



Tobacco Control Legislation and Policy in Nigeria: Much Barking Without Biting

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ABSTRACT

Ten years after ratifying the WHO Framework Convention on Tobacco Control, Nigeria (Africa's most populous country and largest tobacco market) in 2015 enacted a legislation to domesticate the Convention. This article examines the concordance of the new tobacco control legislation with the Convention and its implementation after two years of its enactment. It highlights the challenges the Nigerian government faces in implementing the new legislation. It advocates for synergy among all arms of the government in the country to ensure that the new tobacco control law will not remain a "toothless bulldog" like its predecessor.

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Introduction

As at 31 December 2016, the prevalence of tobacco use in Nigeria by youths was 15.4% while adult tobacco smoking and smokeless tobacco use stood at 5.6% and 1.9% respectively (WHO, 2017). Nigeria is party to the WHO Framework Convention on Tobacco Control (the "FCTC"), an international treaty, which imposes obligation on the governments of State Parties to protect citizens against tobacco and tobacco products-related harm for the promotion and protection of public health. Nigeria signed the Convention on 28 June 2004 and ratified same on 20 October 2005 (UN, 2017). The FCTC aims at ensuring that tobacco and tobacco product control policies of State Parties are implemented over and above the commercial and other interests of the tobacco industry. It provides a "framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke" (art. 3). In line with the objectives of the Convention and its protocols, the resultant domestic legislation of State Parties are expected to aim "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke."

Prior to the FCTC, Nigeria had a legislation which essentially aimed at the control of smoking in certain places and advertisement of tobacco and tobacco products^[1]. Undoubtedly, the legislation was quite inadequate to fulfil the country's obligation under the Convention. Furthermore, there were little or no serious efforts on the part of the relevant government agencies to effectively implement the law. For instance, from its promulgation in 1990 until its repeal in 2015, there is no record of any conviction or even a trial for tobacco related offences under the law. Recently in 2015, the Federal Government of Nigeria, to fulfil its

obligation under the FCTC enacted the National Tobacco Control Act, 2015 (the "NTCA"). This repealed the earlier legislation and more comprehensively aims to "regulate and control the production, manufacture, sale, advertising, promotion and sponsorship of tobacco and tobacco products in Nigeria." Regrettably, two years after the enactment of the new Act, there is very little or no visible sign of its implementation.

This article analyses the major provisions of the NTCA, not only to show their consonance with the standards of the FCTC, but also its policy thrust and the level of control that the new legislation provides to protect Nigerian residents against the adverse effects of tobacco, in line with the aspirations of the Convention. It also highlights the challenges of implementing the new tobacco control legislation and proffers suggestions to overcome the identified challenges. It emphasizes the need for commitment and synergy among all the arms and tiers of government in Nigeria towards implementing the NTCA to ensure that residents of Africa's most populous country and largest tobacco market are adequately protected against the negative health consequences of tobacco consumption and exposure to tobacco smoke.

History of Tobacco Regulation in Nigeria

Generally, consumption of tobacco has a very long history and so does its regulation. The British American Tobacco Nigeria (BATN, 2010) asserts that:

Tobacco has been smoked for at least the last three thousand years. Christopher Columbus found it when he landed in the Americas in 1492, but ancient temple carvings show tobacco being smoked in Central America as long ago as 1,000 BC. Ever since it arrived in Europe in the late 15th century, tobacco has divided opinion, sparked controversy and generated substantial revenue through tax. Not long

after it reached Europe, it was being described in terms ranging from “vile custom of manifold abuses” and “feast for the fiend” to “the divine herb” and “cornucopia of all earthly pleasure. Tobacco has periodically been subject to royal disapprovals, the whims of fashionable use, medicinal studies, smuggling, trade disputes and bans.

Although, tobacco had been cultivated and consumed in a variety of ways by natives in Nigeria^[2], large scale commercial growing of tobacco in the country started in 1934 when British American Tobacco (BAT) decided to source tobacco leaf locally in preparation for the establishment of a cigarette plant in the country ((HMSO, 1908: 40; Agaku, Akinyele, Oluwafemi, 2012: 8; Edohasim, 2010).

The first tobacco control legislation in Nigeria is the Tobacco (Licenses and Returns) Ordinance 1958^[3]. The policy thrust of the colonial legislation was the licensing and control of importation of tobacco into the country and sharing of proceeds of custom duties amongst the federating regions (Alli, 1999). It sought to regulate importation of tobacco by means of import duties. It prohibited the importation of tobacco for commercial purposes except the importer has a license, provided for issuance and revocation of import license, keeping of accounts and supply of information by an importer and penalties for failure to keep accounts and supply information as prescribed (ss. 3 – 10)

The Customs and Excise Management Act 1958^[4] which is an extant law merely extended the licensing regime to tobacco manufacturing in the country. It confers on the Minister of Finance powers to make regulations for “the manufacture of tobacco by a tobacco manufacturer” and for securing the excise duties on tobacco (ss. 115 – 116). But clearly, the chief concern of the legislation in this regard is the fixing and collection of duties on tobacco. Thus, the regulations made pursuant to the above power make provision only for making entry with the Board of Customs and Excise, of the premises used for the manufacture and storage of tobacco and for keeping accurate records of stocks of tobacco and operation accounts by a tobacco manufacturer^[5]. It was not in any way concerned with the quality contents of the manufactured product, its sale, advertisement, promotion and sponsorship. Thus, the control of tobacco in Nigeria remained within the licensing and import duty regulation for about three decades after the country’s political independence.

It was not until 1990, that the then Federal Military Government promulgated the Tobacco (Smoking) Control Act that provided for “the control of smoking in certain places and advertisement of tobacco in Nigeria” The law sought to prohibit smoking in certain public places, restrict advertisement of tobacco in both print and electronic media, prohibit the sponsorship or promotion of tobacco products by tobacco company in any sports event sponsored or promoted by them and prescribed labelling of tobacco products to indicate the amount of tar and nicotine contents of each unit as well as display of certain warnings relating to the health hazards of tobacco. It prescribed the payment of various sums of money as fine or/and terms of imprisonment as penalties for its contravention (ss. 1 – 5). Generally, the 1990 law was observed more in breach by both tobacco manufacturers and smokers (Monye, 2003:144; Nwhator, 2012:19). Its enforcement by the authorized agency, the Federal Ministry of Health, left much to be desired. Thus, owing to weak or total absence of enforcement activities by the Ministry, tobacco companies side-tracked the legal restrictions, especially the requirement of warnings. They also engaged in sponsorship of sports and

musical shows, thereby “advertising themselves (and indirectly their products) as good corporate citizens without the necessity of alluding to health hazards posed by cigarette and tobacco smoking” as required under the law (Kanyip, 2005:311). In spite of its flagrant violations, there is no record of any prosecution let alone conviction under the law. The statute contained no provision that could enhance civil action against tobacco companies by private individuals.

Another statute that seeks significantly to regulate tobacco products in Nigeria is the Standards Organization of Nigeria Act 1971^[6]. It established the Standards Organization of Nigeria (the “SON”), a federal agency, charged with the responsibility for the standardization of methods and products in Nigeria. The functions of SON include certification and registration of all manufactured products distributed, marketed and or consumed throughout Nigeria after ensuring that the products comply with acceptable Nigerian Industrial Standards (NIS) specifications or other acceptable standards. Key functions of the Standards Council of Nigeria, the governing body of the Organization, include to designate, establish and approve standards in respect of metrology, materials, commodities, structures and processes for the certification of products in commerce and industry throughout Nigeria, as well as to provide the necessary measures for quality control of raw materials and products in conformity with the standard specification (ss. 4 – 5). Pursuant to this power, the Organization formulated and published the Standard for Tobacco Products - Specifications for Cigarettes, 2014 (NIS 463) for tobacco product packaging and labelling. Thus, all tobacco products manufactured or imported into Nigeria ought to comply with the standard specifications of the SON. But unfortunately, these standards cover cigarettes only and no other tobacco products. As the global fight against tobacco gathered momentum resulting in the adoption of FCTC in 2003 and Nigeria ratifying the Convention in 2005, the need for a stronger regulatory framework for tobacco and tobacco products became obvious for the country to meet her obligations under the Convention. Also, by this time, tobacco manufacturers began to shift their direction and started targeting Africa especially the youth in attempt to replace former smokers in Europe and America. Consequently, anti-tobacco activists in the country stepped up the agitation/pressure for domestication of the FCTC by government putting in place stricter regulation (ERA/FEN, 2012; Nigerian Healthwatch, 2014). This resulted in a number of measures taken by the government to restrict the marketing of tobacco products and curb their consumption in the country. Such measures included the ban of tobacco advertisements on bill boards and restricting its advertisement on radio and television till after ten o’clock in the night. Also, the federal government and some state governments sued international tobacco firms operating in the country, accusing them, among other things, of putting unacceptable pressure on the country’s health services, and claiming damages for public health costs related to treating smoking-related diseases (ERA/FEN, 2012:10) but none of the cases was concluded as all the lawsuits were eventually withdrawn (Reuters, 2008) for reasons not unconnected with political and economic pressures from the tobacco industry.

Eventually, in 2008, a bill to enact a law to domesticate the FCTC and comprehensively regulate the tobacco industry in Nigeria was introduced in the Nigerian federal legislature. The bill was passed by both the Senate and House of Representatives in 2011 but did not receive presidential assent until May 2015. The following sections of this article analyse the key provisions of the new law, its compliance with the FCTC which it

domesticates, and efforts made so far by the Nigerian government to implement the new legislation.

The National Tobacco Control Act, 2015

Main Thrust and General Provisions of the Act

The National Tobacco Control Act 2015 (NTCA) does not totally ban the production or consumption of tobacco and tobacco products. It seeks to control the manufacture, content, packaging, labelling, sale, distribution, promotion and use or consumption of tobacco and tobacco products in Nigeria. The stated objectives of the Act which are line with the objectives of the FCTC are to:

- (a) protect present and future generations of Nigerians and residents of Nigeria from the devastating health, social, economic, and environmental consequences of use of or exposure to tobacco or tobacco products and exposure to tobacco or tobacco product smoke;
- (b) give effect to the obligations to protect citizens against tobacco or tobacco product-related harms in the promotion of health and other human rights that Nigeria as a party to the WHO FCTC and other related treaties to which Nigeria is a party^[7], other relevant regional and international treaties, the Constitution of the Federal Republic of Nigeria, and all other applicable legislations;
- (c) promote and protect Nigerians and residents' rights to health, life, physical integrity, safe and healthy workplaces, and other rights adversely impacted by tobacco or tobacco product smoke exposure;
- (d) provide equal protection for all workers in the tobacco or tobacco product industry, regardless of where they work, and all population groups;
- (e) discourage smoking initiation, encourage stoppage of tobacco or tobacco product smoking and reduce tobacco or tobacco product consumption through the measures provided in the Act, including through behaviour and norm changes brought about by smoke-free environments;
- (f) inform consumers of the health consequences, addictive nature, and mortal threat posed by tobacco or tobacco product consumption and exposure to tobacco or tobacco product smoke;
- (g) build up and make knowledge available to consumers and the populace at large on the harmful effects, risks and specific harm of tobacco or tobacco product use and exposure to tobacco or tobacco product smoke;
- (h) discourage tobacco or tobacco product use and encourage cessation among users, including through product packaging and labelling;
- (i) prevent or substantially reduce the accessibility of tobacco or tobacco products to young people;
- (j) ensure tobacco or tobacco products are not designed in a way that makes them more addictive or attractive, especially to persons who are below 18 years of age, or in ways that may undercut any of the stated objectives of this Act;
- (k) ensure that any designated regulatory authority is adequately empowered to regulate tobacco or tobacco products and their testing and to require the disclosure of information about tobacco or tobacco products to the government in order to effectively exercise regulatory powers;
- (l) ensure tobacco or tobacco products, their packaging and labelling do not mislead consumers, promote tobacco or tobacco product use or use of the product, or undermine health warning requirements; and
- (m) fulfil the State's obligation under article 5.3 of the WHO FCTC aimed at ensuring that tobacco or tobacco product control policies are implemented over and above any contrary interest of commercial and other vested interests of the tobacco industry on

account of the inherent and irreconcilable conflict of interests between the goals of public health policies for tobacco or tobacco product control and the interests of the tobacco or tobacco product industry, arising from the deadly nature of tobacco or tobacco products (s.1).

In line with article 1 (f) of FCTC "Tobacco product" is defined widely under the Act (s. 45) to mean products entirely or partly made from the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing. This shows that the definition of tobacco products under the Act is much wider than provided under the SON standard which covers only cigarettes.

To ensure its implementation, section 2 of the Act provides for the establishment of a National Tobacco Control Committee (NTCC) which shall consist of:

- (i) a person appointed as Chairperson by the Minister of Health who shall be the Chief Executive of the Committee;
- (ii) the Director of Public Health, Ministry of Health (MoH);
- (iii) the National Co-coordinator of National Tobacco Coordinating Desk, MoH;
- (iv) a representative each of the following not below the rank of a Director in the Public Service of the Federation -
 - a) Justice
 - b) Environment
 - c) Agriculture
 - d) Education
 - e) Nigeria Customs Service
 - f) National Agency for Food and Drug Administration and Control (NAFDAC)
 - g) National Drug Law Enforcement Agency (NDLEA)
 - h) Consumer Protection Council (CPC)
 - i) Standards Organization of Nigeria.
- (v) the Director National Centre for Disease Control;
- (vi) a representative of any tobacco control civil society organization or group appointed by the Minister;
- (vii) a representative of the Manufacturers Association of Nigeria; and
- (viii) a person who is appointed on such terms and conditions as may be determined by the Committee to serve as Secretary to the Committee.

To shield the NTCC from the influence of the tobacco industry, a member of the Committee shall not be affiliated in any manner whatsoever with the tobacco industry or subsidiaries, companies or entities of corporate bodies in the tobacco industry as may be specified in regulations or policy, including any person or entity working on behalf of or to further the interests of the tobacco industry (s. 5 (2); FCTC, art. 5.3). The functions of the Committee include to:

- (i) advise and make recommendations to the Minister, where necessary, on the development and implementation of tobacco control policies, strategies, plans, programs and projects, in accordance with the Convention, its implementation guidelines and protocols;
- (ii) screen or process application for license to manufacture or import or distribute tobacco or tobacco product;
- (iii) make regulations for the approval of the Minister;
- (iv) co-ordinate, support or fund public sensitization campaigns on key provisions of the Act;
- (v) co-ordinate multi-stakeholder national youth smoking prevention programs involving Ministries, Departments and Agencies (MDAs), faith-based organizations, civil society organizations and other stakeholders;
- (vi) develop strategies for the counselling and rehabilitation of smokers, particularly those eager to quit smoking;

(vii) work with the Federal Ministry of Agriculture and other relevant agencies on alternative cropping for tobacco farmers; and
 (viii) perform such other functions as may from time to time, be assigned to it by the Minister.

The Act also provides for the establishment in the MoH, a Tobacco Control Unit (TCU) charged with the responsibility of carrying out the plans, policies, projects and programmes of the NTCC and the Ministry. The functions of the Unit which shall comprise a chairperson and other staff appointed by the Minister on such terms and conditions as may be determined by him, include to:

- (a) implement the decisions of the Committee;
- (b) co-ordinate the activities of the MDAs responsible for the implementation of the Act;
- (c) collate and furnish all required annual or other periodical reports required to be furnished under the Act;
- (d) co-ordinate all enforcement activities under the Act and ensure effective liaison with the police and relevant law enforcement agencies on any violation of the provisions of the Act;
- (e) carry out such other duties and responsibilities as may be assigned by the Minister or the Committee (ss.6 – 7).

This means that the NTCC is not a full-fledged regulatory agency since it lacks the capacity to implement its plans, policies, projects and programmes but has to depend on another body, the TCU, to do so. The Unit, invariably staffed by civil servants who are subject to the bureaucracies inherent in such service. Considering the fact that the MoH will essentially be staffed by persons in the health sector, the regulatory structure adopted under the Act appears to detract from the “multi-sectoral national tobacco control strategies, plans and programs” envisaged under article 5.1 of the FCTC.

Towards fulfilling the financial resources provisions in article 5.6 of the Convention, the Act establishes the Tobacco Control Fund which shall consist of monies made available by the Federal Government from annual budgetary allocations, subventions and gifts, donations and testamentary dispositions which are not inconsistent with the objective of the Act (s. 8).

On its enforcement, the Act provides that the police and any other law enforcement agency of government shall have the duty to inspect and investigate complaints and take appropriate enforcement action under the Act and regulations made under it. However, the Minister may designate authorised officers for the purpose of implementing and enforcing the provisions of the Act (s. 31). Any person who violates any provision of the Act commits an offence and shall be liable to be punished as provided under the Act. Penalties under the Act include fine, imprisonment and forfeiture of tobacco, tobacco products or and things by means of which an offence is committed under the Act. Heavy fines are prescribed for a political candidate or party as well as a business in the tobacco industry that violates any provision of the Act (s. 34).

The prescription of substantial penalties under the Act is justifiable. What is worrisome is entrusting the responsibility for enforcing the provisions of the Act on “the police and any other agency of the government.” Notwithstanding that the general duty of the Nigerian Police includes the enforcement of all laws and regulations with which they are charged (Police Act, Cap. P19, LFN 2004, s. 4), the police is usually overstretched with the preservation of law and order and the protection of life and property to be further encumbered with the enforcement of tobacco regulations. It is our view that the enforcement of the Act would be more effective if entrusted to a specified agency of the government which will bear the primary

responsibility for the enforcement of the Act. This does not preclude collaboration of such agency with the police and other law enforcement agencies when necessary.

Control of the Manufacture/Production of Tobacco

The Parties to the FCTC “recognize that the elimination of all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting,” are essential components of tobacco control. To this end, each Party undertakes to endeavour to adopt and implement measures “including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade”. To help monitor and control the movement of tobacco products and their legal status, each Party is to require that unit packets and packages of tobacco products that are sold on its domestic market carry a statement indicating the final destination or that would assist the authorities in determining whether the product is legally for sale on the domestic market (art. 15).

In furtherance of this obligation, the NTCA provides that no person shall manufacture, import or distribute tobacco or a tobacco product except the person has obtained a license or is authorized in writing by the Minister. The Minister may by regulation prescribe the method and conditions for grant, revocation and other requirements for licensing under the Act. A person who violates any provision of a regulation relating to licensing of dealers under the Act, shall upon conviction, in the case of manufacturer or importer, be liable to a fine of not less than ten million Naira and a term of imprisonment of not more than ten years or both; and in the case of any other person, a fine of not less than five million Naira and a term of imprisonment of not more than 5 years or both (ss. 29 – 30).

The requirement of licensing under the Act does not apply to a retailer of tobacco or tobacco products. This exclusion of the requirement for licensing for retailers is not supportable. One would have thought that considering the health hazards associated with tobacco, all forms of dealing in the product should be subject to licensing or some form of registration as is the case with medicines where patent and proprietary medicines vendors are required to be licensed by the Pharmacists Council of Nigeria (PCN) (PCN, 2017; Barnes, Chandani, Feeley, 2008:14). Furthermore, in spite of the fact that smuggling of tobacco products has been a persistent problem in the country, resulting in huge loss of revenue from import duties and circulation of counterfeit cigarettes (Adenikan, 2015; Messanvi, 2016), there is no requirement for the indication of the final destination of tobacco products under the Act. Rather, the Act delegates to the responsible authority^[8], the power to prescribe by regulation appropriate measures to prevent illicit trade in tobacco products (s. 30). It is therefore imperative for the Minister of Health to make regulations to provide for licensing for retail outlets and the indication of final destination of tobacco products manufactured in or sold on the Nigerian domestic market. These will ensure that Nigeria fully discharges her obligation under the Convention in this regard, and protect tobacco consumers in Nigeria from the hazards of fake and counterfeit tobacco products.

Tobacco Product Quality and Disclosures

The FCTC requires each Party to adopt and implement effective legislative, executive, administrative or other measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products, as well as measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce (art. 10).

In relation to quality, the NTCA stipulates that a person shall not manufacture, distribute or sell tobacco or tobacco product that does not conform to approved standard or quantity prescribed. Any tobacco product that does not conform to an approved standard or prescribed quantity shall be confiscated and destroyed by the relevant law enforcement agencies (s. 17 (1) – (2)). Regarding disclosure of emission and toxic constituents, section 18 (1) of the Act provides that a person who manufactures or imports tobacco or tobacco products shall submit reports on the product contents and emissions as may be prescribed by the Standards Organization of Nigeria (SON). A person who violates any provision of the Act in relation to contents and emissions, commits an offence and on conviction will be liable, where the offender is an individual manufacturer or importer, to a fine of not less than two hundred thousand Naira or a term of imprisonment of not more than one year or both; and in the case of corporate entity, a fine of not less than four million Naira. In the case of a seller of tobacco or tobacco products, the penalty is a fine of not less than two hundred thousand Naira or a term of imprisonment of not more than one year or both (s. 19).

The provisions of the Act relating to public disclosure of content and emissions are somehow contradictory. First, it provides in section 18 (2) that except as provided under the Act or any other law, the Minister may make information from content and emission reports received from the tobacco industry “not accessible to the public”. Section 20 (6) provides that in addition to any prescribed health warnings and messages, each unit and outside packaging and labelling of all tobacco products shall provide in a descriptive and quantitative form, information on constituents and emissions as prescribed in regulations. Curiously, in a summersault, section 21 (3) states that quantitative information on emissions shall not be displayed anywhere on or inside the product’s unit or outside packaging or labelling or on the product itself, including when used as part of a brand name or trade mark.

It is difficult to reconcile the above provisions. From the inconsistencies, it appears that there is an attempt to shield the contents and emissions constituent of tobacco from the public. This is contrary to article 11 of the FCTC which requires disclosure of both health warning and product content. There is therefore, need for a clear provision in a regulation not only to make such disclosure mandatory but also provide for monitoring consistency between the reports submitted to the authority and content and emission disclosure to the public on the product package and label.

Packaging and Labelling of Tobacco Products

To ensure flexibility, the Act does not contain any specific warnings or messages to be included in the unit package or label of tobacco and tobacco products, as was the case under the 1990 law. Rather, it provides that every tobacco or tobacco product package shall contain in writing or graphics, health warning messages or signs as may periodically be prescribed by the MoH. The text of the health warnings and messages shall be in English language and shall cover not less than 50% of the total surface area of the package. The Ministry is mandated to periodically (each period not exceeding 24 months) prescribe a set of new warnings and messages to be used or authorize the use of warnings and messages from previous rotation periods. A new set of health warnings and messages, takes effect to replace the warnings and messages from a previous period. However, products with the old warnings and messages may continue to be sold along with those with the new warnings and messages, for a period not longer than 150 days from the date of the new warnings and messages.

After the expiration of 150 days, in addition to any penalty to which the responsible manufacturer or seller may be subject, any non-compliant packaging and labelling and any product contained therein found in the possession or under the control of a manufacturer or seller or any person acting on their behalf shall be subject to confiscation and destruction (s.20).

To ensure that consumers are not misled by the packaging and labelling of tobacco products, the Act prohibits the use of packaging, labelling and product design and promotional features to create false, misleading, deceptive and erroneous impression about the product’s characteristics, health effects, hazards or emissions or a false impression that a particular tobacco product is less harmful than others (s. 21). The use of terms such as low tar, light, ultra-light or mild, extra, ultra and others terms in any language in the brand name or trademarks, that is likely to mislead consumers is prohibited. A change in any regulation made under the Act relating to standard, packaging and labelling of tobacco or tobacco products takes effect after 18 months from the date of publication of the regulation (s. 22).

Violation of any provision of the Act relating to packaging and labelling, constitutes an offence which upon conviction attracts a fine of not less than five million Naira and a term of imprisonment of not more than two years in the case of manufacturer, importer or wholesale distributor and a fine of not less than two hundred thousand Naira and a term of imprisonment of not more than one year in the case of a retailer (s. 24). In furtherance of FCTC, article 19 which requires that for the purpose of tobacco control, the Parties shall consider taking legislative action or promoting their existing laws, to deal with both criminal and civil liability, including compensation where appropriate, fulfilling the requirements of packaging and labelling under the Act does not remove or diminish the duty of the manufacturer or seller to the consumer, including the duty to warn consumers about the health hazards arising from tobacco use and exposure to tobacco smoke (s. 23). The intention of the legislature here is to ensure that manufacturers and sellers of tobacco and tobacco products do not rely on statutory warnings/messages in consumer claims for injury arising from the use of their products, even if the statutory warning/messages are not adequate. This places a duty of care on tobacco dealers, especially manufacturers, to ensure that they include not only the statutory warnings/messages but that where such statutory warnings/messages are inadequate, that they include additional warnings on health hazards or harmful effects of tobacco to consumers.

Except for the muddled provisions relating to disclosure of relevant constituents and emissions on the packaging and labelling of tobacco products, the provisions of the NTCA on packaging and labelling adequately reflect the provisions of the FCTC. The requirement that not less than 50% of the total surface area of the package of tobacco products is already being complied with by the tobacco industry in relation to cigarettes, but no new warnings have been issued and the warnings under the 1990 law are still being used.

Designated Smoking and “Smoke Free” Areas

Control or restriction of tobacco smoking is intended to protect not just the actual consumer (smoker) but other persons, especially non-smokers (referred to as the passive smoker) from inhaling the smoke of tobacco. Such protection is usually achieved by prohibiting smoking in certain places so as to shield non-smokers from the harmful effect of tobacco smoke. Article 14 of FCTC on demand reduction measures concerning tobacco dependence and cessation, therefore mandates each Party to develop and disseminate appropriate, comprehensive and

integrated guidelines and take effective measures to promote cessation of tobacco use. The Parties are enjoined, among other things, to design and implement effective programs aimed at promoting the cessation of tobacco use, in such locations as educational institutions, health care facilities, workplaces and sporting environments.

To this end, section 9 of the NTCA prohibits the smoking of tobacco or tobacco products in the following places:

- (a) in a dwelling house co-occupied by a person who is below 18 years of age except in a room exclusively occupied by the smoker;
- (b) in a tricycle, vehicle, aircraft, sea vessel, railway coach, lift or any means of public transportation, except in a vehicle exclusively occupied by the smoker;
- (c) indoor or any enclosed public place listed in the Second Schedule to the Act ^[9] or any other public place prescribed by the Minister by regulation made under the Act;
- (d) outdoor, in a public place and in an area that smoking is prohibited by the owner, controller or occupant of such public place who displays prescribed warning with the permit of approval of the NTCC.

In addition to any outdoor space that is designated as non-smoking area by the owner, controller or occupant, a person is not permitted to smoke in any outdoor space:

- (i) within five meters of any doorway, operable window or air intake mechanism of any public place or workplace;
- (ii) within five meters of any waiting area or queue, including public transport stop;
- (iii) anywhere on the premises of any childcare facility or educational facility at any level of instruction;
- (iv) anywhere on the premises of any healthcare facility;
- (v) a playground, amusement park, plaza, public park or other public gathering place;
- (vi) a stadium, arena or any kind of performance space;
- (vii) a space for the service or consumption of food or drink; and
- (viii) any other outdoor public place or work space as may be prescribed by the Minister.

The owner, controller or occupant of a premises, can designate an area within the premises which shall not be more than ten per cent of the premises as a "Designated Smoking Area". This area shall have good ventilation, be equipped with state of the art ventilation equipment and should not compromise those in the Non-Smoking Area.

The Act imposes certain duties on a person who owns, controls or occupies a place or thing (premises). Such a person is mandated to:

- (a) display in a prominent area of the premises the "No Smoking" sign in the way and manner prescribed under the Act or any regulation;
- (b) implement the provisions of the Act and any of its regulations as they relate to the prohibition of smoking;
- (c) take reasonable steps to discourage and stop any person from smoking where it is prohibited including asking the person not to smoke, discontinuing service, asking the person to leave the place premises or public transport vehicle when it is safe to do so; and contacting law enforcement or other appropriate authority when necessary; and
- (d) investigate complaint and take necessary action to ensure compliance (s. 10).

Under section 11 of the Act, a person who violates any of the provisions relating to prohibition of smoking commits an offence and is liable on conviction as follows:

- (i) for contravention of section 9, to a fine of not less than fifty thousand Naira or a term of imprisonment of not less than six months or to both fine and imprisonment;

(ii) for contravention of section 10, in the case of an individual, a fine of not less than one hundred thousand Naira or imprisonment for a term of not less than two years or both and in the case of a corporate entity to a fine not exceeding two hundred thousand Naira.

(iii) for smoking in a place where smoking is prohibited, a fine of not less than fifty thousand Naira or imprisonment for six months or both.

(iv) In spite of the clear provisions of the Act, smokers have, as under the 1990 law, continued to smoke in prohibited places just as owners, occupiers and persons in control of such premises have not complied with the designation and putting up of the required notices. In our view, there is need for a drastic enforcement action to compel compliance with the provisions of the law in this regard.

Prohibition of Tobacco Advertisement, Promotion and Sponsorship

The Parties to the FCTC recognize that bans on tobacco advertising, promotion and sponsorship can reduce tobacco consumption (WHO Media Centre, 2017). Therefore, each Party to the Convention, undertakes to, in accordance with its constitution or constitutional principles, a comprehensive ban of all tobacco advertising, promotion and sponsorship. Where a Party is not in a position to do so as a result of constitutional constraints, it shall apply restrictions on all tobacco advertising, promotion and sponsorship. Comprehensive ban or restriction on advertising, promotion and sponsorship shall, subject to the legal environment and technical means available to the Party, include those originating from its territory with cross-border effects. As a minimum, each Party is required, in accordance with its constitutional principles, to –

- a) prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;
- b) require that health and other appropriate warnings or messages accompany all tobacco advertising, promotion and sponsorship;
- c) restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public;
- d) require, if it does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited;
- e) undertake a comprehensive ban or at least restrict tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the internet, within a period of five years; and
- f) prohibit or restrict, tobacco sponsorship of international events, activities and/or participants therein (art. 13).

Notwithstanding these lofty ideals, presently, only 29 countries, representing 12% of the world's population, have completely banned all forms of tobacco advertising, promotion and sponsorship, while only one out of every three countries has attained the minimal or no restrictions at all on tobacco advertising, promotion and sponsorship (WHO Media Centre, 2017).

By the provisions of the NTCA, it is obvious that Nigeria will be counted among the countries that have gone beyond the minimum obligations and adopted complete and comprehensive ban of all forms of tobacco advertising, promotion and sponsorship. Section 12 (1) of the Act provides that:

- Except otherwise provided in this Act, no person shall –
- a) promote or advertise tobacco or tobacco products in any form;

b) sponsor or participate in any program or event which is aimed at wholly or partially promoting or advertising tobacco or tobacco products; or
 c) engage or participate in any tobacco advertising, promotion or sponsorship as a mediate or event organizer, celebrity or other participant, as a receipt of any sponsorship contribution, or as an intermediary that facilitates any such contribution^[10].

The recognized exceptions under the Act include communications amongst manufacturers of tobacco and tobacco products and wholesalers, distributors and retailers of tobacco or tobacco products or tobacco plant farmers, and any consenting person aged 18 years and above and product information made accessible to persons within the tobacco trade who need such information for trading purposes (s. 12 (2)). For the purpose of monitoring and ensuring compliance with the provisions relating to promotion, advertisement and sponsorship of tobacco or tobacco product, manufacturers, wholesale distributors and importers and any other seller may, by regulation, be required to provide reports to the Minister in that regard, on periodic basis which shall be at least annually (s. 13).

Heavy penalties are attached to the prohibitions. A person who violates any of the provisions relating to the prohibition, shall on conviction, in the case of a tobacco manufacturer or seller responsible for initiating the advertisement, promotion or sponsorship, be liable to a fine of not less than five million Naira or a term of imprisonment of not more than two years. A person that produces or publishes the advertisement, promotion or sponsorship content shall be liable to a fine of not less than three million Naira or imprisonment for not more than one year; while for a person that disseminates the advertisement, promotion or sponsorship content which, he should reasonably have been aware of and was in a position to remove or disable access to, but failed to do so, it is a fine of not less than one million Naira and a term of imprisonment for one year. Engaging or participating in the advertisement, promotion or sponsorship, makes the person liable to a fine of not less than three million Naira and a term of imprisonment for not more than one year (s. 14).

The prohibitions relating to advertisement, promotion and sponsorship as an aspect of tobacco control has been fully complied with in Nigeria. Advertisement of tobacco in both print and electronic media including billboards have totally disappeared in Nigeria. What remains however, are films where actors and actresses are seen smoking which may "make the habit seem good" (Adelabu, 2015). Banning of airing of films wherein actors/actresses smoke by public television stations should be given serious consideration as the tobacco industry can exploit such films to promote tobacco smoking.

Restrictions on Sale of Tobacco and Tobacco Products and Access to Tobacco by Persons Below the age of 18 Years

Article 16 of the FCTC deals with sales of tobacco to and by minors. Parties to the Convention are to "adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or eighteen." The measures set out include those:

- (i) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;
- (ii) banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves; prohibiting the manufacture and sale of sweets, snacks, toys or any other

objects in the form of tobacco products which appeal to minors; and

- (iii) ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.

Each party is to prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors, and as appropriate, adopt and implement effective legislative, executive, administrative or other measures to prohibit the sales of tobacco products by persons under the age set by domestic law, national law or eighteen (art. 16).

In compliance with the above treaty obligations, Nigeria's new tobacco control law, the NTCA expressly prohibits the sale of tobacco or tobacco products to persons below 18 years of age, as well as the employment or use a person who is below 18 years of age to sell or trade in tobacco or tobacco products. The Act imposes an obligation on the seller of tobacco to verify the age of any purchaser prior to any sale by checking any form of official identification prescribed by law. A retailer of tobacco or tobacco products shall display in the prescribed form at every place of sale, sign stating that tobacco sales to persons below 18 years of age is prohibited. A person shall not sell or offer to sell or distribute tobacco or tobacco products through mail, Internet or other online devices (s. 15).

As part of the measures to restrict the affordability of tobacco products to minors, the Convention requires each Party to endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors. Thus, the NTCA of Nigeria prohibits the sale of smoked tobacco products except in a package which shall be intact and contain a minimum of 20 sticks while smokeless tobacco products unit package shall contained a minimum of 30 grams. Any tobacco product unit package that does not meet the prescribed requirements shall be confiscated or forfeited. The penalties for the contravention of the provisions of the Act relating to sale of tobacco and tobacco products are, in the case of failure to paste the prescribed sign, a fine of not less than two hundred thousand Naira or imprisonment for not less than one year in the case of an individual and in the case of a corporate body, a fine not less than four hundred thousand Naira (s. 16).

These provisions aimed at protecting minors and persons under the age of 18 years from smoking are generally not observed. Tobacco retailers are yet to put up the required signs and children can still easily purchase and sell tobacco products. In fact, children are still often seen purchasing cigarettes in open stores. Cigarettes are still sold by sticks not in packets while smokeless tobacco products such as snuff and dried tobacco leaves are freely sold in Nigerian stores and markets but not by weight.

Public Enlightenment

The guiding principle of the FCTC requires that every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke (art. 4). Furthermore, as part of the measure to reduce the demand for tobacco, article 12 of the FCTC requires Parties to promote and strengthen public awareness of tobacco control issues, using all available communication tools, as appropriate. By signing, the Convention, each Party undertakes to adopt and implement effective legislative, executive, administrative or other measures to promote –

- (a) broad access to effective and comprehensive educational and public awareness programs on the health risks including the addictive characteristics of tobacco consumption and exposure to tobacco smoke;

(b) public awareness about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of the cessation of tobacco use and tobacco-free lifestyles;

(c) public access, in accordance with national law, to a wide range of information on the tobacco industry as relevant to the objective of the Convention;

(d) effective and appropriate training or sensitization and awareness programs on tobacco control addressed to persons such as health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons;

(e) awareness and participation of public and private agencies and nongovernmental organizations not affiliated with the tobacco industry in developing and implementing inter-sectoral programs and strategies for tobacco control; and

(f) public awareness of and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.

In furtherance of this obligation, the NTCA provides for a comprehensive Nationwide Education and Information Campaign, to promote and strengthen public awareness on the health consequences, addictive nature and mortal threat posed by tobacco and tobacco products use and exposure to tobacco or tobacco products smoke. The campaign to be organized through MDAs in collaboration with civil society organization will also draw attention to the harmful effects of tobacco or tobacco products growing and handling. A person or entity working on behalf of or furthering the interests of the tobacco industry shall not be involved in public education in any manner, or other initiatives related to tobacco control or public health, including any funding of such activities (s. 38).

Regrettably, these laudable provisions of the NTCA which aptly captures the principles of the FCTC on public enlightenment are yet to be implemented.

Challenges of Implementing the New Tobacco Control Law

Overall, Nigeria can be said to have substantially met her obligations under the FCTC in so far as legislative measures required under the Convention is concerned. The NTCA has domesticated the key provisions of the Convention. But in several respects, the Convention requires not only legislative measures but also “executive, administrative and other measures”^[11]. The enactment of an appropriate legislation on tobacco control is one thing, while effective implementation of the legislation is a different kettle of fish. This part of this article looks at the major challenges that Nigeria faces in implementing the NTCA and offers suggestions on how the challenges can be overcome.

Inherent Loopholes in the Law

The NTCC established under the Act is not an independent regulatory agency. In fact, a careful perusal of the functions and powers of the Committee shows that it is merely advisory to the Minister of Health who is conferred with powers to appoint and remove the members of the Committee from office under certain circumstances (s. 3). Ideally, the NTCC should have been constituted into a full regulatory agency or the responsibility for the regulation of tobacco should have been conferred on the National Agency for Food and Drugs Administrations and Control (NAFDAC) or the National Drug Law Enforcement Agency (NDLEA). In the United States of America, tobacco control has, by statute, been placed under the regulatory ambit of the Food and Drug Administration (FDA)^[12].

Furthermore, the Act provides for the NTCC with the approval of the Minister Health or the Minister to, among other things, make regulations for various purposes under the Act^[13].

However, any regulation made by the Minister “shall be subject to the approval of both Houses of the National Assembly” (s. 39 (2)). This requirement of approval by the National Assembly of tobacco regulations is as curious as it is strange. There is no such provision in any other product regulatory statute in Nigeria^[14]. Considering the usually “busy” or “overcrowded” schedule of the highest legislature in the country, the National Assembly, it will not only be very difficult but also time consuming to obtain the approval not just of one but both Houses of the National Assembly (that is, the House of Representatives and the Senate).

Another area which we strongly feel was not adequately addressed by the NTCA is the control of smokeless tobacco. Consistent with article 1 (f) of the FCTC, the Act defines “tobacco products” to mean “products entirely or partly made of the leaf of tobacco as raw material which are *manufactured* to be used for smoking, sucking, chewing or snuffing” (s. 45). This means that the tobacco products regulated under the Act are those “manufactured”. Manufacturing, entails producing something, usually in large numbers in a factory by the use of machine, as distinct from something that is in its natural state (Garner, 2009:1050). Yet tobacco is consumed not only by smoking but also in a variety of other ways, such as by chewing, snuffing, etc. (Agaku, Akinyele, Oluwafemi, 2012:11), in forms that do not involve any manufacturing process. Even though, the prohibitions and restrictions under the Act relate to “tobacco and “tobacco products”, the Act does not define the word “tobacco” and its provisions appear to essentially regulate tobacco products in its manufactured state. It would have been better to adopt a definition similar to that of “narcotic drug” and “psychotropic substance” in National Drug Law Enforcement Agency Act (Cap. 30, LFN 2004) which domesticates the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989 that defines the regulated substances in terms of their “natural or synthetic” form (s. 52). The implication of this gap in the law is that Nigerian consumers of cigarette and other manufactured tobacco products can evade the law simply by switching from consumption of processed tobacco to unprocessed tobacco.

Corruption and Lack of Political Will

The FCTC recognises that strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multi-sectoral measures and coordinated responses to issues relating to exposure to tobacco smoke, consumption of tobacco products in any form, development, implementation and evaluation of tobacco control programmes that are socially and culturally appropriate to the needs of indigenous individuals and communities.

Corruption in Nigeria is endemic, innate and deep-rooted (Mohammed, 2013:118; Keeper, 2011:172; Onimajesin 2006/2007:178) particularly in the public sector (Okolo, Raymond, 2014: 31). Corruption invariably affects the capacity and willingness of the government to initiate, promote and implement policies and regulations. Weak enforcement of regulations in Nigeria is evident in many areas, ranging from common activities such as traffic, food, drugs and environmental regulations, to health, building, election and taxes regulations. It is not expected that tobacco control will be different. With corruption dampening the political will to enforce regulations and a vibrant tobacco industry desperate for survival and growth, the chances of Nigeria’s new tobacco control law being effectively implemented cannot but be doubtful. For example, over two years since the law came into effect; several of the provisions depend on regulations being made by the Minister, yet no regulation has been made to give

effect to those provisions. There is an urgent need for the country to purge itself of this canker worm that has eaten deep in to the fabrics of the political, economic and social life of the people. There is need to step up and sustain the present anti-corruption programmes of the federal government which appear to be yielding some positive results.

Obstructive Influence of the Tobacco Industry

The Parties to the FCTC recognise the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts (FCTC Preamble). This is borne out of the fact that the tobacco industry is very powerful and often exert pressure to prevent the enactment of, or to weaken tobacco regulations and their enforcement. One of the ways often adopted by the industry to influence public opinion and shape government policies to suit its purpose is through corporate social responsibility (CSR) programmes. Prior to the enactment of the NTCA the industry greatly exploited this avenue as Nigeria did not yet see the “hypocrisy” behind such programmes (Shittu, 2015). For example, BATN, the tobacco company with the largest share of the Nigerian market, constantly engaged in CSR programmes that targeted rural farmers. In 2010, the company contributed ₦108 million of corporate social investment in the communities where they operated (BAT, 2010). In 2007, when the federal government sued the company, it donated a fleet of Ford Ranger trucks to the Nigerian Customs Service and “pumped” \$300 million (then above ₦59 billion) into the local economy, under various programmes (Centre for Media and Democracy, 2007).

It is widely believed that lobbying by the tobacco industry contributed considerably to the long delay in reforms in tobacco control in Nigeria after the country signed and ratified the FCTC. It took the country from 2005 to 2015 (a period of ten years) to enact an appropriate legislation to domesticate the Convention.

In line with objectives of the FCTC, the NTCA has banned all forms of CSR activities by tobacco companies (s. 12 (3)). But apart from CSR programmes, the tobacco industry is known to adopt other ulterior means, such as bribing government officials and civil servant in order to thwart tobacco control efforts. Recently, an investigation by the British Broadcasting Corporation (BBC) uncovered evidence that BAT illegally paid politicians and civil servants (including country representatives in FCTC) from countries of East Africa to thwart tobacco control. Nigeria is not immune from the pervasive influence of the industry (Bilton, 2015). The ERA/FoEN insists that the BBC findings are happening not only in East Africa but in virtually all the nations in Africa where BAT is operating. It alleges that the company, capitalising on weak institutions of government, readily throws in cash to compromise government officials with the aim to “weaken or outrightly stop legislations that save lives” (City Voice, 2015). This may not be far from the truth.

Conclusion

The international community has recognized the dangers of tobacco to human health and taken measures to protect people from such health hazards through the FCTC. Following strict control of tobacco in the developed countries of the West prior to and after the adoption of the FCTC, the tobacco industry has shifted focus to the developing countries, such that Africa is currently rated as the largest market for tobacco in the world, with Nigeria having the largest chunk of that market. Ten years after ratifying the FCTC, the federal government of Nigeria has been able to enact a legislation, the NTCA, to domesticate the Convention. This is considered as a significant stride in tobacco

control in the country. However, enacting an appropriate legislation is but one step within the framework of the Convention; its effective implementation, through “executive, administrative and other measures” is required for the provisions of the Act to have the desired effect.

The NTCA is now two years old. Nigerians and the world at large, eagerly look forward to the federal government of Nigeria putting up appropriate regulations to operationalize the Act. But a number of loopholes in the law itself pose serious challenges to the implementation of the laudable provisions of the Act. It is our considered view that the unnecessary requirement of the approval of both Houses of the National Assembly for any regulation made by the Minister under Act will be the biggest challenge to the implementation of the Act. It will definitely open avenues for the tobacco industry to exert pressures and seek to block the needed regulations through corrupt legislators and other public officials.

Furthermore, the Act provides for the Minister of Health to, among other things, set up the NTCC which will draw up regulations for a separate Tobacco Control Unit with enforcement powers under the Act. Over two years after its enactment, the Committee is yet to be inaugurated, thereby effectively stalling the implementation of certain key provisions of the Act. This reinforces our position that instead of the Committee the practical implementation of the Act should have been entrusted to one of the existing product regulatory agencies such as NAFDAC or NDLEA. Both agencies already have established structures throughout the country as well as highly trained personnel in their respective areas that overseeing tobacco control would just have been a little added responsibility.

In view of the health implications of the tobacco consumption, the federal government of Nigeria, through the MoH should act fast to commence the implementation of all facets of the NTCA. If the new tobacco control law will not remain a “toothless bulldog”¹ and go the way of its predecessor, all arms and tiers of government in the country should show commitment and transparency in implementing the NTCA.

Notes

[1] Tobacco (Smoking Control) Act, 1990, Cap.T6, Laws of the Federation of Nigeria (LFN) 2004.

[2] For example, consumption of tobacco by chewing, nasal snuff and smoking of dried tobacco leaves were common amongst elderly people in rural areas even before the advent of colonialism. The snuff is variously called *utaba* or *ataba* in Igbo, *asa* or *taba* in Yoruba and *Unguru* in Hausa. For these and more traditional smokeless tobacco products used in the major geo-ethnic regions in Nigeria.

[3] Cap. 198, Laws of the Federation of Nigeria (L.F.N.) 1958 which was enacted to give effect to section 6 of the Foreign Jurisdiction: Nigeria (Revenue Allocation) Order-in-Council 1951 as varied by section 156(2) of the Nigerian (Constitution) Order-in-Council 1954.

[4] No. 55 of 1958, Cap. C45, L.F.N. 2004.

[5] Tobacco (Manufacture) Regulations, Legal Notice 77, 1959, ss. 2 – 5.

[6] Cap. S9, LFN 2004 which has been repealed and substantially re-enacted as the SON Act 2015.

[7] Such other treaties listed include the Convention on the Rights of the Child (1989) 1577 U.N.T.S. 3; the International Covenant on Economic, Social and Cultural Rights (1966) 993 U.N.T.S. 3; the International Covenant on Civil and Political Rights (1966) 999 U.N.T.S. 171; the Convention on the

Elimination of all forms of Discrimination against Women (1979) 1249 U.N.T.S 13; the African Charter on Human and Peoples' Rights (1981) 21 I.L.M. 58 (1982).

^[8] "Responsible authority" is defined to mean "the Ministry or Minister, as the case may be, Department or Agency of the Government charged with responsibility for the implementation and enforcement of the provisions" of the Act (s. 45). It is, however, doubtful whether this is intended to confer authority to enforce the provisions of the Act on any other MDA other than the Ministry of Health.

^[9] The places listed in the 2nd Sched. to the Act are: (1) clinic, maternity, hospital and other medical facilities (2) creche, primary school, secondary school (3) college of education, monotechnic, polytechnic, universities and any other educational institution or training centre; except where designated smoking areas are provided (4) workshop, factory, offices, and other workplace; except where designated smoking areas are provided (5) theatre, cinema hall, arena, stadia and any other sporting, leisure or recreational facility except where designated smoking areas are provided (6) Bus stop, vehicle park, seaport, airport, rail station; except where designated smoking areas are provided (7) Cafeteria, restaurant, or any other place for public refreshment and hospitality; except where designated smoking areas are provided (8) Playground, amusement park, leisure park or any other place where members of the public gather to engage in games and sporting activities (9) Sales shop, shopping mall, market or anyplace where the members of the public gather to trade in goods or services (10) Police station, prisons or any other place where prisoners or crime suspect are kept or held in custody (11) Electricity station or any other place where electric power is generated or distributed (12) Petrol station, gas station or any other place where inflammable substances are kept (13) Any other public place that the Minister may prescribe.

^[10] The 1st Sched. to the Act provides broad examples of what constitutes promotion, advertisement and sponsorship of tobacco or tobacco products that are prohibited under the Act (s.12 (3)). The list of the prohibited forms, media and means which is by no means exhaustive is very wide and include all forms of advertising in forms of print and electronic media including radio, television and telecommunication platforms. It includes sales incentives such as supply of free samples and gift items as well as sponsorship of sporting, artistic events and venues.

^[11] In fact, the phrase "effective legislative, executive, administrative and/or other measures" appears no less than fourteen times in the Convention; see for example, articles 4.1, 5.2 (b), 7, 8.2, 9, 10, 12, 13. 2, 13.3, 15.2, 16.1, 16.6, 16.7 and 21.

^[12] Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 11-31, 123 Stat. 1776 (2009). Prior to the enactment of this Act, the US Supreme Court had held in *Food and Drug Administration v. Brown & Williamson Tobacco Corp.* 529 U.S. 120 (2000), that the FDA had no authority to regulate tobacco products (Haynes, Andrews, Jacob, 2013:331).

^[13] For example: section 9 (1) – prescription of additional places where smoking is prohibited; sections 20 (6) and 21(3) on information and disclosure on constituents and emissions of tobacco products; section 20 (4) on warnings and messages that should be placed on tobacco products labels and packages; section 29 (2) requirements for granting and revocation of licenses to tobacco manufacturers and dealers.

^[14] For example, under the food and drugs statutes in the country, the power to make regulations rests with the Governing

Council of the NAFDAC subject to the approval of the Minister of Health – section 30, NAFDAC Act. Also under the SON Act, section 49, the power to make rules for any purpose under the Act is vested in the Standards Council of Nigeria subject to the approval of the Minister of Industry. Even in the petroleum industry which remains the mainstay of the Nigerian economy, the power to make regulations under the Petroleum Act, Cap. P10, LFN 2004 rests with the Minister in charge of petroleum matters, and regulations made by the Minister under the Act does require the imprimatur of the National Assembly.

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