

# Human rights and Tobacco in the age of Covid-19

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# Outline

- Human rights framework and tobacco.
- Government obligations in the context Of Covid-19.
- Cigarette sale ban and human rights.



# Tobacco is a Human Rights issue

- Tobacco use causes death and disability, kills 42100 South Africans.
- Tobacco costs to the economy and environmental effects.
- Second-hand smoke - 80% of population does not smoke.
- Addiction and initiation - Manipulation by TI.
- Tobacco control promotes human rights.
- 1 Creates health related problems; 2. tobacco control is a prerequisite for other human rights; 3. The right to tobacco control derives from the right to health and the right to life.

(C Dresler & S Marks 'The emerging human right to tobacco control' (2006) 28 (3) Human Rights Quarterly 599)

# Relevant rights

- Right to work
- Right to access information
- Right to freedom of expression
- Right to life
- Rights of children
- Right to access health care services
- Right to an environment that is not harmful to health and well-being
- Right to food

# Respect, protect and fulfil human rights - Section 7 of Constitution

- Respect - refrain from acts that make it harder to realise rights.
  - Protect - state to prevent 3rd parties from interfering with rights.
  - Fulfil - take steps towards realisation
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- Respect - Duty is on natural, legal persons, governments
  - Protect and fulfil - Duty is on state.
  - Rights can be limited when justifiable (section 7(3) and section 36)

# Focus must be on promotion of rights - not only on limitation of rights

- The declaration of a state of national disaster vs a state of emergency in terms of section 37 of the Constitution.
- The life of the nation is threatened by a natural disaster or other public emergency etc. The State of Emergency Act and allows for more radical limitations to rights.
- National disaster focuses on on prevention, reduction, mitigation of the risk or severity of disasters - limitations of rights cannot extend beyond what is necessary and must be in line with the constitutional values of our society.

# Cigarette Sale ban and human rights

- Does it promote rights?
- Does it restrict rights?
- Are the restrictions justifiable in an open and democratic society?



- FITA says it will be challenging the ban in court – “Fita also addressed the crime that has risen as a result of the cigarette ban. Last week, a man stabbed two shopkeepers, murdering one in the process, for refusing to sell him cigarettes.” (Cigarette ban issue to go to court – Cape Town ETC, 21 April 2020)

# The purpose of the Cigarette sale ban

“The ban on the sale of cigarettes, said Fita, would not achieve the **stated purpose for which the regulations were made** as cigarettes were still being distributed by people who were not paying duty fees... It also asked the government **why it had not prohibited the sale of non-essential items such as fizzy drinks or junk food.**” (Tobacco and alcohol associations demand answers over lockdown bans 20 April 2020 - Times Live)

‘... at the very least, the executive should provide a clear explanation around its motivation for implementing the ban. ’ - (Mandy Wiener: The case for lifting the cigarette ban 21 April News 24).

Smoking has a negative impact on the health of people who test positive for Covid-19. ‘We believe those who smoke are more vulnerable to being affected because Covid-19 affects the capacity of the lungs’ (Drinking and smoking ‘not helpful’ in fighting Covid-19: Mkhize, 18 April 2020, Times Live)



# The Disaster Management Act – national state of disaster

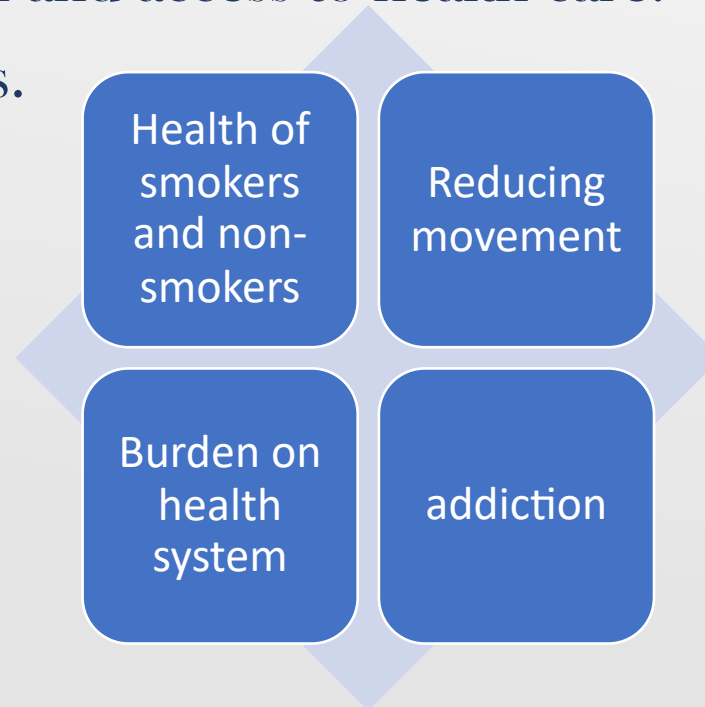
- Section 27(2) of the Act may, gives authority to make regulations **only to the extent that it is necessary for the purpose of-**
  - (a) **assisting and protecting the public;**
  - (b) providing relief to the public;
  - (c) protecting property;
  - (d) preventing or combating disruption; or
  - (e) dealing with the destructive and **other effects of the disaster.**
- The Lock down regulations only allow the sale of essential goods and tobacco products are not listed as essential

# Purpose of Cigarette sale bans

- Means-end relationship
- Close industries to enable social distancing. Confining movement except to obtain essential goods etc.
- To make cigarettes less accessible - reduce the harmful effects of tobacco use amidst Covid-19 - protect the health system.
- Divert funds from tobacco to more essential needs.
- Mitigating the severity or consequences of the disaster.

# Rights to health and life

- Mandates the state to protect health and livelihoods.
- COVID-19 pandemic places a severe burden on the health care system, there are shortages of medical supplies, testing kits, equipment, ventilation systems and protective clothing etc.
- For non-smokers - SHS in lockdown and access to health care.
- A balance of all many considerations.



# Rights to smoke?

A right or liberty to smoke under S.A Constitution is contentious – but tobacco is a legal product.

The right to freedom and security - the right not to be deprived of liberty for reasons that are not acceptable.

State has a duty to reduce active smoking, to protect both smokers and non-smokers.

State has a duty to prevent disease and reduce burden on health system to realise rights to access health care services.

# Smoking cessation – Cigarette sale ban

- The WHO FCTC in Article 14 requires states to promote cessation of tobacco use and adequate treatment for tobacco dependence.
- Taking into account **national circumstances and priorities**
- Facilitating accessibility and affordability for treatment of tobacco dependence including pharmaceutical products.
- Section 27 – access to health care services can extend to preventive, curative and rehabilitative services. However, this is within available resources.
- For states still struggling with resource allocation, smoking cessation, ‘relative to other public health measures, can offer greatest returns on a state’s investment.

(B M Meir ‘Breathing life into the FCTC: Smoking cessation and the right to health’ (2013) 5 Yale Journal of Health Policy, Law and Ethics)

# Smoking Cessation

- Accessible
- Acceptable
- Available
- Behavioural support - NCAS Quitline and information booklets in English, Afrikaans and Zulu.
- The Heart and Stroke Foundation, The Cancer Association of South Africa runs.
- South African National Council on Alcoholism and Drug Dependence (SANCA) for breaking addiction cycles.
- The South African Depression and Anxiety Support Group.

# Smoking Cessation

- NRT available over the counter, pharmacies remain open during lockdown.
- “...Dr Hermann Reuter, a health activist “...the ban could be used as an opportunity to join a programme such as those offered by his organisation SAHARA, that uses ...nicotine replacement, on which there is no ban. **However, Reuter says he would prefer it if the Department of Health provided these.**”

(Should alcohol, tobacco and outdoor exercise be banned? Daily Maverick 17 April 2020)

# Cessation support – Accessibility

NRT available over the counter

Pharmacies remain open

Health facilities remain open to provide prescription  
drugs



# The right to access to information - Covid-19

- Key to democracy - enabling citizens to more fully participate in governance.
- Transparency.
- Timely, accessible and accurate information.
- Governments, natural and legal persons have a duty to respect & promote the right to access information.
- Accuracy and divergent opinions.

# Information in the context of Smoking and Covid-19 S.A

- E-Cigarettes are being promoted – social media channels.
- Stopping smoking has no immediate health benefits in the context of Covid-19, stopping now does not make any difference. The harmful effects of SHS are only after long-term exposure. (SABC news Impact of coronavirus on smokers: Prof Guy Richards)
- Illicit trade – ‘ban is not stopping people from smoking’.
- Illicit trade – ‘government is losing revenue at times when each cent counts’.
- Addiction – ‘withdrawal symptoms’, it ‘makes ordinary people criminals’.

“...the supply is unstoppable...A carton usually retails for between R300 and R450, but is now selling at R900 a pop. A popular tobacco entrepreneur is adding an Uber-like service where he will drop off - for which he adds a R400.00 delivery service. This trade is on Facebook, but mostly on WhatsApp chat groups...Among young people who vape, there are networks to access the nicotine liquids to feed into your vaping device but, again, it's by networks of friends and acquaintances in a trade run largely on WhatsApp groups...” (Prohibition lockdown goes rogue - 20 April 2020 Daily Maverick)

# Media on Covid-19 and smoking

- Cigarette ban is a boon to those smokers trying to kick the habit – Sunday Times
- Restricting drinking and smoking after lockdown will save many lives: experts – Times Live
- Lockdown: Mkhize gives full support to cigarette, alcohol ban – News 24

# Duty to impart health information

Channels of information must cover the health risks related to smoking. Consumers must be informed.

Smoking increases the likelihood of more severe COVID-19 symptoms.

Increased the need for mechanical ventilation, admission to an ICU or death.

Use of e-cigarettes and heated tobacco products can cause lung damage and may lead to increased danger to severe symptoms.

Waterpipes and sharing e-cigarettes may increase the disease transmission

Exposure to second-hand smoke and may lead to an increased risk of severe symptoms and hospitalization.

Channels must be restricted from imparting distorted or misleading information.

Thank you



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