

POLICY BRIEF ON THE IMPLEMENTATION OF SMOKE-FREE LAWS IN ZAMBIA



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EDITORIAL

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Executive Summary

Second-hand exposure to tobacco smoke has been linked to several health outcomes such as respiratory infections, ischemic heart disease, lung cancer and asthma. Globally, about a third of the population is exposed to the harmful effects of smoking resulting in over 600,000 deaths every year.

As such, implementing laws that prohibit smoking in public is necessary to minimise or completely eradicate exposure of citizens to the harmful effects of second-hand tobacco smoke. Zambia has enacted such laws with the primary statute being the Public Health Act, Chapter 295 of the Laws of Zambia. This is in addition to ratifying several international treaties such the World Health Organisation Framework Convention on Tobacco Control.

The implementation of the laws has however remained below par. Restaurants and bars in particular, continue to be noncompliant. This paper has shown that this has been attributed mainly to the lack of enforcement of these laws. There is therefore imperative to advocate for measures and reforms to enhance the implementation and enforcement of these smoke-free laws in Zambia. Proposed measures to enhance enforcement include:

- (i) Engagement of civil society organisations in the processing and facilitating of public complaints against non-compliant business owners and operators.
- (ii) Development of Information Education and Communication materials specifically targeting the youth and raising awareness on the different types of more contemporary tobacco products such as shisha.
- (iii) Enhance the scope of administrative penalties for non-compliant business owners and operators to include revocation of licenses and not merely fines.

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Introduction

According to the World Health Organisation (WHO), the tobacco smoking epidemic is one of the biggest public health threats the world has ever faced killing more than 7 million people¹. In Zambia approximately over 7,000 Zambians die each year from tobacco related illnesses, of which 60% of those deaths occur before the age of 70².

Direct consumers of tobacco are not the only ones at risk, exposure to second-hand smoke from burning tobacco products also causes disease and premature death among non-smokers. There is no risk-free level of second-hand smoke exposure, and even brief exposure can cause immediate harm. According to the Ministry of Health, nearly 800 yearly deaths are due to second-hand smoke exposure³. Therefore, 100% smoke free environments are the only proven way to adequately protect the health of people from the harmful effects of second-hand tobacco smoke⁴.

Studies conducted on a select few western countries and compiled by the Centre for Disease Control and Prevention have shown that smoke free laws that prohibit smoking in public places like bars and restaurants help improve the health of workers and the general population⁵. Some of these improvements in health outcomes, such as reductions in hospital admissions for respiratory and/or heart disease have been noted soon after implementation of the legislation or policies⁶.

While the primary goal of smoke-free laws and policies is to protect non-smokers from second-hand smoke, they can also motivate and assist tobacco users in quitting and preventing tobacco use, particularly among youth. Studies have shown that smoke-free environments not only protect non-smokers, but also reduce tobacco use in continuing smokers by two to four cigarettes a day. Such environments also help both smokers who want to quit and those who have already quit, to successfully stop smoking over the long term⁷. In the United States for example, per capita cigarette consumption in states with comprehensive smoke-free laws is 5 to 20 percent lower than in states without such laws⁸.

¹ The World Health Organisation, "Age-Standardized estimates of current Tobacco use, Tobacco smoking and Cigarette smoking," Tobacco control Monitor (2021).

² The Ministry of Health, "Investment case for Tobacco Control in Zambia" (2019).

³ The Ministry of Health, "Investment case for Tobacco Control in Zambia" (2019).

⁴ The World Health Organisation, "Report on the Global Tobacco Epidemic: Implementing Smoke-Free Environments" (2009).

⁵ Centre for Disease Control and Prevention, "Smoke-Free policies improve health".

⁶ Centre for Disease Control and Prevention, "Smoke-Free policies improve health".

Statement of the Problem

Second-hand smoke exposure is one of the most important and most widespread of harmful exposures in the indoor environment. It has been linked to several health outcomes such as respiratory infections, ischemic heart disease, lung cancer and asthma. Globally, about a third of the population is exposed to the harmful effects of smoking, and this second-hand exposure has been responsible for over 600,000 deaths every year, of which 53,000 were in Africa. These deaths were mostly caused by ischemic heart disease for adults and lower respiratory infections for children. There are no risk-free levels of second-hand smoking and even a small amount of exposure can cause immediate harm⁹. The only way to fully protect non-smokers from the effects of smoke is to make spaces smoke-free.

The Zambian government in 2008, through the Ministry of Local Government passed the smoke-free law, banning smoking in public places. It has been shown that hospitals and public transport are the only public places complying with the law. A study by the Zambia Centre for Applied Research and Development showed that by 2014, nearly 6 years after the Public Smoking regulations were passed, 55 percent of the public spaces visited still had visible patrons smoking, and the air pollution levels for cigarette smoking was 69 percent over the suggested guidelines¹⁰. This appears to have been attributed to the lack of enforcement from the appropriate authority and the lack of holding owners of public places accountable. There is therefore need to interrogate the minimal and/or lack of implementation of existing legislation on smoke free zones in Zambia and to provide appropriate recommendations.

⁹The World Health Organisation, "Report on the Global Tobacco Epidemic: Implementing Smoke-Free Environments" (2009).

¹⁰N. Chizuni, "Let's Clear the Smoke - Making Bars and Restaurants Accountable," Zambia Centre for Applied Research and Development (2017).

Objective of the Policy Brief

The objective of this paper is to analyse and review existing smoke-free laws and regulations, to provide evidence regarding the extent of compliance with these laws, and to help inform priorities for implementation and enforcement.

Methodology

The study was primarily a desk review of existing legislation and regulations on smoke free environments. The study was supplemented by an observation of a select few restaurant-bars and casinos within Lusaka in order to assess the level of compliance with smoke free environments.

Legal Framework

Zambia has enacted local legislation which controls and/or prohibits public smoking. The primary legislation is the Public Health Act, Chapter 295 of the Laws of Zambia (the “Public Health Act”), which broadly prohibits the commission of statutory nuisances and other circumstances that promote situations “injurious or harmful to health”. Pursuant to the Public Health Act are the Public Health (Tobacco) Regulations, Statutory Instrument No. 163 of 1992 (the “Tobacco Regulations”) and the Local Government (Prohibition of Smoking in Public Place) Regulations, Statutory Instrument No. 39 of 2008 (the “Public Smoking Regulations”).

The Public Smoking Regulations, when read with Section 67 of the Public Health Act, effectively prohibit smoking in all public places and workplaces. The Public Smoking Regulations define a public place as “any building, premises, conveyance, or other place to which the public has access”¹¹. Owners, occupiers or operators of a public place, or their respective employees are thus criminally liable permitting smoking in a public place;¹²

Furthermore, under the Tobacco Regulations, hospitals, health centres, nursing homes, kindergartens, cinema halls, theatres, elevators, public transport, and schools for persons up to the age of 21 are expressly listed as areas in which smoking is prohibited ¹³. There is also requirement to display “NO SMOKING”

¹¹ Regulation 2 of the Public Smoking Regulations, S.I No.39 of 2008.

¹² Section 64 of the Public Health Act, Chapter 295 of the Laws of Zambia.

¹³ First schedule to Regulation 5 of the Tobacco Regulations, S.I No. 163 of 1992.

signs in bold letters in the areas listed. It is worth noting, however, that there is no explicit requirement for posting “no smoking” signs in other public places such as restaurants and bars. Nonetheless, smoking on these premises is still prohibited under the Public Health Act which prohibits the commission of a nuisance;¹⁴ and the Public Smoking Regulations which expressly provide that “a person shall not smoke in a public place within the area [under the jurisdiction of a council].”¹⁵

Failure to comply with the aforementioned laws constitutes an offence punishable on conviction to either a fine or imprisonment for a term of years not exceeding two years, or to both¹⁶.

On an international level, Zambia is a signatory to the World Health Organisation (“WHO”) Framework Convention on Tobacco Control (“FCTC”), a legal instrument designed to reduce tobacco related deaths and diseases around the world negotiated with the auspices of the WHO. It is compelled under Article 8 of the FCTC to adopt and implement effective legislative, executive, administrative, and other measures for the protection of persons from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places, and other public places. Further, guidelines under Article 8 specify that 100% smoke-free environments are the only effective way to protect people.

However, despite being signatory to the convention since May 2008, Zambia is yet to domesticate the FCTC. Although a draft Tobacco Control Bill has been deliberated by various stakeholders, there has been no Cabinet approval for the bill to be tabled before Parliament. Domestication of the FCTC would provide Zambia with comprehensive tobacco control legislation that would grant all citizens protection from the harmful effects of tobacco and in a broader sense further ensnare citizens the right to health, life, and a safe working environment.

¹⁴ A nuisance under the Act includes “any act, omission, or thing which is, or may be offensive, dangerous to life, or injurious to health.” Smoking in a public place thus falls within the ambit of a nuisance under the Act.

¹⁵ Regulation 3 (1) of the Public Smoking Regulations, S.I No.39 of 2008.

¹⁶ Regulation 3 (2) of the Public Smoking Regulations, S.I No.39 of 2008.

Enforcement of Smoke Free Laws

Following the enactment of the Public Smoking Regulations, the Ministry of Health developed a Manual on the Enforcement of Smoke Free Tobacco Laws which was published in September of 2009 (the “Enforcement Manual”). The Enforcement Manual was developed to train Environmental Health Officers (“EHOs”) on the Tobacco Regulations and the Public Smoking Regulations. The said manual proposes a holistic and multi-sectoral approach to enforcement of the laws – an approach which includes engaging civil society organisations to receive, process, or make complaints on behalf of members of the public against employers and/or business owners or operators. It also outlines duties of various stakeholders and the processes to follow when carrying out investigations, processing complaints and instituting court process, where necessary.

EHO have been given the primary responsibility to monitor and enforce compliance of smoke free zones. Where necessary, they can enlist the assistance of the police. Local authorities i.e., the City Councils are also required to take steps to ensure smoke free compliance in places under their authority, calling upon EHOs and/or police as necessary.

Furthermore, the Public Health Act also confers powers on EHOs to enter any premises to conduct inspections as they deem fit and undertake enforcement action against owners or operators of the premises and any other persons who violate the law.

The main objectives of smoke-free inspections and investigations are:

- 1) Sensitizing owners, occupiers, and operators of public places, including public conveyances, workplaces, and smokers about smoke-free requirements.
- 2) Imposing warnings and sanctions for violations as appropriate, particularly against owners/occupiers/operators but also against individuals who smoke in violation of the law.

- 3) Obtaining and documenting necessary evidence for enforcement proceedings; and
- 4) Documenting and reporting to the Ministry of Health the fact of compliance or non-compliance, particularly on the part of owners/occupiers/operators, for the purposes of both taking enforcement actions and monitoring compliance trends¹⁷.

It has been noted however, that inspection of business premises is typically done only when licenses are scheduled for annual renewal. Aside from this, the modus operandi of the EHOs is reactionary as opposed to proactive¹⁸. In other words, the EHOs typically respond to public complaints or queries, although they have the authority and mandate to conduct random inspections of establishments.

Compliance with Smoke-free Laws

In order to assess the levels of compliance, 15 selected restaurants and bars in Lusaka were patronised and observed.

A total of 9 of the 15 establishments did not allow cigarette smoking in the indoor areas but allowed cigarette smoking in quasi-outdoor public areas designated for cigarette smokers. What was observed, however, was that these quasi-outdoor smoking areas still caused considerable pollution and exposure to second-hand smoking to members of the public or other patrons.

It was further observed that 4 of the 15 had no smoking prohibitions at all, whilst 2 restaurants neither permitted smoking on its premises nor had any provision for a designated smoking area.

¹⁷ Ministry of Health, "Manual on Enforcement of Smoke Free Laws", September 2009.

¹⁸ N. Chizuni, "Let's Clear the Smoke - Making Bars and Restaurants Accountable," Zambia Centre for Applied Research and Development (2017).

In summary therefore:

- (1) 60 percent of the restaurants were partially compliant in that smoking indoors was prohibited. Nonetheless, they would still be liable for allowing public smoking on their premises based on the catch all definition of what constitutes a “public place” under the Public Smoking Regulations;
- (2) 26.7 percent of the establishments were completely non-compliant; and
- (3) 13.3 percent of establishments were fully compliant.

Conclusion

The Public Health Act, the Tobacco Regulations, and the Public Smoking Regulations, all collectively prohibit smoking in public places. The primary objective for prohibiting public smoking has been to prevent exposure to second-hand tobacco smoke, which has been responsible for premature deaths, and serious cardiovascular and respiratory diseases among non-smokers. This paper has shown that despite the legal requirements for smoke free public zones, the implementation of the said laws has been below par specifically in restaurants and bars, where over 60% of these places have been non-compliant with the law.

Recommendations

Although Zambia has legislation governing smoke-free places and supporting documents for its enforcement, improvements are required to strengthen the law and its implementation. The following are the recommendations:

1. Domestication of the WHO FCTC - this is a comprehensive framework on tobacco control which if enacted, would address the issues associated with implementation of smoke free zones, such as defining the scope of tobacco products, establishing parameters to minimise second-hand exposure, and developing age-appropriate information and education communication campaigns.

2. Enhance collaboration between the local authorities and law enforcement agencies to ensure compliance by service providers.
3. Expand the list of outdoor and quasi-outdoor places where smoking is prohibited. Article 8 of the WHO FCTC and the Guidelines for its implementation require the prohibition of smoking in outdoor or quasi-outdoor places. While the current law broadly defines public places, implementing regulations establishing those places and the parameters within which smoking is prohibited have yet to be finalised.
4. Enhance administrative sanctions to include business licensure suspension or revocation amongst the possible penalties for establishments that repeatedly violate the law governing smoke-free places. For ease of reference, the Enforcement Manual already establishes guidelines for cooperation between different government authorities.
5. Enhance collaboration with civil society organisations (“CSOs”) engaged in the tobacco control space. Since the enactment of the Public Smoking Regulations in 2008, several CSOs have entered the tobacco control space to advocate for an array of public health and economic issues pertaining to tobacco production and trade. In order to give effect to the law and the supporting policy documents (such as the Enforcement Manual), it would be beneficial to the Ministry of Health to develop a multi-sectoral effort to ensure enforcement of tobacco laws. CSOs can play a significant role in the development of Information, Education and Communication materials, generating public dialogue, and holding duty bearers and business operators alike accountable by facilitating public complaints against contravening entities.

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