WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

Best practices in implementation of Article 13 of the WHO FCTC

Case study: Kenya

NATIONAL BEST PRACTICES SERIES PAPER N/4

BEST PRACTICES IN IMPLEMENTATION OF ARTICLE 13 OF THE WHO FCTC
CASE STUDY: KENYA

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June 2013

(Photos in this document are courtesy of Shoba John and Dorcas Kiptui)

Introduction

The WHO Framework Convention on Tobacco Control (WHO FCTC), adopted by the World Health Assembly in May 2003, is among the most widely embraced treaties under the United Nations, with 177 Parties to date. Kenya signed and ratified the WHO FCTC on 25 June 2004. This report is part of the efforts to demonstrate good practices in implementation of the treaty. The African Regional Workshop on Implementation of the WHO FCTC held in Dakar, Senegal, from 9 to 12 October 2012 showcased and identified "good country practices" from the Region in implementation of the treaty[i]. Kenya, as a Party to the WHO FCTC, has made significant efforts in legislating to control tobacco advertising, promotion and sponsorship in line with its treaty obligations.

This review aims to describe the legislative efforts of the Government of Kenya to comply with the WHO FCTC's requirements for comprehensive control of tobacco advertising, promotion and sponsorship that could guide similar efforts in other jurisdictions. The scope of the review did not include verification or validation of experiences in implementing and enforcing the law or their effect on tobacco use.

I. Methodology

The report is the result of a desk review of literature that primarily described legislative and administrative measures taken by the Government of Kenya in regulating tobacco advertising, promotion and sponsorship. The literature reviewed includes the Kenyan tobacco control legislation, the Children's Act, 2001 and Kenya's WHO FCTC implementation reports. A presentation by the Government of Kenya on implementation of Article 13 of the WHO FCTC at the African Regional Workshop, the summary and recommendations of the workshop, Kenya's country profile in the WHO Report on the Global Tobacco Epidemic 2011, the Tobacco Atlas, and implementation reports that are in the public domain, have also been reviewed. The analysis did not include any general trade, business, media or other laws that may have implications for the control of tobacco advertising, promotion and sponsorship in the country. Official documentation on Kenya's experience in implementing and enforcing its law was not available for review.

The WHO FCTC constituted the primary framework for the review. Article 13 of this international, legally binding treaty on tobacco control requires its Parties to comprehensively ban tobacco advertising, promotion and sponsorship, including cross-border elements, within a period of five years of the treaty's entry into force for the Party. The treaty provides a comprehensive definition of "tobacco advertising and promotion" and "tobacco sponsorship" (Box 1).

Box 1. WHO FCTC definition of tobacco advertising, promotion and sponsorship (Article 1)

*"**tobacco advertising and promotion**" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.*

*"**tobacco sponsorship**" means any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.*

The Guidelines for implementation of Article 13 of the WHO FCTC developed by Parties pursuant to this Article, along with parts of the Guidelines on Article 5.3 (on protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry) and Article 11 (on tobacco product packaging and labelling) offer further guidance to Parties in meeting their obligations related to tobacco advertising, promotion and sponsorship under the treaty. Kenya's documented legislative efforts on tobacco advertising, promotion and sponsorship were reviewed against these articles of the WHO FCTC and their respective implementation guidelines. International best practices in developing and implementing laws in this area were also considered in analysing the Party's efforts.

II. Tobacco control in Kenya

Tobacco use in Kenya has seen a significant increase in recent times, particularly in the younger population. Consecutive Global Youth Tobacco Surveys[ii,iii] in the country show that tobacco use among school students (aged 13–15 years) has increased substantially from 13% in 2001 to 18.6% in 2007. 82.2% of the students surveyed in 2007 reported having seen pro-cigarette advertisements on billboards in the past 30 days, 17.6% had an object with a cigarette brand logo, and 11.3% had been offered free cigarettes by a tobacco company representative. Citing the Kenya Demographic & Health Survey of 2008-2009, Kenya's second WHO FCTC implementation report in 2010 indicated a national smoking prevalence of 20.06% in the 15–49 years age group[iv].

In 2007, Kenya enacted legislation specific to tobacco control, the Tobacco Control Act, 2007[v], which became fully enforceable on 8 July 2008. Among other things, the legislation requires a range of measures to regulate tobacco advertising, promotion and sponsorship with a view to comprehensively banning it, including cross-border tobacco advertising, promotion and sponsorship, showcasing Kenya's commitment to regulating tobacco advertising, promotion and sponsorship as well as meeting WHO FCTC obligations in this regard within five years of the treaty's entry into force for the Party.

III. Kenya's legislative efforts in regulating tobacco advertising, promotion and sponsorship

Kenya implements WHO FCTC requirements relating to the prohibition of tobacco advertising, promotion and sponsorship primarily through the relevant provisions of the Tobacco Control Act, 2007. A detailed analysis of this law in the light of Articles 13, 11 and 5.3 of the WHO FCTC and their respective Guidelines brings to light some legislative strategies that could serve as good practices in control of tobacco advertising, promotion and sponsorship.

A) Towards fulfilling obligations under Article 13 of the WHO FCTC

1. **Broad scope of the tobacco advertising, promotion and sponsorship regulation:** Kenya's Tobacco Control Act, 2007 prohibits direct advertising and also *indirect* forms such as brand sharing and brand stretching across communication platforms[vi]. Significantly, the prohibition applies to all tobacco products. In conformity with the WHO FCTC's definition of "tobacco advertising and promotion", the definition of tobacco advertising under Kenyan law includes not only that which

""promotion" means a representation, including an advertisement, whether direct or indirect, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviour about the product or service, or that is intended to or has the effect of inducing consumers to use tobacco products, underestimate the dangers of tobacco consumption, or create recognition of or goodwill for the tobacco manufacturer".

Tobacco Control Act, 2007; Kenya.

promotes tobacco products and their brand elements but also *tobacco use.*

In addition to regulating communication and representation that promotes tobacco, the law also prohibits *actions* that encourage tobacco use such as display of tobacco packs (Part I Section 2), mail order deliveries (Part IV Section 20), contests and sales promotions (Part V Section 30). Once again, this synchronises with the corresponding WHO FCTC definition of "tobacco advertising and promotion" (Article 1).

In line with the definition of "tobacco sponsorship" in the WHO FCTC, the Act prohibits tobacco sponsorship of a broad range of events, including trade-related ones. Kenya's ban on tobacco sponsorship, considered along with its definition of "promotion" (in parenthesis above) that includes "recognition of or good will for the tobacco manufacturer" helps to prohibit corporate social responsibility activities and their promotion.

2. **Regulation of emerging promotional platforms:** The Guidelines for implementation of Article 13 of the WHO FCTC require Parties to ban tobacco advertising, promotion and sponsorship across platforms comprehensively. The Kenyan Tobacco Control Act prohibits advertising across media and all forms of promotional communication and actions.

Internet & mail orders: Besides the mainline platforms such as print and electronic media, Kenya's prohibition extends to tobacco advertising on Internet-based platforms and mail order promotions, placing Kenya among the growing number of countries that currently require these provisions.

Table 1. Emerging platforms of tobacco promotion regulated under Kenyan law

Domestic platforms	Trans-border platforms
Vending machines	Internet
Self-service displays	Retail mail orders
Pack displays	Movies, plays, art
Telephones tobacco packs	
Tobacco look-alikes	
Accessories	

Points of sale: Kenyan law also recognizes points of purchase as potential avenues for tobacco promotion and has therefore banned self-service product displays, vending machines and pack displays.

Figure 1. Image of a smoking, child-appealing character on the Internet
Source: Flicker Hive Mind[vii].

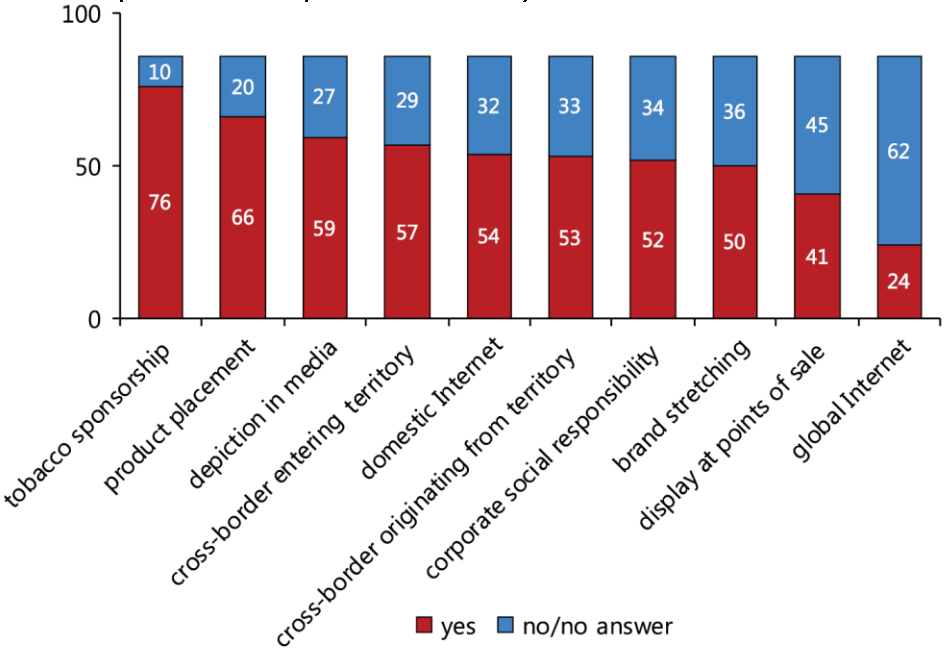
Movies & art**:** Kenyan law also regulates endorsements and depictions of tobacco products in any forms of expression that are misleading or incapable of fully informing consumers of the hazards of tobacco, without evoking a conflicting message or impression. If implemented effectively, this has the potential, among others, to prohibit product placement and brand endorsements in movies, plays and other forms of art and communication.

3. **Prohibiting single-unit sales**: Kenyan law includes several supply-side measures, some of which indirectly reduce exposure, particularly of vulnerable groups, to tobacco products and their promotion. A case in point is its prohibition of sales of single units of tobacco products, tobacco look-alikes and sales in "kiddie packs" of less than 10 cigarettes/10 units of other tobacco products. These prohibitions also fulfil the requirement of Kenya's Children's Act (Section 16)[viii] to protect children from the use of harmful substances, such as tobacco products.

4. **Cross-border tobacco advertising, promotion and sponsorship control:** While Parties to the WHO FCTC have been making steady progress in increasingly regulating tobacco advertising, promotion and sponsorship comprehensively within their jurisdictions, efforts to regulate cross-border tobacco promotions are still emerging. In this context, Kenyan tobacco control law includes provisions that have a bearing on cross-border tobacco promotions. Several provisions in the law indirectly prevent the "*outflow"* of tobacco advertising, promotion and sponsorship banned in the country to other jurisdictions. For instance, Kenya's ban on tobacco advertising in all print and electronic media and tobacco sponsorship of events, taken together with its prohibition on publishing, broadcasting and disseminating any promotion, could benefit other countries that may be receiving media content (such as via magazines, movies, compact disks and sports broadcasts, among others) from Kenya. Kenya's ban on tobacco advertising in electronic media also includes Internet-based promotions that are cross-border in nature.

   Additionally, the Kenyan law explicitly prohibits "*inflow"* from other jurisdictions of those forms of tobacco promotions that are banned in Kenya. According to the 2012 Global Progress Report on implementation of WHO FCTC, nearly one third of the Parties with a comprehensive tobacco advertising, promotion and sponsorship ban reported it to include regulations on the global Internet[ix]. An increasing number of countries regulating both "inflow" and "outflow" of advertising, promotion and sponsorship, supported by a web site as suggested by the Guidelines for implementation of Article 13 (Annex 3) for reporting violations and follow-up action, could help enhance the effect of domestic bans and reduce cross-border tobacco advertising, promotion and sponsorship progressively.

Figure 2. Number of WHO FCTC Parties reporting inclusion of selected provisions in their ban on tobacco advertising, promotion and sponsorship
(of 86 Parties that reported a comprehensive ban)



Source: 2012 Global Progress Report on Implementation of the WHO FCTC.

5. **Penalties:** The law stipulates reasonable penalties that could serve as a deterrent for violations. In Kenya, violation of the prohibition on tobacco vending machines attracts a fine of up to one hundred thousand Kenyan shillings, or imprisonment for a term of up to 12 months, or both. A notable feature of the Kenyan tobacco control law is that it considers even officers of any legal entity who acquiesced to an offence to have committed the offence themselves, thereby attracting the penalties applicable for offending legal entities. This fixes responsibility for compliance on the individuals managing legal entities that promote tobacco, and therefore has the potential to deter violations and improve compliance.

6. **Multisectoral law enforcement mechanism**:

Kenya's Tobacco Control Act lays down a detailed enforcement mechanism. It identifies officers under the Public Health Act to be authorised officers for law enforcement, and authorises Director of Medical Services to notify others. The Act provides for entry and search powers to enforcement officers on reasonable suspicion of contravention of the law to a wide range of places. The law has a qualification of "things" that could be searched and seized, as enforcement of tobacco advertising, promotion and sponsorship laws often involves promotional materials that are not tobacco products, but other materials such as printed matter or electronic storage devices. The law also provides for due process for forfeiture and restoration of seized products and things.

Kenyan law provides for an exemplary Inter-Ministerial consultation led by the Minister of Health for formulating a policy framework for multi-disciplinary and intersectoral implementation of the Act, including Ministers of Information, Communication, Trade, Industry and Foreign Affairs, which is critical given the intersectoral and cross-border nature of tobacco advertising, promotion and sponsorship regulations. Additionally, the Ministry of Public Health in collaboration with civil society trained nearly 1 000 enforcement officers, media and NGOs in 18 towns for effective implementation of the law.

The Tobacco Control Board provided for under the law also has an advisory role including in the setting of tobacco advertising, promotion and sponsorship policies. The Tobacco Control Fund set up under the law could potentially support implementation of its tobacco advertising, promotion and sponsorship provisions.

7. **Responsible entities:** The Article 13 Guidelines recommend (in para 54) the responsible entities to be defined broadly to include the entire marketing chain. Kenya's Tobacco Control Act penalises those persons who engage in advertising, promotion and sponsorship of tobacco products. Additionally, those in control of communication platforms, such as publishers and broadcasters, are prohibited from disseminating tobacco promotions that are banned by law. Their responsibility is reinforced through penalties for non-compliance.

B) **Towards fulfilling obligations under Article 11 of the WHO FCTC of relevance to tobacco advertising, promotion and sponsorship**

1. **Limiting "on-pack" promotion*:*** Tobacco companies engage tobacco packs as "advertising space" that is at close proximity to users and potential users. The Guidelines for implementation of WHO FCTC obligations under Article 11 (Packaging and labelling of tobacco products) recognize that pictorial health warnings and messages could possibly "*disrupt the impact of brand imagery on packaging and decrease the overall attractiveness of the package*". These Guidelines therefore require that the warnings should cover 50% or more of the front and back of the pack and include pictures or pictograms. Kenyan law provides for health warnings, including pictograms, occupying 50% of the front and 60% of the back of packages.

2. **Outlawing misleading information on packs:** In line with Article 11 of the WHO FCTC, Kenyan tobacco control law prohibits misleading descriptors that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the tobacco product or its emissions.

C)**Towards fulfilling obligations under Article 5.3 of the WHO FCTC**

1. **Regulation of corporate social responsibility**: The Guidelines for implementation of Article 5.3 of the WHO FCTC consider activities described as "socially responsible" by the tobacco industry to be public relations efforts aimed at increasing tobacco use and therefore falling with the treaty's definition of tobacco advertising, promotion and sponsorship. Section 6 of these Guidelines therefore requires WHO FCTC Parties to denormalize and regulate such activities. Kenya's ban on organizing or sponsoring any event or activity, including those of a cultural, educational, sporting or trade nature, to advertise or promote tobacco products prevents such activities from being used for purposes of corporate social responsibility and image-building.

2. **Avoiding conflict of interest in policy-setting:** Section 4 of the Article 5.3 Guidelines requires Parties to avoid conflict of interest by government officials and policy-setting bodies dealing with tobacco and public health policies. Kenya's Tobacco Control Board, which has a policy advisory role, including on tobacco advertising, promotion and sponsorship matters, distinctly excludes by law those with direct or indirect affiliation with the tobacco industry or its subsidiaries. The law further stipulates significant penalties for

Board members failing to disclose ties with the industry. Kenya's Tobacco Control Fund also requires avoidance of conflict of interest for the resources it receives.

IV. Kenya's experience in implementing the tobacco advertising, promotion and sponsorship ban

Kenya undertook training of a large number of enforcement officers, media and civil society organisations to support its implementation efforts. In Nyeri, public health officials sensitized retail businesses about the requirements of the law. Kakamega reported that the Ministries of public health and education, local government, police, courts and civil society embarked on a comprehensive drive comprising mass education through public rallies, issuing information, warnings and notices to traders and managers of businesses, training law enforcement officers, and arresting and prosecuting offenders. Increasing awareness of the requirements of the law among stakeholders and action by enforcement agencies have led to removal of bill boards and repainting of buildings bearing brand elements in major cities and towns.

Box 2. Early warnings command compliance

In May 2009, British American Tobacco–Kenya staff participated in the annual labour day celebration parade sporting branded apparel, caps, bags and umbrellas. A monitoring team comprising Ministry of Public Health and civil society organizations documented this violation of the country's tobacco control law. The Ministry warned BAT against similar action in future, which successfully thwarted such attempts thereafter.

Adapted from: Turning off the TAPS: Strategies to Control Tobacco Advertising, Promotion and Sponsorship in Kenya, Institute for Legislative Affairs.

Despite the ongoing enforcement efforts, outdoor advertising on billboards and buildings continues in several parts of the country. Points of sale are emerging as major avenues for ongoing advertising. Branded umbrella-shades, posters, display cases at kiosks and stalls and self-service displays at supermarkets continue to be reported. Tobacco companies are circumventing the ban on point of sale advertising, for instance, by replacing brand signages with entire kiosks painted in brand elements such as of the Supermatch brand in Figure 3 (right)[x]. Attractive cigarette displays with easy access to minors as in Figure 2 (left) have been reported to thrive in violation of the law.

Figure 3. *Left:* **Cigarette display alongside candies;** *centre & right*: **Kiosk painted in brand colours**

The sale of cigarettes by sticks and to minors also continues, even as chewing tobacco products from other jurisdictions that do not adhere to Kenya's packaging stipulations enter the market. In clear violation of the law, tobacco companies indulge in sales promotions at bars through distribution of T-Shirts, caps, and other gifts. Tobacco companies continue to sponsor interactive radio shows in grass roots FM stations such as in Embu and Mastermind Tobacco Kenya sponsored the Mater heart run[xi]. Facebook groups such as SMOKERS that promote smoking continue to exist despite the ban on tobacco advertising via the Internet[xii].

V. Good to better practices: strengthening Kenya's tobacco advertising, promotion and sponsorship regulations in compliance with the WHO FCTC

Kenya's tobacco control legislation of 2007 provides the framework for advancing tobacco control in the country and meeting its WHO FCTC obligations. The Party has made subsequent efforts to implement the law. Kenya's efforts could be strengthened in the following areas to achieve significant reduction in tobacco use and tobacco-related mortality and morbidity.

A) Monitoring and enforcement of the existing legislation:

1. **Monitor compliance, strengthen enforcement:** Best practices indicate that early and active monitoring of compliance is a key step in effective enforcement. Government agencies that are already monitoring compliance of other broadcasting and publishing laws could be mandated to additionally monitor tobacco advertising, promotion and sponsorship violations under the tobacco control law. France has successfully empowered and resourced designated tobacco control NGOs to monitor tobacco promotions and report violations directly to the courts. Establishing and announcing compliance lines (telephone hotlines) has also been reported to be effective in assisting the public to report violations[xiii].

2. **Broaden the enforcement machinery:** The Kenyan Tobacco Control Act recognizes officers under the country's Public Health Act as authorised officers for its enforcement. Bangladesh, for instance, has successfully engaged mobile courts to enforce its advertising ban at points of purchase. It is not clear if additional agencies or officers are engaged in enforcing the tobacco advertising, promotion and sponsorship provisions of the law. Given the reported resource constraints in

WHO FCTC implementation, it would be cost-effective to additionally authorize and engage Government agencies and officers with relevant mandate and expertise, such as media, industry and trade regulators, in monitoring and enforcing compliance with measures to control tobacco advertising, promotion and sponsorship. Further, their inclusion on the Tobacco Control Board could help enlist increased political commitment from the concerned departments for implementation of tobacco advertising, promotion and sponsorship laws. Collating, analysing and tracking compliance and enforcement data is critical to strengthening enforcement as for identifying gaps in the law itself.

3. **Fix proportionate accountability and penalty for all responsible entities**: The Article 13 Guidelines recommend entities responsible for tobacco promotions to be defined across the marketing chain. It also suggests graded responsibility based on the extent of control over the content or the platform. The scope of responsible entities for various types of tobacco promotions and platforms needs to be elaborated in the Kenyan law to include all those in the marketing chain, besides the tobacco companies and those in control of media that it currently holds responsible for compliance**.** The law also needs to consider graded penalties to the entities commensurate with their control over the promotion and also increased penalties for repeat offences.

   While banning product endorsements, for instance, responsibility for compliance and penalties for violations need to be fixed in the decreasing order of control over the activity - from tobacco companies that commission the task to advertising agencies that design the content, media platforms that broadcast the promotion, and models who endorse the tobacco product and any intermediaries.

4. **Adequately fund implementation:** Implementation of the law does not figure among the direct mandates of the Tobacco Control Fund. However, its broad objectives on tobacco-related research, documentation and dissemination and incidental functions can be leveraged to support enforcement of tobacco advertising, promotion and sponsorship policies in the country. Successive WHO FCTC implementation reports of the Kenyan Government[xiv,] indicate a lack of human and financial resources to implement the law. A shadow WHO FCTC report by civil society from 2010 further identifies the fact that the Tobacco Control Fund set up under the Kenyan Tobacco Control Act of 2007 is yet to receive budgetary allocations from the Ministry of Finance. Early identification of sustainable resources could strengthen implementation of the law, including tobacco advertising, promotion and sponsorship control.

5. **Operationalise disclosure of tobacco marketing expenditure:** Information on the tobacco industry's expenditure on marketing and other promotional activities serves as an indicator of emerging forms of tobacco promotion, platforms and entities involved. This in turn can inform policy development and enforcement, prevent violations and improve compliance. Kenyan law empowers the Tobacco Control Board to recommend, and the Minister of Public Health to notify of this requirement. Kenya can therefore leverage its law and WHO FCTC requirements summarised in Table 2 to require the industry to periodically submit this information and further use it to expand the scope of its tobacco advertising, promotion and sponsorship ban to address continuing and emerging promotional tactics of the tobacco industry.

Table 2. Disclosure of tobacco promotional expenditure – WHO FCTC requirements		
Article 13	**Article 13 Guidelines**	**Article 5.3 Guidelines**
Parties to require the tobacco industry to disclose to relevant governmental authorities expenditures on advertising, promotion and sponsorship that are not yet prohibited. Subject to national law, Parties may decide to further use the information to inform the public or other Parties.	Recommend requiring regular and on-request disclosure by tobacco industry to the government of the kind of continuing tobacco advertising, promotion and sponsorship including by brand, placement and frequency, intended territory of receipt of cross-border tobacco advertising, promotion and sponsorship, responsible entities and financial and other resources involved.	Recommend Parties to require the tobacco industry to periodically submit information on marketing expenditures, lobbying, philanthropy, political contributions and other activities not yet prohibited under Article 13 of the treaty.

B) Upgrade and strengthen existing legislation:

1. **Strengthen definition**: Advertising under the Kenyan Tobacco Control Act currently covers those "designed" to promote tobacco products and use. The WHO FCTC definition of "advertising and promotion" includes even those with the *likely* effect of promoting tobacco products or use. Expanding the scope of the definition of advertising to include the latter would move the onus of proof of the intent of any advertising or promotion away from the regulator and enable Kenya to regulate even indirect advertising more comprehensively and effectively. For instance, BAT Kenya advertises its graduate programme in major national newspapers in a manner that is likely to create "good will" for the company (see Appendix 2 - BAT Kenya advertisement in newspapers), which is prohibited by the Kenyan tobacco control law. It is important for the law to provide clear guidance in addressing and fixing the likely promotional effect of such advertisements.

2. **Update the law periodically to include emerging tobacco advertising, promotion and sponsorship**: Tobacco companies are known to circumvent existing laws and promote their products in new ways. A case in point is the tobacco industry's introduction of attractive "inserts" promoting their products in tobacco packs, even as the Government has restricted the scope for advertising on packs through the introduction of picture-based health warnings (see Appendix 1: Dunhill promotional insert in cigarette packs). Reducing tobacco consumption requires law-making to stay ahead of industry's promotional tactics. In the case of tobacco advertising, promotion and sponsorship laws, this calls for periodic review and updating of forms of tobacco advertising, promotion and sponsorship, platforms and responsible entities that need to be brought under the scope of the law. Kenyan law helpfully provides for the Tobacco Control Board to make policy recommendations with regard to tobacco advertising, promotion and sponsorship

and empowers the public health Minister to control labelling, packaging, sale, distribution, promotion or advertising of tobacco products for consumer safety. These provisions in the law can be engaged to regulate emerging forms of tobacco advertising, promotion and sponsorship in a timely manner. Based on the recommendations of the Article13 Guidelines and available implementation reports, Kenya has the scope to improve the comprehensiveness of its tobacco advertising, promotion and sponsorship prohibition by strengthening existing provisions and extending it to include emerging forms of tobacco promotion such as viral marketing, consumer surveys and retailer promotions.

3. **Eliminate tobacco promotions on packs:** The Guidelines for implementation of Articles 11 and 13 recommend plain packaging of tobacco produces that significantly reduces promotional opportunities via packs. Kenyan law currently requires sizeable health warnings on tobacco packs that limit the advertising space on packs. The law further prohibits promotion of brand elements (such as trademark, trade name, logo, graphic arrangement, design, colour, motto and slogans) that evoke brand association as also misleading descriptors. It also prohibits false promotion by way of misleading or deceptive descriptors on tobacco packs. Enforcing the ban on misleading descriptors, and extending the prohibition of promotion of brand elements to tobacco packs, along with larger health warnings on standardised packs would help Kenya to nearly eliminate the remaining avenue for tobacco promotion on packs and enable increased compliance with the relevant WHO FCTC provisions. Countries that are comprehensively banning tobacco advertising, promotion and sponsorship are increasingly considering "plain" packaging that fits the Kenyan context.

4. **Fully protect tobacco advertising, promotion and sponsorship law-making and implementation from tobacco industry interference**
Parliamentary debates on the Kenyan tobacco control bill caution about the likely conflict of interest on the Tobacco Control Board arising from the membership of a business association whose stated objective includes promotion of commercial and industrial interests of its members such as tobacco companies. The debate suggested applying relevant codes of conduct to rule out potential conflicts of interest on the Board[xv]. The Article 5.3 Guidelines require disclosure and exclusion of any persons or entities with direct or indirect association with or interests in the tobacco industry from such policy-making bodies. The requirement of Kenyan law in this regard needs to be implemented stringently to avoid conflict of interest in an exhaustive manner.

"Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy."

Guidelines for implementation of Article 5.3 of the WHO FCTC, Recommendation 4.8

Key lessons from Kenya’s experience implementing Article 13 of the WHO FCTC

Kenya’s legislative effort in regulating tobacco advertising, promotion and sponsorship presents key lessons that could inform law-making in other jurisdictions. These include:

- **Comprehensiveness of tobacco advertising, promotion and sponsorship ban is critical in reducing exposure to tobacco marketing.** The constantly evolving tobacco promotions scenario presents a moving target, requiring “comprehensiveness” to be viewed as a progressive goal to be achieved through increasing and timely regulation of emerging forms of tobacco advertising, promotion and sponsorship and platforms.

- **Action on cross-border advertising is required to achieve an environment free of tobacco advertising, promotion and sponsorship.** Regulation of its *inflow* and *outflow* requires action through domestic legislation, coupled with a global coordination mechanism for reporting violations and improving compliance.

- **Effective enforcement determines the ability of tobacco advertising, promotion and sponsorship laws to meet their objectives and informs further law-making.** Planned, early, visible and proactive enforcement aiming to improve compliance can reduce tobacco advertising, promotion and sponsorship.

- **Technical, technological and financial resources propel implementation.** These need to be identified and planned through domestic sources and international collaborations.

- **Multisectoral nature of tobacco advertising, promotion and sponsorship demand intersectoral coordination for its effective control.** It needs to be mandated by law and operationalised through implementation.

- **Conflict of interest with tobacco companies and allied interests needs to be avoided in policy-setting and implementation.** This requires complete disclosure and exclusion of such interests from such forums.

- **Tobacco advertising, promotion and sponsorship regulations need to work in tandem with other WHO FCTC requirements to achieve population-level benefits.** As tobacco use is driven by multiple factors, its control calls for comprehensive action across price and non-price measures and demand and supply strategies.

Box 3. Kenya's experience with Article 13 of the WHO FCTC: Resonance with the rest of Africa and other developing countries

Kenya's experience may have specific relevance for several countries in Africa and other low-resource settings both in terms of similar challenges and strategies to address them. For instance, sale by single sticks/units of tobacco products is common in most of the developing world. Similarly, points of purchase in these settings ten to be less defined and less regulated and more frequented when compared to the developed countries. All the same, the recent media boom in developing countries implies increased exposure to tobacco advertising, promotion and sponsorship and additional platforms to regulate. This is accentuated by the often unregulated or less regulated environments in these countries that tobacco companies exploit to promote their products, particularly in indirect forms. The competing priorities of health and development in the low-resource settings present challenges to prioritising FCTC implementation (tobacco advertising, promotion and sponsorship regulations included), and finding means for law enforcement.

Kenyan tobacco control law reflects several provisions that address the above challenges. For instance, it strategically bans sale by single units of tobacco products, requires prohibition of tobacco promotion at both points of purchase and across major media platforms, including the emerging ones such as the Internet and phones. The ban includes indirect forms of advertising such as brand stretching, trademark diversification, product placements and endorsements. The law provides for a tobacco control fund for implementation of its provisions including tobacco advertising, promotion and sponsorship regulations. It strategically draws on the strengths and resources of diverse Government and non-government agencies to enhance its law implementation. It holds the tobacco companies accountable through provisions for expenditure disclosures and heavy penalties

Appendix 1
Dunhill promotional insert in cigarette packs

Appendix 2
BAT Kenya advertisement in newspapers

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-Andrew Gikandi, MT Marketing.

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-Emmanuel Omale Marketing Finance Manager, East & Central Africa (Former MT, Finance).

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