/illegal-tobacco-trade-costs-country-billions>

³²<http://atca-africa.org/en/south-africa-exclusive-british-american-tobacco-used-state-agency-to-spy-on-competitors>

³³<https://albertonrecord.co.za/198021/saps-confiscates-illegal-cigarettes>

³⁴[BAT signs MOU to help emerging tobacco farmers in E Cape \[Fin24.com, 15 May 2018\]](#)

INDICATORS	0	1	2	3	4	5
<p>provide mentorship and business support to seven land reform projects in Mpumalanga Province³⁵.</p> <ul style="list-style-type: none"> MASDT provides skills development, mentorship, production support (input costs and mechanisation) to small scale tobacco farmers in Buffelspruit (Nkomazi), Badplaas, Grobblersdal, Venda, Skuinsdrift and Oudshoorn. These emerging farmers sell their tobacco to Limpopo Tobacco Processors (LTP) and BATSA³⁶. The Small Enterprise Development Agency (SEDA) under the Department of Trade and Industry (DTI) also provides funding to MASDT for business development and support services for small enterprises. MASDT is accredited as a Further Education and Training (FET) College with the Department of Higher Education and Training (DHET) and AgriSETA as a training service provider which conducts various skills development and training programmes with emerging farmers, community groups and commercial farmers to develop their governance and production skills and to contribute towards occupational health and safety³⁷. 						
Transparency						
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)					4	
<ul style="list-style-type: none"> The government does not have regulations that specifically apply to disclosure of meetings and interactions with the tobacco industry. However, Section 32(1) of the South African Constitution states that everyone has the right of access to “any information held by the state” as well as “any information that is held by another person and that is required for the exercise or protection of any rights”. Section 32(2) provides that national legislation must be enacted to give effect to the right of access to information. This legislation is the Promotion of Access to Information Act (PAIA)³⁸. <p><i>*Meetings between the tobacco industry and government departments e.g. SARS and the parliamentary committee is reported in the media, only on occasions when known (see no: 3). However, government departments are not required by any specific regulation/s to report / disclose their interactions with the tobacco industry.</i></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				3		
<ul style="list-style-type: none"> Tobacco entities must register /license with SARS (Customs and Excise) before starting to manufacture or deal in Tobacco Products on which the applicable Excise Duty has not yet been paid³⁹. The government requires the tobacco industry to report on standards for manufacturing of reduced ignition propensity (RIP) cigarettes. The regulation requires re-certification of products every three years. However, this is not being done due to lack of capacity for enforcement and compliance within government⁴⁰. <p><i>*There is no registry of tobacco representatives and individuals acting on their behalf including lobbyists.</i></p>						

³⁵ <https://www.news24.com/SouthAfrica/News/its-boom-time-for-tobacco-farmers-201711>It's boom time for tobacco farmers

³⁶ <http://www.rmaa.co.za/masdt-mobile-agricultural-skills-development-and-training/>

³⁷ <https://www.masdt.co.za/index.php/the-company/background-history-results>

³⁸ <https://africacheck.org/factsheets/getting-to-grips-with-the-promotion-of-access-to-information-act-paia/>

³⁹ <http://www.sars.gov.za/ClientSegments/Customs-Excise/Excise/Pages/Tobacco-Products.aspx>

⁴⁰ <https://www.gov.za/documents/tobacco-products-control-act-regulations-standards-manufacturing-reduced-ignition>

INDICATORS	0	1	2	3	4	5
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)					4	
<ul style="list-style-type: none"> <i>The government does not have a policy to prohibit contributions from tobacco industry; and does not require a full disclosure of such contributions.</i> 						
<ul style="list-style-type: none"> <i>The new Political Party Funding Act that was signed into law will force political parties to disclose private funding. However, it is not likely to be enforced before the elections in May 2019, since it needs to be enacted at least six months before an election⁴¹.</i> 						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)		1				
<p><i>Whilst Dr Derek Yach does not neatly fit the level of “retired senior government official” as required in the question, he is a South African by birth and is describes as a “native of South Africa”. When he lived, in South Africa he worked at a parastatal: The South African Medical Research Council, in which he established the Centre for Epidemiological Research and was recognised as a well-respected public health professional. He was later appointed to the World Health Organisation (WHO) as the Executive Director for Non-Communicable diseases and was one of the architects of the global tobacco control convention (FCTC). Today, the South African-born doctor is an outcast in the tobacco control world, accused by former colleagues of “moving to the dark side” by joining the tobacco industry as head the PMI /Foundation for Smoke Free World (FSFW)^{42 43}. His links to South Africa appears to be an important reference for the FSFW and media articles.</i></p> <p><i>In 2018, the Phillip Morris International funded the Foundation for Smoke-Free World (FSFW) and provided a grant of US\$70,800 to the University of Cape Town (UCT) to set up an ‘African Centre of Excellence for Smoking and Mental Health’. The UCT also houses the WHO FCTC Knowledge Hub on Tobacco Taxation that promotes a policy of taxing all forms of tobacco. The FSFW’s funded work is an affront to the efforts under way to implement strong policy on tobacco tax as required in the WHO FCTC. PMI is seeking tax relief for its new so called harm reduction products and a seat at the policy table, in violation of Article 5.3.^{44,45}</i></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)					4	
<ul style="list-style-type: none"> <i>The current Minister of Public Enterprises: Pravin Gordhan has more than 46 000 shares in more than 40 companies which includes shares in Remgro and British American Tobacco Company. This is in his</i> 						

⁴¹ <https://www.news24.com/SouthAfrica/News/watch-new-political-party-funding-act-unlikely-to-be-enforced-before-2019-elections>

⁴² <http://www.wcim2018.com/wp-content/uploads/2015/09/Prof-Derek-Yach.pdf>

⁴³ <https://www.health-e.org.za/2018/03/07/pariah-told-stay-away-tobacco-conference/>

⁴⁴ https://www.tobaccotactics.org/index.php?title=Foundation_for_a_Smoke-Free_World_Grantees

⁴⁵ <http://www.tobaccoecon.uct.ac.za/etcp/projects/fctc-knowledge-hub>

INDICATORS	0	1	2	3	4	5
<p><i>declaration of interests, revealed in the 2017 Register of Members' Interests. The Register was published by the Joint Ethics Committee in Parliament⁴⁶.</i></p> <p><i>*This specific Minister was reported in the media as part of a campaign to discredit him during the state capture period. However, there may be other Ministers with similar shares which have not been publicly reported.</i></p>						
Preventive Measures						
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)						5
<i>*There is no policy and there are no procedures in place to disclose tobacco industry interactions.</i>						
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)						5
<i>*A draft code of conduct was developed by NDOH and a meeting was held with government officials many years ago. However, this was never finalised and approved for implementation by government departments. Hence, no formal code of conduct exists.</i>						
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	

⁴⁶<http://www.sabcnews.com/sabcnews/gordhan-shares-in-over-40-companies/>

INDICATORS	0	1	2	3	4	5
<p><i>* The current Tobacco Products Control Act empowers the Minister to request information on, inter alia, ingredients and additives. However, regulations for FCTC Article 9 & 10 have not yet been developed and implemented.</i></p> <p><i>*Although SARS requires the tobacco industry to submit information on production, manufacture, market share, expenditures and revenue. It excludes information on lobbying, philanthropy, political contributions and all other activities. Examples of political contributions are shown below:</i></p> <ul style="list-style-type: none"> <i>• Sunday times reported that “self-confessed” tobacco smuggler Adriano Mazzotti, has been photographed at meetings with former African Union chairperson Nkosazana Dlamini-Zuma (currently Minister in the Presidency and ex-wife of the former President Zuma), and showered Dlamini-Zuma with an array of election paraphernalia for her ANC presidential campaign, the Sunday Times reported in November 2018⁴⁷.</i> <i>• He allegedly paid tens of thousands of Rand every month for several years to former President Zuma's son (Edward Zuma) for his political influence. Other members of the Zuma family are also said to have received money from cigarette manufacturers that SARS investigated for money laundering, fraud and tax evasion. Alleged tobacco smuggler Yusuf Kajeje and two business partners paid tens of thousands of Rand every month for several years to, among others, Edward Zuma and alleged Durban underworld figure and long-time Zuma family associate, Lloyd Hill. Adriano Mazzotti also purportedly bribed a junior SARS official to get documents to strengthen his hand during negotiations with the tax collector and bribed a prominent senior advocate and acting judge with a "gift" of R500 000, in cash. SARS subsequently failed to enforce the R600 million tax bill against Mazzotti and the cigarette manufacturing company Carnilinx⁴⁸.</i> <i>• The “President’s Keepers”, a book written by an investigative journalist, Jacques Pauw reveals that President Jacob Zuma’s friend Tom Moyane got the top job as head of SARS. He (Moyane) subsequently, ousted fellow senior colleagues from SARS by accusing them of financial wrongdoing and thereby halted investigations into high-level fraudsters and cigarette smugglers involvement with Zuma’s ex-wife and children.⁴⁹</i> <p><i>*This illustrates how easily SARS was possibly “captured” and prevented from carrying out its functions.</i></p>						
19. The government has a program / system/ plan to consistently ⁵⁰ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)						5
<i>There is no government program / system/ plan to consistently raise awareness within its departments on policies relating to WHO FCTC Article 5.3 Guidelines.</i>						
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)					4	

⁴⁷ <https://www.timeslive.co.za/politics/2018-03-13-some-examples-of-political-donors-whose-secret-donations-were-exposed/>

⁴⁸ <https://www.timeslive.co.za/sunday-times/news/2017-10-29-gangster-republic-dirty-cigarette-money-is-funding-ndzs-bid-for-president/>

⁴⁹ <https://www.thesouthafrican.com/the-presidents-keepers-most-shocking-claims-jacques-pauw/>

⁵⁰ 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 as when the tobacco industry intervention is discovered or reported.

INDICATORS	0	1	2	3	4	5
<p><i>* The current Tobacco Control Act does ban contributions as per Section 3(2). However, charitable contributions are permitted provided they are not for the purpose of advertising. This is a serious loophole in the legislation that needs to be addressed.</i></p> <p><i>*The new Political Party Funding Act that was signed into law will force political parties to disclose private funding. However, there is no 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.</i></p>						
TOTAL:72						

Annexure 1

List of Tobacco Control Laws in South Africa

1. The Tobacco Products Control Act 83 of 1993, as amended by General Law Fifth Amendment Act 157 of 1993;
2. Tobacco Products Control Amendment Act 12 of 1999;
3. Tobacco Products Control Amendment Act 23 of 2007; and
4. Tobacco Products Control Amendment Act 63 of 2008.

This is the primary tobacco control law of South Africa. It governs, among other things, smoking restrictions; tobacco advertising, promotion and sponsorship; and packaging and labelling.

5. Regulations:
 - ✓ Regulations Relating to the Labelling, Advertising, and Sale of Tobacco Products (as amended in 1995);
 - ✓ Notice No. R. 977 of 2000 on Regulations relating to provision for exemption for unintended consequences and the phasing out of existing sponsorship or contractual obligations;
 - ✓ Notice no. R. 974 of 2000 relating to the maximum permissible yield of tar, nicotine and other constituents in tobacco products;
 - ✓ Notice No. R. 976 of 2000 on Regulations relating to the point of sale of tobacco products.
 - ✓ Notice No. R. 975 of 2000 on Regulations relating to smoking of tobacco products in public places;
 - ✓ Notice No. R. 429 of 2011 on Regulations relating standards for Manufacturing of Reduced Ignition Propensity (RIP) Cigarettes

* All laws provided here are in effect.

See link: <https://www.tobaccocontrollaws.org/legislation/country/south-africa/laws>

