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Political Change in South Africa: New Tobacco Control and Public Health Policies

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Over the past decade, there has been a dramatic turnaround in the South African government's attitude toward tobacco control. Before 1993, tobacco control policy was virtually nonexistent, but the 1999 Tobacco Control Amendment Act gave the country some of the most progressive tobacco control policies in the world.

Today, all tobacco advertisements and sponsorships have been banned; smoking at work and in restaurants is illegal, except in clearly demarcated areas; and explicit health warnings are required on all cigarette packs. Although cigarettes are still relatively cheap in South Africa, excise taxes represent almost 50 percent of their total retail price, after significant increases in 1994 and again after 1997 (van Walbeek 2002b).

As a result of these policies, cigarette consumption is on a downward spiral. According to Corné van Walbeek of the School of Economics, University of Cape Town, it decreased from 1.9 billion packs in 1991 to about 1.3 billion packs in 2002. The rate of decline has accelerated especially since 1997, when large tax increases sharply increased the price of cigarettes. In light of these accomplishments, many today regard South Africa as a model for other countries.

But these gains have not come easily. They are the result of decades of steadfast lobbying by the health community and antismoking groups and of the new South African government's commitment to public health. And they have come in the face of vehement opposition from the tobacco industry, advertising agencies, hospitality associations, and, until the early 1990s, an apartheid government with extraordinarily close links to the trade itself.

The History: Early Days, Early Struggles

As long ago as September 1963, the *South African Medical Journal*, in a far-sighted editorial, offered advice to the health minister of the time:

There should be no hesitation about banning smoking in public places and on public transport. . . . Cigarette advertising should at first be restricted as to quantity and content with a view to its eventual limitation. It might also be advisable to insist that each cigarette packet should carry a notice to the effect that the contents are potentially dangerous to health. The minister of health may also attempt further restrictions of smoking by increasing the taxation on cigarettes. . . . The matter is important and urgent.

Dr. Yussuf Saloojee, executive director of the National Council Against Smoking (NCAS), has ironically remarked that these suggestions were considered so "important and urgent" that 12 years passed before a single one of them was acted on (Saloojee 1993a). In 1975 the tobacco industry volunteered not to advertise cigarettes on television, but it took another 12 years for it to agree to print on cigarette packs a warning ("Smoking is a health risk.") that was "vaguely worded, badly placed and in very small print" (Hansard 1993).

"A Crime of Apartheid"

Some have maintained that the government's historical lack of interest in tobacco control was "a crime of apartheid," arguing that the tobacco industry was dominated by white, Afrikaans-speaking South Africans with very close ties to the government (Wilkins 2000). The history of the tobacco industry in the country, particularly prior to 1993, bears out this view.

The tobacco manufacturing industry in South Africa is very highly concentrated. The Rembrandt group used to control 87 percent of the market, with British American Tobacco South Africa (BAT) being the only other company with any significant market share. Under the able leadership of the Afrikaner businessman Anton Rupert, Rembrandt developed into a very successful corporation, and it is often perceived as a symbol of the Afrikaans-speaking community's rise to economic power. After its merger with Rothman's International, it gained control of 95 percent of the market. Rupert retained a strong hand through his control of two companies, Remgro and Richemont, that owned 30 percent of BAT.

Rupert became one of the most powerful businessmen in South Africa: he built up strong links with virtually every major decisionmaker, including legal firms and media institutions, and was on the board of most major trusts. Yach (2002) recalls that "anywhere you turned in the media and tried to get a story published that advocated tobacco control, you were blocked by their absolute fear and trepidation of Rupert's long reach through his tobacco companies." Ironically, Rupert's wife was involved with South Africa's Cancer Association, while her husband's products were killing many of the people she was fighting to keep alive (Yach 2002).

Rembrandt had a long history of backing the National Party, which was dominated by Afrikaans-speaking South Africans. The two were, in fact, founded in the same year, 1948, and “grew up together” (Yach 2002). The National Party represented Afrikaner political power, and an unhealthy close relationship between the tobacco industry and the government had far-reaching implications for policymaking.

In the early 1990s Rembrandt rebuilt one of then-president F. W. de Klerk’s homes, and there were annual Rembrandt-funded outings for cabinet ministers. For its part, the National Party government demonstrated a favorable attitude toward the industry through low excise taxes, virtually unrestrained advertising, and an absence of restrictions on smoking in public places. For instance, within party circles, it was well-known that F. W. de Klerk’s predecessor, P. W. Botha, strongly disliked smoking—so much so that he forbade it at cabinet meetings. Yet Botha never expressed his attitude in antitobacco measures (Perlman 1991a).

During this time, the tobacco industry (in effect, Rembrandt) was the Ministry of Finance’s prime adviser on cigarette excise matters, with no indication of any Ministry of Health influence. This was clearly reflected in Finance Minister Barend du Plessis’ 1983 budget speech, when he warned, “The Tobacco Board has presented justified arguments for the maintenance of the status quo regarding the excise taxes on tobacco and I do not intend to wake sleeping dogs.” Three years later, in 1986, du Plessis again refused to increase excise taxes on cigarettes, arguing that any tax increase could adversely affect consumption and lead to a reduction of revenue (van Walbeek 2002a).

At the time, excise taxes accounted for less than 30 percent of the retail price, and the real excise rate on tobacco had been decreasing steadily for the previous 15 years, eroded by inflation. It is hard to imagine that the minister’s grasp of basic economics was so flawed that he believed his own statement. He, like his peers in many countries around the world, would have known very well that a tax rate increase would in fact lead to an *increase* in revenues. The decrease in consumption in response to a price increase would be smaller in percentage terms than the tax rise. The higher tax revenues per pack would generate higher total revenues, despite a somewhat lower sales volume.

The Cape Town Debate

The effect on policy of the relationship between the government and the tobacco industry became evident in 1989, when the Cape Town City Council announced plans to restrict cigarette advertising and smoking in public places. In protest, Rembrandt threatened to withdraw its sponsorship of the Cape Town Symphony Orchestra. The company’s influence

went well beyond its sponsorship: it commanded an enormous network of power and influence, and there was a significant threat of retribution if its wishes were thwarted. Rembrandt's tactic worked: Kobus Meiring, the administrator of the Cape Province, refused to pass the legislation needed to enforce the council's plans (Dennehy 1989a).

The restrictions, which had been proposed by Dr. Michael Popkiss, Cape Town's chief medical officer, would have required restaurants to set aside at least half their tables for nonsmokers (Doman 1989a). Existing by-laws outlawed smoking only on the lower decks of buses, in cinemas, and in public elevators. New restrictions on tobacco advertising were also proposed: in addition to the ban on cigarette commercials on television, cigarette advertising would be prohibited in all council-owned buildings and properties (Dennehy 1989a).

Four days before the council debate on the proposal, Popkiss wrote to Anton Rupert appealing for funds for an AIDS awareness campaign. An outraged Rupert turned down the request, saying that his refusal came "from an industry you have decided to destroy" (Bateman 1989b) in pursuit of "not only dictatorial, but clearly impracticable" objectives (Morris 1989). The exchange prompted Cape Town mayor Peter Muller to rebuke Popkiss for his insensitivity and bad timing, declaring that he found it "incongruous that the [medical officer] can write a financial appeal only four days before a major smoking debate—he must either think that Dr. Rupert is foolish, or alternatively, he's totally devoid of any sensitivity" (Bateman 1989b). Muller's chastisement was immensely embarrassing to the medical officer, as it was highly irregular for a mayor to publicly rebuke a city official.

At the council debate, strong support was shown for the proposal, with 25 councillors voting in favor and only 5, including the Cape Town mayor himself, against. A palpable discomfort existed, however, between Popkiss and the administrator and mayor. This tension was exacerbated by the leak of internal correspondence between Rupert and Popkiss in which the Rembrandt chair accused Popkiss of being "hell-bent to create new regulations against the freedom of the individual to decide for himself" (Bateman 1989b). To worsen the situation, there was a further leak of a letter from the mayor to the council's executive committee in which he was highly critical of Popkiss and his suggested regulations.

The publicity surrounding this feud sparked a heated debate in the letters pages of Cape Town newspapers. The National Council Against Smoking, the Heart Foundation, the Cancer Association, and the Medical Association of South Africa sprang to Popkiss's defense, praising him for creating awareness about the health hazards of smoking and pledging their full support for the bylaw.

The restaurant industry, which had remained silent until then, began actively voicing its concerns. A local organization, the Cape Restaurateurs

Association, gave the council 12 days to withdraw the bylaw or face the threat of court action. When the Cape Town council refused to oblige, the association issued a summons, stating that the ban was “irregular, ultra vires, invalid and unreasonable” (Doman 1989a). The Federation of Hotel, Liquor and Catering Associations of South Africa (FEDHASA) organized a petition signed by 307 Cape Town restaurants to protest the new bylaw. The restaurateurs’ primary objections were that the bylaw infringed on their right to decide how best to run their businesses (Doman 1989a) and that some restaurants were too small to be reasonably expected to divide their eating areas (Leaver 2002). The Cape Town Chamber of Commerce did not remain silent either: it argued that business in South Africa was already overregulated and that “efforts should be directed toward doing away with regulations rather than devising more ways to inhibit business activity” (Cape Town Chamber of Commerce 1990).

Against the fierce opposition to the bill, the health lobby made a compelling case based on the health hazards posed by smoking and inhaling secondhand smoke. And a large majority of the Cape Town public supported restrictions on smoking in enclosed public spaces. The bylaw was only one step away from becoming effective when it was vetoed by Cape Province administrator Meiring. In response, Popkiss commented that he “had never been in favor of the 50–50 rule anyway, because [it] had not been shown to protect non-smokers” (Leaver 2002).

The Evidence against Tobacco Mounts

Meanwhile, a small success was achieved in a different arena. Key players in the public health community, including Prof. Harry Seftel, then at the Medical School of the University of Witwatersrand, and Drs. Derek Yach and Krisela Steyn of the Medical Research Council, were compiling evidence on the harm caused by tobacco in South Africa and on the high costs that tobacco use imposed on both the state and patients in the form of treatment costs for tobacco-related illnesses, forgone earnings, and premature deaths.

As early as 1982, Yach published one of the first tobacco control articles in the *South African Medical Journal*. His study was considered so controversial that the Medical Research Council refused to publish it under its own name but instead listed it as a personal contribution. The study focused on the economic aspects of smoking in South Africa, claiming that “while it is true that a reduction in tobacco and cigarette production would cause some losses to the national economy and individuals, it is also true that the reduction in total costs accompanying such a decrease would more than compensate these losses” (Yach 1982). Encouraging authors to publish studies under their own names was “a

highly exceptional stance to take," indicative of even the medical establishment's fear of "the impact of negative reactions of tobacco companies" (Yach 2002).

But the persistent efforts of Yach and his colleagues eventually paid off. In 1988 they succeeded in arranging a special "tobacco focus" issue of the *South African Medical Journal*, to coincide with the first World No Tobacco Day. It was the first time ever that an entire issue of the *Journal* had been devoted to one preventive aspect of public health, and it was considered a major breakthrough in tobacco control. Yach described it as a critical turning point because "we were not just saying the deaths were rising, we started getting a projection of what was going to happen in the future and introduced the fact that there were practical legislative options that had been taken around the world." The *Journal* had a huge impact in South Africa, receiving extensive coverage and discussion and helping set a basis for future action. So, the publication of the special issue was a first step toward "bridging the gap between epidemiological data sitting in scientific journals and popularizing the data in the mass media and among political groups" (Yach 2002).

The high medical costs of treating smoking-related illnesses at hospitals were drawn to the public's attention. In an editorial in the *South African Medical Journal*, Anton Rupert was accused of using "emotive language" to obscure facts, including the fact that "smoking caused almost half of the cases at Groote Schuur, Cape Town's premier hospital" (Bateman 1989b). These realities did not elude authorities at the University of Cape Town, who used the hospital as a training facility. In March 1989 smoking and the sale of cigarettes were banned in all public areas of the medical school campus, including cafeterias and bars (*Cape Argus* 1989b).

As political opportunities emerged in later years, the strong evidence base helped support and justify actions. Yach (2002) saw the first indication of success in 1991, when initial documents of the new African National Congress (ANC) government's Reconstruction and Development Plan strongly featured tobacco control as an intended policy. It was helpful that a number of people who eventually assumed senior positions in the government had become colleagues of Yach and Steyn in the Medical Research Council in the years just prior to the turnover of power. The most prominent of these were Dr. Nkosazana Zuma, who was health minister from 1994 to 1999, and Dr. Olive Shisana, who became director-general of health in 1995.

Action and Reaction: Efforts Elsewhere

Where Cape Town had failed, Johannesburg dared to tread. In March 1991 the Johannesburg City Council banned smoking in take-away restaurants

and required that 60 percent of seating in all other eateries be reserved for nonsmokers (Burgers 1991). The council faced strong opposition from pro-tobacco groups such as the Johannesburg Chamber of Commerce (Woodgate 1991), but it stood by its decision, arguing that council members would rather have "egg on their faces than death on their consciences" (Nevill and Gill 1991).

Steps had also been taken in the Eastern Cape Province, where the medical officer of Port Elizabeth had banned smoking in prominent public buildings in the city. Even private companies started to act: many declared their cafeterias and boardrooms smoke-free areas and encouraged smoking executives to attend subsidized quit-smoking courses (Barrett 1989).

These events, particularly those in Johannesburg, prompted Popkiss to launch a new offensive against smoking in 1992, asserting that Cape Town should match the bylaw passed in Johannesburg. The Cape Town medical officer was convinced that his new recommendations would fare better than previous ones had, since they were shorter, simpler, and easier to understand. For the second time, however, his proposals came under heavy attack from pro-tobacco lobby groups, and once again the Cape Province administrator refused to pass the bylaw.

A Turning Point

With the second failure to pass a no-smoking bylaw, prospects for legislation in the Cape Province seemed dim. On the national level, however, the appointment of the country's first woman health minister provided a gleam of hope. Dr. Rina Venter may not have been a pro-control advocate when she assumed office, but she was an open-minded social worker with sympathy for nonsmokers who had to suffer from passive smoking (Saloojee 1993a). Perhaps her most important quality was that she was a skilled politician and person of integrity who was prepared to fight for legislation she believed in.

Yussuf Saloojee remarked that "the spark that may have served to focus the mind of the minister on the issue" came in 1991, in the debate on her first health budget (Saloojee 1993a). During the discussion, an opposition member of Parliament, Carole Charlewood, criticized the government, accusing it of "protecting the vested interests of the powerful tobacco industry, and not the people of the country." Charlewood's attack was based on the 1988 report of the Medical Research Council, *Smoking in South Africa: The Need for Action* (Yach and Townsend 1988), which argued that "the costs of the tobacco industry to society outweighed its benefits" (Wilkins 2000) and advocated strong measures to discourage smoking.

Venter knew that, other than low-key, low-budget educational campaigns, the government had very little with which to defend itself against Charlewood's accusations. In her reply the health minister therefore promised to look into the possibility of tobacco control legislation. She later said that "she regarded the matter as sufficiently important to make the decision there and then without having first consulted with her cabinet colleagues" (Saloojee 2002). According to Saloojee, that moment was the turning point in the administration's approach to tobacco control: "It was a vital public commitment, and the first signal of new thinking on this issue at the highest levels of government."

Building Support

Venter was well aware of her party's vested interests, and she recognized that it would be unrealistic to expect full support for her plans. She also knew that one minister, however determined, was "not going to disperse the smoke ring alone" (Perlman 1991a). The outcome of her undertaking would depend crucially on how much support the health department got from the rest of the government. It was not only her party's well-oiled links with the industry that seemed to stand in her way: the state president and many of his colleagues were chain-smokers. In fact, when F. W. de Klerk was asked to observe No Tobacco Day by not smoking, his office replied that his schedule that day was too stressful for him to do without (Perlman 1991a). But despite being a heavy smoker, de Klerk knew that the addiction was harmful, and he supported moderate measures to discourage smoking.

The tobacco industry was a major source of taxes, export revenue, and jobs. According to Perlman (1991a), in 1990 the industry generated 988 million South African rand in taxes, employed over 60,000 people, and spent nearly 90 million rand on advertising.¹ There were, furthermore, several major tobacco-sponsored sports events such as Benson & Hedges cricket and the Rothmans July Handicap, the premier horse race.

But Venter had a strategy. Shortly after her announcement, one of the country's most influential antitobacco alliances, the Tobacco Action Group (TAG), sought a meeting with her. TAG consisted of three large, highly vocal lobbying organizations: the Heart Foundation of Southern Africa, the Cancer Association of South Africa, and the National Council Against Smoking. TAG was highly effective in using "public fora and the media to warn the public against the dangers of tobacco, to call on the government to introduce effective counter measures, and to discredit the industry's claims about their product and the importance of their indus-

1. In 1991, 2.5 South African rand = 1 U.S. dollar.

try" (van Walbeek 2002a). Venter knew that she would not be able to steer a tobacco control bill through Parliament without positive media coverage and outside support. She therefore made a pact with the alliance: she would push for a draft bill from inside if TAG would see to matters outside the legislature (Saloojee 1993a). Saloojee later remarked that Venter "stood by her word throughout this process" (Saloojee 2002).

The agreement meant that the health minister did not have to spend time campaigning for favorable media coverage and backing beyond Parliament: experts were going to do it for her. This plan fit well with the changing role tobacco-control lobbyists saw for themselves during the early 1990s: "Rather than lobbying the policymakers, they were working with the policymakers in publicizing the positive aspects of the proposed tobacco measures" (van Walbeek 2002a).

But however skilled TAG was, it did not face an easy task. The country's two most powerful media institutions at the time, the South African Broadcasting Corporation (SABC) and Nasionale Pers, had close ties with the tobacco industry and were in many respects government controlled. Nasionale Pers owned almost all Afrikaans newspapers and had sold a considerable proportion of its company shares to Rembrandt (Perlman 1991a). The SABC received substantial government subsidies and claimed that many of its radio stations could not survive without cigarette advertisements (Saloojee 1993a).

When the NCAS produced its first antismoking commercial, which it regarded as "a first step towards educating the public to stop being seduced by cigarette advertising" (Levy 1991a), the SABC refused to broadcast it. The corporation conceded that it had a gentlemen's agreement with the cigarette companies, saying that "because the tobacco industry had voluntarily undertaken not to advertise tobacco products on TV, it would be unfair to accept anti-smoking ads" (Levy 1991b). In stark contrast with other print media companies, Nasionale Pers was (unsurprisingly) reluctant to place the advertisement and coyly said it wanted to look at the copy before deciding. The visual broadcast version of the commercial, entitled "Smoky Conversation," showed six young people picnicking and smoking in an idyllic setting while talking about the dangers of their addiction. It was to be shown in all major cinemas for two weeks in April that year, but at a high and unusual cost: Cinemark, one of the country's biggest cinema chains, waived its usual policy of presenting public service messages gratis and charged for showing it. The reason was clear—fear of losing tobacco advertising, as almost a third of all cinema ads were for cigarettes (Perlman 1991a).

Saloojee dismissed the SABC's stance as "rubbish." Tobacco was "undeniably the largest preventable cause of death and the NCAS had a right and a duty to inform the public about its dangers using all available media."

The industry declined to comment, arguing that “smoking was too emotionally loaded to be put into perspective in a single paragraph” (*East London Daily Dispatch* 1991). Instead, it released a leaflet, “Common Sense in Smoking—Personal Choice and Moderation the Key” (Perlman 1991a), which asserted that allegations against smoking were based on heated reactions rather than factual foundations. One paragraph stated, “The industry does not react to points of view which are made merely for the sake of generating publicity, but prefers to put its own point of view to those people who are mindful of their health and the convenience of others and who are prepared to make allowances for other forms of enjoyment.”

When the industry called for private talks with the minister, it became apparent that it had more than the distribution of pamphlets planned: it was going to spend sizable amounts to fly in three international consultants to persuade the minister that legislation was unnecessary (Saloojee 1993a). Venter agreed to the meeting provided that she could involve local tobacco control advocates, including TAG, the Medical Research Council, and an economist from the University of Cape Town. Two years later, during the proceedings of the Extended Public Committee, she described the encounter: “We spent an entire afternoon, from two o’clock to five o’clock, on this matter. These people gave an elucidation of research which in their opinion, as they interpreted it, indicated that tobacco smoke was not at all harmful” (*Hansard* 1993).

Saloojee (2002) recalls an apprehensiveness within the tobacco control group, some of whose members “felt like the ‘B’ team, and were slightly intimidated by the international experts.” But in the end, the South Africans were the ones who convinced the minister. At the conclusion of the meeting, Venter “unequivocally stated that she was going to proceed with legislation because it was her department’s duty to warn smokers of the risks of smoking and to protect the rights of non-smokers without infringing on the rights of smokers” (Saloojee 1993a).

Yet again, there was a strategy involved. Yach recalled that

the minister instructed us to be on our worst possible behavior, which was quite pleasant to be. I’m pretty sure they thought they were coming into a developing country where the knowledge base about the tobacco industry’s behavior was poor. But we had already been fully briefed—through our links with international colleagues—on everybody who was going to be before us. We knew all their arguments and that they could be countered easily. (Yach 2002)

Venter later described it as a day of great satisfaction:

If there has been one day in my life on which I have been proud of our scientists, it was that day. Not only did they testify to the thoroughness

with which they do research, but also demonstrated that they could hold their own in a debate on an international level in which arguments were being advanced in regard to the harmfulness or otherwise to one's health of tobacco smoke. (*Hansard* 1993)

Saloojee believed "the industry's ability to buy expensive foreign lobbying consultants" had turned into a liability: "Nationalism became an advocacy tool. It was a matter of national pride that the home-grown scientists had put the foreign experts in their places" (Saloojee 1993a).

The Road to Legislation

Months later in 1991, Venter introduced the Control of Smoking and Advertising of Tobacco Products Draft Bill. The proposed legislation would give her powers to bar or limit smoking in certain public places and make it an offense to sell cigarettes to anyone under 16. But the real sting was in the changes the minister wanted to make to the advertising code for tobacco products: visual commercials would be required to carry a rotating health warning, and broadcast versions would have to include the phrase "smoking is a health risk" in a voice similar to that of the main presenter of the advertisement (Perlman 1991a). Advertisements would not be allowed to:

- Depict any woman of childbearing age as being associated with smoking
- Imply that smoking is associated with success in sports
- Imply that the use of tobacco products is a sign or proof of manliness, courage, or daring or enhances feminine charm.

Restrictions were also to be placed on tobacco companies' sponsorship of sporting events and any other activities implicitly associated with health, success, or youth. Together, these restrictions called almost every cigarette advertisement in South Africa into question.

Tobacco control lobby groups welcomed the proposal but pointed out that a multifaceted approach was needed. The National Council Against Smoking suggested a "comprehensive anti-smoking program centered around increased taxes on tobacco products" (Leaver 2002). The Medical Research Council reiterated this plea, expressing concern about the increased incidence of smoking among teenagers in poorer, predominantly black communities (*Medicine Today* 1991). The tobacco industry chose not to comment.

Stumbling Blocks

Venter's draft legislation was to be published in the *Gazette* on June 28, 1991. (All proposed legislation must be published in the *Gazette* before

being introduced in Parliament.) It was at this point that the “vested interests” that Member of Parliament Carole Charlewood had commented on in 1991 became apparent: a day after Venter had her “triumphant” meeting with the tobacco industry representatives and local antismoking advocates, the government delayed her plans to publish the proposals. The state maintained that the delay would allow for “the incorporation of a few new ideas” and would give the minister time to review them (Perlman 1991b). Authorities promised that the postponement would be minimal. But two months later, in September 1991, the health department announced that the draft legislation would only be submitted in the following year’s parliamentary session.

In March 1992 the proposed law reemerged, this time as the Tobacco Products Control Bill. TAG immediately organized a workshop to broaden support for the bill, inviting professional, labor, and community associations. Each organization was asked to issue a public statement on smoking and health and to make representations in favor of the legislation. Through this lobbying process, 86 percent of the submissions received by the Department of National Health and Population Development were in support of the proposals (Saloojee 1993a).

The bill’s most significant opponents were the South African Business Institute and the SABC. TAG felt that there was not much it could do to influence the Business Institute but that “the opposition of the SABC could prove a major impediment” (Saloojee 1993a). The SABC asked for radio to be exempt from broadcasting health warnings, as some of its radio stations received up to a third of their revenue from cigarette commercials. It argued that the industry would shift its advertising from radio to billboards and print media, where it could more easily disguise warnings. The SABC’s case was strongly argued, and research had shown that many illiterate people identified cigarettes by package design and would not understand printed health messages. A compromise was reached that exempted radio stations provided that they set aside a pro rata amount of free time for broadcasting health messages.

The tobacco industry yet again refused to comment publicly. It stuck to its “private approach,” with the Tobacco Institute of South Africa (TISA) sending representatives directly to the health minister (Leaver 2002).

In June 1992 the health department once again announced that the bill was unlikely to come before Parliament until the next year. Although Parliament was due to adjourn later that month, the bill was not on the order paper, nor had it been referred to the Joint Committee on Health for consideration. A health department spokesperson said the minister was still discussing the bill with interested parties but strongly denied rumors that the delay was the result of pressure from tobacco organizations. It later emerged that TISA had been given the opportunity to sub-

mit further representations to the health minister and had met with her earlier that month.

Many of Venter's fellow National Party ministers were in disagreement with the bill. For example, the minister of agriculture criticized what he viewed as "punitive measures" against smokers and saw it as "fitting that the industry had simultaneously tried to improve its position and combat the anti-tobacco lobby by forming the Tobacco Institute of South Africa earlier that year" (Leaver 2002). He emphasized how much revenue the industry provided to the state. Antismoking advocates criticized the minister's failure to mention the costs of tobacco use in the form of disease, lost productivity, and medical expenses to the state, which, a widely publicized Medical Research Council report argued, "far outweighed the benefits of smoking, defined as the sum of tax revenue accruing to government and income earned by employees in the tobacco industry" (Leaver 2002).

Health advocates were also greatly concerned about the delays in the legislation, knowing that the industry would do everything in its power to use the postponements to stop it from being passed. Saloojee remarked that "it was difficult to understand the delay in the bill's publication when the express purpose of publication was to elicit comment" (*Cape Times* 1991).

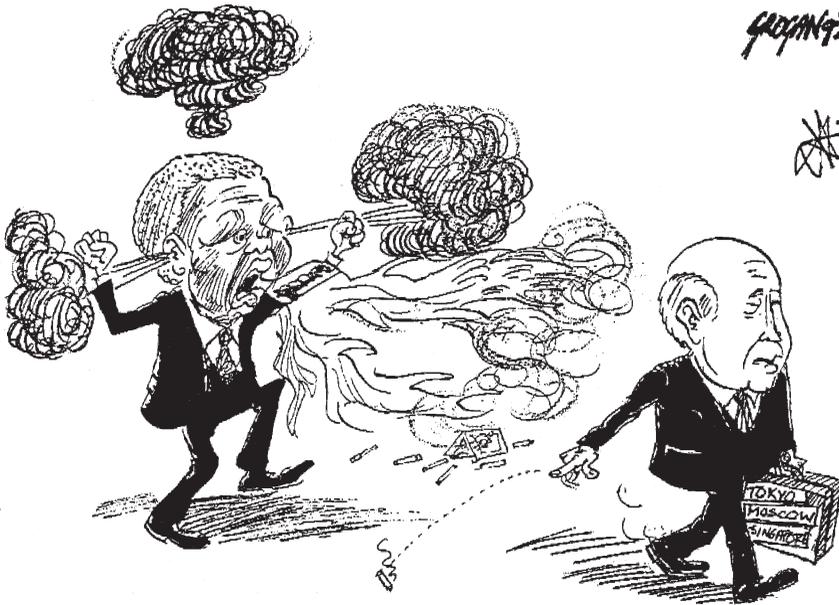
Political Support from the New Government

One important factor that worked against the tobacco industry was South Africa's changing political landscape. By 1992, the country was in transition; its first democratic elections were only two years away, and Nelson Mandela, the country's president-in-waiting and one of the leaders of the antiapartheid liberation movement, the ANC, had gained considerable support after being released from prison in 1990.

Two months after the draft bill was finally published for comment, on World No Tobacco Day, May 31, 1992, Mandela made his stance on smoking clear when he declared his total support for the bill, appealing to all South Africans to back antitobacco campaigns. Thereafter, the tobacco industry's strategy changed noticeably. Saloojee (1993a) observed that it moved from "trying to defeat the bill, to simply weakening it" and speculated that, after hearing Mandela's statement, the industry realized that killing the bill could result in even stronger legislation from a future ANC government. These conjectures seemed to be confirmed when, shortly after Mandela's statement, cigarette companies complained to the minister that the issue had been politicized, "and that while they could trust the present government, they were not too sure about the next."

Another watershed event was the international conference on tobacco use and its control in Africa that Yach and other members of the Medical Research

Figure 6.1. De Klerk Prepares to Take Leave of Power and the Tobacco Control Debate: A Cartoonist's Perspective.



"It would be better for all if you stopped smoking."

State President de Klerk was known to be a heavy smoker but supported weak tobacco control efforts. Future president Mandela had made a strong statement of support for the tobacco control bill, which de Klerk's government was delaying.

Source: *Cape Times*, June 2, 1992.

Council had long been planning and that finally took place in Harare, Zimbabwe, in 1993. Dr. Nkosazana Zuma, who had recently been hired by the Medical Research Council and was soon to become the first health minister of the new South African government, gave the opening speech in her capacity as a representative of the ANC. She made clear her personal commitment, and her party's commitment, to strong efforts to reduce tobacco use in South Africa. The more than 100 conference participants included a large South African delegation, people from about 35 other countries, several notable international experts in tobacco control, and a small huddle of representatives of tobacco growers (Chapman and others 1994).

Debates in Parliament

In Parliament, which still consisted mostly of National Party members, the tobacco industry maintained its strong influence. The Tobacco Prod-

ucts Control Act was tabled in March 1993, after a delay of more than a year. During the interim, TAG was assured that the bill had been approved with minor changes. Although concerned that it had not been told what these revisions were, the lobbying group saw no reason to make a public issue of this. When TAG finally did get to see the tabled version, it was stunned: "The bill as introduced had been completely watered down. The clause restricting smoking in public places had disappeared, and spoken communications were exempted from the need to broadcast health warnings" (Saloojee 1993a).

It was obvious that the bill had met with considerable resistance in the cabinet, as shown by a telling comment that Hernus Kriel, the minister of law and order, made before the cabinet meeting at which the bill was discussed. He was heard to say loudly that Venter's proposals would never reach Parliament, as "50 percent of the cabinet plus one" would oppose it. When questioned who the "50 percent plus one" were, he replied that the state president was the 50 and he was the "one" (Saloojee 1993a).

The first reaction of tobacco control advocates was to reject the weakened bill, but following extensive deliberations they instead decided to make representations to Parliament to try to strengthen the proposed legislation. TAG, the Medical Research Council, and the Johannesburg and Cape Town City Councils each asked to be allowed to give evidence to the Joint Committee on Health. Cigarette companies sent the Tobacco Institute to do the same, yet again with international experts in tow.

Tobacco control supporters argued that a recent Medical Research Council study had shown that the majority of the public supported tobacco control legislation, that the bill distorted the meaning of the word "advertising" because it did not include radio advertising, and that Parliament would be subject to ridicule if it allowed the legislation to pass (Saloojee 1993a). According to the lobbyists, radio was a major issue, as it reached more South Africans than the other media. Moreover, radio, in contrast to print media, was accessible to the large part of the population that was illiterate—a market in which the industry was showing a growing interest.

Cigarette companies responded by releasing studies disputing the statements of the antismoking lobby. One study, by Health Buildings International, argued that "more workers complained about temperature, stuffiness, and lighting than about tobacco smoke and noise" (Perlman 1993). Other studies cast doubt on the links between smoking and disease or contended that restrictions on tobacco advertising were ineffective (Saloojee 1993b).

Despite the industry's efforts, all of the health groups' recommendations were accepted, with local and national authorities being given the power to restrict smoking in public places and radio commercials again

being included in the definition of “advertisements.” (In certain cases, however, radio stations could apply for exemption from the requirement to air a health warning as part of tobacco advertisements.) The bill also outlawed the sale of cigarettes to minors and empowered the minister to prescribe the health warning and the details about dangerous ingredients that were to appear on cigarette packs or in advertisements.

Satisfaction Comes with Success

On June 17, 1993, the Tobacco Products Control Act was approved by Parliament. In Venter’s own words, she had “ultimately succeeded in arriving at a piece of legislation” that gave her “the most satisfaction of any legislation” since she had had “the privilege of being a minister.” Venter made it clear that her business was health and not “problems regarding the cultivation of tobacco.” She refrained from becoming involved in or being drawn into a discussion on the interests of tobacco producers, saying, “I really do not believe that it is a matter in which a minister of national health should participate.” She also mentioned—tellingly—that she had reconciled herself “long ago that it would not be possible to take everyone along with me and to receive everyone’s support for this bill. . . . There are too many vested interests that have to be taken into consideration” (*Hansard* 1993).

Measured against the international “gold standard” for tobacco control legislation, the act was mild. (For legislative “good practice,” see PAHO 2002.) However, it “represented a schism between the ruling National Party government and the industry” (van Walbeek 2002a) and was the first major dent in what had been a solid wall of vested interest (Saloojee 1993a). As it turned out, it was the last piece of legislation passed by the National Party government.

New Government, New Regulations

In April 1994 South Africa’s first democratic elections were held. The ANC replaced the National Party as the ruling party. Under the new health minister, Nkosazana Zuma, the draft regulations for mandatory and explicit health warnings were published in the *Gazette* for comment. The regulations specified the size of health warnings required on printed advertisements and televised commercials, as well as on cigarette packs. The Health Ministry stated that tobacco industry-sponsored events would not be affected by the directives, as they were examples of “indirect advertising” (Miller and Ramsay 1994). This loophole in the legislation was subsequently exploited by the industry.

Eleven different health warnings, each consisting of two parts, were listed in the regulations (Louw 1994). The first part was a concise warning

on the effects of smoking—for example, “Danger, smoking can kill you,” and “Pregnant? Breastfeeding? Your smoking could harm your baby.” The second part explained how and why smoking damaged health, described the benefits of quitting, and gave a telephone number that smokers who wanted to quit could call to get information and advice. (For example, “Nine out of ten patients with lung cancer are smokers. Smoking also causes cancer of the lip, mouth, voice box, food pipe and bladder. Quitting smoking reduces your risk of cancer. For more information or help call. . . .”) Written advertisements only had to carry the first part of the warning, positioned at the top of the advertisement and occupying 10 percent of the area of the advertisement. Another 2 percent of the area had to be dedicated to information on tar and nicotine. Cigarette packs had to carry the two-part warning, which was to occupy 15 percent of the front of the pack and 25 percent of the back.

Antitobacco lobbyists wanted the new labeling in order to give consumers better information about the health hazards of smoking tobacco products, but the cigarette, advertising, and media industries objected strongly (Leaver 2002). TISA sent a submission to the government in which it argued that the regulatory health warnings were unconstitutional because they deprived manufacturers of constitutionally protected property rights of registered trademarks. The industry also asserted that the warnings violated the companies’ right to freedom of expression by “compelling manufacturers to include health messages and warnings with a propagandistic character . . . without stating the source” (Leaver 2002). This argument was supported by advertisers, who said that messages without sources gave the “untenable impression that the tobacco advertiser is warning consumers not to use his product” (*Financial Mail* 1994).

Advertisers also claimed that there had been a lack of transparency and consultation in drawing up the draft regulations and that if the regulations became law, there would be numerous job losses in the advertising industry because the tobacco industry would end many of its contracts. The managing director of Times Media Limited, one of South Africa’s leading newspaper groups, described the proposals as a form of censorship that trampled on the right to free commercial speech (de Villiers 1994a).

Several newspapers and magazines argued that they stood to lose advertising revenue. The media’s opposition was (over)stated in such melodramatic terms as to be almost farcical: the director of Nasionale Pers, in which Rembrandt had shares, predicted a “blood bath” (de Villiers 1994a) and foresaw that the print media would lose millions in revenue and be “paralyzed” (Leaver 2002). The Medical Research Council refuted these absurd claims, quoting a study by the council which had found that in the “10 most popular South African magazines, each with a circulation of over 100,000, tobacco accounted for less than 10% of total adspend” (Leaver 2002).

The one significant concession was that in August 1994 the health minister exempted radio stations from the advertising regulations for one year. Radio stations had argued that they would be hard hit by the new regulations and could lose millions in tobacco advertising revenues (de Villiers 1994a, 1994b). They said they needed time to adjust, since a sudden drop in their revenues might force them to close down broadcasts to isolated and illiterate rural groups, for whom they were a vital source of information and entertainment. For their part, the Independent Broadcasters Association agreed that "the proceeds of five advertising spots per day per radio station which carries tobacco adverts be given to the [health department] for running a campaign aimed at warning people about the dangers of smoking" (de Villiers 1994a, 1994b).

Four months later, in December 1994, the regulations governing the display of health warnings on tobacco products and in advertisements were published in the *Gazette* under the Tobacco Products Control Act of 1993. Enforcement would begin only after several months, to give the tobacco industry time to use up stocks of existing packaging materials. After the legislation was "gazetted," TISA complained that it had not been consulted (Leaver 2002). It had, in fact, voiced its views on several occasions but had not prevailed against the counterarguments and factual evidence presented by the public health groups, which argued that the measures were important for protecting and promoting public health and that the actual economic losses would be trifling, in contrast to the exaggerated claims of those seeking to protect their vested interests.

Implications for the Provinces: New Hope for Cape Town

The implementation of the Tobacco Products Control Act in 1994 was a significant development for municipalities because it granted them the right to apply to the health department to promulgate their own regulations controlling smoking. This was particularly good news for Cape Town because it meant that the administrator no longer had veto power over antismoking measures in the city.

Michael Popkiss, Cape Town's chief medical officer, was quick to apply for these powers. Within four months the Cape Town City Council had tabled draft regulations to restrict smoking in virtually all public places. Specifically, the municipal regulations prohibited smoking in 80 percent of every city restaurant and banned smoking in shopping malls, theaters, cinemas, and all municipal buildings. Public transport, such as trains, buses, and taxis, was also out of bounds for smoking (Oliver 1994). A further stipulation was that any room in which smoking was banned could be designated as a smoking area, provided that a ventilation system was installed to extract the smoky air. The smoking area was not allowed to

exceed 20 percent of the total floor area of the enclosed public space, and it had to be clearly signposted.

On March 30, 1995, the antismoking regulations were passed by a large majority of Cape Town's new democratically elected council. A month later, the regulations were published in the *Gazette*, and by August 1995 admission-of-guilt fines for failing to abide by the regulations had been announced by the chief magistrate. The regulations came into full effect on April 26, 1996.

The *Cape Times*, a regional newspaper, was highly critical of the new local legislation, calling it a "gross interference in the free market economy." The newspaper argued that the council should reconsider its decision, as it had no right to tell "private institutions which rely on public patronage for their business what they should, and should not, allow on their property" (*Cape Times* 1995a). This tone was repeated four days later when a *Cape Times* column lent implicit support to restaurant owners who defied the ban. The newspaper published a photograph of the chairman of the Restaurant Guild with a lit cigarette in one hand and a fork in the other, accompanied by a statement describing the new law as "no less ludicrous or impractical than decreeing that 20% of all restaurant windows must be tinted, or that 80% of all tablecloths must be pink" (Jackman 1995).

Many *Cape Times* readers were angered, accusing the newspaper of irresponsible journalism and of supporting the tobacco lobby. Popkiss wrote an open letter in defense of the regulations, noting that their aim was to protect the public from being exposed to the dangers of environmental tobacco smoke and that the council therefore included "any indoor area which is open to the public or any part of the public" in the legislation, regardless of whether it was state owned or privately owned (Popkiss 1995).

Aside from the restaurateurs and some media, negative feedback was limited (Parker 1995). The designers of the new regulations noted that where similar smoking bans existed abroad, the incidence of smoking had decreased because of social pressure rather than the threat of sanctions. Various organizations publicly highlighted their commitment to the new regulations. For example, one of Cape Town's major shopping centers, the Victoria & Alfred Waterfront, voluntarily began a program of educating tenants and staff about the new smoking measures and how best to implement them. Information tables were set up around the shopping center to promote public awareness of the regulations, and bins were placed at mall entrances to allow people to extinguish their cigarettes before entering (Smith 1995). The Cape Town City Council issued a booklet containing details about the legislation and information about the health hazards of smoking, with the aim of educating the public and easing the implementation process.

In October 1995 the Restaurant Guild launched the "Courtesy of Choice" program in an attempt to preempt similar legislation in other provinces. It encouraged South African restaurants to voluntarily cater to both smokers and nonsmokers by giving patrons the option of deciding whether they would like to be seated in a smoking or nonsmoking area (Leaver 2002). The key to the success of the program would be the installation of adequate ventilation in the smoking sections of restaurants. Participating restaurants were given a ventilation checklist, a training video for staff, and a Courtesy of Choice logo, which displayed the message "Welcome smokers and nonsmokers" along with a yin-yang symbol with one half blank and the other half displaying a cigarette.

The NCAS was extremely scornful of the campaign. Saloojee noted that "if common courtesy alone were sufficient to prevent harm, no laws would be needed at all" and that the Restaurant Guild "was disregarding the preferences of nonsmokers, who had stated in surveys that they preferred smoke-free public places" (Strachan 1995).

Almost two years later, in March 1997, an issue of the hospitality industry magazine *Hotel and Caterer* declared that "the fuss created over the past couple of years about cigarette smoking in restaurants seems to have died down." This was attributed directly to the success of the industry's Courtesy of Choice program in fighting "the fanatical antismoking lobby" (Leaver 2002). Little did the restaurant industry know how wrong that analysis was and what was in store.

National Developments

South Africa's tobacco control cause was helped enormously by the first democratic elections in 1994. The new ruling party, the ANC, had no alliance with the tobacco industry and had a much stronger focus on primary health care than the previous government, including a commitment to an effective tobacco control policy.

More than that, Nelson Mandela, the country's new president, had consistently voiced his strong support for antismoking legislation, and he was on record as having called for a "world free of tobacco" (*Republikein* 1994). Mandela's choice for health minister, Nkosazana Zuma, was known to be strong willed and determined. As a physician and asthma sufferer, she was acutely aware of the dangers of passive smoking. A month after taking office, she insisted on smoke-free cabinet meetings, explaining that exposure to tobacco smoke worsened her condition (*Republikein* 1994). Although the tobacco industry had previously been able to delay impending legislation, they were not able to do so with Zuma as health minister. In fact, Zuma often worked at such a pace as to catch the industry off guard, leading to accusations that she was "bulldozing" health bills through Parliament (Stuart 1998).

From the outset, Zuma made it clear that she was going to do everything in her power to reduce tobacco consumption, warning that additional "national legislation would have to be passed if companies did not voluntarily introduce the necessary anti-smoking policies" (Leaver 2002). Saloojee recalled an encounter with Zuma in Harare in November 1993, shortly before she became health minister. Both were attending the historic All Africa Conference on Tobacco and Health.

Dr Zuma addressed the meeting. . . . She promised that the ANC would ban tobacco advertising, would significantly increase excise taxes, and would regulate tobacco closely. I was sitting next to Dr Zuma. When she returned to her seat, I told her that I had noted everything she had just said and would be holding her to it once she became the health minister. Two months after her appointment, I wrote asking for a meeting. When I entered her office for the meeting, to my amazement, she remembered our conversation and asked: "What took you so long? I've been waiting for you." (Saloojee 2002)

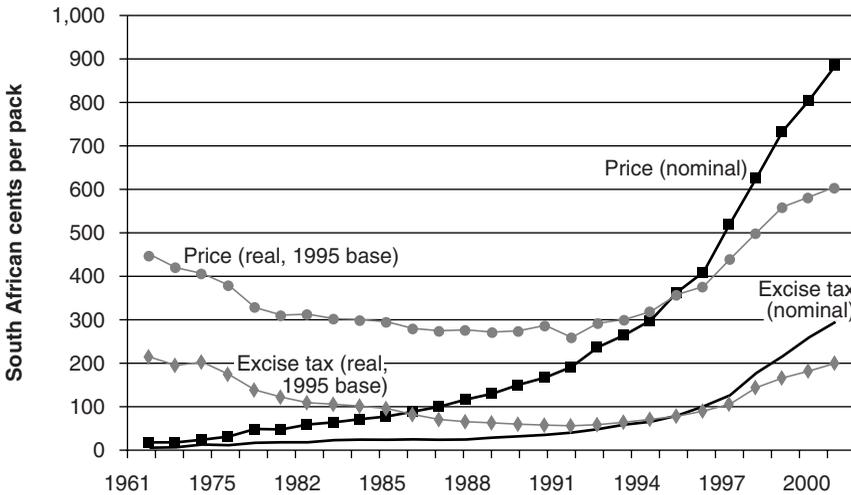
Many prominent delegates to the Harare conference continued on to South Africa afterward, giving major speeches "that helped boost the tobacco control community in the country significantly" (Yach 2002).

Applying Tax Increases

Tobacco lobbyists had long been calling for an increase in taxes on cigarettes. International studies had shown that price was an important determinant of tobacco demand and that raising the price was the single most cost-effective way of quickly reducing consumption. Higher taxes therefore had great potential as a deterrent to smoking. In addition, a tax increase would create more revenue for the government. The NCAS pointed out that because excise taxes had failed to keep up with inflation, the real (inflation-adjusted) tax on cigarettes had fallen by 70 percent between 1970 and 1990 (figure 6.2). Their pleas seemed to have been answered when ANC health advisers proposed a 100 percent increase in cigarette taxes shortly before the 1994 budget. It was a bitter disappointment when finance minister Derek Keys announced a mere 25 percent increase. Antismoking advocates saw the new tax levels as a betrayal of health interests and argued that the budget had effectively sacrificed the lives of thousands of smokers and lost the government millions in revenue. The finance minister responded by saying that as a result of health considerations, the government had agreed to eventually increase the tobacco tax to 50 percent of the retail price of cigarettes. It had opted, however, to phase in the increase; hence the modest rise announced in the current budget.

While tobacco control groups complained that the tax increases were too small, the tobacco industry argued that the hikes were excessive and

Figure 6.2. Real and Nominal Cigarette Prices and Taxes, South Africa, 1961–2000



Source: Van Walbeek (2002a).

discriminatory. Rembrandt alleged that smuggled cigarette brands had already started entering South Africa as a result of the new “sin taxes” on tobacco (*Citizen* 1994). The company’s new chair, Johann Rupert (Anton Rupert’s son) claimed that smuggled brands were undercutting local ones and that this could backfire on the government by negatively affecting state revenues (Leaver 2002). According to van Walbeek (2002a), Rupert’s claims were misleading, and deliberately so: if he could persuade the government that cigarette smuggling was increasing as a result of the high taxes, he might also persuade it that the solution would be to reduce the tax.

Only in 1997 was one of the groups finally satisfied, when the new finance minister, Trevor Manuel, announced a tax rate of 50 percent of the retail selling price of cigarettes, after intensive lobbying by Zuma and antismoking groups. Saloojee asserted that the increase would result in 400,000 fewer smokers and an extra 620 million rand in new revenue for the government, which “could be used to employ more customs and excise officials and tighten border controls” (cited in Singh 1997). The tobacco industry was infuriated by the increase, arguing that thousands of the country’s farmworkers would lose their jobs. Economists at the University of Cape Town challenged this assertion, pointing out that new jobs would be created to satisfy increased demand for other goods and

services as people switched their expenditures from cigarettes to other items. Manuel has since then held firm to his policy and has maintained annual tobacco tax increases of about 50 percent in his budgets (van Walbeek 2002b).

The Struggle for Compliance

In a parliamentary address in October 1996, Zuma accused tobacco companies of ignoring laws requiring the display of health warnings on cigarette packs. The minister warned that "if cigarette companies continued to refuse to comply with the law, her department would respond by banning tobacco advertising" (Leaver 2002). Johann Rupert responded by publishing a full-page open letter to Zuma in the Sunday newspapers saying that the absence of health warnings on certain brands could be blamed on cheaper smuggled goods which had entered South Africa illegally. He alleged that this was the consequence of high tobacco taxes that his company had warned the minister about. In a statement in reply to Rupert's open letter, the minister vowed to intensify her campaign against tobacco, saying, "Responding to individuals is not really our priority at this stage. We are more concerned with the health of the nation" (Leaver 2002).

Meanwhile, cigarette companies and broadcasters took advantage of a loophole in the advertising restrictions in the Tobacco Products Control Act. The act considered sports sponsorships an indirect form of advertising, thus exempting such events from having to display health warnings. The SABC showed Benson & Hedges logos on television during an international cricket match, maintaining that displaying a logo, however prominent, did not constitute advertising (Rulashe 1996). Both the SABC and the tobacco company were strongly criticized, and Zuma threatened to take serious action against companies that were considering "taking advantage of loopholes" in the future (Leaver 2002; see also figure 6.3).

The minister's unwavering political support for tobacco control and her outspoken behavior left her rather exposed. The tobacco industry spent sizable amounts on generating research supporting its position or trying to cast doubts on the arguments and evidence put forward by the public health groups (Wilkins 2000). Clearly, the industry could outspend the groups that were lobbying for tobacco control.

In 1996 an important new partner joined the tobacco control lobby when a number of professional economists entered the debate and set up the Economics of Tobacco Control in South Africa (ETCSA) Project. The project, established at the Applied Fiscal Research Centre of the University of Cape Town with funding from the International Tobacco Initiative (now Research for International Tobacco Control, a secretariat at the International Development Research Centre in Canada), aimed to make

Figure 6.3. Zuma versus Rupert: A Cartoonist's View

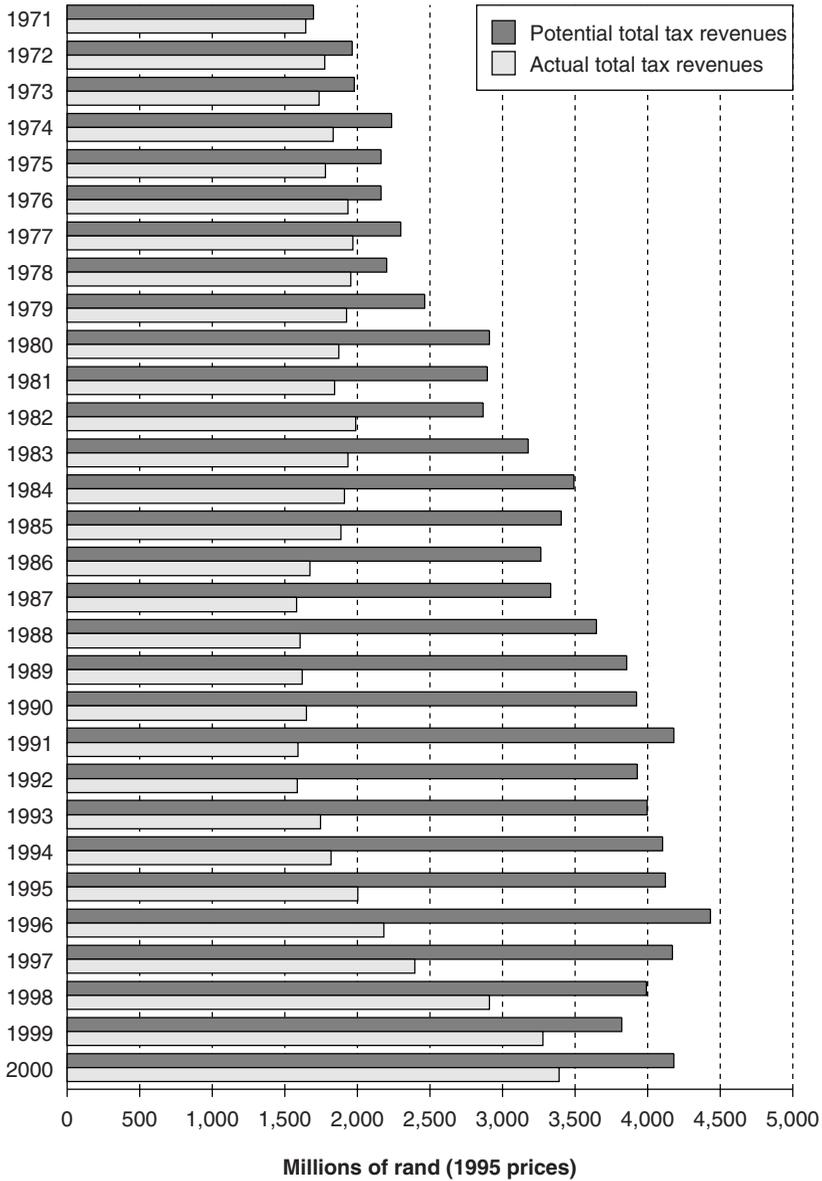


Health Minister Zuma prepares to obliterate tobacco company chair Rupert's opposition to tobacco control. The "writing on the wall" is a set of antimoking statements. *Source: The Star, October 22, 1996.*

available to the government and to others sound and accessible information on tobacco control by systematically researching economic issues and providing facts that contradicted the false claims of the tobacco lobby (Abedian 2002).

The ETCSA Project's research findings countered many of the industry's claims and were well publicized. According to Iraj Abedian, ETCSA's project leader at the time, the findings provided important evidence to support Zuma's anti-tobacco policies and the tax increases. One of the most significant conclusions was that a rise in tobacco excise taxes would increase government revenues, not reduce total revenues as the tobacco lobby claimed. In fact, the research demonstrated that the government was earning much less than it could from tobacco taxes: it was estimated that had the state attempted to maximize its revenue from cigarettes, excise receipts could have been 129 percent higher in 1995 than they actually were (see figure 6.4). Other findings were that job losses in tobacco-related sectors would be more than compensated for by job gains in other sectors, since consumers would spend their money on other

Figure 6.4. Potential and Actual Cigarette Tax Revenues (Excise and Sales Taxes Combined), South Africa, 1971–2000



Source: Van Walbeek (2002a).

goods and services, and that South Africa did not have a significant cigarette smuggling problem (van Walbeek 2002a).

Evidence that the government's tobacco control policy was proving effective emerged in May 1996, when a survey found that the proportion of adults who were currently smokers had declined from 34 percent in February 1995 to 32 percent a year later. It also revealed that more than 8 out of 10 adults viewed health warnings on cigarette packs as helpful and informative. These findings convinced the health minister "that mandatory health warnings on tobacco packaging had proven to be an effective tool in educating the public about the dangers of smoking" (Leaver 2002). An anecdote illustrates the power of these warnings for certain consumers: some shopkeepers reported that shortly after the warnings were introduced, some customers asked for the "old" cigarettes rather than the "new" ones, pointing to the warnings and saying that the new ones would cause them to get sick. These customers assumed that the product had changed, necessitating the new warnings (Saloojee 2002).

Within a year after taking office, Nelson Mandela was awarded two no-smoking medals: one in August 1994 by the Commonwealth Games Council and another in May 1995 by the World Health Organization (WHO). On accepting the latter award on his behalf in Vancouver, Canada, Minister of Health Zuma said that millions of children faced premature death from diseases caused by tobacco, and that "this preventable tragedy must be averted" (Strachan 1995).

1999 Legislation

In January 1998 the health minister announced that a Tobacco Control Amendment Bill would be tabled in Parliament that year. Initially, Zuma gave little indication of precisely what changes it would entail. Addressing a tobacco conference in February, however, she hinted at "an outright ban on advertising, sponsorships and promotions, and raising the age at which minors could legally buy cigarettes to 18" (Leaver 2002).

Six months after the minister had announced her plans, the Tobacco Products Control Amendment Bill was unanimously approved by the cabinet. Among other provisions, it outlawed smoking in enclosed public spaces (including workplaces), banned tobacco advertising and sponsorship, and made it illegal for anyone to sell cigarettes without the prescribed health warnings on packs (Soal 1998a).

The cigarette manufacturing industry slammed the health department for tabling a "draconian bill out of the blue eight weeks before Parliament closes" (Leaver 2002). Many opposition parties agreed, remarking that "the Zuma Bulldozer is clearly in overdrive" (Stuart 1998). The industry complained that the tobacco control lobby had benefited from many

months of access during the bill's drafting process, whereas the tobacco industry had been totally excluded from the process. Cigarette companies, along with advertising and freedom of expression organizations, argued that the legislation was a gross violation of the right to freedom of speech. But Zuma had no interest in modifying the proposals in response to pressure from the industry, and she threatened to take the battle to the country's highest court (Khan 1998).

Zuma even went a step further: when President Mandela asked her to consult with all relevant parties before pressing ahead, she called them together on short notice late one night. Also at the meeting were tobacco control advocates, including the Medical Research Council's Derek Yach. Yach had to counter the fears of the media companies that they would lose a large part of their income because of the ban on tobacco advertising. When he reminded them that "it's better to associate with life than with death," one of the country's largest publishing houses, Caxton, which published many medical publications and also community newspapers, voluntarily withdrew its tobacco advertising in advance of the law (Yach 2002).

Pro-tobacco groups had the opportunity to present arguments as well. Yach recalled that a tobacco representative asked Zuma toward the end of the meeting whether she had listened to their arguments and whether she was going to weaken the legislation as a result. She responded, "If anything I'll consider strengthening it, because I don't believe what you're saying" (Yach 2002).

Sporting organizations did not feel comfortable with the bill, as they stood to lose sponsorship from cigarette companies. The South African tobacco industry annually spent about 40 million rand on sports events such as Winfield rugby, the Rothmans July Handicap, the Gunston 500 (an international surfing competition), and Rothmans soccer. The Premier Soccer League was particularly concerned, as it had a 10-year contract with Rothmans worth 100 million rand that it believed would be difficult to replace (Khan 1998).

Zuma's proposals also ended South Africa's Grand Prix hopes. Earlier that year the chief executive of Formula One Grand Prix had announced that South Africa was being considered as a possible host in the near future. But with the tobacco industry being the main motor racing sponsor and competitors contractually obliged to carry their sponsors' names on their cars, the event would not be allowed in South Africa under the proposed legislation. Shortly after the bill was tabled, Formula One released its race calendar, and South Africa was notably absent. Malaysia, a country with no restrictions on tobacco advertising, had taken its place.

Zuma responded to these concerns by noting that cricket had cut its ties with its tobacco sponsor (Benson & Hedges) some time earlier and

that the sport continued to prosper. The tobacco control proponents also pointed out that tobacco-sponsored events were a betrayal of the millions of youths who looked to sports to promote health, not to promote a deadly addiction (Saloojee 2002). In an attempt to alleviate some of the fears, Zuma and the sports minister discussed plans to phase in the restrictions in order to protect existing sponsorships. Ever determined, however, Zuma commented that "it will be a very short phase-in. If they have a 10-year contract, they won't be able to finish it" (Soal 1998b).

Two weeks after being approved by the cabinet, the Tobacco Products Amendment Bill was published for public comment. Twelve days later, the tobacco industry applied for an urgent interdict to stall the legislation, citing "a lack of consultation in the bill's drafting" (Leaver 2002). Zuma was undeterred and told a journalist that "consultation does not mean we must keep consulting with them until they agree" and that she was now "more than ever determined to get the legislation through Parliament" (Soal 1998b). The applicants asked the Cape Town High Court to order the minister to disclose "all the information that the department had taken into account when drafting the bill" (Leaver 2002). But the case was dismissed eight days later; the court ruled that the information was public knowledge, and Zuma proclaimed that no one would be allowed to filibuster the process (Baleta and Oliver 1998).

Two months later, a public hearing, dubbed by some as being like "the biblical battle between David and Goliath," was scheduled in Parliament. More than 80 groups applied to give oral evidence over two days. Three days after the hearings, the parliamentary health committee approved the bill, to the dismay of cigarette companies. Yet again, the tobacco industry threatened to go to court, but, as in the past, the threat failed to materialize. Instead, after a day's heated debate, the National Assembly approved the proposed legislation, with 213 votes (all from the ANC and the African Christian Party) in favor and 106 against.

Following approval by the National Council of Provinces, the bill was sent to the president for his signature. Mandela, however, sent it back to Parliament, asking that the terms "organized activity" and "public places" be more clearly defined to resolve constitutional uncertainties. The president specifically wanted clarity on whether public places included private residences in which employees such as domestic workers performed their duties. Of particular concern was that "people may not be able to smoke in their own homes if they employ a domestic worker," although, on the other hand, domestic workers should not be subjected to the health risk posed by secondhand smoke (Saloojee 1999).

A month later, the health department had completed the work of drafting amendments to the definitions in question, with "public places" cited as including workplaces but not private homes. In March 1999 the amend-

ments were approved by both the National Assembly and the National Council of Provinces. Only two provinces, the Western Cape, held by the National Party, and Kwazulu-Natal, held by the Inkatha Freedom Party, voted against the bill. The Tobacco Products Amendment Act became law on April 23, 1999, when it was published in the *Gazette*. (The legislation would only come into effect once a date had been set by promulgation in the *Gazette*.)

The tobacco control lobby was extremely satisfied with the new legislation, with the Medical Research Council remarking that the act was “a fitting finale to Mandela’s term of office because it would entrench laws that will protect children for generations to come” (Leaver 2002). The act came into effect on October 1, 2000, with the new health minister, Dr. Manto Tshabalala-Msimang, saying that she did not expect any constitutional challenges. After January 2001, anyone found guilty of disobeying the law (except for restaurant owners who had applied for a six months’ exemption to install nonsmoking areas) would be liable to a fine.

Zuma’s tough stance against smoking was recognized by the WHO in May 1999, with the Tobacco Free World Award. The organization’s director-general, Gro Harlem Brundtland, told Zuma, “We congratulate you on your work—you have strengthened our hands and given hope to many countries” (WHO 1999).

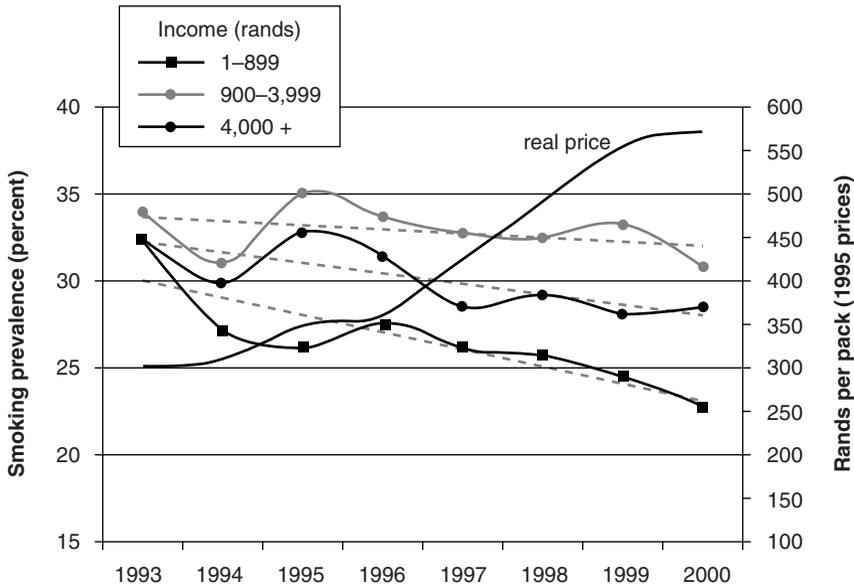
Back in South Africa, the tobacco and advertising industries continued their exaggerated, even absurd, rhetoric, comparing the new legislation to laws enacted by Nazi Germany and referring to Zuma as a “new Hitler.” The minister replied, “I’m getting used to the names by now. What is important is whether we are transforming society for the better, and I think we are” (Soal 1998b).

Conclusion

Derek Yach believes there is an important lesson to be learned from South Africa’s achievements: “You need the right combination of science, evidence and politics to succeed. If you have one without the other, you don’t see action.” He believes that South Africa has had an effective mix of basic science, political commitment, and the ability to move ahead (Yach 2002).

Despite the significant opposition encountered, South Africa now has one of the most comprehensive tobacco control policies in the world. Van Walbeek (2002b) noted that “while the health impact of the change of smoking patterns will only be felt in years to come, the short-term measurable outcomes suggest that the South African government’s tobacco control policy is proving successful: between 1993 and 2000, total tobacco consumption decreased by about 26% . . . per capita consumption

Figure 6.5. Real Cigarette Prices and Smoking Prevalence by Income Group, South Africa, 1993–2000



Source: Van Walbeek (2002a).

decreased by 37% . . . the percent of adults who smoke decreased from 33% to 27%, with the biggest decreases being seen in low income groups . . . and the percent of young people aged 16 to 24 who smoke has decreased significantly from 24% to 19%." Figure 6.5 clearly shows the decline in consumption across all income groups and the much faster and deeper decrease in smoking in the lower-income groups.

Although the degree of compliance with antismoking legislation seems to be high, some say more can be done. Saloojee points out that despite significant increases in tobacco taxes, cigarettes in South Africa are still very cheap in comparison with other countries and that they continue to be affordable, particularly for young people. (See figure 3.2, in chapter 3 in this volume, which compares cigarette prices across a number of countries.) He adds that it is almost impossible to institute legal action for medical damages against cigarette companies without having "sizable amounts of money." Saloojee also points out that some countries, such as Canada and Brazil, now require large pictorial warnings on tobacco products—"something which South Africa needs to consider if we want to keep up with leading tobacco control countries in the world" (Saloojee 2002).

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