



Original investigation

Avoiding “A Massive Spin-Off Effect in West Africa and Beyond”: The Tobacco Industry Stymies Tobacco Control in Nigeria

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Abstract

Background: Nigeria plays important economic and political roles in Africa and is a significant market for the tobacco industry. This study describes the tobacco industry’s efforts to block Nigeria’s early tobacco control attempts, especially the Tobacco Smoking (Control) Decree 20 of 1990, and efforts to strengthen the Decree in 1995.

Method: Analysis of documents from the Truth Tobacco Documents Library and other Internet resources related to Nigeria’s Decree 20 and earlier tobacco control efforts.

Results: The World Conferences on Smoking and Health and World Health Organization in the late 1970s spurred the Nigerian government to take steps towards tobacco regulation. In response, the tobacco industry lobbied government ministries, used front groups and its trade group, the Tobacco Advisory Council of Nigeria, to block and weaken government efforts. The industry obtained a draft of Decree 20 two years before it was enacted, considered the Decree anti-business and proposed language that led to the passage of a weaker Decree in 1990. It also attempted to influence a potential review of the Decree in 1995.

Conclusion: Decree 20 was a strong law for its time, but was weakened due to tobacco industry interference. Nigeria ratified the WHO Framework Convention on Tobacco Control (FCTC) in 2005, and enacted a comprehensive National Tobacco Control Act (NTCA) in May 2015. Lessons learned from Decree 20’s experience should be applied to protect NTCA 2015, and in compliance with WHO FCTC Article 5.3 which require parties to protect tobacco control policies from tobacco industry interference.

Implications: This is the first detailed account of tobacco industry interference with tobacco legislation in Africa. The emergence of tobacco control in Nigeria threatened the tobacco industry, which believed that success in Nigeria would have a “domino effect” in Africa. The industry used lobbying and front groups to successfully block and weaken Nigeria’s tobacco control, especially the Tobacco Smoking (Control) Decree 20 of 1990 and efforts to strengthen it in 1995. Nigeria and other African countries must learn from this history to protect tobacco control policies from the tobacco industry’s vested interests and vigorously implement Article 5.3 of the WHO FCTC.

Introduction

Tobacco will cause 8 million deaths annually worldwide by 2030,¹ with 80% in low and middle-income countries (LMICs).² Comprehensive tobacco control laws reduce smoking prevalence³ and tobacco-caused disease.⁴ These policies form the core of the WHO Framework Convention on Tobacco Control (FCTC).^{5,6} The FCTC explicitly recognizes that the tobacco industry monitors formulation and implementation of tobacco control laws to block, delay or weaken regulation⁷⁻¹⁰ by including Article 5.3, which calls on parties to “protect these policies from commercial and other vested interests of the tobacco industry.”^{5,6,11} The 2016 Impact Assessment of the FCTC found that “the role and activities of the global tobacco industry remain by far the most important obstacle to action across all aspects of the FCTC.”⁵ The tobacco industry, its front groups and third party affiliates target LMICs,^{10,12} taking advantage of weak government commitment to tobacco control, dependence on foreign investment for tobacco leaf buying¹²⁻¹⁴ and domestic manufacturing.^{12,15,16} Unfortunately, there is only limited scholarly analysis of tobacco industry efforts to interfere with policymaking in Africa.^{14,17,18}

While there are variations in the smoking prevalence reported in Nigeria ranging from about 4% to 32% depending on the sample size and geographical location covered by the study,^{19,20} the smoking rate is low compared to western countries. The WHO reported a prevalence of 8.9% (15.4% male and 1.7% female) in 1990,²¹ while the Global Adult Tobacco Survey (GATS) found a prevalence of 3.7% (7.2% male and 0.3% female) in 2012.^{22,23} This low smoking prevalence, together with Nigeria’s rapidly growing population^{24,25} and political influence in West Africa and beyond,²⁶⁻²⁹ makes the tobacco industry view Nigeria as an important market.²⁶ This study explores tobacco industry interference with Nigeria’s attempts at regulating tobacco from the late 1970s to the enactment of Nigeria’s first tobacco control law in 1990, Tobacco Smoking (Control) Decree 20, as well as efforts to strengthen the law 5 years later. In particular, the industry prevented ripple effects from successful implementation of tobacco control policies in Nigeria to the rest of West Africa.

Methods

From August 2015 to June 2016, we retrieved documents from the University of California San Francisco Truth (formerly Legacy) Tobacco Industry Documents Library (TTDL). Initial search terms were “Federal Ministry of Health (FMoH),” “Decree 20,” and “Nigeria” for dates between 1970 and 2015, followed with snowball searches^{9,30} including examining adjacent (Bates number) documents, keywords and names of individuals and organizations which appeared in initial documents (Table 1). Additional documents were obtained from British American Tobacco (BAT)’s website (www.batnigeria.com/group/sites/BAT_7YKMM7R.nsf/vwPagesWebLive/DO7YKMMJ?opendocument accessed March 16, 2016). We also used Google to check and verify some of the names and the affiliations of people identified in the tobacco documents as well as source other documents in relation to the World Conferences on Tobacco or Health. Documents relevant to the scope of this study dated from 1979 to 1997. Archives of “The Guardian and Punch” newspapers and “Newswatch” magazine from 1970 to 1999 were examined from the United States Library of Congress and the University of California Northern Regional Library Facility. Information relevant for this paper was not located in the volumes of these newspapers available to us.

Results

Table 1 presents key players in the tobacco industry and government described by internal tobacco industry documents from 1979 to 1997. The tobacco industry in Nigeria was dominated by British American Tobacco, which owned 60% of the government-owned Nigerian Tobacco Company (NTC)³¹ that controlled about 80% of the domestic market.³² International Tobacco Company (ITC), a subsidiary of Philip Morris International, was also present in the country.^{32,33} While the majority of documents found are from the BAT archives, they reflect joint industry approaches.

Early Tobacco Control Efforts in Nigeria (1979–1987)

In 1979, the World Health Organization (WHO) and the World Conferences on Smoking and Health (WCSH) expressed concern that international tobacco companies were aggressively expanding into developing countries.³⁴ The WHO encouraged countries to pass laws to reduce tobacco use,³⁵ stimulating efforts to develop tobacco control regulations in Nigeria and other African Countries.³⁵

The tobacco industry anticipated international criticism of its activities at the fourth WCSH, held in Stockholm, Sweden in June 1979, especially their aggressive marketing in developing countries.³⁴ In response, it created the International Committee on Smoking Issues (ICOSI), later renamed the International Tobacco Information Center (INFOTAB), to coordinate the industry’s response.^{30,36} ICOSI’s suggested tactics included creating National Manufacturers Associations (NMAs), comprised of all tobacco manufacturers within a country, to represent the industry’s interests,^{7,37,38} and emphasizing other health needs of developing nations, like malaria and reproductive health, to distract from the health consequences of tobacco.^{7,39,14}

In 1979, the NTC and the ITC formed the Tobacco Advisory Council of Nigeria (TACON),⁴⁰ Nigeria’s NMA, funding it on a 70% (NTC)-30% (ITC) basis,³³ roughly each company’s market share at the time.³² TACON’s board consisted of the NTC and ITC’s chief executives and representatives from cigarette distributors, tobacco farmers and the Advertising Practitioners Association.^{33,40}

The first Director General of TACON,^{27,35} Edward Enahoro, was from a politically influential family and had been a senior member of Nigeria’s diplomatic corps³⁵ as well as the deputy permanent secretary of external affairs,⁴¹ providing the political connections the industry sought.⁴⁰ Enahoro’s first report as Director General in 1980 noted that anti-tobacco activities had increased as a direct result of the 1979 Stockholm conference.²⁷

In April 1980 the FMoH organized a national anti-smoking campaign on WHO World Health Day, receiving wide media attention.²⁷ The Ministry also organized a 3-day conference for health commissioners from the 19 States of Nigeria²⁷ to discuss a national tobacco control agenda, after which the commissioners issued a communiqué approving submission of a tobacco control bill to the National Assembly.²⁷

Subsequently, the federal government formed an inter-ministerial committee on the control of smoking in Nigeria,²⁷ with representatives from the Federal Ministries of Health, Education, National Planning, the Nigerian Standards Organization, Medical Services, Nigerian Navy, Health Education Unit, Lagos State Ministry of Education Inspectorate, as well as NTC Limited (BAT) and Philip Morris Nigeria.²⁷ According to Enahoro’s 1980 TACON report, a possible objective of the committee was to “prepare the groundwork for the introduction of a certain number of restrictions” on tobacco.²⁷ Industry records confirm that there was a private member bill, the Cigarette Smoking (Injury) Bill, was introduced in the Nigerian National Assembly and defeated in 1982.⁴²⁻⁴⁴

Table 1. Key Players in the Tobacco Industry and Government and Their Roles in Nigeria, 1979–1997

Name	Position/purpose
Key organizations/departments in the tobacco industry	
British American Tobacco (BAT)	Multinational tobacco company headquartered in United Kingdom and operating in Nigeria (see NTC)
Corporate and Regulatory Affairs (CORA)	A department in BAT “to protect and strengthen the business performance of British American Tobacco” ⁷⁹
International Tobacco Company (ITC)	A subsidiary of Philip Morris International in Nigeria
International Tobacco information Center (INFOTAB) (formerly International Committee on Smoking Issues, ICOSI)	Created by the multinational tobacco companies to develop and coordinate global opposition to tobacco control through a network of regional and national tobacco manufacturing associations ⁸⁰
Nigerian Tobacco Company (NTC)	Nigeria’s State-owned tobacco company, operational since 1912, and incorporated in 1951. ⁸⁰ BAT owned 60% of its shares until 2000 when BAT bought the remaining shares. It became known as BAT Nigeria ⁷⁰
Public Affairs Resource Group (PARG)	Formed in 1992 by British American Tobacco Company Limited (BATCO) ⁸¹ to manage issues of public concern related to tobacco and health and coordinate public relations efforts, with regional coordinators. ⁸²
Tobacco Advisory Council of Nigeria (TACON)	Created in 1979/1980 NTC and ITC to protect the interests of the tobacco industry, it is Nigeria’s National Tobacco Manufacturer’s Association (NMA) ³³
Tobacco industry personnel	
Aig’ Imuokhuede	Deputy director, NTC ⁴⁴
Baptiste, O. A.	Joint Chairman of NTC; Staff of BATCO, London ⁵⁷
Barry Selby	NTC/BATCO (role at the time unclear) ²⁶
Bernard King	American Tobacco Company, Freetown, Liberia ⁶⁴
Dr. Blackman, L. C. F.	Director of BAT Services Ltd; Former director, BAT Research and Development, BATCO London ⁴⁶
David Bacon	Head, Public Affairs/Corporate Communications/Corporate Affairs, BATCO, London ⁸¹
Dick Hartley	Regional Director, Africa and Middle East, BATCO, London ⁸³
Edward (Eddy) O. Enahoro	First Director General, Tobacco Advisory Council of Nigeria (TACON) ²⁷
Gaye Pedlow	Public Affairs Department, BATCO, London ⁸⁴
Irene Ubah	Manager, Corporate Affairs (NTC); Manager Public Affairs (NTC)
Otunba [Chief] Peter Adegbesan	Director, Corporate Affairs (NTC); Adviser, Tobacco Advisory Council of Nigeria (TACON); Regional Coordinator, West African PARG ⁸²
Shabanji Opukah	Head, International Development Issues; Regional Coordinator, East African PARG; Manager, Consumer and Regulatory Affairs, Africa, Middle East, South and Central Asia, BATCO, London ²⁸
Theresa Dooley	Issues Analyst, Information services, INFOTAB, England
Government department and public health personnel ^a	
Dr. Mrs. Edugie Abebe	Deputy director, Federal Ministry of Health ⁶⁰ ; Organizer of Decree 20 review workshop ⁶⁰
Prof. Deji Femi-Pearse	Professor and Dean, Faculty of Medicine, Lagos University Teaching Hospital (LUTH); Chairman, Nigerian Committee on Smoking and Health (NICOSH); WHO consultant ^{54, 60}
Federal Ministry of Health (FMoH)	Charged with overseeing Decree 20
Dr. Gabi Williams	Senior Consultant, FMoH (in 1982) ⁴²
Prof. Olikoye Ransome-Kuti	Minister of Health (1985–1992) ⁸⁴
Dr. Toriola Solanke	Nigerian Cancer Registry; Chairman of Decree 20 review workshop ⁶⁰

^aThese are government officials mentioned in the tobacco documents so it might not be a comprehensive list of tobacco control and government official at the time.

The Fifth WCSH (Winnipeg 1983) and New Lawmakers

The fifth WCSH held in Winnipeg, Canada in July 1983⁴⁵ was attended by eleven Nigerian delegates.⁴⁴ Both BAT and Philip Morris headquarters sent staff to Nigeria before and after the fifth WCSH^{46, 42} to better understand the “cultural and business environment of Nigeria.”⁴² BAT’s representative (Mr. LCF Blackman) also wanted to assess “the possible continued interest of government to impose legislation on health warning and/or restrictions on advertising”⁴² after the defeat of the private member’s bill.^{42–44} Upon hearing that a government-sponsored tobacco control bill (with health warning labels) had reached an advanced stage, BAT’s Blackman complained that health warnings would discriminate against NTC’s brands in favor of smuggled brands and would have no effect on cigarettes sold as individual sticks.⁴² Blackman’s visit report concluded that

the industry’s only recourse was to “lobby members of the National Assembly.”⁴²

After Blackman’s 1982 visit, there were two reports (authors not identified) covering additional visits to Nigeria in March and July 1983, before and after the fifth WCSH in Winnipeg.^{43, 44} The March visit focused on collecting information on Nigeria’s delegates to Winnipeg, particularly Dr. Femi-Pearse, president of the Nigerian Cancer Society, and his presentation at a conference session on “Smoking and the developing countries.”^{43, 45} The March 1983 visit report also had information about Nigeria’s political climate and upcoming elections.⁴³ TACON was already preparing a document to distribute to members of the yet-to-be-elected government⁴³ preempting any anti-smoking legislation proposal by the new lawmakers and to emphasize the importance of tobacco to the Nigerian population.

Table 2. A Comparison of Key Recommendations Made by the Tobacco Industry on the 1988 Draft and Final 1990 Decree 20 Text

Aspects of regulation	Tobacco industry comments on the 1988 draft ⁴⁷	Final language of Decree 20, 1990 ⁸⁵
Restrictions on public smoking (Section 1)		
Offices	In private premises smoking restrictions should be owners' choice	100% Smokefree
Restaurants and hotels	Restrictions should be owners' choice	No restrictions
Lifts	Ban OK as fire prevention	100% Smokefree
Medical establishments	Provide smoking area for staff	100% Smokefree
Public transportation	Designated smoking areas (DSA) should be provided	100% Smokefree
Schools	DSA recommended for primary and secondary schools, no ban on tertiary education institutions	100% Smokefree
Nurseries	Provide smoking area for staff	100% Smokefree
Cinema, theatre or stadium	Not mentioned	100% Smokefree
Outdoor facilities	No restrictions	No restrictions
Public places	Not defined, but DSA indoors and no ban outdoors	Public places not defined separately
Penalties	Not addressed	N1000 and/or imprisonment of no less than 1 month and no more than 2 years
Advertisement, promotion and sponsorship restrictions (Section 2)		
Newspapers and magazines	No prohibition of advertisement	No prohibition, include Health Warnings (HW)
Radio, television and cinema	No prohibition of advertisement	No prohibition, include HW
Billboards and handbills	No prohibition of advertisement	No prohibition, include HW
Sports events	No restriction of sponsorship	Prohibits sponsorship/promotion of tobacco products at events sponsored by tobacco companies
Cultural ceremonies/events	No restriction of sponsorship	Not mentioned in Decree
Penalty	Remove the option of imprisonment for tobacco company staff who contravene the Decree	Fine not exceeding N5000 (US \$620 in 1990) ⁸⁶ and/or imprisonment up to three years for tobacco company staff who contravene the Decree, unless is proven that the offence was without knowledge, consent or connivance
Health warning and nicotine and tar contents display on tobacco products packaging (Section 3)		
Text-only health warning	Opposed rotation of warnings. Opposed the warning, "smokers are liable to die young"	Mandates two rotational warnings; no details on rotational period, size or colors
Implementation date	A 12 months waiting period	No implementation date
Disclosure of nicotine and tar content	Categorize nicotine/tar content as "low," "medium," "high," not actual content	Tar and nicotine contents to be stated on the package
Entry into force of Decree (Section 8)		
	Date should be open	Date to be published in the gazette ^a

^aDecree was enacted on June 25, 1990. An amendment with the effective dates for aspects of the law was announced in December 1990.⁵¹ Tar/nicotine content display and HWC display effective June 1, 1991; all other aspects effective on October 1, 1990.

The July 1983 visit (visitor's name unknown) was "to assess the likely impact of the Winnipeg conference and to plan activities to counteract any threats."⁴⁴ The visit's report noted that Nigerian delegates met at the conference and formed the Nigerian Council on Smoking and Health (NICOSH). Deputy Managing Director of NTC, Mr. Aig-Imoukheude, attended the WCSH as part of the BAT team and signed up to be a member of NICOSH⁴⁴; there is no evidence in the industry documents that his membership request was accepted. The industry planned to continue to lobby at the state and federal levels to ensure that "the anti-smoking temperature is as low as possible."⁴⁴

Before Nigeria's Tobacco Smoking (Control) Decree 20 Was Enacted

In 1988, 2 years before enactment of Decree 20, TACON obtained a draft of Decree 20 from the FMoH to provide the tobacco industry

"the opportunity to make suggestions to government in drafting a reasonable law that is practicably enforceable."⁴⁷

We do not have the draft provided to the industry,⁴⁸ but based on TACON's comments and recommendations and the content of Decree 20 as enacted, it appears that the final decree included provisions the tobacco industry proposed (Table 2) which weakened the Decree, excluded hospitality venues from smoke-free areas, set minimal marketing restrictions in marketing, and put vague clauses in health warnings.

After Enactment of Decree 20

The announcement of Decree 20 by the military government in July 1990⁴⁹ was followed by a general misunderstanding among Nigerians concerning the effective date and scope of smokefree places, particularly a misconception that smoking and cigarette sales had been totally banned. A note from Gaye Pedlow, Public Affairs, BATCo London

Table 3. Summary of Key Recommendations/Resolutions From the 1995 Workshop to Review Decree 20 in 1995 and the Tobacco Industry's Response to These Recommendations

Aspects of tobacco regulation	Recommended amendments ⁶⁰	Tobacco industry's draft response to recommendations ⁶²
Restrictions on public smoking (Section 1)		
Restaurants, hotels, and guest houses	To be included among smokefree places but with designated smoking areas (DSA) allowed	No comment
Public transportation	To read "public transportation and designated NO SMOKING areas"	Include "designated no smoking areas" in public transportation
Schools	"Schools" to be replaced with "all institutions of learning", thus including universities and other tertiary educational institutions	Exclude universities, colleges of technologies and other higher institutions of learning where students are expected to be over 18 years of age
Nurseries	To read "Nursery and Day Care Centers"	No comment
Public places	Define public places as any place used by 10 or more people To include "enclosed public places" among smokefree places	Definition is "indefensible" and non-enforceable. For example in private parties and open gardens "Enclosed public places" should be better defined or removed entirely
Advertisement, promotion and sponsorship restrictions (Section 2)		
Leaflets, stickers and posters	To be included among the means of advertising and should have Health Warnings (HWs)	Exclude 'stickers' as it is not feasible to insert health warnings on them;
Promotional gift items (T-shirts, bags, umbrellas)	To be included among the means of advertising and should have HWs	Exclude promotional gift items from having HWs as these have registered trademarks
Sales promotion	Prohibition of sales promotion should be highlighted in the decree	Ban on promotion should not be included in the decree
Indirect advertising (IA)	IA materials like bus stops built by tobacco companies, stalls and promotional items should be included in the decree as part of advertisement and bear HWs	Not practical to insert HW on some promotional items like key rings No amendment should be made on the original advertisement section of the decree
Health warning, nicotine, and tar content displays on tobacco products packaging (Section 3)		
Text-only health warning	Health warning change from "The Federal Ministry of health warns that tobacco smoking is dangerous to health" to "Caution: smokers are liable to die early" HWs should be clearly visible or audible and read slowly in audiovisual advertisements HW no longer to be rotational	The phrase "The Federal Ministry of Health warns that..." should precede the health warnings New warning must be enforced on smuggled cigarettes Government should spell out the specifications (size, color, position) for HWs Proposed changes must be discussed with the industry for effective implementation Changes on health warning are costly to the industry, need clear details, changes must be discussed with the industry
Implementation date	No comment	A 12-month transition period should be granted
Safe levels of nicotine and tar content	Require in the Decree that the FMOH stipulate safe levels of nicotine and tar to be disclosed on cigarette packs.	The FMOH should only set the upper limits of nicotine and tar content in cigarettes
Compliance with disclosure of nicotine and tar content on packages	The National Food and Drug Administration and Control (NAFDAC) to ensure compliance with regulation on disclosure and health warnings	No comment
Entry into force of Decree (Section 8)		
	Empowerment of the Minister of Health to make rules and regulations to execute the decree	Changes in the decree have cost implications for the industry, and must be discussed with the industry. A 12-month transition period should be established before provisions go into effect
Additional provision		
Sales to and by minors	Provisions be made for a prohibition of the sale of tobacco to and/or by minors with penalties stipulated	Specify restriction of sales to "any person who is less than 18 years of age"

The recommendations made at this review workshop were never used and Decree 20 was never amended.

(recipient and date unknown) stated that smokers were being arrested by law enforcement agents for smoking in public places and that cigarette retailers were having their stocks confiscated.⁵⁰ The situation was probably resulted from lack of understanding of the law, especially among law enforcement agencies charged with enforcing it. Pedlow stated that this chaotic situation led the Minister of Health to issue a press statement in September 1990 stating that Decree 20 was not

effective until October 1, 1990. In February 1991, Adegbesan described NTC's strategy to take advantage of the vagueness of Decree 20:

The industry has resumed brand advertisement in magazines. Whereas warning clause in Benson & Hedges [brand] advert is inserted in bold capital letters that of Excel [brand] is in small letters with small typeface. We are watching government reaction to the difference in display of warning clause.⁵¹

Table 4. Participants at Decree 20 Review Workshop⁶⁰

Name	Organization	Designation
Prof. Deji Fem-Pearse	Robertson Medical Centre, Surulere, Lagos	Consultant Physician
Dr. P. E. Okwuraiwe	NAFDAC, Lagos	Asst. Director
Mr. O. A. Shodeinde	National Primary Health Care Development Agency	Deputy Director
Dr. B. C. Ezeokpo	Enugu State Ministry of Health	Physician
Dr. P. N. Eguakun	Edo State Ministry of Health	Asst. Director
Mr. Wilbert Eden-Okoro	Health Correspondents Association, <i>This Day</i> newspaper, Lagos	Health Correspondent
Mr. Bola Agboola	Advertising Practitioners Council of Nigeria (APCON)	Asst. Registrar
Dr. (Mrs.) C. O. Akitoye	Dept. of Comm. Health UNILAG	Snr. Lecturer, Medical Sociologist
Mr. C. N. Etila	National Planning Commission	Deputy Director
Dr. E. C. Dundele	Nig. Committee for Smoking and Health (NICOSH), Dept of Medicine, LUTH	Consultant Physician
Dr. (Mrs.) E. A. Abebe	NCDP/FMOH, Lagos	Deputy Director
Dr. (Mrs.) A. O. O. Akinsette	NCDP/FMOH, Lagos	Snr. Registrar I
Dr. (Mrs.) Moji Odeku	NCDP/FMOH, Lagos	Snr. Med. Officer
*Bishen	Kaduna State Ministry of Health	Director
*Ledija	NCDP/FMOH, Lagos	Snr. Nur. Officer
Mr. *Williams Russel	Federal Ministry of Information and Culture	Director (Public Rel.)
*Ekunwe	ICH & PC, LUTH	Physician
Prof. Toriola Solanke	Nigerian Cancer Registries, UCH Ibadan	National Coordinator
*Durojaiye	Consumer Protection Organization of Nigeria	President
*B. L. Omojola	Ondo State Ministry of Health	Deputy Director
Otunba Peter Adegbesan	Tobacco Advisory Council	Consultant
Mrs. I. Ubah	Nigerian Tobacco Company	Public Affairs MGR
Mr. Ike Ekengwali	Nigerian Tobacco Company	Marketing Director

FMOH = Federal Ministry of Health; NAFDAC = National Food and Drug Administration and Control; LUTH = Lagos University Teaching Hospital Ministries of Commerce and Tourism, Agriculture, and Finance were invited but did not attend.

*Spelling unclear in source document.

Adegbesan also mentioned that the Ministry of Information planned, through the Advertising Practitioners Council of Nigeria (APCON), to coordinate implementation of the health warnings on advertising materials,⁵² including developing guidelines on the types, print sizes, styles, and positions of the health warnings on packages and advertising materials, which were not included in the Decree. These guidelines do not appear to have been developed until 2002.¹⁹

By mid-1991, there were indications that Decree 20 was ineffective. Adegbesan wrote in the “West African Public Affairs Review”, which was distributed to nine African countries and BAT London headquarters:

The Daily Times and the Republic [both national newspapers] of June 7th carried news about the Minister of Health’s press conference in which he said that government would this year step up moves to ensure enforcement of Decree 20. The Minister regretted that compliance with the law have [sic] not been successful and noted that this was due to the non-education of the Law Enforcement Agencies, especially the police, on the various aspects of the decree.⁵³

Adegbesan stated that the Minister hoped to address this problem through a collaboration of the Ministry of Health and NICOSH.⁵³ We found no evidence whether or not enforcement improved.

Events Leading up to the Review of Decree 20

In April 1995, TACON’s objectives included to “midwife the take-off of the Tobacco Farmers’ Association” and to “mount a counter campaign to the national No Tobacco Day activities.”³³ Ubah reported to Opukah, “A law is in the making, slated for release this year and aimed at tightening the existing anti-tobacco law.”⁵⁴ Ubah also reported that the then-Minister of State for Health and Human

Services, Dr. David Sadauki, in his address at the 1995 WNTD,⁵⁵ mentioned a proposed tobacco law to address “sales to minors, enlargement of areas of designated “public places”, increase in the point size of health warnings, advertisement control.”⁵⁴ Opukah’s reply to Ubah stressed the urgency of stopping tighter tobacco control in Nigeria:

It is clear from your report that the Nigerian government is planning to introduce further controls... It is therefore critical that you immediately put in gear an action programme to lobby the government *with the objective of influencing the outcome of the proposed legislation or indeed stymieing it altogether*. I would suggest that you consider the following:

Take immediate action to lead the preparation of the lobbying activity through the NMA in Nigeria [TACON]. Form a task force comprising of yourself and marketing plus legal colleagues. I should think the PARG [West Africa Public Affairs Group] coordinator Peter Adegbesan will be helpful in this exercise and we should make maximum use of his experience and skills.... I notice from your note that the law is expected to be ready this year [1995]. This calls fro [sic] maximum speed on our part. I hope you will treat this with the priority it deserves.³⁶ [emphasis added]

The Attempt to Review Decree 20 in 1995

The government, through the FMOH, held a workshop in October 1995⁵⁶ to review Decree 20 and unveil a multi-sectorial action plan for tobacco control in Nigeria.⁵⁷ TACON⁵⁷ protested the industry’s exclusion from the workshop, resulting in FMOH inviting NTC to send a delegate to participate in the last two of the five-day workshop.⁵⁷

Ubah informed Opukah and BATCO Public Affairs London that NTC was preparing industry position papers on agriculture and taxation to present at the workshop based on BAT’s and INFOTAB’s

global positions.^{7,37,38,57,58} Opukah replied expressing reservations about the industry being able to make any meaningful impact at the workshop, citing the attendance of a leading tobacco control advocate, Prof. Femi-Pearse.⁵⁹

The Workshop to Review Decree 20

The workshop agenda indicated that the first 3 days, which were closed to the industry, were to design an action plan and strategies for tobacco control in Nigeria.⁶⁰ The last 2 days included the defining and listing of public places, sales to minors, advertisement of tobacco, penalty clauses, enforcement, and the presentation of a draft (amendment) of Decree 20 for concurrence by the attendees (Table 3).⁶⁰ Ubah reported⁶⁰ that the industry was allowed to tell their “side of the story” at the workshop,^{57,59} and made four presentations: Industry’s stand on tobacco and agriculture, tobacco taxes, advertising, and the impact of smuggling.⁶⁰

The FMOH’s planned multi-sectorial approach to tobacco control reflected in the diversity of people invited to the workshop. The list of 23 attendees (Table 4) included three from the industry.⁶⁰

Recommendations Made at the Decree 20 Review Workshop

A copy of the recommendations and the communiqué issued at the end of the workshop (Table 3) was attached to Ubah’s report.⁶⁰ These recommendations included amending the health warning to require more prominent display, prohibiting tobacco promotions at events, including the hospitality industry in “no-smoking” areas, public campaigns on the hazards of smoking, and promoting inter-sectorial collaborations between Ministries and NAFDAC, APCON and nongovernmental organizations.⁶⁰

The workshop also recommended creating a Tobacco Control Information Unit under the FMOH, and establishing collaboration between the FMOH and Ministry of Finance to earmark tobacco tax to health education and treatment of tobacco-related diseases.⁶⁰

NTC and BAT’s Response to the Workshop Report

Opukah’s (BAT) response to Ubah’s (NTC) workshop report stated:

...It is obvious that ... the main aim of the workshop was to make more stringent regulations on tobacco. ...

It seems that, the proposed amendment to the HWC [Health Warning Clause] will no longer carry an attribution [to the government]. If so, I suggest you pursue the issue with the objective of getting an attribution...

I think you also need to get them to actually spell out the details of the HWC ... You should seek to go in proactively with our own proposals bearing in mind the whole question of competitive advantages to BAT...

Do you think you would get a seat on the multisectoral Tobacco Control Information Unit that is being proposed? *Or better still can you stymie its formation?* The resolution about the financing of health [sic] education and the treatment of tobacco related diseases is another one that you need to actively lobby against. It is meant to further alienate tobacco.

As you know there is no evidence that tobacco causes any diseases anyway.

I think you should now begin to work fast on your youth programmes. We do have several cases around the world where youth campaigns have been carried out...

You have to vigorously resist the idea of the regulations being enforced by the Task Force on Fake Drugs. Cigarettes do not fall under this category.... We should not allow Nigeria to set the precedent.

I wonder what role the delegate from the Advertising Practitioners Council of Nigeria played and could play in this. Could the Council be helpful in our lobbying the authorities on the proposed amendments. What about the competition. Any collaboration?

Finally I suggest you take action on the above and any other issues you deem fit ... It is apparent the authorities are doing the usual WHO bidding and they could give you undue surprises. Your lobbying should include notably the ministries of finance, agriculture, the environment, commerce and industry and information. You need to pull in support from the ad agencies the farmers, the traders, the suppliers [sic] and the media. And you need to keep a tab on the goings-on in the ministry of health and the WHO office.²⁹ [emphasis added]

TACON prepared a draft position paper countering each of the workshop’s recommended revisions to Decree 20⁶¹⁻⁶³ (Table 3). Adegbesan sent the draft position paper to the Managing Directors of NTC, ITC and BAT’s Opukah in July 1996. The cover letter stated that the position paper was intended for distribution to the Ministers of Agriculture, Finance, Commerce and Tourism and “others.”⁶¹ We were unable to determine if it was distributed.

The Tobacco Industry’s Anti-Regulation Strategies Used Successfully in Nigeria

In his 1996 memo “NTC CORA plan” for 1997, Opukah told Barry Selby of NTC (BAT, position at the time unknown) of Nigeria’s significance to the tobacco industry because of its influence on other surrounding countries and beyond:

CORA issues in Nigeria may be latent for now, but we have to be on our guard and aim to pre-empt any moves by the anti-regulators. As Nigeria is one of our key markets, we shall spare no effort in helping NTC. We are also aware of the power and influence Nigeria wields politically, and hence the need to ensure the regulators there do not introduce restrictions which will easily have a massive spin-off effect in West Africa and beyond.

In the long-term, it is the hope that CORA in NTC will play a pro-active and significant role in the West Africa area, given Nigeria’s leadership position, its huge (though presently stifled) media, the likelihood of economic and political liberalization, the market potential, threats by competition and the general tendency for Nigeria to seek to lead the rest of Africa.²⁶

It appears that the industry’s successful strategies in Nigeria were being copied in other countries in the region, as outlined by Adegbesan on how to respond to Liberia’s proposed TV and radio advertising ban. Adegbesan advised on using the strategies successful in Nigeria seven to eight years earlier.^{47,48,64}

1. Establish whether the proposed law is at the prompting of WHO, Local anti-smoking groups or influential competitors opposed to T.V. & Radio advert.
2. Do everything possible to obtain the draft decree before it is promulgated into law.
3. Make formal and Informal representation to Government.
4. Prepare Industry “Position Paper” on the proposed decree for discreet and selective circulation to influential members of government and allies.
5. Organize and use Advertising Agency group for government lobby
6. Sensitize media houses about possible loss of revenue if law is passed.
7. Should the tobacco industry fight its battle alone or fight in conjunction with alcohol trade group? Avoid being used as a pawn.⁶⁴

Adegbesan reported that as of March 1996, the Nigerian government took no action to strengthen Decree 20.⁶⁵

Discussion

Tobacco control efforts in Nigeria, as in many LMIC countries,^{7,35} were spurred by the WHO and WCSH.³⁵ Decree 20⁴² formally set the stage for tobacco control and exposed tobacco industry interference in Nigeria as in other developing countries.^{1,16,66} The industry kept close watch from within and outside Nigeria on government's activities and had access to tobacco control plans before they were made public.⁶⁴

Nigeria has experienced turbulent times in terms of leadership, with mostly military governments brought in by various coups d'état and counter coups from 1966 to 1979, 1983 to August, 27, 1993 and November, 1993 to 1998. The period covering the events described in this paper occurred during the regimes of two military governments in Nigeria, General Ibrahim Babangida (1985–1993) and General Sani Abacha (1993–1998). General Babangida enacted Decree 20 in 1990 after the government's initial unsuccessful attempts at tobacco control legislation during Nigeria's second republic.⁴²

During military regimes laws were not made democratically and the public did not have the opportunity to contribute to the process of developing decrees. In contrast, the tobacco industry had access to drafts of Decree 20 two years before it was issued and had the opportunity to comment on it and appears to have influenced the final decree as promulgated.

The industry's efforts in Nigeria mirror several other countries, likely because ICOSI centrally developed these strategies.⁷ In Nigeria, opposition was coordinated through TACON, Nigeria's NMA.³⁰ As elsewhere, the industry recruited a prominent, politically well-connected member of Nigerian society as TACON's Director General and focused on shifting the tobacco debate from public health to social and economic issues,⁵⁹ including trade⁸ and benefits of growing tobacco.^{14,39} The industry also tried to debunk scientific evidence on smoking and health^{29,47,62} and lobbied successfully to exclude hospitality venues from smokefree environments and minimize restrictions on advertising and promotion.

The industry, following its global tactics,⁶⁷ supported vague language for Decree 20, making its enforcement difficult. Unwarranted arrests and harassment of smokers and cigarettes sellers by the police following Decree 20's announcement exemplified the lack of awareness of the content of the law.⁵⁰ Law enforcement agencies displayed their support for the law albeit incorrectly, perhaps due to poor understanding of the provisions of the law and lack of clarity on their mandate. These events⁵⁰ may have weakened public acceptance of the Decree and set the stage for weakening the law.

In response to the review of Decree 20 in 1995, the industry planned to launch its "youth smoking prevention program" (YSP) to divert attention from appropriate tobacco control legislation for preventing smoking initiation⁶⁸ and to support its broader marketing efforts to reach young smokers.⁶⁹

FCTC Article 12 emphasizes the importance of adopting a multi-sectoral approach to deal with tobacco industry's influence including exposing their practices and strategies to subvert tobacco control efforts by using effective communication, education and public awareness programmes.¹¹ Article 12 also reiterates the provisions of Article 5.3 which requires the protection of tobacco policies from the vested interest of the tobacco industry.¹¹ The history in this paper raises awareness of the strategies the industry used within

and outside Nigeria, which have been recycled over the years and are still being employed despite the FCTC.⁷⁰ The industry's success expanded beyond the period covered in this paper.⁷⁰ The presence of the tobacco industry became more significant with investment in corporate social responsibility programs and continued use of the claim that tobacco is economically beneficial, to further delay tobacco control in Nigeria,⁷⁰ as in other LMICs.^{5,6,16,71}

Nigeria signed the WHO Framework Convention on Tobacco Control (WHO-FCTC) in 2004 and ratified it in 2005 but it was not until 2015 that Nigeria enacted comprehensive legislation in the form of the National Tobacco Control Act (NTCA).⁷² Apart from the unsuccessful attempt to review Decree 20 in 1995, we did not find any evidence in the tobacco industry documents that there was an attempt to replace Decree 20 with a stronger law. Although Nigeria ratified the FCTC in 2005, it was not until 2015 that a new legislation, the NCTA, was approved. The NTCA is an improvement over Decree 20, although, it is not 100% compliant with the FCTC. In particular, Nigeria's Tobacco Control Act of 2015 indicates that the tobacco industry has not relented in its efforts to undermine tobacco control in Nigeria. For example, initial versions of the law did not provide for designated smoking areas but the approved law allows for designated smoking areas in hospitality venues, cinema halls, stadia, recreational facilities, workshops, factories, offices and tertiary education institutions, against scientific evidence and the FCTC's recommendations.⁷² In direct violation of FCTC Article 5.3 Guidelines,⁷³ the 2015 law includes the Manufacturers Association of Nigeria (MAN), of which the tobacco industry is a member, as part of the National Tobacco Control Committee responsible for advising and making recommendations on tobacco control to the Minister of Health.⁷²

As in Nigeria, tobacco control efforts in other parts of Africa are still under threat of being influenced by a politically and economically strong tobacco industry even after ratifying the FCTC.²⁰ Despite significant progress in tobacco control²⁰ and ongoing efforts to expose industry tactics in the continent,⁷⁴ bribery allegations against BAT aimed at stalling tobacco policy in Kenya and South Africa have surfaced in the media as recently as 2015 and 2016.^{75,76} The industry's ongoing efforts make it important that policymakers and advocates in Africa understand the history of tobacco industry activities in Africa to better inform their efforts to stop the tobacco industry's continued influence on policymaking in the region.⁷⁷

Our analysis of the history of tobacco industry activities in Nigeria could be instrumental in preventing ongoing interference from the industry. While these tactics are not unique to Nigeria,^{10,12,15} knowing the specific organizations used contributes to focused, country-specific monitoring of the tobacco industry. Additionally, as the industry saw Nigeria as a springboard for tobacco control in West Africa, countries in the region may better understand this history and avoid its repetition.

Guidelines to the NTCA 2015 are being drawn to ensure full implementation of the law. The implementation phase of tobacco control policies is critical for tobacco control success and experience intensive tobacco industry political activity.⁷⁸ It is important to prevent the tobacco industry from repeating its efforts against Decree 20, which may forestall the implementation of the NTCA and tobacco control progress in Africa's most populous and politically influential country. The experience with Decree 20 could inform effective implementation of the NTCA by: (1) Not allowing the tobacco industry to define implementation and enforcement of the law; (2) Raising awareness of the law among the public and those

charged with its enforcement; (3) Disseminating information about the tobacco industry and its front groups to policymakers, media and the public; (4) Ensuring that implementation language is clear, simple and does not leave room for varied interpretations, avoiding loopholes allowing the tobacco industry to exploit vagueness of law and develop its own implementation guidelines.

As African countries comply with the FCTC by developing and implementing comprehensive tobacco control policies, the Nigerian experience illustrates the importance of following the FCTC's Article 5.3 guidelines¹¹ to protect the process from tobacco industry interference.

Limitations

This paper described the process of stalling tobacco control legislation from the tobacco industry internal documents' perspective. Some of the events could not be confirmed through other sources due to poor documentation of events of that time in Nigeria. Additionally, some of the key players mentioned moved to other jobs, retired or were otherwise unavailable to confirm the information from the documents, despite our attempts to locate these individuals. Attempts to locate relevant information from newspapers from the period of 1970 to 1990, returned nothing in available archives.

Conclusion

This paper covers a period before the WHO FCTC was in place, when little was known about how the tobacco industry operated to promote its vested interest and oppose tobacco control. Over the years, the Nigerian government has erroneously involved the tobacco industry in tobacco control decision-making. Nigeria's NTCA need not follow the fate of Decree 20. Effective tobacco control in Nigeria, free from tobacco industry interference, will benefit Nigeria and set a precedent for effective tobacco control in West Africa and other LMICs.

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Declaration of Interests

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