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Framework Convention on Tobacco Control Implementation in Nigeria: Lessons for Low- and Middle-Income Countries

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Abstract

Background: Nigeria is a significant tobacco market and influential country in Africa. Nigeria ratified the WHO Framework Convention on Tobacco Control (FCTC) in 2005. We reviewed Nigeria's tobacco control legislation since 2000 and compliance of the National Tobacco Control Act (NTCA) 2015 with the FCTC.

Methods: We reviewed the National Tobacco Control Bills 2011 (proposed by legislature) and 2014 (proposed by Executive), the NTCA 2015, and media stories on tobacco control from 2008 to 2017.

Results: The NTCA, despite being more comprehensive than Nigeria's first Tobacco Smoking (Control) law of 1990, maintained provisions promoted by the tobacco industry, for example: allowing designated smoking areas in hospitality venues, higher educational institutions, and transportation venues; a loophole in the advertising restrictions allowing communications with consenting adults; and having the Manufacturers Association of Nigeria (MAN) (which includes tobacco companies) on the National Tobacco Control Committee charged with working with the Ministry of Health to implement the law. The industry is also directly involved with the Standards Organisation of Nigeria (SON) in preparing regulations on cigarette constituents and emissions. In an unprecedented step globally, the law requires that implementing regulations be approved by the National Assembly, giving the industry another opportunity to weaken this law further by lobbying the legislators to favor the industry. As of January 2018, the law was still not being enforced.

Conclusion: The NTCA can be strengthened through implementation guidelines still being developed. The industry should be prevented from interfering with through MAN and SON, as required by FCTC Article 5.3.

Implications: The tobacco industry works to block Framework Convention on Tobacco Control implementation even after a country ratifies the treaty. The Nigerian case illustrates that it is essential for health authorities to remain vigilant and ensure that the tobacco industry does not play a decision-making role in the process of tobacco legislation and regulation either directly or indirectly. The unprecedented step of requiring approval of implementing regulations for the Nigerian law should not be allowed to become a precedent in other countries.

Introduction

Even though smoking rates are still lower in Africa than most other WHO regions,¹ increasing rates of tobacco use coupled with fast growing populations and increasing consumer purchasing power make Africa an attractive market for tobacco multinationals² and likely the next epicenter of the tobacco epidemic if nothing is done to block the industry.^{1,3-5} The 2005 WHO Framework Convention on Tobacco Control⁶ (FCTC) is the treaty setting the standards for parties to regulate the production, sale, and distribution of tobacco. Forty-four of the 47 countries in the WHO AFRO region are parties to the FCTC,⁷ but FCTC implementation in Africa has been poor.^{8,9} As of 2015 only 7 of the 41 African countries' laws restricting secondhand smoke exposure were comprehensive, and only 14 of the 32 countries with restrictions on tobacco advertising, promotion, and sponsorship had comprehensive bans.¹⁰ Lack of political will, more than the lack of financial resources, has been identified as a reason for the low implementation of the FCTC in Africa.^{1,8,11}

Nigeria is a key tobacco industry market in Africa because of the country's population size and access to other markets in the region.¹² In 2003, British American Tobacco built a state-of-the-art manufacturing plant in Nigeria to service West African countries¹³ and in 2016 opened its new West Africa Head Office in Lagos, Nigeria.¹⁴

Nigeria began efforts to regulate tobacco in the 1970s, but the industry consistently undermined these efforts.¹² The first tobacco control law in Nigeria, *Tobacco Smoking (Control) Decree 20*, enacted in 1990,¹⁵ was ineffective because it included industry-proposed language that weakened the law and resulted in ineffective implementation. The industry also blocked a 1995 attempt to strengthen Decree 20.¹²

The aim of this study is to review Nigeria's attempts at tobacco control legislation since 2000 and to assess compliance of the National Tobacco Control Act (NTCA) 2015 with the FCTC.

Methods

Legislative documents on tobacco control bills were retrieved from the Nigerian National Assembly Web site (www.nassnig.org), yielding seven legislative documents related to six bills (four Senate Bills¹⁶⁻¹⁹ and two House Bills^{20,21}). Other legislative documents were retrieved from the Campaign for Tobacco-Free Kids (CTFK) Tobacco Control Laws' Web site (www.tobaccocontrollaws.org). Copies of public hearing proceedings were obtained from CTFK and Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN).^{22,23} Newspaper articles reporting on the tobacco control legislative process between January 2008 and May 2017 were retrieved through a Google search of Nigerian newspaper Web sites (*Guardian*, *Vanguard*, *Daily Trust*, *Leadership*, and *Premium Times*) using snowball search strategy involving following up stories in published articles or searching for more information about a published report. Data were analyzed following the data management procedure of the Framework Approach (familiarization with the data, identifying themes, developing a coding matrix, assigning data to the themes, and categorizing the coding matrix).²⁴ The FCTC articles were used as a priori themes for this analysis. Coding was done by the first author and checked by the other two authors. All three authors agreed with the final version of the results derived from the analysis. Other data were used to provide historical information on timeline of Nigeria's attempt to regulate tobacco since the year 2000 including the legislative history of the NTCA 2015.

Results

Information presented in this section is derived from 16 newspaper articles, 6 tobacco control bills, 3 legislative documents (2 summary of public hearings and 1 notice to legislators), and 4 Acts (2 tobacco control laws and 2 laws guiding the Standards Organization of Nigeria [SON]). Nigeria operates a presidential system of government. The legislative process for enacting a law in Nigeria involves four stages: (1) introduction of a bill (to amend an old law or to create a new one); (2) first and second readings, committal of the bill to the responsible house committee that will report to both houses of the National Assembly in plenary and third reading; (3) request for concurrence from either house of the National Assembly (depending on the origin of the bill); and (4) presidential assent.²⁵

Early Attempts at Tobacco Control Legislation in Nigeria (2000–2005)

The first attempt to enact a tobacco control law after Nigeria returned to democratic rule in 1999 began in 2000. We could not locate a copy of the *Tobacco Smoking (Control) Amendment bill*²¹ (Table 1); It is likely that this bill converted the *Tobacco Smoking (Control) Decree 20* of 1990 into the *Tobacco Smoking (Control) Act*.²⁶⁻²⁸ The *Cigarettes and other tobacco products bill* introduced in 2002¹⁸ did not pass. In 2005, the year Nigeria ratified the FCTC, the *Regulation of production, marketing and consumption of tobacco and tobacco products bill*¹⁹ was introduced in the Senate, but was not passed. These laws received little publicity and little is known about their legislative history (Table 1). There were no more legislative activities on tobacco control until 2008.

Legislative History of the Tobacco Control Bills (2008–2015)

The National Tobacco Control Bill 2011

In 2008, a member of the Senate Committee on Health introduced the National Tobacco Control Bill¹⁷ (NTCB) to repeal and replace the *Tobacco Smoking (Control) Act* of 2001.^{15,28} The NTCB included some strong public health provisions; it required 100% smokefree public places, including indoor workplaces and public transport, banned advertising, promotion, and sponsorship, sales to and by minors (under 18 years old) and mandated health warnings on at least 50% of the total surface of cigarette packs and at points of sale.

The Senate Committee on Health held a 2-day hearing in July 2009 attended by 34 individuals and organizations. The tobacco industry (primarily British American Tobacco Nigeria, BATN) used front groups and third-party organizations and individuals, with 12 attendees arguing to remove provisions not favorable to the tobacco industry.²² Four (including BATN) of the 12 attendees stated that they would support the bill if amended as they recommended.²² The Nigerian Cancer Society, ERA/FoEN, Federal Ministry of Health (FMoH), World Health Organization, and others supported the bill.²²

The Senate delayed action on the NTCB for 2 years after the hearing^{17,29} during which time tobacco control activists continued to use the media to press for the passage of the bill³⁰ while the tobacco industry worked to quash it.^{13,28} The National Assembly passed the NTCB in March 2011 after dropping provisions to establish 100% smokefree public places and ban on advertising and sponsorship. The NTCB did not become law because President Dr Goodluck Jonathan did not give his assent before his term ended on May 29, 2011.³¹ We were unable to determine why President Jonathan did not sign it.

Table 1. Timeline of Nigeria's Tobacco Control Legislative Efforts From 1990–2015

Date	Event
1990	Decree 20 enacted ¹²
1995	Unsuccessful attempt to review of Decree 20. ¹²
1999	May 29; Advent of the Fourth Republic after 16 years of military rule
2000	BAT Nigeria (BATN) incorporated as a Nigerian company ⁸¹
2000	Hon. Tony Anyanwu and Hon. Adamu Fanda introduce Tobacco Smoking (Control) Amendment Bill ²¹ Presumably, this was the process to convert Decree 20 to become an Act ^{26–28}
2001	February 6; first reading of Tobacco Smoking (Control) Amendment Bill ²¹
2001	British American Tobacco Nigeria (BATN) buys remaining 40% shares of Nigerian Tobacco Company (NTC) becoming sole owner of NTC. NTC's name is changed to BATN ^{81,82}
2002	Senator Nnamdi Eriobuna (representing Anambra South) introduces Cigarettes and Other Tobacco Products Bill ¹⁸
2002	Advertising Practitioners Council of Nigeria (APCON) publishes guidelines banning all forms of tobacco advertising in the media ²⁸
2002	March 20: Cross River State passes law prohibiting advertising cigarette and other tobacco products under Governor Donald Duke ⁸³
2004	June 28: Nigeria signs FCTC ¹³
2005	October 20: Nigeria ratifies FCTC ⁸⁴
2005	Senator Muhammed Abba Aji (representing Borno Central) introduced A Bill to Regulate the Production, Marketing and Consumption of Tobacco and Tobacco Products ¹⁹
2006	January 18: FCTC comes into force in Nigeria ⁸⁴
2007	Federal Capital Territory, Abuja passes smokefree public places law under Minister Aliyu Modibo ^{13,28}
2008	Senator Olorunmimbe Mamora (representing Lagos East) introduces the National Tobacco Control Bill (NTCB) ¹⁷
2009	February: Second reading on the NTCB ^{13,28}
2009	July 20: Public hearing on the NTCB ⁸⁵
2009	October 20: Osun State passes comprehensive smokefree public places law ¹³
2011	March 11: Senate passes NTCB May 31: House of Representatives passes NTCB ⁸⁶ May 29: NTCB dies without a signature by President Goodluck Jonathan
2012	Hon. Yacoob Bush-Alebiosu introduced the Tobacco Smoking (Control) Bill in the House of Representatives ²⁰
2012	Senator Ifeanyi Okowa (representing Delta North) introduces NTCB ¹⁶
2012	September 26: Ekiti State passes Prohibition of Smoking in Public Places Law under Governor Peter Fayose ⁸⁷
2013	March 21: Tobacco Smoking (Control) Bill passes second reading in the house ⁸⁸
2014	February 17: Lagos State passes Lagos State smokefree law under Governor Raji Fashola ⁸⁹
2014	April 9: Federal Executive Council approves draft Tobacco Control Bill (Executive NTCB 2014) to be sent to the National Assembly ³²
2014	September 24: Tobacco Control Bill passes first reading in the Senate ⁹⁰
2014	July 16: Public hearing on new tobacco bill in the House of Representative ³³
2014	October 15: Public hearing on tobacco bill in the House of Senate ³⁴
2015	May 12: Both houses of National Assembly pass new tobacco bill ³⁵
2015	May 26: President Jonathan signs the NTCA into law ³⁶

Precise dates are provided only if available.

FCTC = Framework Convention on Tobacco Control; NTCA = National Tobacco Control Act.

The NTCA 2015

A new government was sworn in on May 29, 2011, led by President Jonathan. In 2014, the Executive sent a new tobacco control bill (Executive NTCB 2014) to the National Assembly³² (column 4 in the [Supplementary Table S1](#)) where it joined two bills that had been initiated in the National Assembly, one sponsored by nine senators¹⁶ and another²⁰ in the House of Representatives.

Each house reconciled their private member bills with the Executive bill, following the National Assembly's rules ([Table 1](#)). At the House Committee on Health public hearing in July 2014,³³ 26 witnesses testified, with 10 supporting the bill, 4 opposing (including Japan Tobacco International), and 12 (including BATN and International Tobacco Company) opposing some provisions and recommending amendments to weaken the bill.²³ They opposed provisions banning corporate social responsibility activities by the tobacco industry, 50% health warnings with text in Nigeria's three major indigenous languages (Hausa, Igbo, Yoruba), and ingredient regulations, while advocating to exempt hospitality and

entertainment venues from being 100% smokefree and for the right of the industry to communicate with traders, marketers, distributors, and adult smokers.

The Senate Committee on Health held its public hearing in October 2014.³⁴ We could not obtain documentation of attendees or details of this hearing, but, as described later, some of the bill's final language is typical of language supported by the tobacco industry.

After the hearings, the two bills were harmonized by a committee of members from both houses. The consolidated bill was passed by both houses on May 12, 2015.³⁵ President Jonathan assented to the bill on May 26, 2015 as the NTCA 2015.³⁶

Comparison of Nigeria's Tobacco Control Legislation With the FCTC

Comparison of the Executive NTCB 2014 With the FCTC

Nigeria's tobacco control policy would have set a strong public health example for other countries if the Executive NTCB of 2014³⁷ had been passed as introduced ([Supplementary Table S1](#)). It included

100% smokefree indoor public places and workplaces, public transport, health care premises, child care, and educational facilities, and some outdoor public places including playgrounds, amusement parks, and within 10 m of transport stops without allowing designated smoking areas (DSAs). Health warnings and messages were to be in English and the three major Nigerian languages (Hausa, Igbo, and Yoruba). Incentives and privileges (including tax exemptions, loans, and direct investments) to persons or companies who manufacture or sell tobacco products were prohibited. The bill also included detailed provisions mandating the tobacco industry to report the following to the FMoH: market share, identification of tobacco industry lobbyists and lobbying firms, payments made to scientists, researchers, and journalists, tobacco products revenues and profits according to regions and sectors and by wholesalers and retailers, and corporate tax owed and paid. The bill excluded trade organizations (notably the Manufacturers Association of Nigeria [MAN] and Advertisers Practitioners Council of Nigeria) which have relationships with the tobacco industry from membership on the National Tobacco Control Committee (NATOCC) which advises the FMoH on the development and implementation of tobacco control policies. These latter provisions, recommended in the Guidelines for Implementation of FCTC Article 5.3,¹¹ would have established one of the strongest national policies globally to implement Article 5.3. When this Executive bill was reconciled with two bills that originated in the National Assembly in 2012 (Table 1), most of these strong provisions were dropped from the final bill (NTCA 2015).

Comparison of the NTCA 2015 With the FCTC

In this section, we compare the NTCA with the FCTC⁶ and its guidelines for implementation¹¹ (Table 2).

FCTC Article 5—General Obligations. FCTC Article 5 requires that each party develop a multisectoral national tobacco control strategy and protect tobacco control policies from the commercial and other vested interests of the tobacco industry.⁶

The NTCA 2015 established a NATOCC and a Tobacco Control unit in the FMoH to implement and enforce the law, implement NATOCC's decisions, and coordinate tobacco control with other government ministries, departments, and agencies. The NTCA created the Tobacco Control Fund to finance these activities with funds allocated from the annual budget, subventions, gifts, and donations, but did not specify the budget or appropriate any money.³⁸

The NTCA also established a NATOCC, a multisectoral body with members representing the FMoH, Justice, Environment, Agriculture, and Education, the Nigeria Customs Service, National Agency for Food and Drug Administration and Control, National Drug Law Enforcement Agency, SON, Consumer Protection Council, and National Centre for Disease Control to advise the FMoH on implementation of the law.³⁸ FMoH appoints the NATOCC Chairperson and has two of its officials as members (the Director of Public Health and National Coordinator of National Tobacco Coordinating Desk). NATOCC also includes a representative from a civil society group and MAN.³⁸ Including MAN violates FCTC Article 5.3¹¹ because the tobacco industry is a member of MAN.

The NTCA is strong on the transparency of interactions between government officials with the tobacco industry. It requires full recording and public disclosure of minutes of such meetings regardless of whether the meeting was initiated by the government or the tobacco industry.³⁸

FMoH is mandated to prescribe health warning messages and graphics for cigarette packaging, granting licenses to tobacco dealers

(manufacturers, importers, and distributors) and writing regulations to implement the law in consultation with the NATOCC.³⁸

Section 39(2) of the law stipulates that any regulation drawn by FMoH requires approval of both houses of the National Assembly before it can be implemented.³⁸ This provision reduces the FMoH's independence and creates another opportunity for the tobacco industry to block effective regulations.

Article 8—Protection From Exposure to Tobacco Smoke. FCTC Article 8 guidelines call for 100% protection from secondhand smoke in indoor spaces and other public places.¹¹ The NTCA nominally provides for smokefree public transportation, indoor public places, and residential houses (private homes) co-occupied by persons under 18 years, nursery to secondary-level educational institutions, recreational facilities, market places, and shopping malls. The law, however, allows owners to DSAs of up to 10% of the premises in hospitality venues, tertiary educational institutions, and transportation venues if the DSAs (1) have good ventilation, (2) are equipped with state-of-the-art ventilation equipment, and (3) do not compromise those in the nonsmoking area. The FMoH is to establish specific technical requirements for DSAs. Defining these requirements creates an opportunity for the FMoH to prepare strict standards that discourage creating DSAs. Such standards would, however, need approval from the National Assembly, where they would be vulnerable to tobacco industry attacks.

Article 9—Regulation of the Contents of Tobacco Products. FCTC Article 9 commits parties to measure and regulate the contents and emissions of tobacco products.⁶ The guidelines for implementing Article 9 stipulates that the national body responsible for tobacco control matters be responsible for or, at least, have input into the regulation process.¹¹

The SON is responsible for regulating the quality of all manufactured or imported products.³⁹ The law governing SON allows parties with substantial interests to contribute to the establishment of specific Nigerian Industrial Standards (NIS).³⁹ This provision, when applied to tobacco products, contradicts FCTC Article 5.3 because it allows for tobacco industry a formal role in defining its own regulation.^{6,11} The SON's 2008 and 2014 guidelines cover only cigarettes, not other combustible tobacco products, e-cigarettes, or smokeless tobacco^{40,41} which is popular in Nigeria.²⁹ Eight of eighteen committee members who drafted SON's 2008 guideline for tobacco product specification were from the tobacco industry.⁴⁰ In 2014, the year before NTCA passed, SON released a revised guideline⁴¹ prepared by a 27-member committee that included seven tobacco industry employees and representatives⁴¹ in violation of FCTC Article 5.3.⁶ The FMoH is not represented on SON's committees that wrote the NIS *Specification for Cigarette* in violation of the guidelines for implementing Articles 9 and 10.¹¹

Article 10—Regulation of Tobacco Product Disclosure. FCTC Article 10 commits parties to require tobacco product manufacturers and importers to disclose information about the contents and emissions of tobacco products to government authorities and to disclose the toxic constituents and emissions of tobacco products to the public.⁶ The NTCA requires persons who manufacture or import tobacco or tobacco products to submit reports on the contents and emissions as may be prescribed by SON.³⁸ The foreword to the 2014 NIS *Specification for Cigarettes*, however, states that SON seeks to "create a level playing field for manufacturers, importers

Table 2. Comparative Analysis of the National Tobacco Control Act (NTCA 2015) With the Framework Convention on Tobacco Control (FCTC)

WHO FCTC provision	Strength/weakness	NTCA 2015
Article 5: general obligations	Strength	-A multisectoral National Tobacco Control Committee (NATOCC) established led by the FMOH -Transparency of any meeting between government and the tobacco industry Prohibited -Voluntary contributions from the tobacco industry to government bodies and politicians, including campaign contributions -Public office holders working for the tobacco industry 24 months after leaving office
	Weakness	Manufacturers Association of Nigeria (MAN) is a member of NATOCC
Article 8: protection from exposure to secondhand smoke	Strength	100% smoking banned in indoor workplaces, public transport, indoor public places, and residential houses co-occupied by persons under 18 years
	Weakness	DSAs allowed in hospitality industry (like cafeteria and restaurants), tertiary educational institutions, workplaces, entertainment venues, all transport avenues, ie, airports, seaports, railway stations
Article 9: regulation of the contents of tobacco products	Strength	SON may prescribe regulations on the contents and emissions of tobacco products
	Weakness	SON not carrying out any independent product testing of tobacco products
Article 10: regulation of tobacco products disclosures	Strength	Tobacco manufacturers to submit information on product constituents and emission content
	Weakness	-The Minister of Health may NOT make the information from this report accessible to the public -Manufacturers only required to provide descriptive/qualitative information on constituents and emissions on the unit and outside packaging of tobacco product
Article 11: packaging and labeling of tobacco products	Strength	-HWL to be textual and graphic covering at least 50% of the total surface area of the package -24-month rotation period for each set of health warnings -Prohibits manufacturers from using the descriptive terms such as low tar, ultra-light or mild, extra, ultra, and other terms that are likely to mislead consumers
	Weakness	-HWL text to be in English language only -POS warning not stipulated
	Strength	Government to collaborate with civil society organizations (CSOs) to educate the public. Tobacco industry excluded from any such educational programs
Article 12: education, communication, training, and public awareness	Weakness	No details on the sources of funding and budget for education, communication, training and public awareness activities and how they would be coordinated between CSOs and government
	Strength	Comprehensive ban on tobacco advertisement, promotion, and sponsorship of events and includes ban on corporate social responsibility of any kind
Article 13: advertising, promotion, and sponsorship	Weakness	Excludes communication between manufacturers and retailers and any consenting person above 18 years from the ban
	Strength	Smoking prevention programs stated as one of the duties of NATOCC; no details provided about such programs
Article 14: demand reduction measures concerning tobacco dependence and cessation	Weakness	No details on how NATOCC is to carry its duties bothering on smoking prevention and cessation programs
	Strength	Ban on -Sales to and by minors (age 18), -Any article resembling tobacco products, -Sales through mails, vending machines, the Internet or other online devices -Cigarettes to be sold in packs of a minimum of 20 sticks and smokeless tobacco products only in packs of 30 g
Article 16: sales to and by minors	Weakness	—
	Strength	Authorized the Minister of Health to make additional regulations to fulfill the objectives of the law
	Weakness	Requires approval of both houses of the National Assembly for any regulations made by the minister

DSAs= designated smoking areas; FMOH = Federal Ministry of Health; HWL = health warning label; POS = point of sale; SON = Standards Organisation of Nigeria.

and marketers of the [tobacco] products.”⁴¹ The NTCA only allows for manufacturers and importers to publicly disclose of the name of the constituents of tobacco products’ and emissions, but not their quantity.³⁸

Article 11—Packaging and Labeling of Tobacco Products. FCTC Article 11 stipulates that 50% (and no less than 30%) of the principal display area of each package of tobacco products carry textual

and pictorial health warning labels in the country’s principal language or languages.⁶ Article 11 also prohibits the use of the terms such as “low tar,” “light,” “ultra-light,” or “mild.”⁶ The NTCA only requires English language warnings on cigarette packaging,³⁸ not the three major indigenous languages that more than two thirds of Nigerians speak.⁴²

The NTCA aligns with Article 11⁶ by prohibiting the use of “low tar,” “ultra-light,” “mild,” “extra,” “ultra,” and other misleading

terms on cigarettes. The law also prohibits using these terms as part of a cigarette brand name as well as color coding³⁸ which is used by the industry to circumvent prohibitions on these descriptive terms.⁴³ The NTCA does not require health warnings at point of sale.

Article 12—Education, Communication, Training, and Public Awareness. FCTC Article 12 encourages parties to strengthen and promote public awareness of tobacco control issues and to make effective laws to do so.⁶ The NTCA directs the government to collaborate with civil society groups to educate the public on the dangers of tobacco smoking and about the tobacco industry's deceptive tactics, but it does not appropriate any funds for this educational campaign. The NTCA also excludes any involvement of the tobacco industry or anyone furthering the industry's interests from participating in public tobacco control or public health initiatives under this section of the law.

Article 13—Tobacco Advertising, Promotion, and Sponsorship. FCTC Article 13 guidelines require bans on tobacco advertising, promotion, and sponsorship including direct and indirect marketing channels and corporate social responsibility activities.¹¹ The NTCA nominally bans tobacco advertising, promotion, and sponsorship but exempts communication between manufacturers and retailers with any "consenting person" 18 years and above.³⁸ Regulatory language could limit the scope of this communication, but as of October 2017 no regulations had been proposed by the FMOH and such regulations would require approval by the National Assembly to take effect.

Article 14—Demand Reduction Measures Concerning Tobacco Dependence and Cessation. FCTC Article 14 guidelines call for creating infrastructure to promote and provide effective treatment for tobacco dependence.¹¹ The NTCA tasks NATOCC with rehabilitating smokers and coordinating national youth smoking prevention programs but does not provide details of how this will be done or resources to do it.

Article 16—Sales to and by Minors. FCTC Article 16 requires parties to prohibit the sale of tobacco products to and by minors by setting a legal age for the purchase or sale of tobacco products and prohibit the sale of tobacco products on open store shelves.⁶ Article 16 also bans the manufacturing of tobacco products in forms that appeal to minors (such as toys, sweets, and snacks), prohibits sales via vending machines accessible to minors, distribution of free samples, and sale of cigarettes in single sticks and small packets.⁶ The NTCA requires age verification for buyers of tobacco products where the seller is not certain whether the buyer is older than 18 years of age. It also bans the sale of tobacco products by mail, vending machines, or through the internet, requires cigarettes packs to have a minimum of 20 sticks and smokeless tobacco a minimum of 30 g per pack, and prohibits the supply or sale of toys and sweets and any nontobacco products that are made to resemble tobacco products.³⁸

Implementation of the NTCA as of October 2017

The NTCA stipulates that the Nigerian police or any other authorized officers designated by the FMOH are to enforce the law.

As of October 2017, the FMOH had not released any regulations to implement the NTCA. However, at the 2017 World No Tobacco Day (May 31) celebration, Minister of Health Prof. Isaac Adewole announced that the government would begin enforcing

nine NTCA provisions that did not require regulatory guidelines for implementation:

1. Prohibition of the sale of tobacco products to and by anyone below age 18.
2. Ban of sale of cigarettes in single sticks; cigarettes must be sold in packs of 20 sticks only.
3. Smokeless tobacco shall be sold in a minimum of a pack of 30 grams.
4. Ban of sale or offer for sale or distribution of tobacco or tobacco products through mail, internet, or other online devices.
5. Prohibition of interference of tobacco industry in public health and related issues.
6. Prohibition of smoking anywhere on the premises of a child care facility, educational facility, and healthcare facility. Other [places] prohibited for smoking include playgrounds, amusement parks, plazas, public parks, stadia, public transport, restaurants' bar, and other public gathering spaces.
7. Prosecution of owner or manager of any of the places listed above who permits, encourages or fails to stop smoking in the above listed places.
8. Prohibition of tobacco advertising, promotion and sponsorship of any kind.
9. Compliance with specified standards for content.⁴⁴

On June 15, 2017, the FMOH launched "Tobacco-free Nigeria," a 6-month campaign to raise awareness of the NTCA and dangers of tobacco.⁴⁵ This campaign involved social media and offline activities and recruiting Nigerian celebrities as antitobacco ambassadors.⁴⁵ As of January 2018, to the best of our knowledge, the effectiveness of this campaign had not been evaluated. Other than these activities reported here, there is lack of information on the implementation and enforcement of the NTCA so far.

Discussion

Some parts of the NTCA moved Nigeria closer to having an FCTC compliant tobacco control law, particularly compared with the Decree 20 of 1990.¹⁵ For example, the ban on advertising, promotion, and sponsorship including all forms of corporate social responsibility activities³⁸ is aimed at blocking the tobacco companies from recruiting young people to smoke as they have done in Nigeria and similar settings.^{5,13} Globally, tobacco advertising, promotion, and sponsorship account for one third of youth who experimented with tobacco.^{46,47} The NTCA bans sales to and by minors, which is prevalent in Nigeria⁴⁸ as in other low- and middle-income countries⁴⁹ (LMICs) and influences young people to initiate smoking.⁴⁸ Provisions requiring pictorial and textual warning labels, establishment of the multisectoral committee on tobacco control, and mandating transparency of interactions between the industry and government³⁸ are other positive aspects of the law.

Important provisions in the NTCA, however, fall far short of FCTC compliance and create avenues for the tobacco industry to thwart FCTC implementation. Allowing marketing to "consenting persons" age 18 years and above undermines the NTCA's ban on advertising and FCTC Article 13¹¹ and allows the industry to continue targeting young adults, as it has done in Nigeria,¹³ as well as Argentina,⁵⁰ Canada,⁵¹ Cost Rica,⁵² United States,⁵³ and globally.⁵⁴ In 2010, British American Tobacco South Africa (BATSA) unsuccessfully challenged the South African government in court to overturn legislation banning one-on-one communication with smokers.^{55,56}

Allowing DSAs is part of the industry's "accommodation program" for smokers⁵⁷⁻⁵⁹ and violates FCTC Article 8 guidelines, which require 100% smokefree places.⁶ DSAs are promoted by the industry to undermine social norm changes supported by smokefree spaces.^{57,58,60,61} There is a sharp improvement in indoor air quality following comprehensive smokefree policies,^{62,63} improved health outcomes (including lower heart attacks, strokes, and respiratory illness,⁶⁴ low birth weight, complications of pregnancy⁶⁵), and reducing smoking prevalence.⁶⁶ Nonsmoking sections of restaurants with DSAs sometimes have tobacco smoke pollution as high as the smoking areas.^{67,68} Establishing 100% smokefree places with no accommodation for DSAs remains the best way to protect people from secondhand smoke.⁴⁷

The NTCA 2015 falls short of the FCTC in regulation of tobacco products' contents and emissions by SON. SON's specifications for cigarettes are drawn by a committee that include employees of the tobacco industry and exclude the FMOH.^{38,40,41} Furthermore, SON uses guidelines established by the International Standards Organization, which are dominated by the tobacco industry and do not consider health impact.⁶⁹

The tobacco industry fights any attempt to have strong laws in place, in LMICs^{5,56,70} and in Nigeria since the 1970s.¹² The tobacco industry continues their interference even after passage of tobacco control laws, as in Costa Rica,⁵² Colombia,⁷¹ Mexico,⁷² Uruguay,⁷⁰ North America,⁵⁸ and globally.⁷³ Tobacco control advocates must continue to engage with government after passage of tobacco control laws as legislation and implementation are both parts of effective tobacco control.⁷⁴ Failure of health advocates to continue pressing the government after a successful passage of the law will lead to implementation and enforcement failure.⁷⁴

Nigeria still has an opportunity to prevent the tobacco industry from impeding successful NTCA implementation. Adherence to the FCTC Article 5.3 guidelines will make it harder for the tobacco industry to take advantage of the loopholes in the NTCA, particularly inclusion of MAN in NATOCC and preparing regulations for tobacco products' contents and emissions by SON. SON could be mandated (through the NTCA regulatory guidelines or by an amendment of the NTCA 2015 or SON Act) to revise their process to develop guidelines on tobacco products to exclude the tobacco industry and include the FMOH in compliance with the FCTC Article 5.3, and the guidelines to implementation of Articles 9 and 10.¹¹

Other loopholes and ambiguity in the NTCA could be addressed in the regulations drafted by the FMOH. A "consenting adult" could be defined as one in which the industry has obtained written positive consent within the last 12 months. The 2014 proposed Executive NTCB addressed how the policy can be protected from the commercial and other vested interests of the tobacco industry (part 9, sections 25-35)³⁷ and provided a good starting point for NATOCC to work with as they seek to correct some of the shortfalls of the NTCA and implement Article 5.3.

The major problem facing implementing regulations under the NTCA requirement is the need for them to be approved by both houses of the National Assembly before implementation.³⁸ This provision is the first of its kind in Nigeria. In addition to delaying the implementation of the law, this process gives room for another round of lobbying by the tobacco industry to further weaken the law.⁷⁵ This provision also sets a bad precedent for future policy making in Nigeria and other countries.

At the same time, however, it also creates an opportunity for health advocates to remove loopholes from the law and support

effective regulations when this issue is reopened in the National Assembly. Doing so will likely require a substantial effort by health advocates.

To ensure the successful implementation of the NTCA, there is a need not only to raise awareness about the law among the general population⁴⁵ but to include research involving surveillance and evaluation in the implementation process to monitor and ascertain the effectiveness of the law.⁷⁴ Health advocates and the FMOH need to raise awareness concerning how the law applies to various segments of the population to ensure that the provisions of the law are understood and enforced. For example, law enforcement agents must be educated by the FMOH on their role in ensuring effective compliance with the law. The FMOH needs to structure the implementation of the law so that there can be local and state-level government implementation targets parallel to national-level targets.⁷⁶ Implementation of state-level tobacco laws and local ordinances has been effective in reducing tobacco use in many countries around the world.^{66,76,77} This approach will not only ensure overall effective nationwide implementation of the law, but make it easier to evaluate implementation progress against these national targets.⁷⁸

Implications for Other LMICs

Because Nigeria is a major market in Africa, it has the potential to boost the global antitobacco movement if the country's laws are comprehensive, FCTC compliant and properly implemented and evaluated.¹² African countries and other LMICs, which are constantly targeted by the tobacco industry,⁷⁹ should focus on making laws that are strong from the outset. Since the tobacco industry is the major threat to the FCTC⁸⁰ and to the formulation of comprehensive and effective tobacco control policies,^{73,79} such laws should ensure strict compliance with FCTC Article 5.3 and should block any avenue through which the tobacco industry would be able to interfere with tobacco control directly or indirectly.

The requirement that regulations be taken back to the National Assembly for approval is a new and dangerous precedent that LMICs should avoid.

Limitations

This study relies on publicly available and accessible information. There was limited information on the legislative history of Nigeria's tobacco control bills brought before the National Assembly. The Web sites of several government agencies were not functioning optimally to enable a comprehensive search for information. However, information from newspaper sources was used to mitigate these limitations.

Conclusion

The Nigerian experience provides a model for advocates in LMICs. During the legislative process key provisions of the law were weakened, resulting in provisions that violate Article 5.3. Identifying loopholes to be addressed through regulations, and possibly, amendment of the law is very important. Equally important is to ensure that implementing guidelines are developed and approved without offering further opportunities for the tobacco industry to delay or weaken the law. Health advocates and the Ministries of Health should constantly monitor the tobacco industry to proactively mitigate its interference in the formulation and effective implementation of tobacco control laws by seeing that FCTC Article 5.3 is embodied in national tobacco control laws.

Supplementary Material

Supplementary data are available at *Nicotine & Tobacco Research* online.

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Declaration of Interests

None declared.

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