

SOUTH AFRICA

2020

TOBACCO
INDUSTRY
INTERFERENCE
INDEX

Acknowledgements

The information from this report on South Africa 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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FOREWORD

Aside from drawing an enormous salary, it must be difficult to be a CEO of a large tobacco company in current times. The industry and its products are reviled throughout the world, tobacco products are fair game for the government to increase excise taxes, and many governments impose strong legislative controls to curb smoking. Through the WHO's Framework Convention on Tobacco Control, countries are committed to implement stronger tobacco control policies. The WHO assists countries to achieve these goals aimed at reducing tobacco use, and therefore saving lives.

The tobacco industry's products prematurely kill 8 million people each year. The tobacco industry strives to be regarded as a "normal" industry. They are not. Its products addict people in a vulnerable stage of their lives. Most smokers regret starting, but addiction keeps them smoking. "Free choice" does not apply to addicted smokers.

For many decades the tobacco industry has been able to increase its profits, even though governments in many countries implemented strong tobacco control policies. However, the tide is turning against the tobacco industry. Between January 2010 and May 2016, the share price of British American Tobacco (BAT) increased by nearly 300% on the JSE, but between May 2016 and December 2019 it dropped by 35%. Whereas BAT used to be a "must have" share in any share portfolio, the erratic performance of its share price in recent years has affected its status. Share prices of Philip Morris, Japan Tobacco, and other tobacco companies have also decreased sharply in the past three to five years.

To account for this loss in share prices, the tobacco industry is soldiering on, selling their products to new markets that have little to no regulation, and trying to reinvent themselves in other markets. The rhetoric is very similar as before: smokers have a right to choose to smoke, tobacco is a legal product, and government interventions in the market will increase illicit trade. Expediently, tobacco companies claim to want to move away from traditional cigarettes to "safer" new-generation products.

In order to buy credibility, the industry tries to create the impression that they have changed. They are no longer telling blatant lies as they did in the 1950s. They have become more nuanced and sophisticated. For example, in 2017 Philip Morris created the Foundation for a Smoke-free World. Despite its name, it is a front group for the tobacco industry, and is discredited by public health groups globally. Their actions have been very disruptive and have distracted university personnel from more productive work. In 2018 they awarded a grant to a department in University of Cape Town's Medical School to create a "Centre of Excellence". This caused major outrage in the university and resulted in at least one funding agency turning away funding from other departments at UCT, on the grounds that the whole university was tainted by its association with the tobacco industry. In December 2019, UCT adopted a policy to not accept any tobacco industry funding. While this was a victory for public health, the incident distracted researchers from doing tobacco control research.

This report considers various aspects of tobacco industry interference in 2019. The report concludes that industry interference has decreased in 2019, relative to 2018. This is a positive development. The changes brought about by the Ramaphosa administration are starting to bear fruit. In particular, the developments at the South African Revenue Service in 2019 have resulted in an increase in the collection of excise tax revenue from the sale of tobacco products. The "nine lost years" of the Zuma administration are hopefully behind us.

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SOUTH AFRICA: 2020 TOBACCO INDUSTRY INTERFERENCE INDEX

INTRODUCTION

South Africa is one of the five biggest producers of cigarettes in Africa and over 80 per cent of the country's cigarette exports are to other African countries.¹ The combined revenues of the world's 6 largest tobacco companies in 2016 was more than USD 346 Billion, 20% larger than the Gross National Income of South Africa. The industry is a powerful force that does not fear the actions of nation-states because of their extensive resources and global market power.² British American Tobacco South Africa (BATSA) is still the largest tobacco manufacturer and distributor of tobacco products in South Africa. The proportion of the market share held by the tobacco industry as reported in 2016 (i.e. is the latest data available) in the Euromonitor International estimated that BATSA held 74% of market share, followed by Japan Tobacco International (JTI) with 9% and Philip Morris International (PMI) with 8%. Local manufacturers (make up the balance of the 8% - such as Gold-Leaf Tobacco, Best Tobacco Company, Amalgamated Tobacco Manufacturers and Carnilinx Tobacco Company) and continue to offer lower priced brands, which steadily gain market share.

This is the second report on the Tobacco Industry Interference Index (TIII) for South Africa. There is an improvement in the overall index score compared to the previous year, despite the tobacco industry's continued use of a multitude of tactics, economic power, lobbying and marketing to influence tobacco control policy. The report highlights three key issues, namely, the continued efforts by the tobacco industry to market its products using new platforms and tactics; the delay in the finalization of the Control of Tobacco Products and Electronic Delivery Systems Bill (2018); and the restructuring of the South African Revenue Services (SARS) with the establishment of the "Illicit Economy Unit" to improve its capacity for effective service delivery.

During 2019, the tobacco industry had some significant developments and continued its efforts to market its products. British American Tobacco (BAT) described the South African market as the "most profitable market in value in the African continent". BAT acquired the South African e-cigarette maker, Twisp, with the aim to target 70 million African smokers to switch to vaping products. According to BAT, Twisp is a multi-channel distributor of vaping products and flavours in South Africa with about 70 stores nationally with access to more than 50 000 consumer interactions per month.³ In July 2019, PMI started selling its heated tobacco product, IQOS (I Quit Ordinary Smoking), in Johannesburg. In opening its first IQOS store for Africa in Johannesburg, PMI claimed, "We are bringing the first experience of commercializing this technology on the African continent and the objective is based on this experience over time, to roll it out in the rest of the continent."⁴

Although tobacco legislation was tightened (in 2009) to prevent the industry from advertising or promoting their products, the industry found alternative mechanisms and platforms to introduce its products. The newest trend was the use of social media influencers, to blur the lines between what is legal and what is not. PMSA sent a prominent Radio (Metro FM) talk show host Pearl Modiadie to Italy (all expenses paid) for the opening of the Milan Design Week for the promotion of the new IQOS (heat-not-burn tobacco product). The radio show host published posts about the IQOS exhibition, which was sent to more than 2 million followers, including short videos of the IQOS exhibition and an interview with the PMSA Marketing Director. This radio show host is one of at least five prominent social media influencers who posted about IQOS in this year. Another lifestyle vlogger and Instagrammer, Aluve Nguza who has more than 10 300 twitter followers tweeted about a tobacco job for influencers:

¹ <https://health-e.org.za/2018/08/31/cigarette-market-soaring-in-africa/>

² <https://tobaccoatlas.org/country/south-africa/>

³ Carin Smith. British American Tobacco aiming at 70 million African smokers with Twisp deal Fin24. August 14, 2019. <https://www.fin24.com/Companies/Agribusiness/british-american-tobacco-aiming-at-70-million-african-smokers-with-twisp-deal-20190814>

⁴ Tobacco Journal International. PMI launches first African IQOS store. 29 July 2019. http://www.tobaccojournal.com/PMI_launches_first_African_IQOS_store.55369.0.html

“Looking for Nelson Mandela University (NMU) students who are keen to become brand ambassadors for a tobacco brand. You have to be a student at NMU, between the ages of 22-24, have a [minimum] of 1 500 followers and be a smoker.” More than 150 young people replied, some posting pictures of themselves with cigarettes as examples.⁵

Smokers were also invited to celebrate the launch of IQOS (PMSA new product) at an event that was attended by celebrities (e.g. fashion stylist, Tshepi Vundla and local TV show, Isidingo actress and master of ceremony, Jo-Anne Reyneke.⁶

PMSA launched a new online Tinder campaign, aimed to encourage singles to stop smoking, titled 'Unsmoke the world, one match at a time', which reached over a million people in two weeks on the match-making platform.⁷

The tobacco industry also used influencers to do market research. A leaked contract revealed that a Johannesburg-based company paid influencers to attend social events with boxes of BATSA brands. Once at the event, the influencers were told to chat to other partygoers about the brand they were assigned and return with intel on trends, suggestions for new packaging, and any promotions run by other brands. This included photos and videos of the people they spoke to.⁸

The tobacco industry continued to mobilize public support for the #TakeBackTheTax campaign during this period. BATSA vowed to use 2 250 000 USD (30 million ZAR) tax rebate from SARS to tackle the illegal tobacco trade and announced it will commit this entire rebate to the #TakeBackTheTax initiative fighting the illegal trade in cigarettes. BATSA also dismissed newspaper reports alleging it owed R143 million (equivalent to less than six days of the tax it collects and pays to SARS every year) to tax authorities as "false".⁹

The Tobacco Products Control Act 83 of 1993 (as amended) is the primary tobacco control law in South Africa. Although the long-awaited changes to this Act were realised with the introduction of the new proposed Control of Tobacco Products and Electronic Delivery Systems Bill (2018), the Bill has not been finalized. The new Bill will make dramatic changes (once promulgated) and have far-ranging effects on public health. However, the Bill has continued to be met with opposition from the tobacco industry and certain consumer groups but supported by the public health field. The World Health Organization has backed the proposed new Bill for stricter legislation which are consistent with the country's obligations under the Framework Convention on Tobacco Control (FCTC) and will therefore serve to “bring South Africa back to the forefront of international tobacco control best practice”.¹⁰

Although the Bill was published for public comment in 2018, the Bill was not resubmitted to parliament in the reporting period and this delay has worked in favour of the tobacco industry. The government is under ongoing pressure by the tobacco industry to scrap the proposed new tobacco Bill and focus on the sale of illegal tobacco. The industry argues that government continues to insist on further restricting the legal industry and urges government to focus its efforts on enforcing existing and “already sufficient regulations”; to work with the tobacco sector to combat illegal trade and to concentrate on introducing ‘youth-centered’ tobacco prevention programmes. An independent opinion research company, Victory Research was commissioned by Japan Tobacco International (JTI) to interview adults, aged 18 years and older, to support the view that if the government wants to

5 <https://mg.co.za/article/2019-06-20-00-big-tobacco-advertising-using-influencers-social-media-iqos/>

6 <https://mg.co.za/article/2019-06-20-00-big-tobacco-advertising-using-influencers-social-media-iqos/>

7 <https://www.mediaupdate.co.za/marketing/147584/philip-morris-sa-gets-tinder-daters-to-swipe-left-on-smoking>

8 <https://mg.co.za/article/2019-06-20-00-big-tobacco-advertising-using-influencers-social-media-iqos/>

9 <https://www.iol.co.za/business-report/companies/british-american-tobacco-pledges-r30m-in-fight-against-illegal-tobacco-20788235>

10 <https://www.getaway.co.za/travel-news/new-tobacco-laws-proposed-for-south-africa/>

reduce youth smoking, its priority should be to enforce existing regulations rather than the introduction of the proposed Tobacco Bill.¹¹

Despite the pressure and tactics from the tobacco industry, there appears to be improvement in the government's response to tobacco industry interference compared to the 2019 report. SARS is in a process of rebuilding its capacity which resulted in SARS instituting a civil process to recover 10.7 million USD (200 million ZAR) which was lost to the fiscus through the illicit tobacco trade. The claim related to a single case investigated by project "Honey Badger", which was previously disbanded by the former commissioner during state capture. The "Large Business Centre" which was previously dismantled was relaunched and focused on revenue collection; data and technology was improved to address illicit trade; a programme to exchange information on imports and exports with neighbouring countries, Botswana, Lesotho and eSwatini was established; and a tender for a track-and-trace marker technology was developed and advertised.¹² SARS also conducted periodic visits to tobacco and cigarette manufacturers and deployed customs inspectors to a number of cigarette manufacturing facilities to conduct checks on the production, consolidation of tobacco use, the number of cigarettes produced, and the quantities removed for distribution.¹³

These concerted efforts by SARS to mitigate against tobacco industry interference has positively resulted in lowering the score of the Tobacco Industry Interference Index (TII) from 72 in 2018 to 58 in 2019. This is a positive indication that government has strengthened tobacco control, however, much more effort is needed to sustain efforts to mitigate against tobacco industry interference. The finalization and implementation of the Control of Tobacco Products and Electronic Delivery Systems Bill (2018); the implementation of the Political Party Funding Act and a code of conduct for government officials and politicians on WHO FCTC Article 5.3 guidelines will directly impact on reducing further industry interference and will contribute greatly to strengthening tobacco control in the country.

¹¹ <https://www.2oceansvibe.com/2019/07/29/tobacco-industry-fighting-back-hard-against-sas-proposed-smoking-law-changes/>

¹² <https://www.fin24.com/Economy/sars-in-court-to-recover-r200m-lost-through-illicit-tobacco-trade-in-decade-old-case-20191119>

¹³ <https://www.businesslive.co.za/bd/national/2019-11-19-sars-still-not-up-to-scratch-in-dealing-with-illicit-tobacco-trade/>

Summary Findings

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

The development of public health policies, in relation to tobacco control continue to be led by the Ministry of Health (MOH) / National Department of Health (NDOH) and other government departments which deal with non-health related tobacco issues like taxation, customs, excise, revenue, production, trade and industry, environmental affairs and tourism. The Department for Rural Development and Land Reform (DRDLR) continued with an existing contract with the NGO, MASDT (funded by BATSA) and Eastern Cape local government continued to accept assistance for agriculture and skills development from the tobacco industry. However, the government fully implements Recommendation 4.9 and 8.3 of the Article 5.3 Guidelines¹⁴ of the WHO FCTC by excluding tobacco industry representatives in the government delegations to the FCTC COP and its related meetings.

2. INDUSTRY CSR ACTIVITIES

The current Tobacco Products Control Act bans corporate social responsibility (CSR) contributions from the tobacco industry. 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, should the new Tobacco Bill be passed in its current form.

Some government departments and officials continue to be engaged in activities that are funded by the tobacco industry. The tobacco industry also continues to form partnerships with non-governmental organizations and in so doing, indirectly supports government initiatives like the renovation of schools, and support to Early Childhood Development centres and teacher development programmes. Two academic institutions were also funded by the tobacco industry in this reporting period.

3. BENEFITS TO THE INDUSTRY

The tobacco industry applied various tactics to delay government efforts for tobacco control. Tobacco industry interference resulted in SARS extending the deadline on the all-important tender for the Track and Trace (TT) once and thereafter the tender was delayed even further after apparent pressure from tobacco manufacturers. The close of the tender was effectively delayed from April to 31 October in 2019.

Further tactics to oppose the Bill was the commissioning of a study by the now-defunct Tobacco Institute of South Africa (TISA) to show that if the government curbed illicit trade, there would be no need for the draft Bill nor would tobacco taxes have to be raised.

Although a special tax unit was re-established in SARS to focus on tax evasion and excise duties, the increases in tobacco taxation in 2019, is still lower than the WHO's recommendation of a minimum tax of 70% of retail price. There was no evidence in this reporting period to show that the South African tax system is to be revised and aligned in accordance with Article 6 of the FCTC.

¹⁴ Guidelines for implementation for Article 5.3: Recommendation 4.9 and 8.3 refer to not allowing the tobacco industry to be a member of any government body or form part of a delegation to any meetings of the Parties

Industry efforts and misinformation have continued to misdirect government attention on the illicit trade of tobacco products.

In the 2019 Medium Term Budget Policy Statement, the tobacco industry made submissions for inclusion in the Tax Bill and argued that if tobacco taxes are increased people will switch to cheaper illicit cigarettes and the government will therefore receive less revenue. The Parliamentary Standing Committee on Finance rejected these submissions and argued that tax evasion was an enforcement issue, not a tax issue. However, although excise tax and VAT were increased in Feb 2019, the industry absorbed these increases and did not increase the retail selling price of tobacco products.

4. UNNECESSARY INTERACTION

Meetings and interactions may have taken place but there were no reports published in this period, aside from the meeting between the chairperson of the parliamentary Portfolio Committee on Health and the BATSA representatives about new proposed Control of Tobacco Products and Electronic Delivery Systems Bill (2018).

The draft Code of Conduct (in accordance with FCTC Article 5.3) for politicians and government officials in South Africa is still to be finalized, approved and implemented. Some government departments and local authorities continue to interact with the industry through previous agreements /Memorandum of Understanding (MOU) and through partnerships with NGOs that are funded by the industry.

5. TRANSPARENCY

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 does accept assistance from the tobacco industry and the tobacco industry continues to publicly announce its partnership with government. This was illustrated in the partnership with government and municipal officials in the “cigarette butt” and “beach clean-up” campaigns in Cape Town; and the ECDC farmers project in the Eastern Cape Province.

6. CONFLICT OF INTEREST

The status quo remains about the government not having a policy to prohibit contributions from the tobacco industry; and does not require a full disclosure of such contributions.

The provisions of the current Public Funding of Represented Political Parties Act (103 of 1997) remains valid, until such time that the new Political Party Funding Act is promulgated. This new Act will force political parties to disclose private funding. The Electoral Commission held public hearings on the Regulations to administer the new Political Party Funding Act and began with hearing submissions from various parties. It is envisaged that the law would be operational by the time the local government elections take place, in 2021. There was also no record in this period of any retired government official/s forming part of the tobacco industry.

7. PREVENTIVE MEASURES

The status quo remains with government having no protocols or policies in place to record interactions with the tobacco industry. There are no formal procedures to disclose and record interactions (such as agendas, attendees' registers, or meeting minutes) with the tobacco industry and its representatives, that are in accordance with the recommendations of FCTC Article 5.3. The draft code of conduct on Article 5.3 guidelines for public officials was discussed, however, to date, no further progress has been noted and this continues to work in favour of the tobacco industry.

The current Tobacco Products Control Act empowers the Minister to request information on, inter alia, 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 does not require information on lobbying, philanthropy, or political contributions. The government does not have a dedicated programme to raise awareness within government departments on policies relating to guidelines on FCTC Article 5.3

Recommendations

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

1. Advocate for the new proposed Control of Tobacco Products and Electronic Delivery Systems Bill (2018), to be urgently passed by parliament with minimum content and technical 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 their 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 government-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 FCTC 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 (Price and tax measures to reduce the demand for tobacco).
6. Develop and implement a code of conduct (based on FCTC Article 5.3 recommendations) for government officials and political leaders.
7. Ratify the Protocol to Eliminate Illicit Trade in Tobacco Products (which was signed by the government in 2012).
8. Implement an independent and effective track and trace system for all tobacco products to address illicit trade issues with immediate effect.

2020 Tobacco Industry Interference Index

Results

and

Findings

The Table below provides details on findings related to the South African government's compliance with Article 5.3 of the FCTC.

	0	1	2	3	4	5
INDICATOR 1: Level of Industry Participation in Policy-Development						
1. The government ¹⁵ accepts, supports, or endorses any offer for assistance by or in collaboration with the tobacco industry ¹⁶ in setting or implementing public health policies in relation to tobacco control ¹⁷ (Rec 3.1)				3		
<p>The status quo remained with the development of public health policies, in relation to tobacco control being primarily initiated and led by the Ministry of Health (MOH) / National Department of Health (NDOH) and other government departments continued to deal with non-health related tobacco issues like taxation, customs, excise, revenue, production, trade and industry, environmental affairs, tourism, etc.</p> <p>The National Department of Health did not collaborate or involve the tobacco industry in developing and or implementing public health policies in this period. However, the Department for Rural Development and Land Reform (DRDLR) continued with the existing contract with the NGO, MASDT (BATSAs funded) to provide mentorship and business support for reform projects and the Eastern Cape local government continued to accept assistance for agriculture and skills development from the tobacco industry.</p>						
2. The government accepts, supports, or endorses <u>policies or legislation drafted by or in collaboration with the tobacco industry.</u> (Rec 3.4)		1				
<p>There is no evidence to show the government accepted policies and legislation that is drafted by the tobacco industry.</p> <p>The South African Revenue Services (SARS) rejected submissions from the tobacco industry, as is reflected in the Revised Draft Response Document on the 2019 Tax Bill. In the 2019 Medium Term Budget Policy Statement, the tobacco industry made submissions for inclusion in the Tax Bill. The main concerns the industry raised in the submissions were: the increase in excise duties will shrink the legal tobacco industry while boosting the illicit market; increases will not lead to higher tax revenues but result in consumers being unable to afford legal cigarettes; and further increases in taxes and an increase in the price to consumers of legal tobacco products will lead to switching to cheaper, illicit tobacco products.¹⁸</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)				3		

¹⁵ 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

¹⁶ The term, "tobacco industry" includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

¹⁷ "Offer of assistance" may include draft legislation, technical input, recommendations, oversees study tour

¹⁸<http://www.treasury.gov.za/legislation/bills/2019/2019%20Revised%20%20Draft%20Response%20Document%20on%20the%202019%20Tax%20Bills-MTBPS-30%20October%202019.pdf>

	0	1	2	3	4	5
The National Department of Health (NDOH) never invites the tobacco industry to be members of any committees or groups that determine public health policy. There is no published evidence of other (non-health sector) government departments meeting with any tobacco industry in this reporting period aside from the parliamentary Portfolio Committee on Health. On 23 July 2019, Dr Sibongiseni Dhlomo, chairperson of the Parliamentary Portfolio Committee on Health through a press release indicated that the Committee met with the British American Tobacco South Africa (BATSA) representatives lead by its head of External Affairs. BATSA raised concerns that Parliament may take decisions with regard to the Tobacco Amendment Bill that may affect the tobacco industry. The Chairperson affirmed that BATSA will be invited for consultation when the committee will deal with the Tobacco Amendment Bill, 2018. ¹⁹						
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) ²⁰ (Rec 4.9 & 8.3)		1				
The status quo remained in this period with no inclusion of the tobacco industry in the South African delegation to COP, which is led by NDOH.						
INDICATOR 2: Industry 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 ²¹ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)						5
The status quo with regard to current legislation remained in this period of reporting: The current Tobacco Products Control Act bans 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 (unchanged) be passed by parliament. Examples of new partnerships with the tobacco industry are listed below:						
<ul style="list-style-type: none"> ✓ A.1. Philip Morris South Africa (PMSA), formed partnerships with the Central City Improvement District (CCID) and City of Cape Town to tackle the “cigarette butt” litter problem in Cape Town's central business district (CBD) by raising public awareness and encouraging smokers to dispose of butts in 300 butt bins that were placed in hotspots.²² ✓ A.2. PMSA launched a beach anti-litter campaign “Our Beaches are not Ashtrays” over the festive season in partnership with the City of Cape Town and the Clean C NGO, which runs regular beach clean ups along the coastline on the first Saturday of every month. A mayoral committee member for water and waste at the City of Cape Town, Alderman: Xanthea Limberg, said that "The City is happy to support this programme, especially during a period 						

¹⁹ Chairperson says British American Tobacco will be invited for consultation when committee deals with Tobacco Amendment Bill. Accessed last 18 April 2020 from <<https://www.parliament.gov.za/press-releases/chairperson-says-british-american-tobacco-will-be-invited-consultation-when-committee-deals-tobacco-amendment-bill>>

²⁰ Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

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

²² <https://www.bizcommunity.com/Article/196/703/196068.html>

that sees high numbers of visitors to our beautiful beaches". The public awareness drive on beaches is, according to PMSA, the next step in an anti-littering partnership with local authorities. The initial focus on cigarette butt litter in Cape Town's CBD is steadily being expanded to include the coastline and other locations.²³

A.4 Triologue Forum commissioned by BATSA to revise and develop a roadmap for its CSI programme continued to support various initiatives. The Forum also supported conferences with leaders and various sectors:

- ✓ A. Triologue Business in Society Conference 2019 was held with 400 delegates from the corporate, non-profit, government, academic, and media sectors, to share lessons and best practice in development, with emphasis on the role of business in society. The conference focused on collaboration in education, managing risks, innovative finance and building relationships in development. Speakers included representatives from the Department of Basic Education, University of Stellenbosch. The keynote speaker was a former judge of the Constitutional Court of South Africa.²⁴
- ✓ A CSI Forum on Teacher Development was presented in partnership with Capitec Foundation on 22 August and 27 August in Johannesburg and Cape Town respectively.²⁵

B. Examples of Non-Profit Organizations (NPOs) that are funded by tobacco industry and work with government like the Department of Social Development; and of public academic institutions that receive funding from the tobacco Industry are listed below:

- ✓ B.1. The Same Foundation receives funding from PMSA. The foundation works in public primary and secondary schools to renovate facilities and provide learning equipment. They also partner with public hospitals and clinics to supply the equipment and infrastructure. The Same Foundation partnered with PMSA to renovate and complete a new science laboratory at the Sibusisiwe Technical High School in Durban.²⁶
- ✓ B.2. Rise Against Hunger (RAH) - an initiative that aims to alleviate hunger and address the issue of food security receives funding from BATSA. RAH packaged 60 000 meals to feed 230 children with five meals a week for an entire year for distribution through the Early Childhood Development (ECD) connect programme. The key focus of the Programme is to assist ECD's to develop their facility to qualify for registration with the Department of Social Development.²⁷ BATSA also partnered with Rise Against Hunger to commemorate Mandela Day. BATSA employees volunteered their time on Mandela Day to pack meals for the less fortunate (as an annual event) and packed 120,000 meals for charity in July 2019.
- ✓ B.3 The Manger Care Centre (MCC), a registered non-profit organization with the Department of Social Development, and a public benefit organisation receives funding from BATSA. Manger Care Centre establishes partnerships with national agencies and corporate funders to assist specific communities through contractual agreements with the funders. MCC renders services to NPOs, community projects, Community Property Associations or Co-operatives. The MCC has twenty-one (21) organic vegetable tunnels that produce

²³ <https://www.mediaupdate.co.za/publicity/147687/philip-morris-sa-launches-beach-anti-litter-campaign>

²⁴ <https://triologue.co.za/trialogue-business-society-conference-2019/>

²⁵ <https://triologue.co.za/teacher-development/>

²⁶ <http://www.samefoundation.org.za/second-new-classroom-for-inspirational-rural-school-in-umbumbulu-durban/>

²⁷ <https://rahafrica.org/category/news/>

spinach. This project was sponsored in part by BATSA who made a substantial donation toward the development of a Training Centre.²⁸

- ✓ B.4 The University of Cape Town (UCT) is one of at least two South African universities to have received funding from PMI’s Foundation for a Smoke Free World (FSFW). This sparked outrage among the broader university and was thereafter cancelled and resulted in one donor refusing to work with the university’s internationally recognized tobacco control unit. Experts worry that this could make the university “untouchable” for public health funders. By the time UCT learned of the grant, 21341 USD (300,000 ZAR) had already been paid to the psychiatry department. The university was drafting guidelines to ban entities from accepting money from the tobacco industry.²⁹ These guidelines were adopted by UCT in 2019 and is now official policy.
- ✓ The University of Stellenbosch Business School also accepted about 85 000 USD (1.2m ZAR) from the FSFW for a project called “An ethical framework for a smoke-free world”, tax returns show.³⁰

The Economic Freedom Front (EFF) is a popular political party, which has influence in swaying public support for policy development in the country. The leader of this party, Julius Malema has thrown down a challenge to anyone using his friendship with Adriano Mazzotti, a cigarette smuggler, to criticize him. In a Twitter post, he made it clear that reports about his friendship with self-confessed cigarette smuggler Adriano Mazzotti do not faze him, he is more than happy to continue with this relationship.³¹

INDICATOR 3: Benefits to the Tobacco Industry

6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)				3		
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In 2018, the proposed Control of Tobacco Products and Electronic Delivery Systems Bill, which will repeal the Tobacco Products Control Act 1993, was published for public comment. To date, the Bill has not been finalized by NDOH for resubmission to parliament. This delay continued to work in the interests of the tobacco industry. The tobacco industry abided by the deadline and no extension of time was granted to the tobacco industry for their comment. The tobacco industry has continued to use a variety of arguments and tactics to oppose the new Draft Bill.

Further tactics were used by the tobacco industry to oppose efforts by government to get back on its feet, post the state capture enquiry, as follows:

- ✓ The South African Revenue Services (SARS) is slowly recovering from the chaos of Moyane’s (previous commissioner) tenure and reconstituting itself under the leadership of the new commissioner who has promised to implement the findings of the first state capture inquiry. A new illicit trade unit is established with a specific focus on tobacco which aims to crackdown on rampant illicit tobacco, with plans to phase out the old, ineffective Diamond

²⁸ <https://www.mangercare.co.za/agri-tunnels>
²⁹Medical Brief (23 October 20219). Big Tobacco and the controversy over research and influencing policy. Accessed last 18 April 2020 from < <https://www.medicalbrief.co.za/archives/big-tobacco-and-the-controversy-over-research-and-influencing-policy/>>
³⁰Medical Brief (23 October 20219). Big Tobacco and the controversy over research and influencing policy. Accessed last 18 April 2020 from < <https://www.medicalbrief.co.za/archives/big-tobacco-and-the-controversy-over-research-and-influencing-policy/>>
³¹ The Citizen (6 October 2019). Malema proudly owns his friendship with Adriano Mazzotti. Accessed last 18 April 2020 from <<https://citizen.co.za/news/south-africa/social-media/2187765/malema-proudly-owns-his-friendship-with-adriano-mazzotti/>>

stamps and introduce a new system of ‘track and trace (TT)’. The tender specified that the new TT service providers must be “solely and entirely accountable to SARS and completely independent of the tobacco industry”. To ensure no foul play, SARS requested full transparency in all contractual documents and reserved the right to reject any sub-contractor that did not meet the criteria. However, as soon as it was announced, the tender process was delayed by manufacturers and the Tobacco Institute of Southern Africa (TISA). TISA claimed the whole process was rushed, even though SARS has been discussing a replacement for the Diamond stamps for over a decade, the industry body is still demanding a greater say in the development of a new system.³² TISA argued that the tender does not reflect the realities of the cigarette market in SA, since 80% of cigarettes are retailed by small informal retail shops that are not equipped for the new rules and will be forced out of the legal trade as a result. “The system specified in the tender will capture only the legal market and could drive illicit trade up further. It would be disastrous if this rushed process resulted in the adoption of a system that would not only fail to achieve its stated goals but actually lead to increased illegal trade.”³³ TISA warned that SARS could award a multibillion-rand contract to a monopoly, which may fail to curb the R8 billion illegal cigarette trade.³⁴ As a result of the tobacco industry interference, SARS extended the deadline for the TT tender and issued a statement on the update about the tender. SARS had announced the tender in April, with a deadline for June 20 explaining that “the extension allows the Commissioner, Mr. Edward Kieswetter the opportunity to apply his mind, consider all relevant factors and consult further”.³⁵ The tender was delayed even further: SARS come under fire for pushing for a system that fights illicit tobacco manufacturing, initially temporarily withdrawing a tender for “further consideration” after apparent pressure from manufacturers. The tender, which was to close on August 30, was extended to close on October 31.³⁶

- ✓ South Africa’s earlier efforts to tackle tobacco smuggling placed it in the crosshairs of tobacco industry interference who objected to the draft bill with the misleading claim that evidence-based measures to protect the public will increase cigarette smuggling. Another tactic of the Tobacco Institute of South Africa (TISA) against the bill was the commissioning of its own study that presented smaller, local tobacco companies as being wholly responsible for the sale of illegal cigarettes. According to TISA, if the government curbed illicit trade, there would be no need for the draft Bill nor would tobacco taxes have to be raised.³⁷

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3)					4
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Finance Minister Tito Mboweni turned a deaf ear to the tobacco industry’s desperate calls to not increase the excise tax on tobacco from their current level. The minister announced that there would be a special unit focused on tax evasion in order to ensure maximum tax revenue is realized and excise duties on tobacco were increased, as follows:

- ✓ A pack of 20 cigarettes went up by R1.14 to R16.66

³² <https://africatimes.com/2019/09/30/why-track-trace-is-the-solution-for-south-africas-tobacco-wars/>

³³ <https://omny.fm/shows/capetalk-evenings/no-to-sars-cigarette-tracking>

³⁴ <https://www.onlinetenders.co.za/news/fears-mount-sars-contract-could-hit-legal-cigarette-industry>

³⁵ <https://www.fin24.com/Economy/sars-extends-deadline-for-tender-to-help-stop-illicit-tobacco-trade-20190524>

³⁶ <https://select.timeslive.co.za/news/2019-09-02-sars-comes-under-fire-for-plan-to-smoke-out-illicit-cigarettes/>

³⁷ <https://www.cbn.co.za/featured/big-tobacco-uses-dirty-tricks-to-contest-draft-bill/>

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- ✓ The excise duty on a typical cigar went up by about 64 cents to R7.80³⁸

However, despite this increase above, it is still lower than the WHO's recommendation of a minimum tax of 70% of retail price. The industry has continued to argue that if tobacco taxes are increased, people will switch to cheaper illicit cigarettes and the government will therefore receive less revenue. This argument has continued to work, particularly well in South Africa.³⁹ Sadly, in 2019 the government did receive less revenue than in the previous year.

The status quo remains as follows: Duty-free allowances for travelers into South Africa (according to SARS), remains unchanged as follows: Goods falling within the following allowances may be brought in without the payment of customs duty and VAT as accompanied baggage:

- ✓ No more than 200 cigarettes and 20 cigars per person
- ✓ No more than 250g of cigarette or pipe tobacco per person⁴⁰

2. The following are examples of indirect incentives that allowed the tobacco industry to continue to market and sell its products:

- ✓ In December 2017, BATSA announced its intention to buy the South African e-cigarette company Twisp, which would give the company a new local product and direct access to a large number of retail outlets in the country. The sale was blocked by the South African Competition Commission in 2018 as it was deemed anti-competitive. However, in August 2019 BATSA was given the go-ahead to complete the purchase. This allowed BATSA to develop direct-to-consumer relationships, gain consumer insight and pilot and test new products. There were some conditions placed by the Commission on the merger: BAT had to agree with retailers not to allocate more than 70% of visible retail space to the company's e-cigarettes, and that it would not incentivize retailers to deny space to competitors' products. They also had to agree not to cut any jobs for two years.

Although PMSA was not given any direct benefits, the current laws do not prohibit the opening of new tobacco stores for the sale of electronic nicotine and non-nicotine delivery systems (ENDS/ ENNDS). Philip Morris International Inc opened its first flagship store in Sandton, Johannesburg to grow the demand in Africa for its alternative heated tobacco product IQOS. The store is accessible to tourists and business people and allows for the use of its retail footprint as a springboard to expand in the rest of the continent. South Africa is the first and only market in Africa where Philip Morris sells IQOS. PMSA introduced an IQOS subscription option enabling consumers to pay off the device over the course of a year for around R80 per month to ensure that the cost isn't a barrier to choosing these devices.⁴¹

INDICATOR 4: Forms of Unnecessary Interaction						
8. Top level government officials (such as President/ Prime Minister or Minister ⁴²) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or	0					

³⁸ <https://www.iol.co.za/business-report/budget/budget2019-mboweni-ignores-btfa-goes-ahead-with-sin-tax-hikes-19403408>

³⁹ http://tobaccotactics.org/index.php?title=South_Africa- Country_Profile

⁴⁰ <http://www.sars.gov.za/ClientSegments/Customs-Excise/Travellers/Pages/Arrival-in-SA.aspx>

⁴¹ <https://www.bizcommunity.com/Article/196/162/199944.html>

⁴² Includes immediate members of the families of the high-level officials

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organized by the tobacco companies or those furthering its interests. (Rec 2.1)						
There is no published evidence in this period of top-level officials meeting with tobacco industry or attending social function and other events sponsored by tobacco companies.						
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)	0					
No evidence of assistance from the tobacco industry was published in this period to reflect on government acceptance of assistance on enforcement.						
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>						5
<p>1. The memorandum of understanding (MOU) signed (in 2018) between Eastern Cape Development Corporation (ECDC), a government agency, and BATSA to fund skills training for emerging farmers and the buying of the tobacco leaves is still in place and proceeded as follows:</p> <ul style="list-style-type: none"> ✓ The ECDC injected a further R500 000 into tobacco production to expand the project into the Kat River Valley with the involvement of the local municipality and support of BATSA. The project is owned by the Khatala Community Project Development Co-operative (KCPDC) which was also selected to participate in the BATSA Black Farmers Development Programme. <p>2. 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 one-stop centre for small and medium-sized enterprises in the agricultural sector continued to provide support to emerging farmers. The other partners in the initiative include AgriSA, Limpopo Tobacco Processors and the Tobacco Institute of Southern Africa (TISA). The Department for Rural Development and Land Reform (DRDLR) continued to contract MASDT to provide mentorship and business support to land reform projects.</p> <ul style="list-style-type: none"> ✓ MASDT paid suppliers directly and farmers received +/- 4855 USD (70 000 ZAR) /ha for inputs, which includes seedlings, manure, and fertilizers. The money is then paid back after harvest. Government, together with MASDT through the Small Enterprise Development Agency, stipulates that for every hectare of tobacco planted, a hectare of vegetables had to be planted.⁴³ <p>The status quo remains: The Small Enterprise Development Agency (SEDA) under the Department of Trade and Industry (DTI) also continues to provide 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 safety⁴⁴.</p>						

⁴³ <https://www.farmersweekly.co.za/agri-business/empowerment/big-opportunities-for-small-scale-tobacco-farmers/>

⁴⁴ <https://www.masdt.co.za/index.php/the-company/background-history-results>

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INDICATOR 5: 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	
<p>The status quo remains:</p> <p>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)⁴⁵.</p> <p>*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 to report / disclose their interactions with the tobacco industry.</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 (Rec 5.3)				3		
<p>The status quo remains:</p> <p>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 paid⁴⁶.</p> <p>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 government⁴⁷.</p> <p>*There is no registry of tobacco representatives and individuals acting on their behalf, including lobbyists.</p>						
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)					4	
<p>The status quo remains with regard to the government not having a policy to prohibit contributions from the tobacco industry; and does not require a full disclosure of such contributions.</p> <p>The new Political Party Funding Act that was signed into law will force political parties to disclose private funding. However, to date, this new act has not been implemented. The provisions of the</p>						

⁴⁵ <https://africacheck.org/factsheets/getting-to-grips-with-the-promotion-of-access-to-information-act-paia/>

⁴⁶ <http://www.sars.gov.za/ClientSegments/Customs-Excise/Excise/Pages/Tobacco-Products.aspx>

⁴⁷ <https://www.gov.za/documents/tobacco-products-control-act-regulations-standards-manufacturing-reduced-ignition>

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current public funding of represented political parties Act, 103 of 1997 remains valid, until such time that the new Political Party Funding Act is promulgated. ⁴⁸ The Electoral Commission held public hearings on the Regulations to administer the Political Party Funding Act and began with hearing submissions from various parties. It is envisaged that the law would be operational by the time the local government elections take place, in 2021. ⁴⁹						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)		1				
There is no record in this period of any government official/s that form part of the tobacco industry. However, it must be noted that Edward Zuma (eldest son of Jacob Zuma the former President of South Africa) was a director, later a shareholder and finally a partner in Amalgamated Tobacco Manufacturing (ATM). ⁵⁰ Edward, received money from cigarette manufacturers that SARS investigated for money laundering, fraud and tax evasion. Edward has been in the news for defaulting on a multimillion loan, owing money and allegedly dealing in contraband cigarettes. ⁵¹						
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					
There are no reports published in this period to indicate that government officials and relatives were holding positions in the tobacco industry.						
INDICATOR 7: 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
The status quo remains: *There is no policy and there are no procedures in place to disclose tobacco industry interactions.						
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)				3		
A draft code of conduct was developed by NDOH and a meeting was held with government officials. However, this was never finalised and approved for implementation by government departments. Thus, no formal code of conduct exists.						
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	
The status quo remains:						

⁴⁸ <https://www.gov.za/speeches/electoral-commission-postpones-commencement-political-party-funding-act%C2%A0-3-apr-2019-0000>

⁴⁹ <https://pmg.org.za/page/IECday2?via=homepage-feature-card>

⁵⁰ <https://www.news24.com/news24/Books/extract-tobacco-wars-that-guy-fears-nobody-and-nothing-20190730>

⁵¹ Jacques Pauw. Tobacco trade bred industry with 'criminality, political links embedded in DNA' 31 May 2019 <https://bit.ly/2UpScuA>

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<p>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 (regulation of the contents of products and regulation of tobacco product disclosures) have not yet been developed and implemented.</p> <p>SARS requires the tobacco industry to submit information on production, manufacture, market share, expenditures, and revenue. However, this excludes information on lobbying, philanthropy, political contributions, and all other activities.</p>						
<p>19. The government has a program / system/ plan to consistently⁵² raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)</p>						5
<p>The status quo remains:</p> <p>There is no government program /system/ plan to consistently raise awareness within its departments on policies relating to WHO FCTC Article 5.3 Guidelines.</p>						
<p>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)</p>					4	
<p>The status quo remains:</p> <p>The current Tobacco Products 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.</p> <p>The new Political Party Funding Act that was signed into law will force political parties to disclose private funding. However, there is currently no government 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.</p>						
TOTAL					58	

⁵² 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.