



# NICOTIANA TABACUM

*A Profile of Tobacco Control  
in Kenya*



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# TOBACCO - NICOTIANA TABACUM

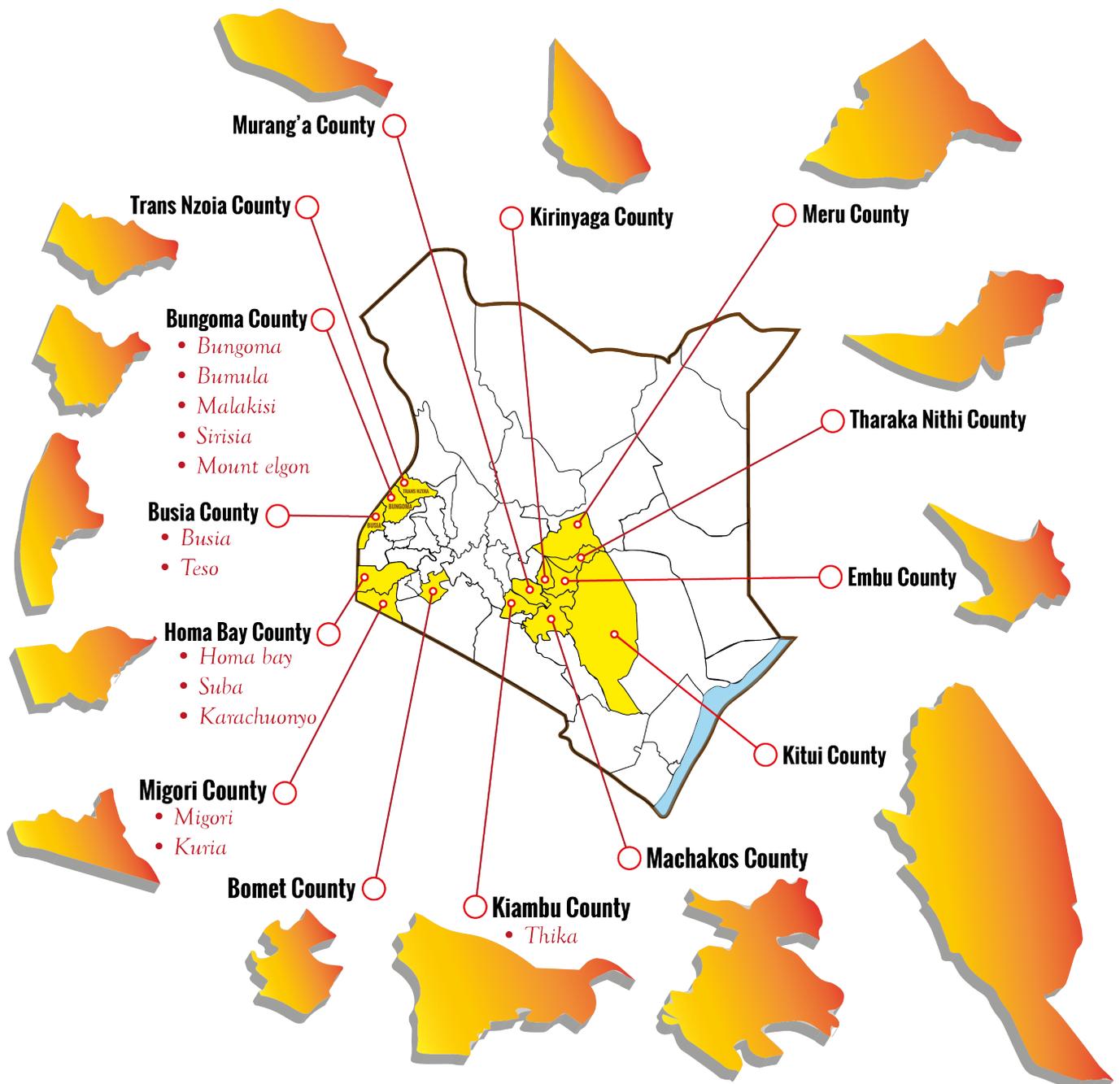
Tobacco refers to several plants in the Nicotiana genus and the Solanaceae family. This covers over 70 species of tobacco e.g. *Nicotiana acuminata*, *Nicotiana africana* Merxm, *Nicotiana alata*, jasmine tobacco, *Nicotiana attenuata*, *Nicotiana benthamiana* Domin, *Nicotiana clevelandii*, *Nicotiana glauca*, Brazilian tree tobacco, shrub tobacco etc.<sup>1</sup>

*Nicotiana Tabacum* is the species of tobacco, used in the making of the products consumed as stimulants; for example cigarettes. There are 4 main varieties of *Nicotina Tabacum* that are grown as cash crops and used in industries; Burley tobacco, Bright leaf tobacco (Virginia tobacco), Oriental tobacco and Blended tobacco.<sup>2</sup> The most common variety grown in Kenya is the flue-cured Virginia tobacco (Bright leaf tobacco).<sup>3</sup>



# TOBACCO FARMING IN KENYA

Tobacco farming is documented in 13 of the 47 counties of Kenya.<sup>4,5,6</sup>



## LAND USE FOR TOBACCO FARMING

The Kenyan land area (excludes inland water bodies) is 56,914,000ha.<sup>7</sup> Arable land is land that is regularly ploughed or tilled, generally under a system of crop rotation.<sup>8</sup> FAO further describes arable land as land under temporary crops (double-cropped areas are counted once), temporary meadows for mowing or for pasture, land under market or kitchen gardens, and land temporarily fallow. Land abandoned as a result of shifting cultivation is excluded. Arable land in Kenya is 5,800,000ha; 10.19% of the Kenya Land area.<sup>9</sup>

In 1970, tobacco farm land was estimated at 500ha, increased to 14,160ha by year 2000.<sup>10</sup> As of 2018, tobacco is cultivated on 18,317ha; an increase from 17,191ha in 2017 and an increase from 16,395ha in 2016. This translates to a leaf production of 9,711 tons; a decline from 9,786 in 2017 and 9,974 in 2016.<sup>11</sup>

BAT Kenya is the main tobacco company in the country, with a market share of 71.5%. In the 2019 annual report, the company reported a yield of 8.9million kilograms of tobacco (9,810.6tons). Therefore, a loose estimation of Kenya's tobacco yield based on BAT's market share, would be 12,447,552.45 kilograms (13,721.077tons).<sup>12,13</sup>

There are over 50,000 Kenyan households that depend on tobacco farming directly.<sup>14</sup>



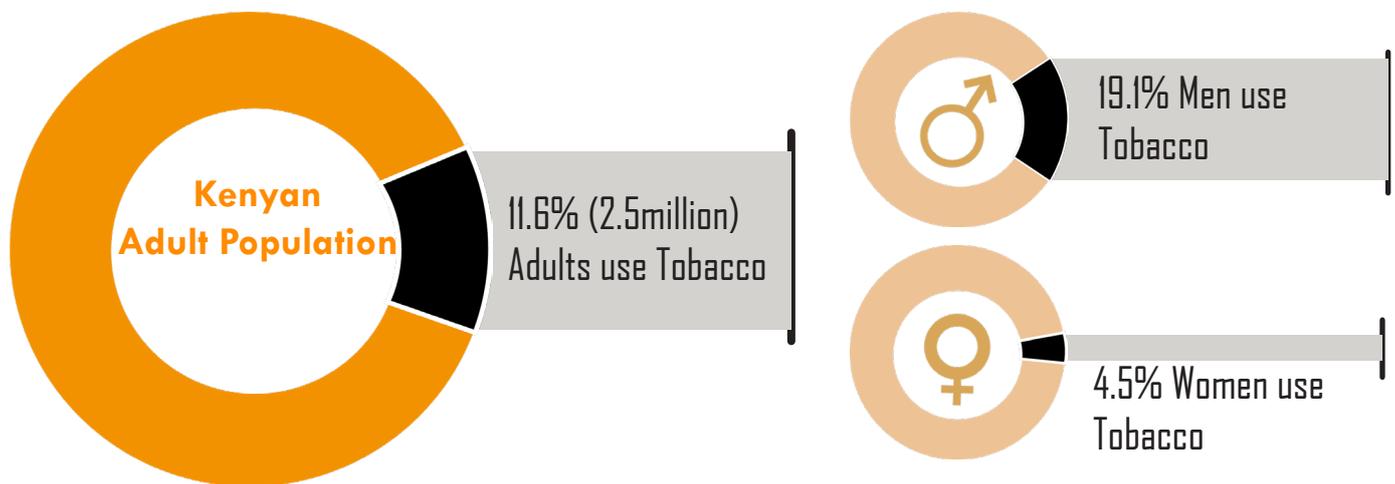
# TOBACCO PRODUCTS

Conventionally, companies and industries modify their products and introduce enhanced and trendy products. Tobacco processing companies are not an exception. Tobacco products are in two brackets; smoking tobacco and smokeless tobacco. Smoking tobacco covers cigarettes, cigars, electronic cigarettes and water pipes (shisha/Hookah). Smokeless tobacco includes dissolvable tobacco products, tobacco taken orally then spat out after use and tobacco taken by being snorted in through the nose (snuffing).

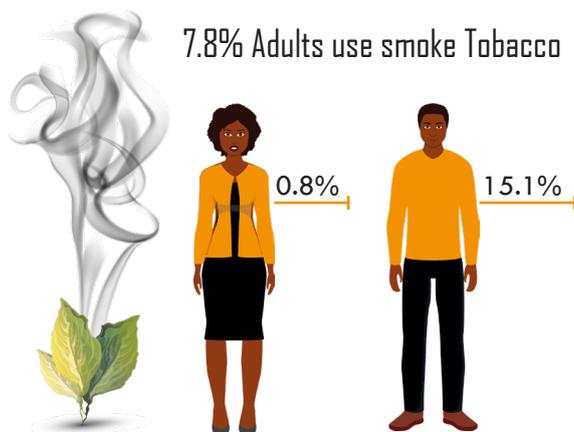
In Kenya 11.6% of Adults use tobacco (smoke & smokeless), translating to 2.5million Adults (15 years and over); specifically, 19.1%Men and 4.5% Women. 7.8% adults use smoke tobacco, translating to 1.7million adults (15 years and over); 15.1% being men and 0.8% women. 4.5% adults consume smokeless tobacco; 5.3% being Men and 3.8% Women, translating to 1million adults.<sup>15</sup> Three out of four tobacco users (77.4%), are less than 50 years old, with the average start age being 21 and the average quit age, 27years old.<sup>16</sup>

The World Health Assembly established a global voluntary tobacco target in 2013 to help reduce prevent premature avoidable mortality from NCDs. The agreed global tobacco target is a 30% relative reduction in prevalence of current tobacco use in persons aged 15+ years.<sup>17</sup>

## Adult - 15years and over

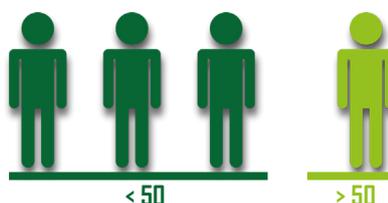
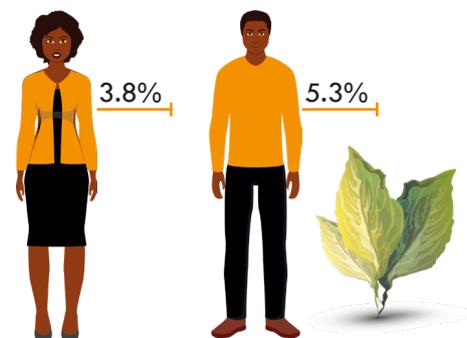


### SMOKE TOBACCO



### SMOKELESS TOBACCO

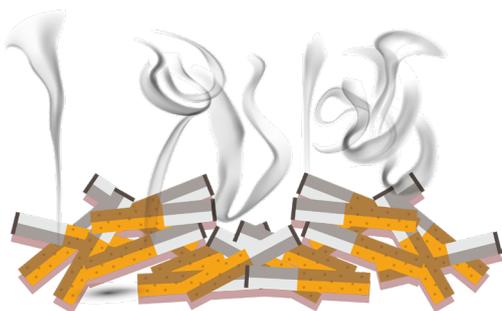
4.5% Adults use smokeless Tobacco



**77.4% Tobacco Users are below age 50 (3 out of 4 Tobacco Users)**

## Cigarettes

Tobacco wrapped in paper and a filter. Consumed by burning and inhaling the smoke. In 2016, 17.14 billion cigarettes were produced in Kenya.<sup>18</sup> A study done in Nairobi in 2007 indicated that the most prevalent mode of tobacco use is smoking (91.7%).<sup>19</sup>



Smoking accounts for 91.7% of the modes in which tobacco is used (Kenya)

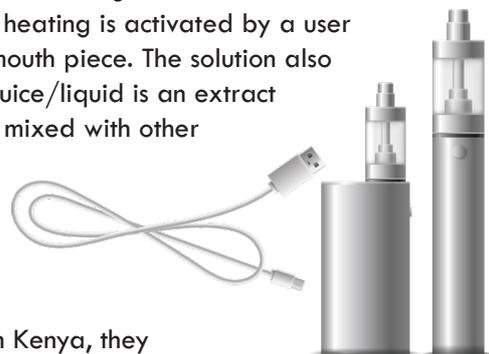
## Cigars

Cigars are produced locally; however, there is no report on quantity produced. In 2010, over 12 billion sticks of cigarettes and cigars were produced in Kenya. 5 Cigars in Kenya are in a great sense, viewed as luxury meant for higher income consumers of tobacco products. However, Euromonitor International notes that the number of cigar consumers has increased since 2015.<sup>20</sup>



## Electronic Cigarettes

Also known as vape pen, e-cig or e-cigar. It takes the form of a pen or pipe. It has a mouthpiece, a tank, a heating element, a rechargeable battery and electronic circuits. The tank has a nicotine or non-nicotine solution that gets heated to release it as vapor. The heating is activated by a user sucking on the mouth piece. The solution also known as an e-juice/liquid is an extract of tobacco and mixed with other additives including flavoring. E-cigars are not locally manufactured in Kenya, they are imported mainly from Europe, China and USA.<sup>21</sup> Consumption of e-cigars has experienced a rise after the ban on shisha in Kenya.



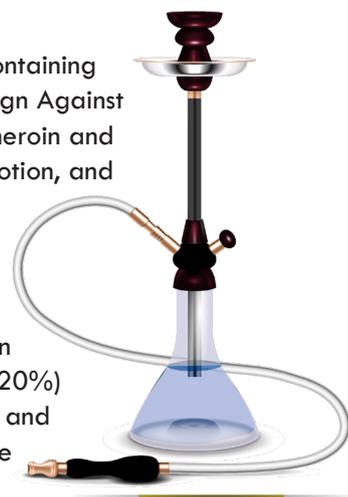
## Smokeless Tobacco

These are tobacco products that are either sniffed, chewed or simply placed between the cheek or lip and the gum. The substance is spat out after use. Nicotine pouches for chewing, kuber for putting between the lip and gum, snus, snuffing (taken in through the nostrils). In Kenya, 957,800 people use smokeless tobacco.<sup>18</sup> In Kenya, snuffing makes 3% of tobacco product consumption and combined snuffing and chewing 3.7%.<sup>19</sup>



## Water Pipes (Shisha/Hookah)

It involves the breathing in of flavored smoke through a hose connected to an instrument containing a bowl with tobacco that is being heated. In 2014, The National Authority for the Campaign Against Alcohol and Drug Abuse (Nacada), banned 19 flavors of shisha after testing positive for heroin and cannabinoids.<sup>22,23</sup> In 2017, a ban was made on the importation, sale, advertisement, promotion, and distribution of shisha in Kenya. This achieved through powers conferred under Section 36 (m) of the Public Health Act. The ban was gazette on 28th December 2017 as The Kenya Gazette Supplement No 188. This made Kenya the 4th country to ban it in East Africa, besides Uganda, Tanzania and Rwanda. Violation of the ban faces a penalty as provided for under Section 163 of the Public Health Act.<sup>24</sup> In 2019, Compliance of the ban in public places was at 80% with a 20% violation taking place in restaurants (5%), bars (20%) and night clubs (24%).<sup>25,26</sup> The sale of shisha despite the ban was most common in Nairobi and Mombasa.<sup>27</sup> In 2018, a petition was filed in the High court to lift the ban. In June 2019, the High court upheld the Ban on shisha in Kenya.<sup>28</sup>



## Dissolvable Tobacco

Tobacco products that are not disposed (spitting out) but consumed in entirety i.e. dissolve in the mouth. They take the form of tablets, strips or sticks. They have the appearance of confectionary. There is no data captured on the availability and consumption of dissolvable tobacco products in Kenya.



The prevalence of the consumption of dissolvable tobacco products, snus and electronic cigarettes have a favorable perception among young adults and teenagers. They are perceived as: trendy, attractive, modern, innovative, 'hip', the new 'in thing', stylish, a fashion accessory, 'high-tech' (e-cigarettes). This fades the perception of these products as harmful to human health. Furthermore, these products pose a threat to the tobacco products control efforts, through a strong appeal to non-smokers to have the experience of using tobacco. Nonsmokers also expressed these products as their supposed choice if they chose to smoke, in the sense that consumption of this is perceived as not smoking.<sup>29</sup>

# HEALTH RISKS ASSOCIATED WITH TOBACCO



## Non-Communicable Diseases

In Kenya, the likelihood of dying between the ages 30 and 70 years from the four main NCDs namely; cardiovascular diseases, cancer, diabetes, and chronic respiratory diseases is 18%. The main risk factors for NCDs in Kenya are exposure to tobacco use, physical inactivity, unhealthy diets and harmful use of alcohol.<sup>30</sup> Smoking tobacco exposes the smoker to over 7000 toxic chemicals, including at least 70 known carcinogens that can damage almost every human organ. The harm also happens to the unborn, in cases of pregnant women who are users of tobacco products.

## Secondhand Smoke

Second hand smoke is the smoke from burning tobacco products, such as cigarettes, cigars, or pipes. It is also the smoke that has been exhaled, or breathed out, by the smoking person.<sup>31</sup> Exposure to secondhand smoke is harmful to health among the unborn, children and adults; causes mortality and morbidity.<sup>18</sup>



## Morbidity and Death in Kenya

With an analysis of 2015 to 2019, Morbidity in Kenya has continued to rise, except in 2017. In 2015, the disease incidence was 53.2million; in 2019, it was 87.8million. This is a major health concern. An increasing morbidity, increases the budget strain on the national and counties health budgets. These are resources that could be used to promote socio-economic development.<sup>32</sup> The public sector health budget was at KSh94 billion in the 2012/13 financial year but has expanded to KSh207 billion in the 2018/19 Financial year.<sup>33</sup>

**Table 1: Morbidity in Kenya - The Kenya National Bureau of Statistics (KNBS) 2020**

Year	Disease Incident
2015	53,169,451
2016	56,503,224
2017	46,271,618
2018	74,812,873
2019	87,767,959

**Table 2: Main Diseases in Kenya - KNBS 2020**

Year	Diseases of the respiratory system		Pneumonia		Diseases of the skin (Incl. Ulcers)		Rheumatism, joint pains		Eye infection/condition	
	Number	%	Number	%	Number	%	Number	%	Number	%
2015	18,264,778	34.4	1,508,212	2.8	4,755,915	8.9	1,474,433	2.8	988,183	1.9
2016	19,621,737	34.7	1,616,913	2.9	4,409,229	7.8	1,572,172	2.8	1,004,923	1.8
2017	14,482,269	31.3	1,208,592	2.6	3,261,935	7.0	1,246,731	2.7	656,451	1.4
2018	21,957,171	29.3	1,776,108	2.4	4,372,923	5.8	1,825,551	2.4	939,572	1.3
2019	21,974,043	25.0	1,968,554	2.2	4,452,158	5.1	2,182,264	2.5	1,013,862	1.2

Tobacco is one of the leading risk factors to the highlighted NCDs. This implies Morbidity and Co-morbidity as a result of tobacco products consumption. Tobacco is also one of the leading factors to mortality.

**Table 3: Main causes of Death in Kenya (KNBS 2020)**

Year	Pneumonia	Cancer	Tuberculosis	Anaemia	Heart Disease	Meningitis
2015	22,473	15,714	10,183	8,472	5,799	4,499
2016	21,295	15,762	4,735	8,165	5,353	4,374
2017	21,584	16,953	9,081	8,294	4,786	3,540

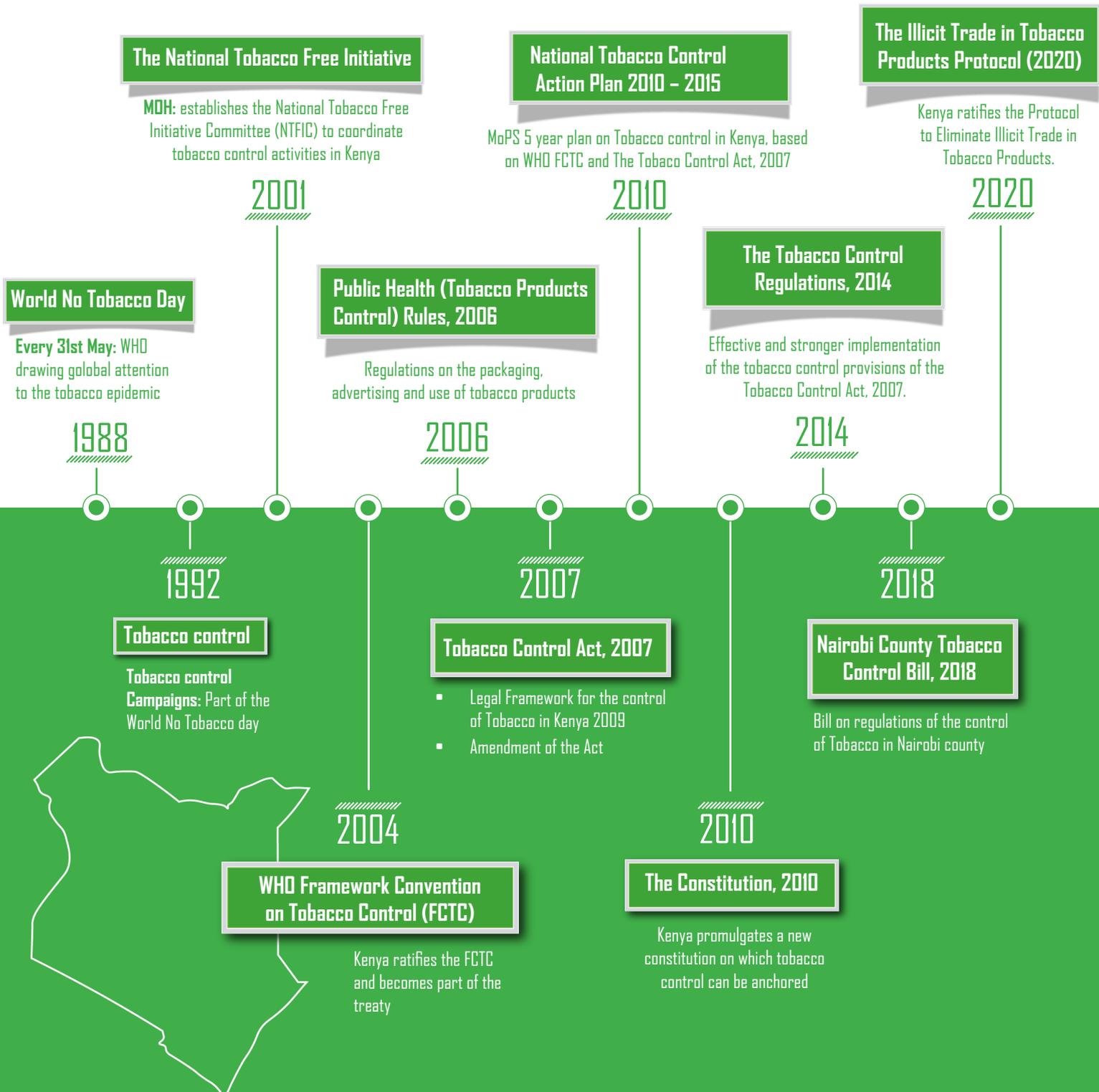
Pneumonia, Malaria and Cancer continued to be the leading causes of registered deaths in Kenya.<sup>34</sup>

About 6,000 Kenyans die each year from tobacco-related diseases.<sup>14</sup>



# TOBACCO CONTROL IN KENYA

Tobacco Control revolves around Production, distribution, display, purchase and use. Production control is about measures regulating the growth of tobacco and the manufacture of tobacco products. Distribution control is about the tracking of tobacco products from manufacture to sale and the illicit trade of tobacco products. Display control is about measures to regulate the packing, labelling and marketing of tobacco products. Purchase control is about the measures instituted and enforced as tobacco product tax policies and the regulations at the point of purchase. Use control is about the regulations instituted with regards to the use of tobacco products and respective disposal.<sup>18</sup>



## 31st May of every year - World No Tobacco Day - 1988

In 1988, Resolution WHA42.19 was passed, calling the member states of the World Health Organization to celebrate a 'World No Tobacco Day', every year on 31st May. With an objective to draw global attention to the tobacco epidemic and the preventable death and disease it causes, the WHO sets a theme for every year.<sup>35</sup>

World No Tobacco Day themes from 1988 to 2020:<sup>36</sup>

- 2020 Protecting youth from industry manipulation and preventing them from tobacco and nicotine use
- 2019 Tobacco and lung health
- 2018 Tobacco and heart disease
- 2017 Tobacco – a threat to development
- 2016 Get ready for plain packaging
- 2015 Stop illicit trade of tobacco products
- 2014 Raise taxes on tobacco
- 2013 Ban tobacco advertising, promotion and sponsorship
- 2012 Tobacco industry interference
- 2011 The WHO Framework Convention on Tobacco Control
- 2010 Gender and tobacco with an emphasis on marketing to women
- 2009 Tobacco health warnings
- 2008 Tobacco-free youth
- 2007 Smoke free inside
- 2006 Tobacco: deadly in any form or disguise
- 2005 Health professionals against tobacco
- 2004 Tobacco and poverty, a vicious circle
- 2003 Tobacco free film, tobacco free fashion
- 2002 Tobacco free sports
- 2001 Second-hand smoke kills
- 2000 Tobacco kills, don't be duped
- 1999 Leave the pack behind
- 1998 Growing up without tobacco
- 1997 United for a tobacco free world
- 1996 Sport and art without tobacco: play it tobacco free
- 1995 Tobacco costs more than you think
- 1994 Media and tobacco: get the message across
- 1993 Health services: our windows to a tobacco free world
- 1992 Tobacco free workplaces: safer and healthier
- 1991 Public places and transport: better be tobacco free
- 1990 Childhood and youth without tobacco: growing up without tobacco
- 1989 Women and tobacco: the female smoker: at added risk
- 1988 Tobacco or Health: choose health

## Tobacco control Initiated in Kenya - 1992

In 1992, tobacco control campaigns were initiated in Kenya, as part of the World No Tobacco Day celebration.<sup>37</sup>

## The National Tobacco Free Initiative - 2001

In July 1998, the World Health Organization established the Tobacco Free Initiative (TFI); with the objective to focus international attention, resources and action on the global tobacco epidemic.<sup>38</sup> In 2001, the Kenya Ministry of Health (MOH) established the National Tobacco Free Initiative Committee (NTFIC) to coordinate tobacco control activities in Kenya from a focal point.<sup>37</sup>

# Kenyan Ratification of the WHO Framework Convention on Tobacco Control (WHO FCTC) - 2004

The WHO FCTC is the first treaty, adopted on 21<sup>st</sup> May 2003, under the World Health Organization, that was developed in response to the tobacco epidemic. It outlines a regulatory strategy to address the epidemic through the reduction of tobacco demand and supply. On 25th June 2004, Kenya ratified the FCTC, and became a signatory to the treaty, alongside 181 other countries.<sup>39,40</sup>

## The Demand Reduction Provisions:

**A**

1. Price and tax measures
2. Non-price measures
  - Protection from exposure to tobacco smoke
  - Regulation of the contents of tobacco products
  - Regulation of tobacco product disclosures
  - Regulations on Packaging and labelling of tobacco products
  - Tobacco Education, communication, training and public awareness
  - Tobacco advertising, promotion and sponsorship
  - Cessation and Tobacco dependence address

## The Supply Reduction Provisions:

1. Curbing illicit trade in tobacco products
2. Curbing sales to and by minors
3. Provision of support for economically viable alternative activities

**B**

**C**

In 2008, the MPOWER measures were introduced to further strengthen the control of tobacco as a response to the tobacco epidemic.

- M** Monitor tobacco use and prevention policies
- P** Protecting people from tobacco smoke
- O** Offer help to quit smoke
- W** Warn about the dangers of tobacco
- E** Enforce bans on tobacco advertising, promotion and sponsorship
- R** Raise taxes on tobacco

# WHO FCTC

## Public Health (Tobacco Products Control) Rules, 2006

Tobacco control Rules were gazetted on 23rd May 2006, under the Public Health Act, 2006.<sup>41</sup> The rules require the clear display of health warnings in English and Swahili on the packaging of all tobacco products as well as advertising on print or broadcast; and also gives directives on the standards to which the health warning is to be displayed or broadcasted. The rules prohibit smoking or holding a lighted tobacco product in the indoor area of public places.

The Minister charged with public health may prohibit or restrict smoking in specific outdoor public spaces where people are likely to congregate in close proximity or where smoking may pose a fire or any other hazard. Smoking or holding a lighted tobacco product in a public vessel is also prohibited. Provision is also made for owners or managers of a public place or vessel to prohibit smoking by posting clearly legible signs communicating the same in English and Swahili (separately); standards to which the post is made is outlined in the rules.

A person who contravenes these rules is guilty of an offence. The owner or manager of the public vessel or public place may: ask the smoker to cease smoking; leave the premises or vessel; seek the assistance of a health officer, police officer or any other officer authorized to enforce these rules.

The rules make provisions to further protect nonsmokers from second hand smoke. The medical departments, other departments and other agencies are charged with raising public awareness to safeguard the health of smokers from second hand smoke.

Local authorities still maintain the powers to make by-laws for the protection of non-smokers from environmental and side stream smoke. A person guilty of contravening the rules outlined is upon conviction liable to a fine of up to KSh50,000 or an imprisonment term of up to 6 months or both.

## Kenya Tobacco Control Act, 2007 and the Statute Law (Miscellaneous Amendment) Act, No. 6 of 2009

Enacted in 2007, it provides the legal framework for the control of the production, manufacture, sale, labelling, advertising, promotion, sponsorship and use of tobacco products, including exposure to tobacco smoke.<sup>42</sup> In 2009, amendments were made to the Tobacco Control Act by the Statute Law (Miscellaneous Amendment) Act No. 6 of 2009. The amendment deleted Section 14(3) and creates a new subsection (6) under section 34.<sup>43</sup>

### Tobacco Control Board

The Act provides for the establishment of a Tobacco control Board. The Board was established and inaugurated in 2009; to provide advice on tobacco control to the Minister responsible for public health (Cabinet Secretary - Ministry of Health).<sup>42</sup>

The Board meeting is at least four times in every financial year and at intervals of not more than three months. The meeting quorum is six members. The Board may invite any person to attend its meeting to assist or advise the Board on any particular matter.

The Board is mandated to: a) advise the Minister on the national policy to be adopted with regard to the production, manufacture, sale, advertising, promotion, sponsorship and use of tobacco and tobacco products; b) advise the minister on the exercise of his powers and the performance of his functions under the Act; c) matters relating to the administration of the Tobacco Control Fund; d) recommend to the Minister and to participate in the formulation of the regulations to be made under section 53 of the Act; e) perform other functions as assigned by the Minister.



## Tobacco Control fund

The Act provides for the establishment of a fund to cover the capital and current expenditure in the research, documentation and dissemination of information on tobacco and tobacco products; and the promotion of national cessation and rehabilitation programs. The receipts, earnings or accruals of the fund are not remitted to the consolidated fund at the end of the financial year, they are retained for the intended purpose.

The fund is sourced from: a) appropriation by parliament; b) fees, contributions, gifts or grants given as testamentary gifts (provided no conflict of interest); c) monies earned or proceeding from investment of the Fund; d) a solatium compensatory contribution from licensed cigarette manufacturers or importers; e) money from property forfeited after seizure from a violation of the tobacco Act; e) and any other sums which may in any manner become payable to or vested in the Fund. The act further provides for the administration of the fund by the Minister, the accounting officer of the Ministry relating to Health, or a person appointed by the accounting officer.



## Information, Education and Communication

The Act provides for the government promotion of public awareness on the health risks and addictive nature of tobacco growing, handling, consumption, smoking or exposure to smoke. This is to be carried out in schools and other institutions of learning, prisons and institutions of confinement, remand homes, the disciplined forces, places of work and all communities throughout Kenya. The government through the ministry of education is required to integrate this tobacco awareness into syllabuses at all levels and systems of learning. In addition, the Government is to provide training for healthcare providers to acquire skills for proper information dissemination and education on tobacco, so that tobacco control related information is part of healthcare services.



## Economically viable alternatives to Tobacco

The Minister responsible for Agriculture is required to put in place policies to promote economically viable alternatives to growing tobacco. While other ministries put in place policies to promote economically viable alternatives for tobacco workers, distributors, retailers and individual sellers.

## Tax and price policies

The Minister is mandated to implement tax policies and price policies on tobacco and tobacco products with the aim of tobacco control. Furthermore, prohibit or restrict any sale or importation of tax-free tobacco products by international travelers.

## Regulations on Tobacco Products

The Act invokes a ban on:

**Table 4: Tobacco Product Bans in the Kenya Tobacco Control Act, 2007**

Ban	Liability for contravention
The Sale of any tobacco product to a minor	Fine of < Kshs50,000 or imprisonment for < 6 months or both.
The manufacture or sale of objects resembling bacco products.	Fine of < Kshs500,000 or imprisonment for < 3 years or both.
The sale of tobacco products through vending machines.	Fine of < Kshs100,000 or imprisonment for < 12 Months or both.
The sale of cigarettes, except in a package containing at least ten cigarettes or ten units for other packaged tobacco products	Fine of < Kshs50,000 or imprisonment for < 6 months or both
The self-service sale of tobacco or tobacco products	Fine of < Kshs50,000 or imprisonment for < 6 months or both
The delivery of tobacco or tobacco products to users	Fine of < Kshs100,000 or imprisonment for < 12 Months or both
The promotion or sales promotion of tobacco or any tobacco product	fine of < Kshs1,000,000, or imprisonment of < 6 months or both.
Publishing, broadcasting or dissemination of any communication that originates outside Kenya and contains promotional material of a tobacco-related brand element.	Fine of < Kshs 3,000,000, or imprisonment of < 3 years or both.
The involuntary exposure to tobacco Smoke (the right to a smoke free environment - ban on smoking in any public space.	Fine of < Kshs50,000 or imprisonment of < 6 months or both.

## Regulations on Tobacco Products

The Act requires the display of health hazards and warnings of effects, that may arise from the consumption of tobacco and tobacco products, and further directs the standards with which that should be done.

The Act provides for tobacco enforcement, including the authorisation of enforcement officers to enter with reasonable grounds, places believed that tobacco or tobacco products have been produced, manufactured, tested, stored, labelled, sold or used. The officer(s) may seize any tobacco, a tobacco product or thing on which the ACT has been contravened.

### National Tobacco Control Action Plan 2010 - 2015

The Ministry of Public Health and Sanitation established The National Tobacco Control Action Plan 2010-2015 (NTCAP) in 2010, outlining the directions for tobacco control in Kenya between 2010 and 2015, with its base on the World Health Organization Framework Convention on Tobacco Control (FCTC) and the Tobacco Control Act 2007. Specifically, it outlines public health policy on tobacco control for Kenya and facilitates implementation of key recommendations of the Tobacco Control Act 2007.<sup>19</sup>

It utilises a multi-sectoral and multi-disciplinary approach to tobacco control for Kenya. These include regulation, education, provision of cessation services, creation of networks and partnerships for tobacco control and research across Health, Trade and Economics, Environment, social cultural, Legal, Religious and Human Rights issues.

The plan sought to reduce the prevalence of tobacco use, its associated diseases, disability and deaths in Kenya by:

- 1. Prevention of people from starting to use tobacco products particularly cigarette smoking by:** raising awareness about the effects of tobacco smoke on smokers' and non-smokers' health through Public information, Education; Banning the advertising and promotion of tobacco products; Enforcing existing legislation on sales of tobacco to children; and the widespread adoption of smoke-free policies in workplaces and places frequented by the general public.
- 2. (cessation) Reduction in the number of people using tobacco by helping users to quit by:** Behavioural and support services; Pharmacotherapy; and Counseling and referral by health professionals.
- 3. Protection of non-smokers from the effects of second-hand smoke by:** raising awareness of the public including adolescents, pregnant women and children on the dangers of exposure to second hand smoke; Raising awareness of the public, especially adolescents around the legalities associated with smoking in public places; Adoption of smoke free policies in public places, work places and institutions. Enforcement of ban on smoking in public places.
- 4. To strengthen Partnerships and coordination of the Health Sector with other sectors, Government Departments and Agencies, non- Government stakeholders such as Civil Society and Religious organizations.** These partnerships were to be harnessed by: The development of a common understanding of tobacco control between all the stakeholders; Improvement of communication and information sharing for effective Tobacco Control; Improvement of capacity for tobacco control; and the Mobilization of and concentration of Human and Financial resources to support tobacco control work in Kenya
- 5. Research, Monitoring and Evaluation** to ensure that the tobacco control programs and policies were appropriate and effective.

## The Constitution of Kenya, 2010

The constitution of Kenya, 2010, promulgated on 27th August 2010; makes certain provisions on which tobacco control can be anchored: a) Provides the right to the highest attainable standard of health (Article 43(a)), with the implication of fighting against that which hinders the same; the right to education, which can include the education about the dangers of handling tobacco as well as consumption of tobacco products or secondary smoke; b) the right to health (Article 70), which includes the fight against causes of morbidity and co-morbidity; c) The right to a clean and healthy environment, which may include free from pollution by second hand smoke; d) all international treaties ratified by Kenya become part of national law (Article 2(6), this includes the WHO Framework Convention on Tobacco Control. The Constitution, makes provisions for tobacco control by cutting out a devolved system of governance to make service delivery efficient and effective. Through this system, more bills can be done as well as the empowerment of tobacco farmers to take up alternative farming.

## The Tobacco Control Regulations, 2014

The Kenyan government introduced the Tobacco Control Regulations (TCR) in 2014, to facilitate effective and stronger implementation of the tobacco control provisions of the Tobacco Control Act, 2007. The Regulations called for: graphic health warnings; stronger smoke free legislation; Annual Solatium compensatory contribution (obligating tobacco manufacturers and importers to pay 2% of the value of the tobacco products manufactured in or imported to the government to help offset the costs of treating tobacco related morbidity and mortality); protecting public health policies from the commercial and other vested interests of the tobacco industry (based on the FCTC).<sup>44</sup>

## Nairobi county tobacco control bill - 2018

The Nairobi City County Tobacco Control Bill, tabled in December 2018, aimed to introduce greater regulation of tobacco in Nairobi by creating a new county department responsible for issuing licenses to all manufacturers, distributors, suppliers and retailers of tobacco products, with fines for non-compliance. The bill proposed:

- The establishment of a County Tobacco Control Advisory Committee to : a) advise the county executive member and the county executive committee on policies, laws, plans, strategies and measures to adopt for tobacco control; b) provide a platform for government and nonstate actors to collaborate on tobacco control as well as stakeholder mobilization; c) review progress of the Act's implementation; and where necessary, facilitate implementation of the Act.
- Restrictions on retail locations (health or educational institutions, parks and other public entertainment areas) and at points of sale, including keeping tobacco out of sight and clear signage prohibiting sale to under 18s.
- Rules governing second hand smoke, and the definition and extension of public smoke free areas.
- Provision of health and cessation services, and public education
- A ban on unlicensed manufacture, distribution and sale of any tobacco product. The respective licenses to be issued by the county government and in a way that enhances tobacco control.

It also covered regulation of interaction between public officials and the tobacco industry, with clauses on disclosure, and a code of conduct for all those “involved in setting or implementing public health policies for tobacco control”.

However, it is a bill and therefore not enforceable.

## The Illicit Trade in Tobacco Products Protocol (2020)

On May 4th 2020, Kenya became the 59th country to ratify the Protocol to Eliminate Illicit Trade in Tobacco Products. It is in line with Article 15 of WHO FCTC, and seeks to eliminate all forms of illicit trade in tobacco products through supply chain control, the prosecution of offences and international Cooperation.

### Supply Chain Control

Highlights a heightened diligence to monitor and control the tobacco supply chain by way of licensing, approval and effective control systems; verification of identity and licenses for persons or players in the tobacco supply chain; enhanced tracking and tracing systems to monitor and control the movement of tobacco products and relevant equipment in the tobacco supply chain; Promotion of the full accountability of the players in the supply chain, by way of accurate records of all processes and transactions e.g. production, tax remittance, distribution etc.; Promotion of security and preventive measures to control cross border supply of tobacco products and financial transactions supporting the same; A ban on tobacco related marketing, promotion or sale through internet, telecommunication or any other evolving technology; Supervision and ensuring the compliance of free zones, international transit and duty free sales, to provisions seeking to control the illicit trade of tobacco products.

### Prosecution of offences

Is about the adoption of legislative measures to outline unlawful conduct with regards to illicit production, marketing, handling, distribution and sale of tobacco products. Furthermore, to adopt legislation outlining the liability of legal persons for the unlawful conduct as either civil, administrative or criminal. Finally, the prosecution and sanctioning of those held liable for the unlawful conduct or facilitating the same. The sanctions should be proportionate to the offence and dissuasive; including: monetary sanctions; seizure of assets, property and payments; disposal or destruction of tobacco and tobacco products, incarceration etc. The protocol also calls for effective enforcement of established legislation, as well as enhanced or special investigative techniques to combat the illicit trade of tobacco and tobacco products.

### International Cooperation

Is key to success in the control of the illicit trade. This calls for local, regional or international communication, collaboration and assistance between officers, agencies or organizations to enhance the fight against the illicit trade of tobacco and tobacco products. More specifically, either assistance or sharing of information, technology, training, technical capacity, enforcement, customs administration, investigation, extradition and prosecution of offences. This should be conducted subject to domestic laws on confidentiality and privacy, jurisdiction, sovereignty and territorial integrity.

# ECONOMICS OF TOBACCO

Tobacco farmers in Kenya are estimated to be 55,000.<sup>4</sup> These are both independent and contract farmers.

*Contract farming involves agricultural or livestock production on the basis of an agreement between farmers and buyers; the buyers being mostly being processing or marketing firms. The agreement is done prior to any cultivation and includes the terms and conditions for the production and sale of the farm products. These terms and conditions usually specify the price to be paid to the farmer and delivery timelines, the quantity and quality of the product demanded by the buyer. The contract may also include specific details on how the production will be done in terms of specific inputs such as seeds, tools, fertilizers and the technical advice that the buyer will provide to the farmers. In certain cases, the buyer may provide the inputs for free or at a cost.<sup>45</sup> Independent farming involves production without any formal agreement, terms or conditions.*

Majority of farmers are attracted to contract farming by the appeal of a ready buyer for their tobacco leaf; and the provision of extension services and necessary farming inputs on loan. These are inputs like farming gear and tools, fertilizer, seeds, herbicides etc.

Tobacco is an unscheduled crop in Kenya; the government does not monitor or support tobacco production; leaving it to organization by Tobacco companies. The companies have established concession agreements in which they respectively allocate themselves geographic areas for purposes of monopsony; they then set prices at which they buy each grade of tobacco leaf from the farmers. There are 2 main companies with market share in Kenya; British American Tobacco (BAT) at 78.8% and Mastermind Tobacco Kenya (MTK) at 16%. Alliance One Tobacco Kenya was also a major tobacco company in Kenya, but closed down and relocated to other countries in 2015.

The recruitment to tobacco farming in descending order of significance includes: a) tobacco firm extension staff 69.69%; b) other tobacco farmers - 26.03%; government extension staff (3.42%).

The main motivation for tobacco farmers in descending order of significance include: a) belief that tobacco is the only economically viable crop in the area (consistent cash earnings, even during the worst harvest) – 33.85%; b) perception of tobacco as a lucrative crop – 25.81%; c) A ready market for the tobacco leaf, with a well-established value chain (alternative crops have weak value chains, poor prices and susceptible to exploitation by middle men) – 13.16%; d) influence from other tobacco producers – 12.31%; e) inheritance from parents, a tobacco growing history in the family or area and the availability of land – 9.23%; f) good incentives from the tobacco company – 8.55%.



## Tobacco Growing

In Kenya, the growing of crops directly contributes significantly to GDP, with margins fluctuating around a third of the Gross Domestic Product. Over a span of 5 years, the performance has been as follows: 23% in 2015; 24.2% in 2016; 28.5% in 2017; 27.7% in 2018; and 27.8% in 2019.<sup>32</sup> Tobacco growing contributes to 0.03% of GDP, the tobacco industry as a whole 7% of GDP and 65% of tobacco farmers income.<sup>46,14</sup>

## Tobacco Leaf Production

In a season, production averages at 1320.7 kilograms for contract farmers and 822.7 kilograms for independent farmers. This translates to 710Kgs of tobacco leaf per acre for contract farmers and 538Kgs per acre for independent farmers. However, not all leaf yield is sold for various reasons like quality among others.

## Price of Tobacco Leaf:

On average, contract farmers have an offer of KSh129.58 per kg of tobacco leaf and KSh114.67 for independent farmers.

## Average Income (Gross)

On average, contract farmers earn KSh65,225 per acre or KSh119 per kilogram; and KSh70,265 per acre or KSh146 per kilogram for independent farmers.

## The cost of tobacco farming

Manifests as inputs, labour, levy and transport:

### Inputs Cost:

These include principal variable cost such as tools, fertilizer, herbicide, pesticide and seeds, but not fixed cost such as land rental. On average, contract farmers require KSh28,015 to grow tobacco per acre or KSh71 to produce a kilogram of tobacco leaves; KSh22,392 per acre or KSh72 per kilogram for independent farmers.

### Levy Cost:

For contract farmers, an acre of tobacco has a levy of KSh3,396 or KSh84 per kilogram of tobacco; KSh632 per acre or KSh15 per kilogram for independent farmers.

### Transport Cost:

For contract farmers, the cost of transport for tobacco produce, averages at KSh1,160 per acre or KSh3 per kilogram; KSh891 per acre or KSh21 per kilogram for independent farmers.

### Labour Cost:

Tobacco growing is a family activity; the labour involved comes from male and female family members or hired labour or both. For contract farmers to produce tobacco from an acre of land, 476.21 hours of labour are needed or 2.19 hours per kilogram; 637.89 hours per acre or 2.63 hours per kilogram for independent farmers. Labour cost is estimated at KSh10,189 to produce an acre of tobacco or KSh25 to produce a kilogram of tobacco for the contract farmer using hired labour. When using the labour of family members, the contract farmer needs KSh22,005 per acre or KSh30 per kilogram. For independent farmers, using hired labour has a cost of KSh9,568 per acre or KSh22 per kilogram, while use of household members would have a cost of KSh29,476 per acre or KSh49 per kilogram.

## Perceived Vs Actual Profit

Farmers mostly do not include the cost of personal and household labour to determine profit. This is the perceived profit and amounts to an average of KSh22,104 per acre for contract farmers and KSh34,287 per acre for independent farmers. After including personal and household costs the profits drop, this is the actual profit; a KSh1,131 loss for contract farmers and KSh3,742 profit for independent farmers.

Both perceived and Actual profits vary by region. Evidence points to Migori as the area with the highest profit margins for contract farmers, Meru for independent farmers. However, this is based on a study of 4 tobacco producing counties; Bungoma, Busia, Migori and Meru. Note that the per kilogram measure used, is the amount actually sold.

## Farmer Debt and Credit

66% of tobacco farmers need credit to farm tobacco. 70% of those seeking credit, need it to access farm inputs, 20% need the credit to access hired labour and 10% need the credit to cater for irrigation and marketing among other reasons. 65.68% of farmers who borrow, do so from leaf buying firms (tobacco companies). After the sale of tobacco products, 58.8% farmers were able to clear their debts, while 41.2% farmers remain with outstanding debt. With regard to the farmers with outstanding debt, 22.62% farmers owe the debt to neighbours, 22.22% to fellow farmers, 20.24% to tobacco leaf buying firms, 11.9% to relatives, 10.32% to farmer clubs and associations, 5.16% to micro-finance institutions, and 7.54% from other sources.<sup>47</sup>

# TOBACCO TAXATION

Traditionally, taxation has been a way to generate revenue for the government. However, it has proven to be an effective way to influence market activity and consumption. More specifically, influence on the behaviour of consumers, buyers and sellers towards a product or service. This is one of the handy tools in the control of tobacco and tobacco products. The taxation of tobacco and tobacco products is expected to make them less affordable for consumers and less profit for the tobacco companies. Consequently, the consumption of tobacco products decreases, a decreased demand also decreases respective production or importation. In Kenya, taxation for tobacco and tobacco products is mainly on cigarettes, which is the main tobacco product. Taxation takes the form of excise duty; value added tax and import duty.

## Value Added Tax (VAT)

The Value Added Tax Act, 2013, outlines that tobacco and tobacco products can't be zero rated. Zero rated, implies that a good or service is not subject to VAT, additionally, credits are allowed for VAT paid for inputs (claim on VAT paid for inputs). Kenya has been having a VAT of 16%. However, as a result of Covid-19 implications, the government lowered the VAT to 14% as a tax relief to cushion the economy.<sup>48</sup>

## Excise Duty

Since 1991, Kenya had an ad valorem excise of 130% of the ex-factory price of tobacco. An ad valorem excise is a tax on a selected good produced for sale within a country, or imported and sold in that country. In cases of importation, it is charged from the importer at the point of entry and in addition to import duty. It is charged from the manufacturer and wholesaler for products manufactured locally. Ex-factory price is the price of a product from the factory (manufacturer's price).<sup>49</sup> From 1993 to 2007, the taxation changed to a rate based on the retail selling price. The rate was changed severally over the years. As of 2007, the cigarette band excise duty rates were in four tiers:<sup>50,51</sup>

**Table 5: Excise Duty on Tobacco and Tobacco Products between 1993 and 2007**

1993 – 2007 Bands based on Retail Selling Price (RSP) in KShs	Excise Duty in KShs
1,500 and below	500
1,501 – 2,500	800
2,501 – 3,500	1,200
Above 3,500	2,000

**Table 6 : Excise Duty on Tobacco and Tobacco Products from 2007**

2007 Bands based on Retail Selling Price (RSP) in KShs and Packaging characteristics	Excise Duty in KShs
Plain cigarettes or RSP 1,500 and below	700
Soft Cap I cigarettes or RSP 1,501 – 2,500	1,200
Soft Cap II cigarettes or RSP 2,501 – 3,500	1,500
Hinge lid cigarettes or RSP Above 3,500	2,500

**Table 7 : Excise Duty on Tobacco and Tobacco Products from 2008**

2008 Bands based on Retail Selling Price (RSP) in KShs, Packaging characteristics and Length	Excise Duty in KShs
• Plain cigarettes or plain cigarettes with RSP of up to 2,500 per 1,000 sticks	700
• Soft cap I cigarettes of up to 72mm	1,200
• Soft cap I cigarettes of up to 72mm with RSP 2,501 – 3,500 per 1,000 sticks	
• Soft cap I cigarettes of over 72mm	1,500
• Soft cap I cigarettes of over 72mm with RSP 3,501 – 4,500 per 1,000 sticks	
• Hinge lid cigarettes	2,500
• Hinge lid cigarettes with RSP of more than KShs. 4500 per 1,000 sticks	

1993

2007

2008

In 2007, the taxation remained in four tiers but based on a hybrid of Retail selling Price and packaging characteristics.

In 2008, the taxation still remained in four tiers but the basis for the excise duty expanded to include cigarette length.

2010

The Finance Act, 2010, amended the tax structure to predominantly Retail Selling Price based and packaging.

**Table 8: Excise Duty on Tobacco and Tobacco Products from 2010**

2010 Bands based on Retail Selling Price (RSP) in KShs	Excise Duty in KShs
<ul style="list-style-type: none"> <li>Plain cigarettes</li> <li>Cigarettes with RSP of up to 2,500 per 1,000 sticks</li> </ul>	700
<ul style="list-style-type: none"> <li>Soft cap I cigarettes</li> <li>Cigarettes with RSP 2,501 – 3,500 per 1,000 sticks</li> </ul>	1,200
<ul style="list-style-type: none"> <li>Soft cap II cigarettes of over 72mm</li> <li>Cigarettes with RSP 3,501 – 4,500 per 1,000 sticks</li> </ul>	1,500
<ul style="list-style-type: none"> <li>Hinge lid cigarettes</li> <li>Cigarettes with RSP of more than KShs. 4500 per 1,000 sticks</li> </ul>	2,500

2007

The tax structure was complicated and a challenge for tax compliance. Therefore, it was simplified in 2012 as KShs1,200 per 100 cigarettes (KShs24 per pack) or an ad valorem tax of 35% of Retail Selling Price. Choice went with the higher one. This tax structure was also problematic as manufacturers were noted to take steps that reduced tax liability.

2015

The government made effort to simplify the tax structure and make it easier to comply with tax requirements. This facilitated the development of the Excise Duty Bill, 2015, which introduced a single uniform duty of KShs2,500 per 1,000 cigarettes of KShs50 per pack. This meant paying more for consumers of lower quality cigarettes while consumers of premium brands remained the same. This necessitated the return to a four-tier based excise duty structure.

**Table 9 : Excise Duty on Tobacco and Tobacco Products from 2015**

2015 Bands based on Ex-factory price and packaging in KShs	Excise Duty in KShs
Plain cigarettes or cigarettes with ex-factory selling price of up to KShs.2750 per 1,000 sticks	900
Soft cup cigarettes with ex-factory selling price of KShs. 2751 to KShs. 3750 per 1,000 sticks	1,200
Soft cup cigarettes with ex-factory selling price of KShs. 3751 to KShs. 4750 per 1,000 sticks	1,800
Hinge lid cigarettes or cigarettes with ex-factory selling price of more than KShs. 4750 per 1,000 sticks	2,800

2017

In 2017, The Cabinet Secretary for Treasury introduced a two-tier tax structure of KShs2,500 per 1,000 sticks for cigarette with filters, KShs1,800 per 1,000 sticks for plain cigarettes. This saw a manipulation of the tax system, by introducing non-filter cigarettes to avoid the higher tax tier of KShs2,500 per 1,000 sticks. This led to loss of government revenue, increase in non-filter cigarettes, which meant more tar consumed, a reduction in cigarette price, which translated to increased cigarette consumption.<sup>52</sup>

2019

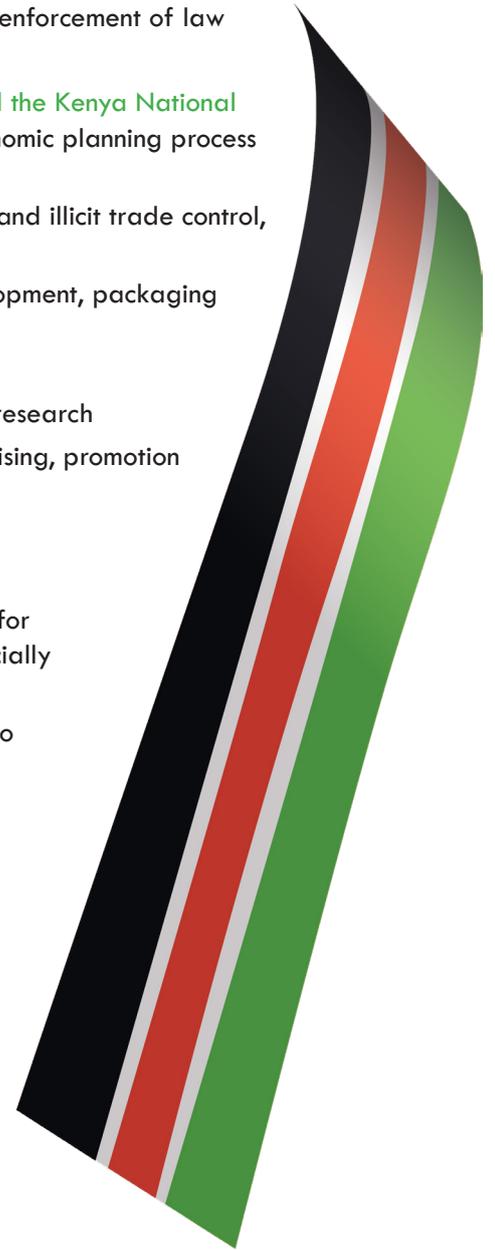
In 2019, The Excise duty Act, 2015, was amended by the Finance Act, 2019. This remains the tax structure in 2020. More tobacco products were included in the taxation.<sup>53, 54</sup> Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes got a duty of KSh12,624 per kg; Electronic cigarettes at KShs3787 per unit; Cartridge for use in electronic cigarettes at KShs2,525 per unit; Cigarette with filters (Hinge lid and soft cap) at KShs3,157 per 1,000 sticks; Cigarettes without filters (plain cigarettes) at KShs2,272 per 1,000 sticks; and any other manufactured tobacco product, tobacco substitutes, “homogenous” and “reconstituted tobacco”, tobacco extracts and essences at KShs8,837 per Kg.

## Import Tax

There is a 30% import duty on the CIF (cost, insurance and freight) value of the products imported from outside of East African Community (EAC). The Miscellaneous Fees and Levies Act, 2016, imposed a Railway Development Levy (RDL) of 3.5% of the customs value of the goods imported into Kenya for home use at the time of entry. The Act also introduced an Import Declaration Fee of 2% of the customs value of the goods at the time of entry.<sup>55</sup>

# GOVERNMENT MINISTRIES AND AGENCIES WITH RESPONSIBILITY IN TOBACCO CONTROL

- **Ministry of Public Health and Sanitation** - Leadership, implementation and enforcement of law
- **Ministry of Medical Services** - Capacity building, tobacco cessation
- **Ministry of State for Planning, National Development and Vision 2030 and the Kenya National Bureau of Statistics** - tobacco control in the national development and economic planning process and data provision
- **Ministry of Finance (Kenya Revenue Authority)** - Economic and tax policies and illicit trade control, generation of statistics
- **Ministry of Industrialization, Kenya Bureau of Standards** - Standard development, packaging and labelling, product-testing
- **Ministry of Agriculture** - Alternative crops for tobacco farmers
- **Ministries of Basic and Higher Education** - School health programmes and research
- **Ministry of Information and Communication** - Regulation of tobacco advertising, promotion and sponsorship, training
- **Ministry of Internal Security (Police)** - Enforcement of law
- **Ministry of Youth and Sports** - Youth empowerment
- **Ministry Provincial administration and Internal Security – National Agency for the Campaign Against Drug Abuse (NACADA)** - Drug abuse policies, especially cessation, communication and information
- **Ministry of Local Government** - Implementation and enforcement of tobacco control measures
- **Ministry of Environment – National Environment Management Authority** - Environmental compliance, including emissions
- **Kenya Medical Research Institute** - Health research
- **Ministry of Labour** - Occupational health and safety
- **Ministries of Cooperatives** - Alternative livelihoods
- **Ministry of Gender and Children’s Affairs** - Women’s and children’s issues
- **Attorney General** - Legal advice, e.g., on interpretation of legislation and negotiation on WHO FCTC tools and protocols



# INTERFERENCE AND GAPS IN TOBACCO CONTROL

The Tobacco industry in Kenya is dominated by two companies; British American Tobacco Kenya (BAT) and Mastermind Tobacco Kenya Limited (MTK). BAT has 71.5% market share, MTK 15.9% and others share 12.6% of the market.

## Control of Tobacco Farmers

Majority of tobacco farmers in Kenya are under contract farming from tobacco companies. The contracts keep the farmers dependent on the companies. They determine the grading of tobacco leaves and respective pricing; the cost of farm inputs and extension services which are provided on credit. This gives much influence and control to the leaf buying or tobacco product manufacturing companies. There have been complaints about lack of protective gear; poor grading of their output (tobacco leaves); poor quality inputs; harassment when crop fails (because of drought or hailstorms), farmer failure to repay a loan in full; and a lack of insurance for the curing barns, which are susceptible to catching fire during the curing process. To cut down on Labour costs, farmers capitalise on household labour; the women and children. The implication is child labour. Majority of Tobacco growing regions are the poorest in the country. A region like Meru is not badly off because of other crops like Khat. As established under the Economics of Tobacco, contract farmers make losses when full labour costs are factored in. Research has proven that farmers are better off growing alternative crops.<sup>5</sup> The main defence of the tobacco companies against unfriendly legislation, is that the farmers and tobacco workers/employees will be left economically worse off by loss of livelihood; BAT Kenya prides in creating direct and indirect employment and business opportunity for 85,000 Kenyans.<sup>12</sup>

## Control of Tobacco Farmers

In 2020, the government put tobacco as an essential item and further included local manufacturers of exports as essential manufacturers. This includes Tobacco manufacturers as essential manufacturers besides tobacco products being granted essential status by the Ministry of Industry, Trade and Cooperatives. This is government whose responsibility is to control it, not promote it.<sup>57</sup> BAT Kenya made a donation of KShs 10.6million to the COVID-19 Emergency Response Fund.

## Corporate Image

Majority of tobacco farmers in Kenya are under contract farming from tobacco companies. Tobacco companies are on toes to keep up with corporate social responsibility. This is in an effort to improve their image and shape public perception in their favour.<sup>13</sup> In 2019, The National Environment Trust Fund (NETFUND), which is a state corporation under the Ministry of Forest and Environment, collaborated with the Export Promotion Council, which prides in being Kenya's premier institution in the development and promotion of export trade. These are two strategic organizations, that together with a few others held an award for exemplary local export businesses. The awards were held during the 3rd Kenya Trade week and Expo at the Kenyatta International Conference Centre. British American Tobacco (BAT) Kenya Limited won the Solid Rock Commendation (Lifetime Achievement) Award; which was presented to BAT's Managing director by the deputy president, in an occasion that was also graced by the Cabinet Secretary to the Ministry of Industry, Trade and Cooperatives.<sup>56,12</sup> This is not the vision envisioned in the Tobacco Control Act, 2007 and the Tobacco control regulations, 2014. The tobacco industry remains visible, a fairly positive image and in different ways receiving appreciation and affirmation by government officers and organs.

## Tobacco Advertisement, promotion and Sponsorship (TAPS)

It is prohibited under the Tobacco Control Act, 2007, but is often violated.; British American Tobacco Kenya contributed KShs 10.6million to the Covid-19 Emergency Response Fund.<sup>13</sup>

## Interference with Policy and Legislative Processes Conflict of Interest

The tobacco industry is keen to establish high-level political links with the government; strategic public officers for the sake of influencing policy and legislation. There is also representation of the industry in major associations that influence policy and legislation by way of lobbying, advocacy or direct drafting of policies.

BAT is a member of the Kenya Association of Manufacturers (KAM), who engage with government in terms of enhancing the environment and moreover, manufacturing is one of the agendas of the government. KAM has had an influence through review of legislation; for example, the Tobacco control regulations, 2014.<sup>58</sup>

Mastermind Tobacco Kenya was a beneficiary of funding from the previous Burundi president. The major tobacco companies have been cited to offer retreats and pleasantries to strategic persons of potential influence to legislation and policy making. The two major tobacco companies in Kenya have been consistent in pursuing meetings and/or written communication to the parliamentary committees, the Tobacco control Board, Ministry of East African Affairs, the Ministry of Health among other organs involved in the efforts to control tobacco. In addition, they have taken legal action to delay or overturn legislation that is pro tobacco control.<sup>59</sup>

The Tobacco Regulations, 2014, establishes measures to protect Tobacco control from influence by the Tobacco establishments. There is to be, no collaboration, partnership or endorsement of any of the practices, entity or product of the tobacco industry. The interactions between public officers should be at public spaces in the presence of at least one other public officer, with a disclosure by writing, of the nature of business and interest of the public officer. A public authority or officer should not accept any hospitality, direct or indirect funding, whether directly or indirectly from the tobacco industry or affiliates. The public officer with interaction(s) with the industry should not engage in decision making or processes related to tobacco control.

In BAT's 2019 annual report (page 52), "In 2019, we continued engaging with various government departments in pursuing a balanced and predictable regulatory and fiscal environment for our business." This implies that the tobacco industry is actively engaging government to influence the current and future regulatory, policy and legislative landscape. This is contrary to the Tobacco regulations requirement that public officers do not interact with the tobacco industry in a manner that jeopardizes tobacco control.

Engagement of the tobacco industry with government officials, creates a conflict of interest in that the tobacco industry seeks self-preservation while government is expected to control it. Government officials are well engaging with the tobacco industry. For example, the Chairperson of the Board of Directors of Business Registration Services (BRS) is also a Non-Executive Director of British American Tobacco Kenya Ltd.

## Enforcement

The Tobacco Control Act, 2007 and the Tobacco Control Regulations, 2014 are clear about what is expected of Tobacco product packaging and health warnings. However, this is violated in a significant number of tobacco products, mostly cigarettes. Most of the warnings are not at the top of the pack, not at least 50% of the front and back of the pack, do not include pictures, and no set of 15 rotating pictorial health warnings on all packages of smoked and smokeless tobacco.

The sale of tobacco in single sticks was banned. However, 83% smokers have purchased cigarettes in single sticks.

Tobacco smoking in public places has reduced significantly but still happens without consequence. 14% of tobacco users and 15% of non-users who work inside a building noticed smoking inside their workplace in the last month, and 16% of tobacco users and 7% of non-users who visited a restaurant noticed people smoking indoors the last time they visited. There was a very high prevalence of smoking in bars: 86% of tobacco users and 67% of non-users who visited a bar noticed people smoking indoors during their last visit. Therefore, Kenya falls short of the FCTC requirement of 100% smoke free public spaces.

The law bans the advertisement and promotion of tobacco products. However, promotion of tobacco product is rife the entertainment media. 41% of tobacco users and 29% of non-users reported noticing people using tobacco products in the entertainment media "often" or "once in a while" in the last 6 months. This is of great sabotage in the fight against tobacco.

## Legislation and Strategies to Support Tobacco Control

The existing legislation needs expansion in further defining the modalities of enforcement by the relevant authorities and compliance by the tobacco industry. For example, BAT Kenya reported that the 2% solatium required is not clear in terms of modality. The law requires declaration of interest and interaction of public officers with the tobacco industry. However, the modalities of it as well as how the information is pooled or handled is not clear.<sup>12</sup>

Tobacco is an unscheduled crop in Kenya; the government does not monitor or support tobacco production. This leaves the farmers at the mercy of tobacco companies or tobacco leaf buying firms, whose practice does not facilitate a switch to other alternative crops.<sup>46</sup> Policymakers lack sufficient nationally representative data on farmers' engagement, practices and livelihoods, both to address the industry's claims (which lack an evidence base) and to inform tobacco farming policies particularly around efforts to implement the WHO FCTC. BAT's Annual 2019 report, highlights 5,000 farmers to have received a net pay of KShs 1.5 billion; this implies Kshs300,000 annual net pay per farmer. This creates a perception that tobacco is a profitable cash crop. Research has shown that Tobacco farmers are making losses or very little actual profit (highlighted in the Economics of Tobacco section of this document).

## Tax Evasion

Tobacco evasion and Tax Avoidance is a setback for tobacco control efforts and objectives; It makes tobacco and tobacco products more affordable, which increases demand and hence more consumption. Tax evasion and avoidance has been witnessed in the form of undeclared domestic production, counterfeit products, undeclared imports and underdeclared product values that determine tax. In 2011, Kenya lost a tax revenue of KShs70 to illicit cigarette trade. In 2012, illicit cigarettes accounted for 11% of the cigarette market.<sup>60</sup>

## Monitoring

The MOPHS does not have clear mechanisms for monitoring tobacco consumption and control. This is mainly dependent on the civil society and donor funding. The studies that involve government are few and not consistent.<sup>37</sup>

## Tax Evasion

The Ministry of Public Health and Sanitation (MOPHS) is charged with tobacco control in Kenya. This is achieved through the office of the minister, assisted by the office of the permanent secretary, in turn assisted by the office of the director of public health. Tobacco control is anchored in the department of disease control; within which it is under the Division of Non-Communicable Diseases. In this Division is the Tobacco control Desk which is assisted by an informal technical working group. The Tobacco desk has one officer and four staff who have other responsibilities besides Tobacco control. This implies that Tobacco control is quite limited in human resource.<sup>37</sup>

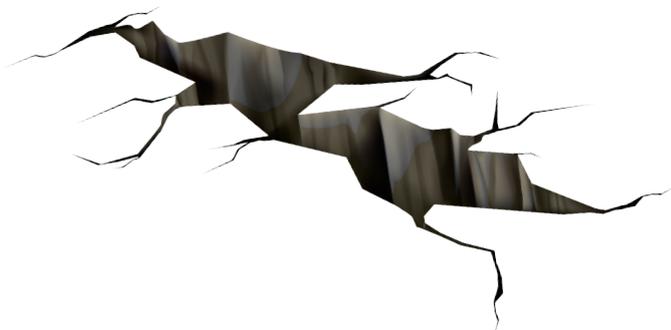
## Implementation of Tobacco Control

The tobacco control fund was envisioned by the Tobacco Control Act. However, it is not operational despite an outline of the source of funding in the Act. Further, Tobacco control does not have a dedicated budget line for tobacco control activities.<sup>37</sup>

Other government agencies and devolved governments have limited participation in tobacco control. For example, the ministry of Agriculture should develop initiatives to facilitate the farming of tobacco alternatives and promote alternative livelihoods. Local governments need to play a more active role in tobacco control. County governments should develop custom tobacco control policies; Nairobi county developed a bill but it remains a bill.<sup>37</sup>

Cessation support and services are provided for in tobacco control measures. This is offered by NACADA and some health facilities that provide the service at service point. The cessation services are few. This means that there are limited cessation programs and services in public healthcare facilities in Kenya. Cessation therapies are available from private pharmacies but the medication is not covered by national health insurance, and hence quite costly. NACADA provides a 24-hour drug help line to offer free counselling, information, and support for alcohol and drug abuse. However, most smokers are unaware of this service

A survey in 2012 revealed that 20% of tobacco users had visited a health provider within 6 months. 35% of the smokers who visited the health facilities were given advice to quit tobacco. This implies that cessation services, though not well developed, are underutilized by smokers.



# TOBACCO TRACKING

Taxation is one of the key tobacco control measures. The effectiveness of which, lies on how well it is enforced. To this end, the Kenya Revenue Authority has implemented several Tobacco tracking methods that combine staff capacity building, use of technology and enhanced systems to monitor tobacco products production and distribution.<sup>60</sup>



## Tax Stamps

An adhesive label that serves as proof of excise tax payment. The stamps had a serial number as a unique identifier of a specific type of cigarette. They were in two colours; for filter and the other for non-filter cigarettes. This increased the tax revenue from KShs230million to 250million. The stamps were easy to counterfeit, steal and had to be counted manually besides not identifying a specific brand or quantity produced.



## Tax Stamp Verification at 4 points - units

An adhesive label that serves as proof of excise tax payment. The stamps had a serial number as a unique identifier of a specific type of cigarette. They were in two colours; for filter and the other for non-filter cigarettes. This increased the tax revenue from KShs230million to 250million. The stamps were easy to counterfeit, steal and had to be counted manually besides not identifying a specific brand or quantity produced.



## Electronic cargo tracking system

Electronic tracking of cigarettes produced for export and those in transit. Export vehicles are fitted and secured with radiofrequency ID (RFID) Electronic seals which use GPS/GPRS technology that send and receive data on the location of the vehicle using digital cellular communication. Upon loading the products, the RFID transmit the information to the relevant party in the destination country. If the seals are tampered with or the vehicle deviates by 50 m or more from the route, an alert is sent to the relevant Kenyan authority. Upon receiving the goods, confirmation is sent to the Kenyan authorities.



## Excisable goods management system (EGMS) & iTax system

The EGMS is a track and trace system (T&T). and Licensed Cigarette/tobacco product manufacturers affix photosensitive readers on production lines to transmit production data to the Kenya Revenue Authority servers in real time. The product packs are affixed with electronic excise stamps e.g. cigarettes packs. Importers purchase electronic excise stamps in Kenya and send them to their facilities abroad to be affixed on each pack destined for Kenya. The digital stamps are activated online and serve as proof that excise tax and VAT have been paid. They are affixed on each cigarette or tobacco product pack in such a manner that removal would make them unusable. They are difficult to counterfeit. The manufacturers bear the cost of acquiring the excise stamps, the stamp applicators, adjustments and adaptations of equipment and premises necessary to install the EGMS system.

Tobacco products designated for export are not marked, because these are tracked by the electronic cargo monitoring system.

KRA officials who are equipped with handheld devices that swipe the stamp and transmit data such as date of issue, producer's name, product category, and brand to the central server. The devices also verify the authenticity of a stamp, tracking and tracing it at any point in the chain of distribution. An authorized enforcement officer may inspect a premise at any time, seize illicit products, and arrest the offender on the spot. KRA established 300 enforcement units for inspection purposes; between February and June 2014, they seized over 300,000 illegal products from about 900 outlets and prosecuted over 150 offenders.

Cigarette distributors, supermarkets and retailers have a device that verifies the authenticity of any tobacco product as they admit them into inventory. Consequently, they are subject to prosecution if found selling products without the appropriate excise tax paid; if proven guilty they are liable to pay a fine of up to KSh5 million and/or imprisonment of up to 3 years.

It was meant to allow for production counting, track and trace, stock control, tax forecasting, forecasting and processing of tax stamps, and collecting other business intelligence. It facilitates the detection of counterfeit goods, prevents smuggling, and eliminates the falsification of production.<sup>61</sup>

The Kenya Revenue Authority in the same year introduced the itax system, which facilitates online tax payments and filing of income tax.

## KRA Stamp Checker

KRA introduced a smart phone application which allows the public to verify the genuineness of tobacco products like cigarettes, using mobile phones. The application is called 'Soma Label' and is available on a number of platforms, the most commonly accessed being Google play which is the main application distribution service for android phones.<sup>62</sup>



# Alternatives to Tobacco

The control of tobacco farming is a key component of tobacco control; it involves the influence of farmers to switch to the farming of alternative crops while also facilitating the absorption of tobacco workers into other sources of livelihood. This strategy is two sided; addressing challenges to the switch and exploiting opportunities that support the switch. In summary, improved access to credit, better supply chains for alternative crops or products, raising awareness and education of farmers on the risks and downsides of tobacco farming and the opportunities or benefits of alternative crops, products or livelihood sources; are the key solutions in facilitating the replacement of tobacco farming and employment as a source of livelihood. Almost half of tobacco farmers (49.23%) consider a switch from tobacco to another crop.<sup>47</sup>

## Challenges to Address

Especially for contract farmers, the tobacco supply chain is better structured and developed than that of alternative crops. Other crops lack a ready market, causing uncertainty. Uncertainty causes low risk uptake in farmers, meaning less likely to switch to alternative crops. For lack of a ready market, the farmers are at risk of exploitation by middle men through low price offers. Low prices and even lack of market may occur as a result of over saturation of a crop in the market.

Kenya's unemployment has been on the rise, especially a sharp rise during the covid-19 pandemic. This does not inspire the tobacco labour force to venture or be absorbed in other sectors.

To address these challenges, it is important to support the enhancement of supply chains of tobacco's alternative crops. In addition, the raising of awareness on alternative crops and the opportunities available for a switch from tobacco; and provision of farming capacity on the alternative crops.

## Opportunities

### Labour

Tobacco is labour intensive. In fact, tobacco contract farmers, who are the majority, make losses when total labour costs are deducted from income. For example, tobacco growing requires an average of 220 labour days, passion fruit and watermelon less than 50 labour days, soya bean slightly over 50 labour days and pepper 75. This means that other crops have cheaper labour in general.

Tobacco has only one harvest season, Maize and sweet potatoes are easy to grow and have two harvest seasons in a year. Most other crops require less inputs as opposed to tobacco.

Value addition is easier to manage within the farming regions as opposed to tobacco, this implies a promotion of cottage industries to support alternative crops e.g. farmers can set up a maize mill, sweet potato processing etc. Hence, development of local market.

### Tobacco farming is a health hazard

Farmers make use of agrochemicals from the nursery till harvest. The intensive and repeated use of these chemicals has health risks, most farmers are not aware of proper safety procedures, neither do they have proper access to protective wear or gear. Farmers are at risk of green tobacco sickness caused by absorption of nicotine through the skin; chest problems/pains; poor eyesight, blurred vision or complete loss of sight; miscarriages for pregnant women; fever; dry throat; itchy/irritated skin at harvesting; back problems; from the curing process, many farmers inhale tobacco for prolonged periods and eventually become smokers. 82% of tobacco farmers are aware of some of the health risks associated with farming or handling of tobacco, only 11% protect themselves from the harmful effects of tobacco. Farmers report high prices of acquiring protective materials as the barrier to observing safety.

### Depleting soil nutrients/environmental degradation

Tobacco is a heavy feeder of soil nutrients and contributes to environmental degradation. Tobacco growing usually involves substantial use of pesticides and fertilizers, these chemicals may affect drinking water sources as a result of run-off from tobacco farms. Tobacco crops take up more nitrogen, phosphorus and potassium than other major crops, leaving the soil exhausted of nutrients.<sup>63</sup>

## Child Labour

Due to the low profitability of tobacco, farmers utilize household labour more, as a means to cut down on labour cost. This implies the use of children in the farming. This is child labour as they are directly engaged in the farming activities, this in turn cuts down on their engagement with such activities like education, tuition, sporting and other social activities necessary for a wholesome growth and development. Growth of alternative crops does not fuel child labour at the scale that tobacco does.<sup>19</sup>

## Food Security

Tobacco cuts down on food security. More land is used to grow tobacco and less on food crops. An example is Kuria, a region that used to produce enough food for the local population but is now dependent on relief food every year or food from other regions.

## Tobacco Farmers growing other crops as well

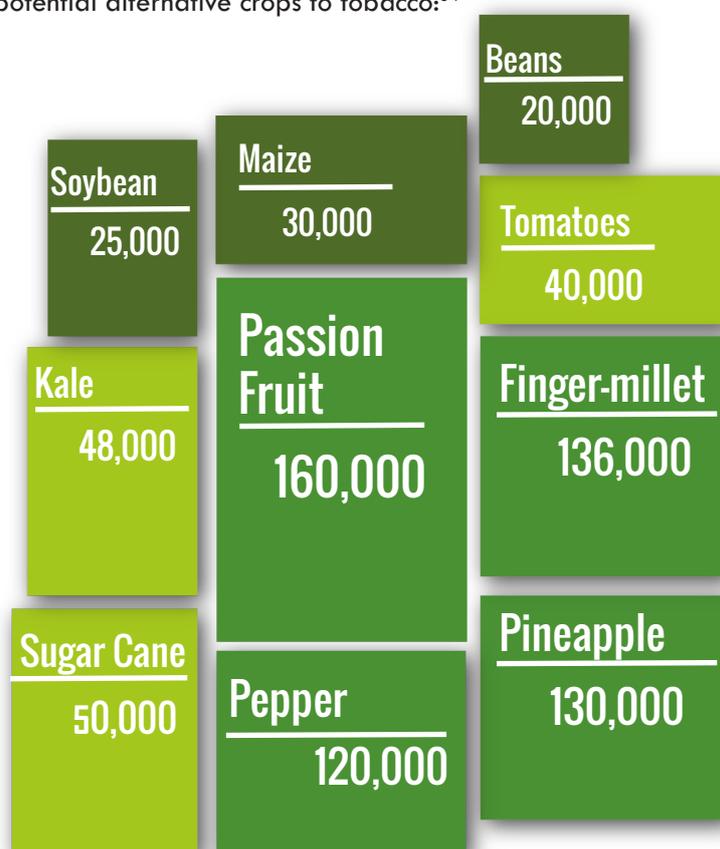
Most Tobacco farmers grow a mix of tobacco, maize and beans. Other crops also grown in addition to tobacco include ground nuts, sweet potatoes, peas etc. This is mainly based on farmer food security for their household. Only a minority of tobacco-farming households rely on tobacco farming as an only source of livelihood.

## Other sectors in Tobacco growing regions

Every region where tobacco is grown in Kenya has other sectors that can be promoted to replace tobacco. For example, in South Nyanza, Bamboo is grown but has a lot more potential in terms of acreage, value chain development and profitability. In Kuria, there is gold mining, however, the artisanal miners are challenged in terms of licenses/mining permits, extortion and exploitation. Such sectors can be enhanced to successfully replace tobacco farming.<sup>4</sup>

## Profitability of Tobacco compared to other crops

Studies have revealed that Other crops are more profitable compared to tobacco. Tobacco has a perceived profit per acre average of KSh22,104 for contract farmers and KSh34,287 for independent farmers; Actual profits per acre drop to an average of -KSh1,131 (loss) and KSh3,742 for independent farmers. A 2007 study revealed the net income per acre of 10 crops which are potential alternative crops to tobacco:<sup>64</sup>



## Other Alternative to Tobacco Cultivation: Bamboo Farming

Bamboo commercial farming is a viable alternative to tobacco cultivation. Bamboo can output several products:

- **Bamboo seedlings** – Production of bamboo seedlings for sale, best in an environment with demand for the same.
- **Bamboo hand crafts** – The list of items that can be made from bamboo is limitless, this can target a local Kenyan population, tourists and exports.
- **Bamboo furniture** – Production of bamboo for use in the manufacture of furniture for both indoor and outdoor use. This further helps the country preserve timber and therefore a plus in the fight to save trees, water catchment areas
- **Bamboo structures and housing** – Use of bamboo to make structures like pavilions, houses, shades etc.
- **Bamboo toothpicks** – Every year, Kenya imports tooth picks worth millions, especially from China. There is opportunity in the local manufacture of bamboo toothpicks.

This kind of investment in tobacco, further requires: the development or enhancement of bamboo value chains; the set up or accessibility of small-scale and/or large-scale bamboo factories; farmer mobilization, training and extension services.

Tobacco growing contributes to deforestation (cutting trees to clear land for tobacco cultivation), loss of biodiversity, soil erosion, land degradation, water pollution and increases in atmospheric carbon dioxide, hence contributing to global warming.<sup>65</sup> Bamboo on the other hand has the exact opposite effects on the environment:<sup>66</sup>

- **Soil erosion control** – Bamboo has an extensive network of rhizomes or root stocks that tie soil together and prevents soil erosion and even landslides.
- **Water conservation** – Bamboo canopies prevent the evaporation of streams, positively regulates the quality and quantity of water in the soil by absorbing large amounts of water during rains and returns much of the water back to the soil, rivers and streams during the dry seasons;
- **Land rehabilitation** – Bamboo is able to grow very fast on degraded soils and steep slopes, has long root systems and contributes to organic matter through leaf and twig drops hence nutrient cycling.
- **carbon sequestration** – Bamboo captures large amounts of carbon dioxide and converts to oxygen; this contributes to the reverse of the effects of global warming.
- **Beautiful landscape**

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