



ILLICIT TOBACCO IN NIGERIA

The Centre for the Study of the Economies of Africa (CSEA)
September, 2020

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1. INTRODUCTION

Globally, the trade in illicit tobacco products has increasingly been a source of concern for policymakers, development practitioners, and health officials owing to the adverse social and economic impact on public health, government revenue, and the financial support to criminal networks. Every year, it is estimated that some 600 billion cigarettes, representing over 10 percent of the global cigarette consumption, pass through the black market (WHO, 2015). The pervasiveness of such trade has negative implication for society, especially developing countries who are already faced with weak fiscal capacity and health systems. It is estimated that African countries lose about €10 billion in tax, invariably increasing tobacco-induced health incidence and fatality. There is therefore broad agreement that illicit trade is bad both for government revenues and for public health—for all, except the members of the industry and criminal networks feeding on the illicit trade.

What is less agreed upon is the interplay between illicit trade and tobacco taxation—which, when set at appropriate levels, is known to be among the most effective tobacco control measures. One side of the argument, mostly championed by the tobacco industry, is that tobacco tax opens opportunity for tax arbitrage for smugglers to exploit. In essence, since tobacco taxes and other government regulations only apply to the licit tobacco industry, the hand of black-market operators is strengthened allowing them to gain a competitive edge and thus market share. On the other hand, there is the argument that tobacco taxation is an essential part of a broader system for tobacco control (including border control, track and trace system etc.), that allows government not to face the trade-off between the damage to public health created by cigarettes consumption and public finance constrained by illicit tobacco trade.

For countries with a major tobacco industry presence and a growing public health concern around tobacco consumption, as is the case in Nigeria, managing the interplay between a tobacco tax and the tobacco industry backlash can be difficult without rigorous empirical evidence to guide policy framing. For example, while the Federal Government signed the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) in 2005, the ratification was delayed until 2015—a development attributed to influential tobacco industry lobbying (Egbe, Bialous, & Glantz, 2019). Likewise, in 2018, the Nigerian government approved a new tax policy to progressively increase specific tax on each 20 cigarettes-pack between 2018 and 2020. Again, the initial momentum around the initiatives has subsided as the tobacco industry continue to push the argument on the possible increase in the size of illicit tobacco trade with more stringent tobacco control regulations.

In this study, we document successful cases of effective synergies in countries that, like Nigeria, display a significant presence of the tobacco industry and face similar challenges to trade regulation but were still able to implement higher tobacco tax policies and other tobacco control measures, while reducing the level of illicit trade. In the case of Kenya, the study finds that a more stringent policy platform both for legal producers and illicit traders—in the form of a higher excise tax, more advanced track and trace measures, tighter border control and active inter-agency cooperation—effectively curbs the incidence of illicit trade, while also reducing tobacco consumption. The key lesson is that measures to reduce illicit tobacco trade needs to be amalgamated with tobacco taxation, and each can be addressed in its own respect with appropriate strategies. Moreover, Nigeria has not reached the phase where tobacco tax should be a concern for the tobacco industry. With the new tax policy introduced in 2018, this amounts to 16.4 percent excise tax burden in overall, which is still significantly lower than the 75 percent excise tax burden on tobacco products recommended by the WHO. Our analysis of price trends in Nigeria and differential with neighbouring countries show that there has not been significant perturbation in the Nigerian tobacco market to create an arbitrage opportunity.

The rest of the paper proceeds as follows. Section 2 outlines our estimates regarding the volume of illicit trade in tobacco in Nigeria. This is followed by a discussion on the costs of this shadowy economy. Section 4 moves the discussion towards an analysis of tobacco market regulations in the country, and the manner in which these have often clashed with the interests of Nigeria's large tobacco industry. Section 5 brings the case of Kenya to the fore, highlighting the applicability of different tobacco measures to those currently enforced in Nigeria, even when conditions are comparable. This is followed by an explicit section discussing how Nigeria could learn from regional best-practices to ensure the licit tobacco industry is regulated sufficiently without opening avenues to be exploited by illegal traders. Section 7 concludes the assessment.

2. SIZE OF ILLICIT TOBACCO TRADE IN NIGERIA

While there is certainly a significant presence of illicit trade in the Nigerian tobacco market, the actual market share of illicit tobacco trade is not known and there has been no attempts to estimate it (CSEA, 2019). The literature on illicit tobacco trade in Nigeria has therefore relied on the average estimate of 10 percent of retail sales as reported for developing countries by the World Health Organization (2005). However, the prevailing demographic and economic conditions in Nigeria suggest that the size of illicit tobacco trade is likely to be much higher. The enormous size of the Nigerian economy and population vis-à-vis neighbouring countries, make Nigeria susceptible to dumping and illicit trade in a multitude of areas. In addition, porous borders, poor tax administration and broader weakness in regulation also increase the potential for illicit trade. All these factors imply that the country is more predisposed to illicit tobacco trade than estimates for developing countries may suggest.

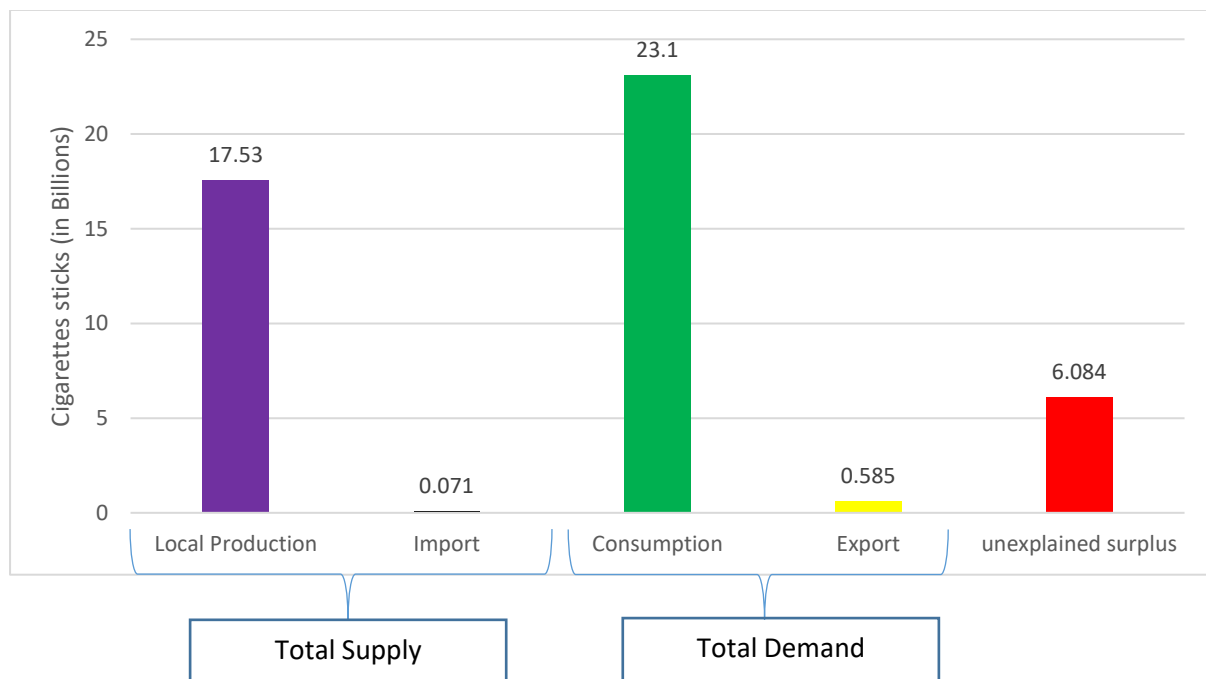
The literature on illicit tobacco trade emphasises on several major channels that illicit tobacco trade could take, all of which are likely to be present in Nigeria. There is, for instance, the illicit domestic production and so-dubbed "faked" exports from the tobacco industry itself. In that regard, the industry has been shown to be engaged in such tax-avoiding practices in many parts of the African continent and beyond. There are also contraband cigarettes, which are smuggled from abroad without payment of the necessary import duties. This can be large-scale through organised crime or small-scale smuggling activities by individual smokers. The activities of "Yan-Pitos" discussed in Box 1 is an instance of large-scale system of illicit trade taking place in Nigeria. The second form is counterfeited cigarettes which are manufactured locally without contractual agreement or permission from the actual producer or license holders. The prevalence of counterfeited cigarettes in Nigeria is hard to estimate as they resemble the original products except for taste and quality. Ogara (2014), in his investigative reporting of illicit tobacco market in Nigeria, found high presence of counterfeited cigarettes in major towns and cities across the country. The last of form illicit tobacco trade is called the "illicit whites" market. This is an illegitimate practice by tobacco manufacturers or retailers where cigarettes are mass-produced/imported into a country for the sole purpose of being smuggled into another country. To this point, Golub (2012) has noted that a significant proportion of imported cigarettes into Togo and Benin are destined for re-exporting into Nigeria.

The size of the illicit tobacco trade is difficult to measure due to its illegality, its cross-national and continuously evolving nature, and data collection and analysis complexities (Allen, 2019). However, a rough estimate can be derived by assessing the supply and demand gap in Nigeria. It is expected that total supply of cigarette (locally produced, inventories and imports) should equal total consumption

plus exports. Should there be a significant differential—that is, a measurably larger demand compared to the supply—this would be taken as the volume of illicit trade. To be sure, the calculations below represent little more than a rough estimate and do not account for a number of data fallacies and methodological shortcomings required for more accurate estimates (see for ex. Velios et al, 2019 for a more comprehensive methodology). To that point, it is well accepted that for more reliable estimates of the volume of illicit trade, calculations should be carried out for a period longer than a year. Moreover, survey data on tobacco consumption is notoriously unreliable. Nevertheless, this first-degree estimate can serve as useful guidance to understand the magnitude of the illicit tobacco market in the country.

Figure 1 summarises basic components of demand and supply based on data available from the Tobacco Atlas (Drope et al, 2018). In Nigeria, a total of 17.53 billion sticks were produced in 2016, 3.3 percent (585 million sticks) of which was exported. Similarly, it is estimated that annual demand for cigarette in Nigeria is 22.76 billion sticks over the same period. The demand is estimated on the assumption that there are approximately 7,638,000 daily smokers in Nigeria (Drope et al, 2018), who smoke an average of 8.3 sticks per day according to GATS (2012): this places total demand at 23.1 billion sticks yearly (i.e. $7,638,000 \times 8.3 \times 365$). Accounting for net exports in cigarettes trade of about 514 million cigarette sticks in 2016, this estimation gives unexplained surplus, interpreted as the size of illicit tobacco trade, of about 6.08 billion sticks of cigarette illegally consumed in Nigeria per annum. This represents about 26.3 percent of the total cigarettes consumed in Nigeria.

Figure 1 Nigerian Demand and Supply of Cigarette in 2016



While, as mentioned above, this estimate is admittedly rough, and may not provide the most accurate volume of illicit tobacco trade in Nigeria, it certainly underscores the point that illicit trade volume in Nigeria exceeds the 10 percent estimate used in the literature. Several factors could be driving the illicit tobacco trade in Nigeria, which can be categorised in terms of demand and supply factors. On the demand side, the consumers want to buy cheap products and save money. In terms of the supply side, members of the industry and illicit producers seek to circumvent the payment of taxes—which,

of course, they do not pay on illicit products—to make high profits with low risk of being caught and penalised. Other contributory factors include disparities in prices between neighbouring jurisdictions, protectionist policies, corruption, weak enforcement, porous borders, lack of official controls in free zones, poor transit controls, inadequate or out-of-date legislation and sanctions, growth in illegal distribution networks, and public tolerance.

Box 1 Channels of Illicit Trade in Nigeria

According to Ogala (2014), an investigative journalist that has examined the market for illicit trade in Nigeria, there are numerous forms taken by the illicit trade in Nigeria.

First, there are the “Yan Pitos” which is a colloquial name for the car used by smugglers to transport foreign cigarettes across Nigerian border especially in Northern Nigeria. The modus operandi of the Yan Pitos entails taking the illicit tobacco consignments from the seaports in neighbouring Benin and Togo and driving up to Northern Benin or Niger where they eventually enter Nigeria through Ogun, Kebbi, Sokoto or Katsina states. Nigeria’s porous borders and the collaboration between smugglers and border protection authorities makes the smuggling operations of the Yan Pitos relatively easy.

Another mode of illicit tobacco trade that is thriving and feeding deep into Nigeria’s tobacco trade market, according to Ogala (2014), is the abuse of the duty-free policy, particularly in international airports. Under Nigerian law, passengers are allowed 200 cigarettes or 200 grammes of tobacco that is foreign manufactured to be carried duty free for personal use. However, this duty-free policy is abused by a growing network of duty-free cigarette smugglers.

A third form of trade in illicit tobacco products in Nigeria is the smuggling and retail in unregulated fakes. These are counterfeit of popular brands which are then sold to unsuspecting smokers. These unregulated fakes are usually very hard to tell apart from the original cigarette products.

Finally, although not easily quantifiable, evidence from neighbouring countries points to a high likelihood of substantial involvement by licensed producers. These companies very often fail to declare the entirety of their production to tax authorities, choosing instead to distribute a portion via back-channels that escape the oversight of tax authorities. However, more research on the involvement of licensed producers in the illicit market in Nigeria is certainly needed.

3. RAMIFICATIONS OF THE ILLEGAL TRADE OF TOBACCO

The effects of tobacco smuggling on Nigerian society are deep and multi-faceted. Along with the costs associated with the illicit trade itself, the harmfulness inherent to tobacco products makes the greater availability of cheap illicit products costly both for individuals, in terms of medical bills and reduced labour, and for the government with foregone revenue and increased expenditure in healthcare among other things. The following sub-sections delve into the specific implications of the illicit trade in tobacco both globally and at a Nigerian level.

3.1. The Global Costs of Illicit Trade in Tobacco Products

The illicit trade in tobacco, arises, for the most part, from an effort to circumvent costly regulatory obstacles, chief among them the costs of taxation. Illicit tobacco trade constitutes a sizeable portion of tobacco consumption globally. This results in one in ten cigarettes being illicitly trafficked,

amounting to 600 billion illegitimately traded cigarettes a year (WHO, 2015). The prevalence of illicit tobacco is rooted in a number of causes but is especially the result of consumers' desire for lower prices and greater product variety. In fact, global prices for illicit tobacco products range between 50 and 70 percent less than those of regulated products, greatly increasing affordability (World Bank, 2017).

The World Bank (2017) estimates that the illegal cigarette market leads to a 2 percent increase in consumption globally, translating to some 164,000 extra deaths yearly. Furthermore, illicit tobacco, due to its greater affordability, disproportionately impacts price-sensitive population subgroups such as youth and poorer sections of the population, thus contributing to exacerbating societal inequality (World Bank, 2017).

Moreover, the illicit trade of tobacco products can have a significant impact on government revenues, with an estimated annual global tax revenue loss of US\$40-50 billion (World Bank, 2017). This estimate, however, neglects the loss arising from morbidity-induced productivity decline, and thus is likely to be significantly higher in economic terms.

From a developmental perspective, the costs of illicit tobacco trading can be detrimental to the progress of countries towards the achievement of the United Nation's Sustainable Development Goals (SDGs). SDG 3, for instance, calls for healthy lives and the promotion of wellbeing for all at all ages, which is intrinsically linked to tobacco consumption, and is undermined by the illicit trade. The availability of low cost products aids consumption, and limits the effectiveness of government public health programmes aimed at reducing unhealthy behaviours, particularly amongst the youth and the poorer sections of society (Transnational Alliance to Combat Illicit Trade, 2019). This is further exacerbated by the non-compliance of illicit products with regulations concerning labelling, health warnings on packaging, and minimum quality requirements.

Besides the obvious health implications of the trade, illicit tobacco also undermines economic-focused SDGs such as SDG 8—decent work and economic growth—and SDG 17—the creation of global partnerships, of which domestic resource mobilisation is a crucial tenet. Job creation and economic growth are heavily dependent on an enabling economic, social, and environmental policy framework and an effective provision of public goods, which are sustained in part by domestic resource mobilization through tax and other revenue collection (UNCTAD, 2019). This is severely undermined by illicit tobacco markets. Moreover, economic growth is also hampered through the damage to the competitiveness of regulation-compliant traders, further diminishing government revenues and opportunities for gainful legal employment.

Finally, black market tobacco trading generates large illicit financial flows, enables corruption and facilitates other transnational organized crimes such as money laundering and human trafficking, all of which diminish progress towards SDG 16 calling for the promotion of peace, justice and strong institutions (UNCTAD, 2019). Particularly in West Africa, given the active operation of numerous criminal groups and the resultant criminal economies, profits from illicit trade can further enrich groups involved in ongoing conflicts, including terrorism, and act as a potent driver of conflict, thereby undermining the potential for development (OECD, 2018).

3.2. Illicit Tobacco Effects in Nigeria

As a regional hub of tobacco production and trade, Nigeria appears in the World Health Organization's (2015) list of significant transit and destination countries for illicit tobacco products. As such, the country faces significant illicit tobacco-related challenges that are yet to be fully understood.

While the actual magnitude of illicit trade in Nigeria is unknown, our tentative estimate detailed in this paper puts the figure at around 26 percent of tobacco consumption. The sources of this illicit market are certainly varied and are derived from a complex combination of illicit local production and distribution, and magnified by the fact that the West African region, and some of Nigeria's neighbours in particular, have long been a valid conduit for illicit cigarettes smuggling to Nigeria and the rest of Africa. To this point, a number of ports in neighbouring countries, have been argued to be among the most important channels for importation of tobacco illegally into West Africa, and have often served as transit points for smuggling into the much larger Nigerian market, which has legislated for higher tariffs on tobacco (Golub, 2012).

Medical costs of illicit consumption in Nigeria are hard to fully estimate. This reflects the lack of data inherent to illicit trade, as well as the paucity of medical statistics. Nevertheless, using our estimate of the portion of Nigerian tobacco consumption sourced illicitly, and the most recent statistics on tobacco-related mortality, a very tentative estimate can be made of the costs of illicit tobacco consumption in Nigeria. The impact of general tobacco consumption on Nigerians has been the subject of increasing scrutiny in the last few years, in part due to its increased popularity: in Nigeria, smoking prevalence is growing at an average of 4 percent each year; from 11.3 percent in 2000 to 17.4 percent in 2015 (World Bank, 2017). Tobacco-related diseases are responsible for about 17,500 deaths per year (about 207 men and 130 women per week) and about 250,000 annual cancer diagnoses (Drope et al, 2018).

Box 2 *The Gendered Dimension*

The understudied nature of illicit tobacco trade in Nigeria makes accurate, disaggregated analysis of the impact of the trade on diverse demographic groups difficult to achieve. This lack of disaggregation also holds true at an international level, where studies on illicit tobacco trade have focused primarily on its impact on total consumption. Nevertheless, while tobacco smuggling may not so obviously have a gendered dimension as other forms of organised crime (ex. human and sexual trafficking), the United Nations (2020) highlights the impossibility of effectively tackling illicit smuggling without the inclusion of a gendered perspective. It is therefore worth focusing on it briefly, if only to highlight the inadequate care being placed on the issue.

The impact of illicit production and smuggling of tobacco products on women is likely to be multi-dimensional. On the one hand, there are the health-related concerns stemming from increased access and consumption. Equally important however, are considerations of the impact on women that the supply-side of the trade may cause.

In terms of consumption, the prevalence of smoking generally among Nigerian women has been increasing. While this is true for the male population as well, studies conducted in other countries (see for ex. Curti et al., 2019) suggest that women are disproportionately more likely to access illicit tobacco products. This is likely due to their lower economic status on average, which makes lower-priced tobacco products more attractive and affordable. Although no specific gendered study has been conducted in the Nigerian context, the similarly disadvantaged economic position of women makes it likely that a similar dynamic exists. More research is certainly required.

The gender-specific dynamics on the supply side of the illicit tobacco trade are just as uncertain. However, more acknowledgement of female-specific aspects of various illicit trades (beyond sexual trafficking) is emerging in policymaking circles. This is due to an increasing amount of data connecting illicit markets to gender-specific ramifications that often further hamper quests for female equality. For instance, there is increasingly strong evidence of the correlation between illicit trades of drugs, firearms and other products with sexual trafficking (which disproportionately sees women and girls as victims).

Moreover, findings in Latin America highlight a strong prevalence of women being forced to act as drug “mules”, transporting illicit products cross-border. While no such evidence has been uncovered in an African context, nor specifically in relation to tobacco, such dynamics in small smuggling circles such as the Yan Pitos in Nigeria (see box 1) are easily conceivable and require greater attention.

Finally, participation in illicit smuggling disproportionately affects disadvantaged women who often lack the education to pursue other forms of income. These women, therefore, often put themselves at the mercy of dominant male smugglers, and are more subject to sexual abuse and gender-based violence.

It is important, however, to stress the almost complete lack of a gendered focus in tackling the illicit tobacco trade. To this point, the WHO Protocol to Eliminate Illicit Trade in Tobacco Products—the leading international policy-guiding document—lacks a single mention of gender-specific dynamics. Without more data-generation and policy focus on gender both at an international and a Nigerian level, it is unlikely that illicit tobacco trade will be tackled in an egalitarian and effective way.

Further, it is possible to derive a rough estimate of the loss of tax revenue resulting from the consumption of illicit products in the stead of legal, taxed tobacco goods, giving further proof of the wider-ranging economic costs that are associated with the illicit trade. As highlighted in section 2, Nigerians demand an estimated 6.08 billion illegal cigarette sticks yearly, accounting for 26 percent of total consumption. Removing the 2 percent increase in total tobacco consumption predicted by the World Bank as a result of the supply of illicit products, this would suggest that the tax revenue from 5.95 billion sticks is currently being lost by the Nigerian government. Using data from CTFK (2019), which estimates a ₦55 billion total tax revenue from tobacco taxation in 2020, substituting illicit consumption with legally taxed products would therefore lead to an estimated ₦12 to ₦13 billion increased government taxation revenue for the year, if all else were held equal.

4. THE TOBACCO REGULATORY PICTURE IN NIGERIA

Nigeria is a key tobacco industry market in Africa because of the country's population size and access to other markets in the region. Accordingly, British American Tobacco (BAT) has been trading in Nigeria since 1911, with its operations intensifying after the establishment of the Nigerian Tobacco Company (NTC) in 1951—a manufacturing, distributing and marketing company jointly owned by the Nigerian Government and BAT (Funmi, 1974). As recently as 2003, with great encouragement from the Federal Government, BAT built a US\$150 million state-of-the-art (implying lower employment needs) manufacturing plant in Nigeria to service West African countries and opened its new West Africa Head Office in Lagos in 2016 (Egbe, 2017).

While Nigeria's market size justifies its attractiveness as a destination for tobacco multinationals, the lax regulatory environment, and Nigeria's history of weak enforcement have certainly contributed. Fairly loose regulations coupled with uncertain enforcement, characterise the Nigerian market, both licit and illicit, thus creating a favourable environment for traders of all stamps.

4.1. Regulations of Tobacco in Nigeria

Since the establishment of the first Tobacco Company in Lagos in 1951, Nigeria has been trying to regulate the tobacco market. In line with global norms at the time, initial attempts at regulation were more concerned with controlling imports, licensing and duty payments rather than with public health (See Section 6 of the Nigeria Order in Council of 1951; the Tobacco Ordinance of 1958; Alli, 1999). The first health-related tobacco regulation was the Tobacco Smoking Control Decree of 1990, which was later converted into an Act at the inception of the Third Republic (Oladepo et al., 2018). While the decree made Nigeria amongst the first African countries to regulate tobacco smoke, the lax, industry-friendly terminology, and the poor enforcement of the law made it largely ineffective in controlling sales and consumption (WHO, 2008).

In 2005, Nigeria signed the WHO Framework Convention on Tobacco Control (FCTC), designed to push universal standards to limit the harmful impacts of tobacco consumption. Nevertheless, active lobbying by the largest tobacco companies in the country meant it was not until 2015 that the Federal Government passed the National Tobacco Control Act (NTCA) to implement the framework. Nigeria's 2015 NTCA was far more stringent than the 1990 Act because, among other things, it regulated the interaction of government and industry; regulated e-cigarettes and other tobacco products; established the National Tobacco Control Committee (a multi-sectorial coordinating mechanism) and a Tobacco Control Fund; and stipulated more stringent measures for violating the law. Despite the

Box 3 WHO FCTC Summarized

According to the World Health Organization itself, the Framework Convention on Tobacco Control was “the first global public health treaty” (WHO, 2015), and was established in 2005, with 180 parties to the convention—Nigeria being one of them.

The WHO FCTC was developed by countries in response to the globalisation of the tobacco epidemic and aims to tackle some of the root causes of the global nature of the issue, including complex factors with cross-border effects, such as trade liberalisation and direct foreign investment, tobacco advertising, promotion and sponsorship beyond national borders, and illicit trade in tobacco products.

Amongst the most important provisions are, on the demand side, the encouraging of a tax equal to at least 75 percent of retail price, as well as non-price interventions such as restrictions on the contexts in which tobacco may be consumed. On the supply side, parties signatory to the FCTC commit to limit the legal sale of tobacco products to youths, and make it more difficult to access tobacco products. Moreover, all parties outline their commitment to diminishing tobacco production by promoting non-tobacco-related options for workers in the sector.

Crucially, Article 15 of the Convention concerns the commitment of parties to eliminate all forms of illicit trade in tobacco products, and includes measures such as obligatory marking of tobacco packaging to enable tracking and tracing, the monitoring of cross-border trade, relevant legislation to be enacted, and the confiscation of proceeds derived from the illicit trade in tobacco products. Parties are also required (in accordance with national law), to cooperate with each other and with international organisations in combating illicit trade.

NTCA being a strong step forward from a regulatory point of view, Nigeria's implementation deficiencies coupled with a taxing structure not compliant with WHO FCTC guidelines, combine to create what is effectively still a favourable environment for tobacco production and distribution (Catherine, 2019).

In June 2018, a new tax regime on tobacco products was introduced. There was an increment to the previously in place 20 percent ad valorem tax¹ charged on locally produced goods, such that tobacco products attracted a specific duty of ₦20 per pack, which was to rise to ₦40 in 2019, and rise further to ₦58 in 2020. This newly approved tax rate for tobacco products amounts to about 16.4 percent tax

¹ In contrast to WHO recommendations, the tax base used to determine the amount to be taxed is not the retail price, but rather is based on the Unit Cost Analysis (UCA) which is an estimate of the cost of production. This, therefore, neglects the large mark-up in retail prices and thus limits the effect of the tax on profitability and consumption (Akanonu et al, 2019).

burden in relation to retail price of tobacco products, which is still much inferior to the WHO-recommended benchmark of 75 percent of retail price.

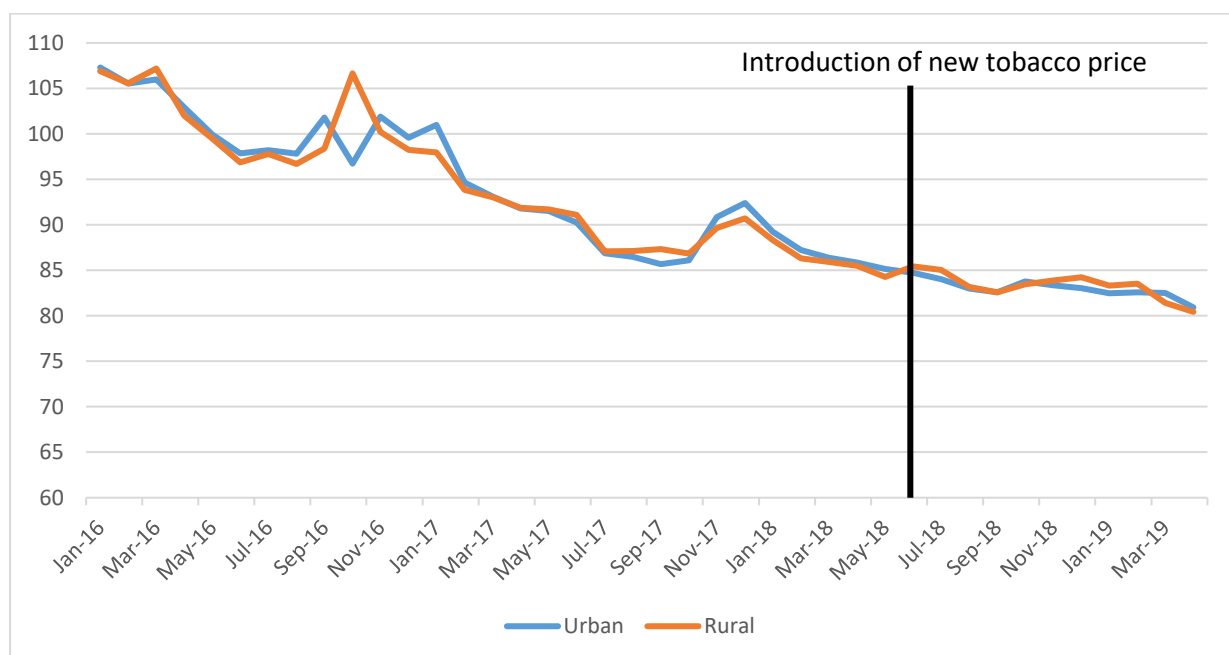
The apparent difficulty in implementing FCTC standard tobacco control measures is partly due to strong lobbying from tobacco industry that has often made strong claims about the severity of impacts that such measures may have on employment and the economy. This strategy by the tobacco industry has proven effective in many Lower and Middle Income Countries (LMICs) due to scarce, or otherwise weak, research evidence to refute misleading and extremely exaggerated claims, as well as to add credibility to advocacy efforts (Akanonu et al., 2018).

Furthermore, regional barriers such as tax ceilings formerly imposed by Economic Community of West African States (ECOWAS) have limited the ability of national governments to tax tobacco at effective levels. In response, the regional community has adopted a new directive that harmonises tobacco excise duties and removes the tax ceilings for member states. The new directive, calls for ad valorem duty rates of a minimum of 50 percent and a specific duty rate of at least US\$0.40 (₦122) per pack of 20 cigarette—Nigeria’s 2018 policy falls short of these commitments (ECOWAS, 2017). However, the concerns regarding illicit trade remain a significant regional barrier that can prevent member states from implementing effective tobacco tax policies. Specifically, the new ECOWAS directive is not legally binding and there are no sanctions for non-adoption by member states. Therefore, countries that wish to raise tobacco taxes significantly might be discouraged by the concern that tobacco products will flow into their countries from regional neighbours that do not adopt the provisions of the new directions or sufficiently raise tobacco taxes themselves.

It is nevertheless important to evaluate the validity of the industry’s claims regarding the relationship between tax levels and adverse effects in terms of employment and the prominence of the illicit market. While the industry continues to appeal to standard economic arguments that support the concept of taxation having some distortionary effects, including job loss and scaling up of smuggling activities, most research actually points to an opposite effect, with higher taxes predicted to increase employment and GDP (for ex. WHO, 2017). With the recent tobacco taxation, the tax burden as a share of retail prices only increased to 16.4 percent from 5.4 percent prior to the tax increase. A virtual avalanche of evidence points to the fact that the current meagre tax hike has not affected the tobacco market in Nigeria in any significant way. Some of which are summarised here:

- i. Tobacco prices have been stable despite the new tax regime of 2018: The key channel if there is any effect from tobacco tax should be through cigarette price increase, as tax burden is shifted to consumers. However, as shown in Figure 2, the real price of the most popular cigarette in Nigeria, Benson & Hedges (manufactured by British American Tobacco, BAT), has in fact declined in both rural and urban areas since the commencement of the new tax regime. Given the near monopoly enjoyed by BAT in the Nigerian tobacco industry, the decrease in price highlights the inaccuracy of some of the industry’s claims on the demand shock or loss of employment.

Figure 2 Monthly Prices of Benson & Hedges in Urban and Rural Areas in Nigeria



Source: National Bureau of Statistics, 2019

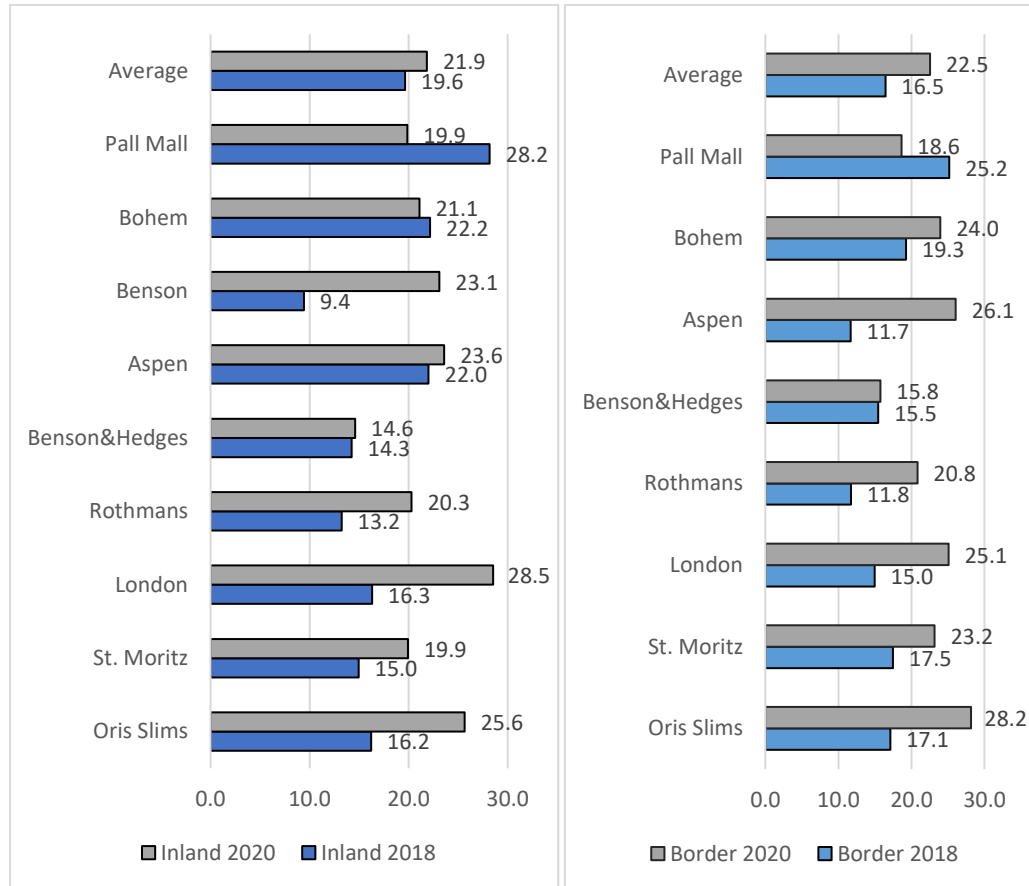
- ii. Secondly, the improbability of a large increase in illicit trade is underscored as the significant price rise upon which such a prediction could be made did not materialise. This is further emphasised by the lack of arbitrage opportunities for cross-border smugglers. For example, a pack of Marlboro, which costs ₦500 in Nigeria, costs ₦918 in Cameroun, ₦612 in Chad and Niger, and ₦460 in Benin. While this represent the premium end of the market, it is still an indication that there has no substantial arbitrage opportunity due to tax increase to scale up the illicit trade. Finally, the absence of significant price change is also an indication that the recent tax is not far-reaching enough—limiting the health benefits such a tax might seek to engender.
- iii. Sharp and significant rise in tobacco price dispersion across states is expected if the distortionary effect of the tobacco taxes is evident. Again, comparison of estimates of coefficient of variation (CV)², a measure of price dispersion, point to weak or absence of distortionary effect. In Figure 3, we compared the CVs based on data collected prior to the tax increase in February of 2018 and a followed survey in February 2020. Both data were collected by CSEA using similar instruments and targeting same locations. Specifically, we covered equal number of border and inland states in Nigeria³. Illicit trade is likely to affect border states as the activities of cross-border operatives and smugglers are more rampant around border areas. The result shows that price dispersion has increase across most cigarette brands between 2018 and 2020. The estimated CVs are higher in the border states than inland states, but the differences are quite marginal. In 2018, the differences in CV between border and inland states are of 3.1 percentage points, compared to 0.6 percentage point difference in 2020 (see Figure 3). The expected

² CV=(standard deviation /mean)*100

³ See the appendix for the detailed discussion of the survey coverage.

direction of change will be opposite, with significantly higher Cv in the border states, if illicit trade has spiked up.

Figure 3 Price Dispersion in Inland and Border States between 2018 and 2020 (in percentage)



Source: CSEA 2019 & 2020

Table 1 also supports the conclusion in Figure 3 on the absence of distortional effect from tobacco tax increase. Table 1 focuses on border states in Nigeria alone and compares price dispersion between rural, semi-urban and urban areas in these border states. The survey is designed such that the semi-urban areas are designated as the most economic developed town nearest to the border. For instance, in Lagos state, we surveyed Badagry Town (about 20km to the Seme-Krake joint border post). The presence of a distortional effect from tobacco tax suggests price dispersion will be highest in the semi-urban areas than the estimate for urban and rural locations. While we found a higher price dispersion in semi-urban areas after the 2018 cigarette price increase, the difference with other locations less than one percentage point. Again, the trend in price dispersion reflect a pattern that do not support the a significant changes caused by the new tax regime on the tobacco industry in Nigeria.

Table 1 Price Dispersion Across Selected Locations in Border States in Nigeria (in Percentage)

	Rural		Semi-Urban		Urban	
	2018	2020	2018	2020	2018	2020
PallMall	24.10	20.68	23.90	15.36	22.70	19.69
Oris Slims	20.80	28.05	14.10	29.79	16.40	28.78
St.Moritz	22.00	25.36	13.70	21.74	16.60	23.56
London	16.90	22.60	16.00	25.62	14.80	25.57
Rothmans	13.60	17.79	11.50	19.84	13.10	21.45
Benson & Hedges	16.60	14.72	13.60	14.98	15.10	16.07
Dorchester	22.20	25.51	19.70	30.98	13.10	22.60
Aspen	17.50	20.49	17.80	21.67	19.40	21.13
Bohem	18.40	22.80	17.50	26.88	27.50	21.86
Average	19.12	22.00	16.42	22.98	17.63	22.30

Source: CSEA 2019 & 2020

Overall, weakness in the regulatory framework in Nigeria seems to benefit both illicit and licit cigarette markets in some ways. It is therefore the government and citizenry that lose from illicit tobacco trade with revenue shortfall and through health impact of accessing cheap and sometimes adulterated illicit cigarettes. In contrast to the industry’s arguments, past studies internationally, and the preliminary evidence here highlighted in Nigeria, demonstrate how tobacco taxation has only a limited impact on the prevalence of illicit smuggling (Petit and Nagy, 2017). Nevertheless, despite the new tax regulations, the tobacco industry’s lobbying machine has so far dampened the effect of recent government regulatory efforts. The Federal Government has become hesitant in pushing through with the tax reforms and the expected tax increase in 2019 was not implemented, while other tobacco control measures are yet to materialise. Lobby power, together with the admittedly inadequate regulatory framework surrounding efforts to curb illicit trade in Nigeria, make it difficult for Nigeria to implement restrictions on tobacco more akin to international standards. Until illicit trade is tackled in a more comprehensive manner, it is likely that the broader tobacco control initiatives will remain weak.

4.2. Government Action in Preventing the Illicit Trade of Tobacco Products

The global standard policy framework to tackle illicit tobacco is outlined in the Protocol to Eliminate Illicit Trade in Tobacco Products of 2012. The Protocol extends and complements the requirements of the WHO FCTC with the objective being the “elimination of all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO FCTC” (WHO, 2013). Nigeria ratified the Protocol in 2019.

The implementation of the provisions outlined in the Protocol, or in its FCTC Article 15 antecedent, however, is yet to make significant in-roads. It is no understatement, therefore, to say that Nigeria’s effort to tackle illicit trade has, with the exception of some highlights including the seizure of 17000 illegal cigarette cartons in 2016, been thus far underwhelming (WHO, 2018). Looking specifically at Nigeria’s progress in legislating for the provisions of the Protocol effectively underscores the very point.

The Protocol, *inter alia*, contains requirements for strict licensing of all entities in the supply chain of tobacco products; the undertaking of stringent due diligence methods; and the adoption of track and trace measures for products. Of these, only on licensing can the 2015 NTCA be argued to make substantive provisions. The NTCA requires that “no person shall manufacture, import or distribute tobacco or a tobacco product except persons having obtained a license or authorization in writing by the Minister” (Ukwueze, 2018). However, retailers are exempt from the licensing requirement, markedly reducing its potential effectiveness in curbing illicit trade (Ukwueze, 2018).

With regards to due diligence requirements, the NTCA prohibits the sale of tobacco or its products to any person under 18 years of age. Under this law, a retailer of tobacco or its product is obliged to verify the age of the customer through a valid identification card and place a prescribed sign at point of sale stating that the sale of tobacco product to all under 18 years of age is prohibited. Further, to limit the affordability of tobacco products, thus limiting the availability to the youth, the NTCA specifies that the sale of tobacco products in quantities inferior to twenty sticks or thirty grammes (in the case of smokeless products) is forbidden. Adherence to such measures should limit the demand for illicit products as their affordability is amongst their most marketable characteristics and youth often lack the resources to buy in larger quantities at once. Nevertheless, poor enforcement capacities and a lack of effective dissemination of information ensure these provisions are present on paper only. Also, as Ukwueze (2018) points out, the sale of tobacco products to youths in small quantities remain pervasive.

In addition, the Protocol requires that Track and Trace (T&T) measures be instituted by signatories independently of industry players. These include methods such as unique irremovable identifiers, and are aimed at ensuring the traceability of products as they progress along the supply chain (Gallagher et al., 2019). Effective T&T should not only hold legal producers to account—a necessary feature given the evidence of large manufacturer involvement in the illicit market—but also, through easier distinction of legal and illegal products, limit the ability of illegal suppliers to smuggle and distribute their products unchecked. However, Nigeria has yet to introduce any T&T plans, which along with the faulty customs operations and border porosity, facilitate the cross-border smuggling, and distribution of illicit products.

Nigeria’s lack of proactivity in the creation of legislature to limit the prevalence of illicit tobacco, markedly contrasts with Kenya and Morocco who have both implemented and reaped the rewards of targeted strategic policy to curb illicit tobacco trade. Nigeria’s future regulatory framework, therefore, ought not only to be significantly more stringent than it currently is, but must also reflect the lessons learned in other African countries that have demonstrated the potential effectiveness of certain policies.

5. CASE STUDIES ON PREVENTING ILLICIT TOBACCO TRADE

This section presents a case study of an African country—Kenya—that has adopted WHO-recommended strategies to curb illicit tobacco trade and can serve as a valuable lesson for Nigeria. While it must be clarified that the two countries differ significantly, thus implying the need for caution in generalising, the relative success Kenya has encountered in its fight against the illicit tobacco trade serves to

highlight the promise that exists in the development of regulations more in line with global best practices.

5.1 Kenya

Background

Kenya began growing tobacco in 1907 and has evolved into a regional hub for manufacturing tobacco products, supplying markets in Mauritius, Rwanda and Uganda (GATS, 2014). Despite being a major manufacturing hub, illicit tobacco trade was prevalent in the past reaching a share of 21 percent of total market in 2007. Smoking prevalence in 2014 was estimated at 7.8 percent (15.1 percent of men and 0.8 percent of women), which is lower than Africa's smoking prevalence rate at 10.2 percent (GATS, 2014; World Bank, 2019). Due to the low prevalence relative to the continent's average, the health impact of tobacco use in Kenya is below average as only 5 percent of deaths from non-communicable diseases, and 69 per 100,000 deaths for individuals aged 30 and above are as a result of tobacco use (Kenya Ministry of Health in GATS, 2014).

Kenya has achieved considerable milestones in tobacco control policy and regulation. Kenya's current tobacco tax structure is a two-tiered specific tax system which taxes cigarette with filters higher than plain cigarettes - currently Kshs. 2,630 (US\$25.50) and Kshs. 1,893 (US\$18.40), respectively (International Institute for Legislative Affairs, 2019). Given the tax regime in place, cigarettes are relatively unaffordable as it takes 11.7 percent per capita GDP to purchase 100 packs of cigarettes (GATS, 2014). Meanwhile, the cost of 100 packs of cigarettes is 7.1 percent of per capita GDP (Nigeria GATS, 2012). The Kenyan government signed, ratified and domesticated the WHO Framework Convention on Tobacco Control (FCTC) in 2004 and 2007 respectively and signed the WHO Protocol to Eliminate Illicit Trade in Tobacco Products in 2013. While the protocol has not been ratified, considerable progress has been made in the implementation of a number of provisions of the protocol.

Approach to Eliminate Illicit Tobacco Trade

Since the early 2000s, Kenya has made significant strides in curbing the prevalence of illicit tobacco trade. Even with improved tobacco control policy and regulation, Kenya was able to reduce the share of its illicit cigarette market to 5 percent by 2016 from 15 percent in 2003 (Ross, 2019). The government adopted a comprehensive strategy comprising of affixing tax stamps to cigarettes for domestic consumption, licensing and registration of cigarette producers and importers, coordination of implementing agencies, implementing a track and trace system, and enhanced enforcement efforts and penalties for those engaged in illicit tobacco trade (see Figure 4).

Following a government audit in 2003 that revealed severe tax evasion and avoidance schemes, the Kenya Revenue Authority (KRA) introduced paper tax stamps on all cigarette packs sold in the domestic market including domestically-produced and imported cigarettes. By providing an identifier to verify the tax compliance status and as such the authenticity of the cigarette pack, the paper tax stamps were expected to curb the supply of illicit cigarettes to the domestic market. To ensure adequate enforcement, monthly reports on the quantity and usage of stamps were required to be

submitted by both domestic manufacturers and importers, and regular compliance checks and audits were conducted by the Customs and Excise Department. As a result of these measures, legal cigarettes and cigar sales increased by 52 percent between 2003 and 2004 (KNBS, 2016).

Within a few years, enforcing the use of the paper tax stamps became difficult as they were easy to forge and steal considering that they had to be counted manually. In 2010, the KRA implemented a more extensive set of measures including an upgraded tax stamp regime, improved licensing controls, importer registration, and reforms to the production accounting system to better track cigarette production. The updated tax stamp regime launched novel paper tax stamps with enhanced security features such as ultraviolet markings, the coat of arms, the KRA logo and wording, and identified the package size or products, and was followed with more intensive enforcement procedures by the KRA. Furthermore, cigarette manufacturers were required to renew their licenses annually and importers were mandated to register with the KRA. The licensing process was extensive and required providing detailed information on products, including source and destination. Non-compliance to the law was punishable by a fine of up to Kshs. 1.5 million (US\$14,583) and a prison term not exceeding three years, as well as forfeiture of the goods. To ensure compliance, the government deployed enforcement units at various stages of production lines. In addition, the KRA introduced an electronic cargo tracking system (ECTS) which uses GPS technology to monitor the movement of cigarettes produced for exports in order to curtail deviations from the originally planned route and as such, curb the illicit cigarette market particularly along Kenya's borders. These measures were largely successful as the legal sales of cigarettes and cigars expanded by 67 percent in 2010 relative to 2009 and the ERC Group estimated that the illicit cigarette market was 11 percent of the total market in 2012 compared to 21 percent in 2007 (KNBS, 2016; ERC, 2015).

To improve the effectiveness of the ECTS, the Excisable Goods Management System (EGMS) for tobacco and alcohol products, a more technologically advanced track and trace system, was launched in 2012. Between 2013 and 2014, the EGMS which allows for electronic tax stamps that are unique, secure, and non-removable with track and trace capabilities was implemented. While the ECTS utilized paper tax stamps and were used to track cigarettes produced for exports, the EGMS affixed electronic tax stamps on all cigarettes consumed in the domestic market including domestically-produced and imported cigarettes.

As part of the EGMS, a control and monitoring system was put in place in cigarette manufacturing facilities to scan and send information on the product type and quantity data to the KRA in real time. In addition to the control system established in manufacturing facilities, cigarette distributors and retailers were required to verify the authenticity of tobacco products before selling them to the public. The penalty for selling products for which the appropriate excise tax had not been paid was a fine of up to Kshs. 5 million (US\$48,000) and imprisonment of up to three years. Furthermore, an excise tax enforcement unit was created to identify offenders using a handheld electronic device for the verification of the authenticity of the stamp and for tracking and tracing the product.

In implementing the EGMS, the KRA assembled a multidisciplinary team consisting of tax, information and communication technology, legal and procurement experts and developed multi-stakeholder partnerships involving the Kenya Bureau of Standards (KEBS), the Anti-Counterfeit Agency as well as the Kenya Private Sector Alliance to gain their support and keep them informed on new developments.

In 2014 alone, the KRA seized 20 million illegal cigarettes and 150 offenders were prosecuted (WHO, 2015; Ngeywo, 2014). Following the implementation of the EGMS, the illicit cigarette market as a share of the total market declined from 15 percent in 2003-2013 to 5 percent in 2015 (Ross, 2019).

In November 2015, the Kenyan government adopted the Excise Duty Act and the Tax Procedures Act. While local manufacturers were required to be licensed, the Act mandated that both manufacturers and importers must be licensed. In addition, the Act increased the fine for non-compliance from Kshs. 1.5 million (US\$14,583) to Kshs. 5 million (US\$48,000) and the possibility of a prison term of up to three years. Furthermore, in 2016 the KRA released the KRA Stamp Checker app which allows the public to verify the authenticity of tobacco products using mobile phones. All these measures serve as effective deterrent for illicit trade operators.

Figure 4 Approaches implemented in Kenya to eliminate illicit tobacco trade

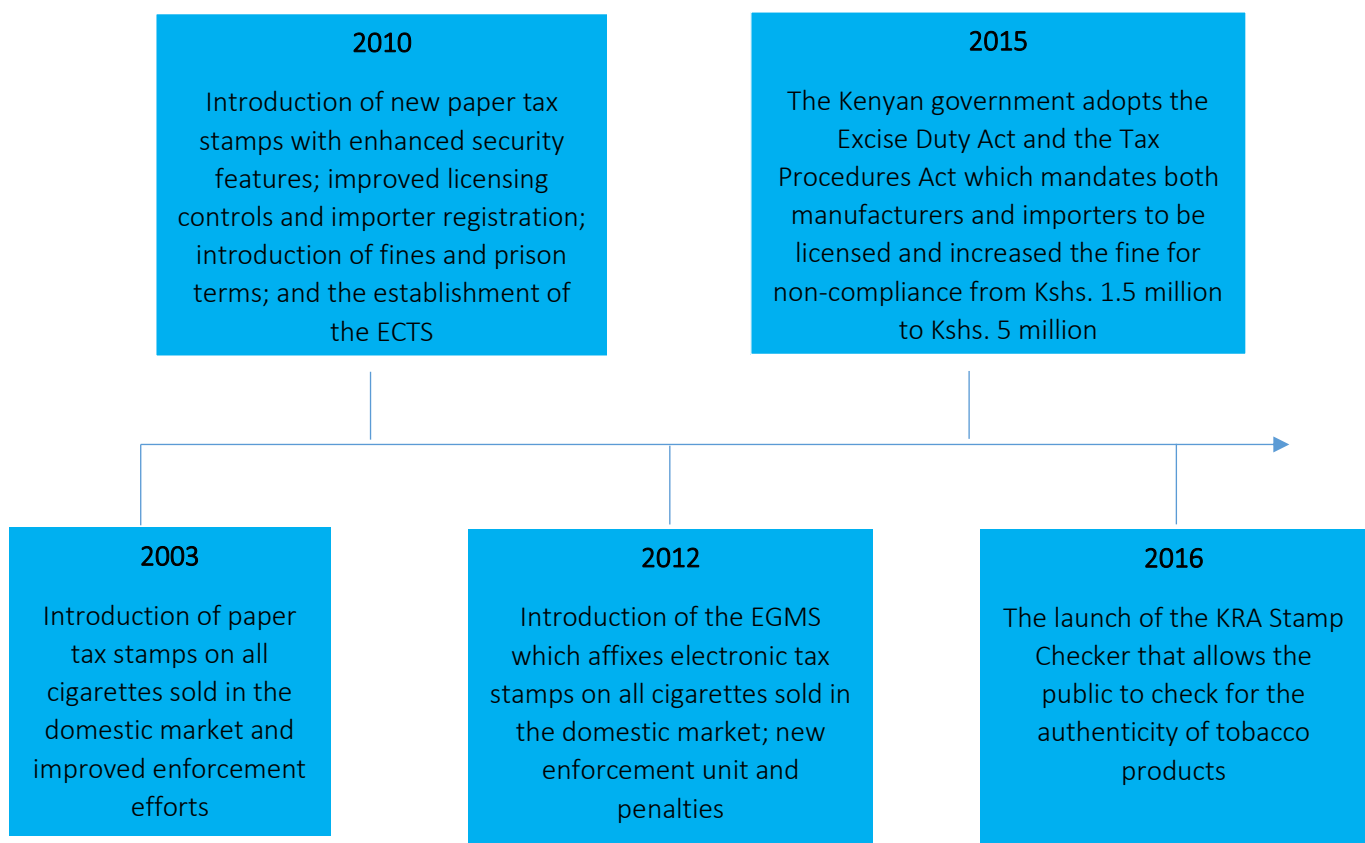


Table 2 Implementation of common approaches to address illicit tobacco trade & year of ratification of WHO Framework Convention for Tobacco Control (FCTC) & signing/accession of WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products in Kenya

Approach	Kenya
High-tech tax stamps	√
Licensing of tobacco manufacturers and importers	√
Agency coordination	√
Track and trace system	√
Enforcement	√
Penalties	√
Public awareness	√
Export tax	
Tax harmonization	X
Agreements with industry	
Year ratified WHO FCTC	2007
Year signed WHO FCTC	2004
Illicit trade protocol	2013

6. DISCUSSION

Too often, the issues of taxation on legal tobacco products and the size of the illicit market are conflated into being two sides of the same coin. While basic economic theory has amply been used by tobacco lobbyists to suggest such an irrefutable relationship—that is to say that if taxes are raised on legal products, the illicit trade will automatically fill the demand gap at lower prices—it is clear from the case study of Kenya that this need not be the case. Higher excise taxes on legal tobacco goods can coincide with the shrinking of the black market if compounded with strategic, context-specific regulations that directly tackle the illicit trade. A more holistic, multi-sectoral implementation of the WHO FCTC represents one clear such plan to tie the efforts to reduce consumption with those to curb illicit trade.

A CSEA (2019) study highlights the strong potential to coordinate efforts to raise taxes, thus reducing consumption, with the fight against counterfeit and smuggled products. The research finds that earmarking the higher estimated tax revenues resulting from FCTC-compliant taxation in Nigeria, for the purpose of illicit tobacco control (particularly in terms of border control, and regulation enforcement), can lead to a reduction in illicit trade market share and tobacco consumption. The simulation of a tax structure akin to that detailed by the WHO FCTC was the most effective of those tested in significantly reducing consumption (thus reducing healthcare costs), and simultaneously increase in government tax revenue, hence freeing a substantial sum to be spent on an effective rolling-out of measures to curb illicit trade. It therefore becomes evident that, with sufficient political will, raising taxes and reducing illicit trade are not antitheses of each other, but rather represent logical complements. The effective reduction of the prevalence of illicit tobacco products requires a significant budgetary commitment which raising tobacco taxation can help fulfil.

The relatively successful experience of Kenya in implementing large parts of the WHO FCTC protocol, despite much higher taxation rates than in Nigeria should serve as a starting point for the design of a

new regulatory regime in Nigeria. Despite facing many of the same challenges of those in Nigeria—chief amongst them border porosity and unlicensed local production—Kenya highlights the potential effectiveness of methods including the adoption of a track and trace system on tobacco products; the establishment of routine physical controls (inspection) in factories; regular and randomised tax audits on tobacco manufacturing companies; and the introduction of barcode and vehicle scanners to authorities like the Nigeria Customs Service at entry points into the country to better track illicit tobacco products.

Designing policy suited to the Nigerian context however, will require an in-depth effort to ascertain the cost-effectiveness of various methods, as well as an active political willingness to learn from what has been done in other countries—something much easier said than done given the current lack of political unity on the subject matter, and the power of tobacco lobbyists in the country (CSEA, 2019). This exercise, therefore, demands a fair appraisal of the requirements for successful policy design. For instance, government policymakers should opt to invest in high technology markings to set in motion a track and trace system akin to those in Kenya, for which attaining effectiveness will entail heightened enforcement by the responsible authorities, including the Customs and Excise service, data exchange and international coordination between countries that are transit hubs for illicit tobacco trade. The features of an effective track and trace system include but are not limited to; unique identification numbers, the use of irremovable and non-replicable marking technologies, aggregation of units, effective aggregation of product units in the supply chain, data capture and data transfer between relevant authorities and stakeholders.

Technological innovations and the adoption of a track and tracing system are crucial components of combating illicit trade. However, effectively reducing illicit tobacco trade requires a holistic approach that integrates technology and manpower development together with policy coordination at multilateral level and greater independence from industry pressures. For example, approximately 80 million products, including tobacco products, are tracked and traced in the European Union, yet this extensive system has not completely eradicated the smuggling of illicit and counterfeit cigarettes into Europe (German Smoking Tobacco Association, 2017). The prominent role of the industry in the T&T system, and its failure to fully curtail illicit smuggling, highlight the simultaneous need for a multi-dimensional policy approach, and a greater separation of policymaking from industrial interests. Nigeria therefore, ought to complement technological advances in track and trace with progress in other realms, as outlined in the FCTC and exemplified by the case of Kenya.

Greater bureaucratic efficiency in agency coordination, for example, was shown in Kenya to be a highly effective strategy to keep on top of the rapidly evolving market. To combat illicitness, the Federal Inland Revenue Services, the National Information Technology Development Agency, National Agency for Food and Drug Administration and Control, Standard Organization of Nigeria, Customs as well as representatives of the private sector independent from often-uncooperative industry players, must be put in the condition to share information efficiently in order to direct policymakers' attention to the most pressing matters and the developments of the illicit tobacco trade.

In addition, in a time of increasing regional and continental integration, Nigeria must both protect itself from the risks, and harness the cooperative political benefits of these internationalist movements. As in Morocco, Nigeria's border porosity poses a massive challenge in the regulation of the tobacco market. While borders are set to become less important with the advent of the African Continental Free Trade Area (AfCFTA), the Federal Government should invest in vehicle-scanning technologies to ensure an adequate screening at entry points. Earmarking tobacco tax revenues to this end would be a suitable source of financing that may, however, require sufficient political will to counter the industry opposition to any such policy.

Further, Nigeria should make use of Africa-wide forums of discussion, and of the cooperative spirit of the WHO Protocol to Eliminate the Illicit Trade in Tobacco Products to push for a continental regulatory alignment. The size of its economy and population make Nigeria particularly vulnerable to cross-border arbitrage opportunities. It is therefore in the national interest to demand greater compliance with international regulations in neighbouring economies starting from a unified tax structure—to limit the possibility for cross-border profit-making—and continuing with universal standards agreements, minimum retail pricing requirements, and restrictions on sales. While the ECOWAS 2017 Directive was a positive step in this regard, the unenforceability of the agreement has limited its impact in curbing cross-country illicit trade, and highlights the need for a more determined international effort. The AfCFTA forum, therefore, should be strongly utilised to push for continental cooperation.

Ultimately, observing the successes of regional partners in imposing higher taxation while simultaneously reducing the volume of illicit activity must suggest that a fuller implementation of the WHO FCTC and the subsequent Protocol to Eliminate the Illicit Trade in Tobacco Products is not only possible, but also desirable in the Nigerian context. Nigeria would benefit from increasing taxes on tobacco products and simultaneously investing in the curbing of the illicit trade and should therefore act accordingly.

6.1 Envisioning New Policies in Nigeria: Costs and Benefits

It is now clear that the often-peddled claims by licit tobacco interests of the inherent incompatibility between illicit trade reduction and higher taxation on legal tobacco products are vastly exaggerated. Higher tax regimes that contribute to government revenues and the reduction of consumption can well co-exist with stronger measures for the prevention of the illicit trade and thus engender positive results from both health and economic points of view. It remains true however, that the optimal selection of relevant counter-illicit trade policies to complement higher taxation regimes requires a cost and benefit analysis that must stem from an in-depth study of the context. In this regard, both the foreseeable reduction in trade volume, and the expected timeframe for results to appear, must be taken into account in judging the benefits of policy actions. On the other hand, any government action to curb illicit trade is likely to carry some, at times significant, monetary burdens. To be sure, international evidence points to higher excise tax on legal tobacco products as a worthy financier of such initiatives, making a new holistic tobacco regulatory picture largely self-sufficient, yet it is still worth taking a look at the expected fiscal burden of each measure to uncover the best options.

An accurate, numerical, cost-benefit analysis of each measure in the Nigerian context would require a profound study of contextual conditions well beyond the scope of this report. It is nevertheless possible to gain some perspective on the foreseeable costs and benefits of different counter-illicit trade policies by studying the experiences of other countries that have imposed them globally. In what follows of this section, we make use of contextual understanding and international empirical evidence to make broad-stroke remarks on the potential costs and benefits of some of the different counter-illicit trade policies discussed above were they to be implemented in Nigeria. It must be noted, however, that even in developed nations the World Bank (2019) laments a lack of data gathering and dissemination that makes accurate cost-benefit analysis of counter-illicit trade policies difficult and somewhat unreliable.

High-Tech Product Marking and Tax Stamp

These product markings consist of counterfeit-protected images added onto product packaging that indicate information regarding the product, from its location and date of manufacturing, to actual descriptions of the qualities of the products themselves. Product markings generally serve three functions (World Bank, 2019): facilitate track and tracing strategies (highlighting the complementarity of different strategies); aid revenue collection and taxation; and serve to authenticate products.

As we have seen above, Kenya is a particularly salient example of a successful implementation of high-tech stamps in the fight against illicit trade and tax evasion. However, the cost per stamp there is unclear, which does make it difficult to effectively evaluate the costs of the policy. A more transparent case of high-tech product marking in a country that has struggled with tax collection has been in Georgia. There, a partnership with a Swiss firm, has allowed for significantly higher tax collection at a cost of 5 Euros per one thousand stamps. While more costly than the previous paper tax stamp, the Georgian government has highlighted the much greater revenue collection that has resulted from the policy thus making it a fiscal net benefit (Ross, 2017). This effect is to be magnified by the expected passage of the burden of the stamp cost to producers themselves.

Such reports of effectiveness from Georgia and Kenya make the imposition of a high-tech stamp on tobacco products appear potentially advantageous to Nigeria—although care should always be exercised in comparing such vastly different contexts. The partnership with foreign private firms with experience in supplying high-tech stamps may be an efficient implementation strategy. The Georgian example also highlights the benefits of even a partial utilisation of the potential of the stamps. There, despite the possibility of using the stamps for tracking and tracing, only the tracing capacity of the system is currently being employed, thus significantly lowering operational costs, but still yielding benefits.

Just as in Georgia, the challenge of the illicit market in Nigeria are caused by a complex web of intra-national tax avoidance and cross-border smuggling (World Bank, 2019a). It is therefore clear that there is a need for technological stamps to be complemented with international cooperation and the fomenting of national political will to increase regulation.

Track and Trace System

Track and Trace (T&T) systems make use of, and deepen the reliability of high-tech stamps and product markings by setting up a centralised record-keeping structure enabling real-time accounting of all products. As the World Bank (2019) argues, these systems are particularly useful when addressing crimes and diversion of legal goods into illicit circles, but less effective in dealing with counterfeit production.

Kenya has already been highlighted as an example of a successful implantation of T&T systems. In addition, the experience of Turkey serves to solidify the argument for a modern T&T system to be implemented in Nigeria. As it is in Nigeria, Turkey's illicit tobacco market is a confluence of cross-border smuggling and domestic illicit production. After stepping up its efforts in the "Monitoring/Tracking System for Products with Tax Stamps" policy since 2010, government tax revenue has increased significantly, while confiscations of illicit products have increased by almost fifteen times (Cetinkaya & Marquez, 2017). Thus, a higher tobacco tax burden was complemented by greater control of the illicit trade, proving the potential for success of the policy.

Turkey, however, also serves as a warning sign regarding the importance of political will. In the early years of the new T&T policy, illicit confiscations did not increase dramatically. It was only after a change in political factors contributing to a more cooperative, inter-agency system in enforcement

that the policy began to reap benefits. It is clear that similar political considerations are important in the Nigerian context as well, and must be considered when judging the likelihood of success of T&T systems.

The European Union's T&T efforts are perhaps the most extensive of any tried so far, and includes tight monitoring and T&T ability at all stages of the supply chain. This goes as far as tightly regulating the modes of transportation allowed for tobacco products, and the imposition of standards on foreign producers seeking to export to the Union. While the context is admittedly different to Nigeria's and more easily monitored, a pre-implementation impact forecast by the European Commission has predicted a multi-billion-euro economic and social benefit from the T&T system stemming from higher tax revenues and reduced consumption of low quality products (European Commission, 2017). It is also encouraging to note that the EU has been able to shift the majority of the high initial-stage costs of the system on the tobacco industry. Nigeria's large and growing tobacco market may facilitate a similar move to ease fiscal constraints.

Manpower and Strengthening of Customs

It is undoubtable that any strategy aiming to curtail the illicit trade in Nigeria will require an investment in greater manpower and capital both in order to increase frequency of border controls, and to carry out sequestrations and raids within Nigeria. The success of the Track and Trace system depends on this, and so does any attempt to limit border porosity.

Of course, the extent of positive results from strengthening the Customs force will be dependent on the size of the investment. The 2020 budget for the entirety of the Nigeria Customs Service was set at ₦238 billion apportioned between capital and personnel costs. There was also a commitment to hire 3,200 new officers in the year 2020, although the COVID pandemic may have impacted that ambition.

Regardless, considering the numerous tasks carried out by the NCS, a total workforce of just fifteen thousand is unlikely to suffice for a strong enforcement of counter-illicit trade policies, particularly given the length of Nigerian borders, and the need for increased in-country monitoring and raiding to complement T&T systems. It should also be noted that, while the NCS's dual purpose to perform border control and in-country raids may be beneficial in fostering coordination, it also requires greater bureaucratic proficiency and management, all of which raise the employment needs of the service. Other countries have opted for separate forces to carry each of the tasks, which may be something Nigeria could consider in the long-run.

The cost of necessary investment in high-tech scanners at border crossings and ports is also high and must be accounted for. Scanners range from hundreds of thousands of dollars to several millions per piece, depending of the size and penetration capacity (Australian Customs & Border Protection Service, 2011).

Again, it is important to note that while these costs seem substantial, international evidence as well as CSEA (2019) simulations in Nigeria highlight the strong potential for earmarking revenues from higher taxation on tobacco products to finance investment combatting illicit trade. In addition, Nigeria can certainly leverage on the size of its domestic market to transfer costs directly onto producers through further taxation or other means. It therefore would seem excessively conservative to avoid investments in Customs labour and capital enhancement due to fiscal concerns.

The Complementarity Imperative

While analysing the costs and benefits of individual policies is certainly relevant, studying the costs and potential benefits of some of the policies Nigeria might wish to implement sheds light on the

relative futility of single-policy approaches. The costs—and even more so, the benefits—of the implementation of any policy depends on whether or not it is supported by complementary policies that permit efficiency. For instance, forecasting the benefits of a high tech T&T system will inevitably depend on how its implementation is complemented with the hiring of more Customs officers to carry out the tracking and tracing of goods and intercepting illicitly traded ones before they reach consumers.

It should also be noted that economies of scale in implementation of T&T measures can also be reached through the extension of the policy to more than just tobacco. In Kenya for instance, the tracking and tracing of tobacco products is carried out in concert with that of other illicitly traded items, thus lowering the costs of T&T across the board. Again, this highlights how complementing policies and investments in a range of different fields must form part of a cost-effective strategy.

7. CONCLUSION

While international standards approximate the size of illicit tobacco trade in developing countries to be around 10 percent of the market, this study's preliminary analysis has highlighted the likelihood that, in fact, the black market in tobacco products constitutes a larger share of the tobacco market in the Nigerian context. Using supply and demand gaps based on surveys of Nigerian tobacco consumption and data on domestic production, imports and exports, we have estimated that up to 26 percent of the tobacco products consumed in Nigeria are sourced illicitly. This estimate however, requires validation through more extensive research, preferably using data from a longer timeframe. We therefore call for further studies to be carried out to better ascertain the true size of illicit tobacco trade in Nigeria and inform policy debates on the best methods to regulate the market.

The pervasiveness of illicit tobacco products not only harms the health of consumers by stimulating greater consumption of lower standards goods at more affordable prices, but also represents a severe cost for the development efforts of the government. A significant tax revenue reduction, approximated in the range of ₦12 billion, the loss of national productivity associated with morbidity, and the increased healthcare costs all compound to pose a significant barrier to Nigerian development.

The issue of the illicit market, however, does not in itself justify the suboptimal regulation of the tobacco industry in Nigeria. As a signatory of the WHO Framework Convention for Tobacco Control, Nigeria should be imposing a much larger tax on tobacco products than it currently is, and ought to be more actively attempting to curb tobacco consumption. While the size and effects of the illicit market are rightly a concern, the erroneous conflation of industry-wide tobacco regulation with increased volume of illegal trade has prevented the imposition of measures tackling the rise of tobacco consumption, and poses a threat to be addressed. The theory, often peddled by the tobacco lobbies, that increased taxation on their products will necessarily lead to increased illicit activity has thus far prevented the enactment of a wider tobacco regulation framework that advances the national interest in terms of public health and government revenue.

International evidence from countries facing similar challenges as Nigeria, such as Kenya, highlights that a more stringent policy platform both for legal producers and illicit traders—in the form of a higher excise tax, more advanced track and trace measures, tighter border control, active inter-agency cooperation, and more—represents a successful strategy to regulate noxious tobacco consumption, and to decrease the ubiquity of illicit goods.

We therefore find that, to improve public health and developmental prospects, Nigeria should shadow the examples set by Kenya in more closely following the guidelines of the WHO FCTC with regards to taxation, and the Protocol to Eliminate the Illicit Trade in Tobacco Products' recommendations on measures to curb illicit activity. The combination of higher taxation, earmarked tax revenues, a modern track and trace system, careful border controls and international cooperation represents a much more fruitful path for Nigeria going forward compared to the current lax regulations and insufficient taxation.

8. REFERENCES

- Akanonu, P., Ishaku, J., Onyekwena, C. (2019) The Economics of Tobacco Control in Nigeria: Modelling the Fiscal and Health Effects of a Tobacco Excise Tax Change. ICTD working paper 99
- Allen W.A, (2019). Tobacco Industry Data on Illicit Tobacco Trade: A systematic Review of existing Assessment . *Tab Control*, 334-345.
- Bloom, D., Kuhn, M., and Pretner, K., 2018. *Health and Economic Growth*. IZA DP No. 11939. Institute of Labor Economics. Available at: <http://ftp.iza.org/dp11939.pdf>
- Boonn A., 2018. The Case for High-Tech Cigarette Tax Stamps. CTFK.
- British American Tobacco. (2010). Enhancing Supply Chain Security and Fighting Illicit Trade in Tobacco Products. London: British American Tobacco.
- Catherine O, E. C. (2019). Nigeria Isn't Doing Enough to Reduce Tobacco Use, Here is Why. *The Conversation Academic Journal*.
- Chu, V., Pheng, S., Xaysana, S., Snong, T., Bounmy, S., Sisouphanh, V. (2009). *Tobacco-Related Socio Economic Cost of Stroke, Lung Cancer and COPD in Laos. The Collaborative Funding Program for Southeast Asia Tobacco Control Research*. Sponsored by Research for International Tobacco Control (RITC) of the International Development Research Centre (IDRC).
- CSEA (2018). Examining the implications of the recent change in Tobacco Tax Policy in Nigeria. Retrieved from cseaafrica.org: http://cseaafrica.org/examining-the-implications-of-the-recent-change-in-tobacco-tax-policy-in-nigeria/#_ftn3
- CSEA, (2019). A Scoping Study of Nigeria's Tobacco Market and Policy Space
- Curti, D., Shang, C., Chaloupka, F., Fong, G. (2019) Tobacco taxation, illegal cigarette supply and geography: findings from the ITC Uruguay Surveys *Tobacco Control*, 28(Suppl 1), s53 - May 2019. <https://doi.org/10.1136/tobaccocontrol-2017-054218>
- Deaton, A. (2013). *The Great Escape: health, wealth, and the origins of inequality*. Princeton: Princeton University Press
- Drope J, Schluger N, Cahn Z, Drope J, Hamill S, Islami F, Liber A, Nargis N, Stoklosa M. 2018. *The Tobacco Atlas*. Atlanta: American Cancer Society and Vital Strategies
- Egbe, O. B. (2017). Framework Convention on Tobacco Control Implementation in Nigeria: Lessons for Low and Middle Income Countries. *Tobacco Research* , 1122-1136.
- Egbe, C. O., Bialous, S. A., & Glantz, S. (2019). Framework convention on tobacco control implementation in Nigeria: lessons for low-and middle-income countries. *Nicotine and Tobacco Research*, 21(8), 1122-1130.
- ERC Group, 2007. *World cigarettes. The 2007 Survey*, Suffolk, ERC.
- ERC Group, 2015. *World cigarettes. The 2015 Survey*. Suffolk, ERC.
- Euromonitor, 2013. *Illicit Trade in Tobacco Products 2012*.
- European Commission (2017). COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT: COMMISSION IMPLEMENTING REGULATION (EU) on technical standards for the establishment and operation of a traceability system for tobacco products and COMMISSION IMPLEMENTING DECISION on technical standards for security features applied to tobacco products.
- Funmi, A. J. (1974). *British Direct Investment and Economic Development in Nigeria, 1955 - 1972*. Keele University.
- German Smoking Tobacco Association. (2017). A successful track and trace system. VdR.
- Gallagher et al (2019) <https://tobaccocontrol.bmj.com/content/early/2019/08/30/tobaccocontrol-2019-055094>
- GATS, 2014. *Global Adult Tobacco Survey Kenya Report*. Retrieved from: <https://www.who.int/tobacco/surveillance/survey/gats/Kenya-report-2014.pdf?ua=1>
- Giovino, G. M. (2012). Tobacco Use in 3 Billion Individuals from 16 countries; An analysis of nationally representative crosssectional household survey. *Lancet*, 68-79.
- Golub, S. (2012). *Entrepot, Trade and Smuggling in West Africa: Benin, Togo and Nigeria*. The World Economy Swartmore.
- International Institute for Legislative Affairs, 2019. *Making Tobacco Taxes Work for Kenya: Proposals for the National Budget 2019/2020*. Retrieved from: <http://ilakenya.org/wp-content/uploads/2019/06/Making-Tobacco-Taxes-Work-For-Kenya-2.pdf>

- OECD. (2018). Criminal economies and illicit financial flows in West Africa. OECD iLibrary.
- Kenya National Bureau of Statistics (KNBS). Economic Survey 2016. In: Production Statistics, Macroeconomic Statistics, Strategy and Development, Finance and Administration, Population and Social Statistics, Information and Communication Technology, editors. Nairobi: KNBS; 2016. p. 123.
- Phipps, A.B. and Byrne, M.K. (2003), Brief interventions for secondary trauma: review and recommendations. *Stress and Health*, 19: 139-147. doi:10.1002/smi.970
- Ngeywo CM, 2014. Kenya Revenue Authority. Implementation of a Track and Trace System for Tobacco in Kenya. PowerPoint presentation at the Multi-Sectorial Workshop on the adoption of the Protocol to eliminate illicit trade in Tobacco Products for ASEAN Countries held in Naypyitaw: 9-11 December 2014.
- Nigeria, G.A.T.S., 2012. Global Adult Tobacco Survey: Country Report. Federal Ministry of Health, Abuja, Nigeria
- Nnadozie, E. Munthali, T. Nantchouang, R. and Diawara, B. (2017) Domestic Resource Mobilization in Africa: State, Capacity Imperatives and Policy Actions. *Africa Journal of Management* 3(2). Doi.org/10.1080/23322373.2017.1335110.
- Owoeye, O. and Olaniyan, O., (2015) *Economic Cost of Tobacco-Related Diseases in Nigeria: a Study of three Hospitals in Ibadan, Southwest Nigeria*. MPRA Paper No. 88054 Available at: <https://mpra.ub.uni-muenchen.de/88054/>
- Petit, P. and Nagy, J. (2016). How to design and enforce tobacco excises? International Monetary Fund.
- Ross H., 2015. Controlling Illicit Tobacco Trade: International Experience.
- Ross, H. (2017). Report on Technical Assistance Visit to Georgia. 4 - 12 September. 2017
- Ross H., 2019. Confronting Illicit Tobacco Trade: a Global Review of Country Experiences: Kenya: Controlling Illicit Cigarette Trade.
- Swinnerton, S., (2006) Living in poverty and its effects on health, *Contemporary Nurse*, 22:1, 75-80, DOI: 10.5172/conu.2006.22.1.75
- The Informal Economy and Decent Work: A Policy Resource Guide supporting transitions to formality, chapter 2 (Geneva, ILO, 2013), available at: http://www.ilo.org/emppolicy/pubs/WCMS_212688/lang--en/index.htm.
- Ukwueze, C. O. (2018). Tobacco Control Legislation and Policy in Nigeria: Much Barking Without Biting. *Elixir International Journal*, 49641-49651.
- WHO, 2015. WHO Report on the Global Tobacco Epidemic, 2015: Raising Taxes on Tobacco. Geneva: World Health Organization, 2015.
- World Bank, 2019. Smoking prevalence, total (ages 15+). Retrieved from: <https://data.worldbank.org/indicator/SH.PRV.SMOK?locations=ZG>
- World Bank, 2019a. Confronting Illicit Tobacco Trade: A Global Review of Country Experiences
- WHO, 2017. NCI Tobacco Control Monograph Series 21 - The Economics of Tobacco and Tobacco Control

APPENDIX

Price Survey

The prices of tobacco products were collected from randomly selected kiosks and retail outlet, through a survey in the 18 states in Nigeria, with three states purposively selected per geopolitical zone. The information on prices were elicited through a questionnaire administer on owners of shops or sales clerk in the sampled area. The survey was conducted between February 3 and 10, 2020. The selection of states was based on ensuring fair representation along key dimensions: regions, border versus inland states, major tobacco production and distribution hubs. The survey sample encompasses retailers of different tobacco products (e.g. cigarettes, cigars, shisha) across brands (economy brands to premium) in all 18 states. We sampled as a minimum 70 retailers per state.

Table 3 Survey Coverage

State	Region	Location
#Abuja	North-central	Inland
#Kwara	North-central	Border
Benue	North-central	Border
#Sokoto	North-west	Border
#Kano	North-west	Inland
Kaduna*	North-west	Inland
#Adamawa	North-east	Border
#Bauchi	North-east	Inland
Taraba	North-east	Border
#Lagos*	South-west	Border
#Ekiti	South-west	Inland
Oyo*	South-west	Border
#Anambra	South-east	Inland
#Enugu	South-east	Inland
Imo	South-east	Inland
#Cross River	South-south	Border
#Rivers	South-south	Border
Delta	South-south	Border

* Tobacco manufacturing hubs

There are states covered in the 2018 survey. CSEA has a cigarette price database from previously conducting a price survey in 12 of these states (in its 2018 tobacco market study funded by Campaign for Tobacco-Free Kids, CTFK).