

Does the Cultivation of Tobacco Violate Human Rights
and Child Labour Laws?

***A Synopsis of Pro-Tobacco Legal Arguments
Raised in the***

**2018 FCTC Moot Court Competition
5th and 6th April 2018**



Organised by Beyond Research Limited

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Abbreviations

African Children's Charter	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
COP	Conference of Parties
CRC	United Nations Convention on the Rights of the Child
FCTC	Framework Convention on Tobacco Control
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	United Nations International Labour Organisation
IT	Impression Tobacco
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
VCLT	Vienna Convention on the Law of Treaties

1. Introduction

A moot court competition is a contest in which law students argue a hypothetical case before a make-believe court. In March and April 2018, Zambia hosted the first ever moot court competition on the WHO Framework Convention on Tobacco Control (FCTC). In total, 22 law students, 13 lecturers of law and three high court judges participated in the competition. The students and lecturers came from 11 tertiary institutions representing Zambia, Zimbabwe, Mozambique, Malawi, Tanzania and South Africa. This document is a synopsis of the pro-tobacco legal arguments submitted by the 22 students on the following six cardinal questions:

1. Is a state bound by the FCTC when an official accedes to it at the international level, but does not comply with the regulations and procedures laid down at the national level?
2. Is it permissible for ministerial regulations to go against legislation and the Constitution?
3. Do the ministerial regulations violate the tobacco farmers' right to employment?
4. Do the ministerial regulations violate the human right to development?
5. Are children's rights and child labour laws transgressed when children work with their parents on tobacco farms?
6. Does tobacco cultivation infringe upon public health?

What follows is a summary of the responses that were given to the above questions during the competition. Each response comprises of a brief reference to facts of the imaginary case, an outline of the pro-tobacco arguments and some opposing arguments that was raised by the students.

2. The Six Legal Arguments

2.1 Is a state bound by the FCTC when an official accedes to it at the international level, but does not comply with the regulations and procedures laid down at the national level?

In the imaginary case, Langaria is a sub-Saharan African state, which has ratified several treaties including the African Charter on Human and Peoples' Rights (African Charter); the African Charter on the Rights and Welfare of the Child (African Children's Charter); the United Nations Convention on the Rights of the Child (CRC); the Vienna Convention on the Law of Treaties (VCLT); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In November 2016, the government of Langaria sponsored Mr. Sasu (the Minister of Health) to attend the FCTC Conference of Parties (COP) in Geneva. Mr. Sasu acceded to the FCTC in Geneva on 23rd November 2016. According to *section 5 of the Langarian International Treaties Act* of 2000, mere accession to a treaty by a minister does not bind the state to the treaty. All government ministries that are affected by such a treaty must be consulted and they must agree to be bound by the treaty. Together, the affected ministries must sign an instrument in which they declare their willingness to comply with the treaty; and that instrument must be deposited with Parliament. Unfortunately, there was no meeting between the Ministry of Health, Minister of Agriculture and the

Minister of Development prior to Mr. Sasu's accession, to discuss the case of tobacco farming in Langaria vis-à-vis the FCTC. The question that arises is therefore whether or not Langaria is bound to the FCTC when Mr. Sasu did not follow the instructions in section 5 of the International Treaties Act.

Article 11 of the VLCT stipulates that a State expresses its consent to be bound by a treaty by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed. *Article 2(1)(b) of the VLCT* defines accession as an act whereby a state establishes on the international plane its consent to be bound by a treaty. Mr. Sasu acceded to the FCTC. Furthermore, *Article 26 of the VLCT* states that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith'. This means that Langaria must respect the FCTC.

Does it mean therefore that international law is superior to national law? When does the principle of State sovereignty apply? In the **Zambian case of Sara Longwe v Intercontinental Hotel (1992)**, the High Court held that a nation is bound by its own laws.¹ In the American case of **Medellin v Texas (2008)** it was decided that 'even if an international treaty may constitute an international commitment, it is not binding in domestic law unless Congress has enacted statutes implementing it.'² Despite being a monist state, international agreements in America are not binding without approval of the legislature. This approval does not come in form of domestication but rather implementation to give effect to the international agreement. In this case, the State of Langaria is not bound by the FCTC because Mr. Sasu did not comply national law, particularly section 5 of the International Treaties Act, which lays down the procedure to be followed in order for an international instrument to be binding on Langaria. To argue otherwise would be to disregard national law and trample upon the principle of State sovereignty.

If the FCTC were a 'self-executing' treaty,³ it could possibly be argued that Langaria is bound despite the provisions of section 5 of the International Treaties Act. In the American case of **Foster and Elam v Neilson (1829)**,⁴ which discussed self-executing treaties, the court found that a treaty which uses language that shows the need for further domestic legislation to bring the treaty into force is not self-executing and therefore does not immediately bind a party to it. Article 5(1) of the FCTC provides that, each party shall 'develop' and 'implement' national tobacco control strategies in accordance with the Convention. This shows that the treaty is not self-executing as it requires municipal legislation to come into effect in any party State.

2.2 Is it permissible for ministerial regulations to go against legislation and the Constitution?

On 4th December 2016, the Langarian Times Newspaper published a press briefing in which the Minister of Health made a ministerial pronouncement on the new Public

¹*Sarah Longwe v Intercontinental Hotel (1992/HP/765)*.

²*Medellin v Texas* 552 U.S. 491 (2008).

³The Peace and Justice Initiative. *How does international law apply in a domestic legal system: Dualist and Monist theories*. www.thejusticeandpeaceinitiative.org (Accessed 16 March 2018).

⁴*Foster and Elam v Neilson* 27 U.S. 2 Pet. 253 (1829).

Health Regulations, stating that: 'Come 2030, Langaria will be a tobacco free zone and the campaign begins now! The *preamble of the Langarian Tobacco Act* states that it is a law that provides 'for the promotion (emphasis added), control and regulation of the production, marketing, packaging and export of tobacco'. Making Langaria a tobacco free zone by 2030 vitiates the *Tobacco Act* which aims to promote and regulate tobacco production and not eliminate it completely. In a parliamentary State, a minister has no power to create regulations which fly in the face of a law enacted by Parliament.

The ministerial regulations also state that there 'shall' be:

- 'A limit on the production and export of tobacco by 60%'; and
- 'An increase in tax on all tobacco products from 6% to 11%.'

In the *Zambian case of Nyendwa v. Spooner (2009)* the court noted that the word 'shall' means that there is no discretion and thus compliance with such a provision is mandatory.⁵ This means that the ministerial regulations compel the State to reduce the production of tobacco. Meanwhile, *Article 104 of the Constitution* obliges the government of Langaria to 'create an economic environment which encourages individual initiative and self-reliance among the people, so as to promote investment, employment and wealth'. Evidently, there is a conflict between the ministerial regulations and the Constitution as the regulations discourage investment, increase unemployment and prevent the government from creating an environment that promotes economic development. In a constitutional State, the Constitution is the supreme law of the land. All law and conduct that goes against it is null and void to the extent of its inconsistency with the Constitution, as was clearly pronounced in the *Zambian case of Mulundika and Seven Others v The People (1995)*.⁶ In light of the principle of constitutional supremacy, the ministerial regulations have no force of law as they go against the highest law of the land.

2.3 Do the ministerial regulations violate the tobacco farmers' right to employment?

The facts reveal that the ministerial regulations led to many tobacco farmers losing their source of income and their ability to be self-reliant, as Impression Tobacco (IT) had to retrench 60% of its employees at the manufacturing plant. Furthermore, IT reduced the number of farmers on its scheme, leaving 50% of them without means to cultivate tobacco, yet the tobacco industry contributes 37.5% to the country's GDP.

Langaria is a State party to the Africa Charter and the ICESCR. The right to employment is part of the fundamental right to work, which is guaranteed in *Article 15 of the African Charter* and *Article 6 of the ICESCR*. According to *the Committee on Economic, Social and Cultural Rights* in its *General Comment No. 18* on the Right to Work:

The right to work is essential for realising other human rights and forms an inseparable and inherent part of human dignity... The right to work entails the right of everyone to the opportunity to gain his living by which he freely chooses or accepts and State parties must take steps to safeguard this right. The State is under obligation to adopt

⁵*Nyendwa v Spooner* (Appeal No. 21/2009) [2010] ZMSC 2 (15 June 2010).

⁶*Mulundika and Seven Others v The People* (1995) S.J.

legislation or to take measures that promote access to decent work aimed at achieving full employment. States are further prohibited from implementing retrogressive measures that hinder the full realisation of this right.

In Langaria, the main cash crop that is cultivated is tobacco and it employs 1.2 million people, making the tobacco industry the third largest employer in the country. The fact that the ministerial regulations led to a reduction of employees in the tobacco industry confirms that the regulations indirectly infringe upon the right to employment.

Mr. Tumbwii is one of the 50% of farmers who were left without means to produce tobacco when the new ministerial regulations were implemented. When that happened, Mr. Tumbwii was no longer able to generate an income, thus he failed to send his children to school and he was forced to marry off his 13-year-old daughter in exchange for a bride price. This shows that the ministerial regulations are a retrogressive measure as they have made many tobacco farmers destitute, stripping them and their families of their dignity. In the Indian case of **Olga Telis and others v Bombay Municipal Council (1985)**,⁷ the Supreme Court noted that no person can live without the means of living, hence it interpreted the right to life to include the right to a livelihood.

In addition to guaranteeing the right to work, *Article 23(1) of the Universal Declaration of Human Rights (UDHR)* goes further and states that everyone has the right 'to free choice of employment' and 'to protection against unemployment'. The right to work (like many other rights) imposes on State parties the obligation to 'respect', 'protect' and 'fulfil'.⁸ The obligation to 'respect' the right to work requires States parties to refrain from interfering directly or indirectly with the enjoyment of the right to work. The obligation to 'protect' requires measures by the State to ensure that third parties do not deprive right-holders of their entitlements. The obligation to 'fulfil' requires States to take positive measures for the realisation of the right to work. Langaria has failed to respect and protect this right as the ministerial regulations have indirectly interfered with the right to employment of the tobacco farmers; and it has failed to fulfil the right to employment as the ministerial regulations have led to an increase in unemployment, thereby violating the tobacco farmers' right to employment.

It is stated in Langaria's National Strategic and Development Plan of 2017 – 2021 that 'tobacco production is a very lucrative investment opportunity because it is 10 times more profitable than rice production and 14 times more profitable than sunflower'. Despite this, Honourable Sasu proceeded to make his ministerial pronouncement which has a negative impact on the tobacco industry. *Article 17 of the FCTC* obliges member States to provide support for viable alternative activities for tobacco workers, farmers and sellers. No such alternatives have been provided to the tobacco farmers who are now unemployed due to the implementation of the regulations. Manifestly, the ministerial regulations are incompatible with Langaria's National Strategic and Development Plan, as well as its international obligations on the right to work as provided for in the *FCTC, UDHR, ICESCR and the African Charter*.

⁷*Olga Telis and others v Bombay Municipal Council (1985) SCC (3) 545.*

⁸OHCHR Factsheet 31

2.4 Are the ministerial regulations a violation of the human right to development?

The United Nations Declaration on the Right to Development defines the right to development as an inalienable human right which entitles all humans to participate in, contribute to and enjoy economic, social, cultural and political development. *Article 22 of the African Charter* provides for the right to development. The *African Charter* and the *ICESCR* place a mandatory duty on States to ensure the exercise of the right to development by undertaking steps for the actualisation of this right, including adopting of legislation. The *preamble of the African Charter* states that State parties are '**convinced** (emphasis added) that it is henceforth essential to pay particular attention to the right to development.'

The right to development thus comprises of a procedural and substantive element. In case of the **Saramaka People v Suriname (2007)**, the Inter-American Court on Human Rights supported the issue of participation in consultative forums as a determinant of whether or not the procedural element of the right to development was observed. The lack of effective participation of the Saramaka people in development or investment plans within their territory was ruled to be a violation of the procedural aspect of the right to development.

Similarly, in the case of **Angela Poma v Peru (2006)** decided by the Human Rights Committee established under *Article 28 of the ICCPR*,⁹ it was held that the admissibility of measures which substantially compromise or interfere with significant economic activities of a minority group or indigenous community depends on whether the members of the community in question had the opportunity to participate in the decision-making process in relation to these measures; and whether they will continue to benefit from their traditional economy. The participation in the decision-making process must be effective, which requires not mere consultation but free, prior and informed consent of the members of the community. In Langaria too, Mr. Sasu did not engage in any consultative forum with the tobacco farmers. The creation of the ministerial regulations was a unilateral decision. Further, the regulations clearly have an adverse impact on the tobacco industry and farmers. These regulations therefore violate the procedural limb of the right to development.

Development is more than just the expansion of income and wealth: its focus is on people. In the **Endorois case (2010)**,¹⁰ the African Commission on Human and Peoples Rights found that the result of development should be the empowerment of the Endorois community. In just under five months of implementing the ministerial regulations in Langaria, 50% of the small-scale farmers on the IT input scheme were left without means to cultivate tobacco; and 60% of the manufacturing plant workers lost their jobs. The regulations therefore led to the disempowerment of the Langarian people as they could no longer participate effectively and contribute to the economic development of Langaria. It is thus apparent that the substantive limb to the right to

⁹ **Angela Poma Poma v. Peru**, Comm. 1457/2006, U.N. Doc. CCPR/C/95/D/1457/2006 (HRC 2009).

¹⁰ Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of **Endorois Welfare Council v. Kenya**, 276/2003, African Commission on Human and Peoples' Rights (4 February 2010).

development was transgressed; and that the regulations violate the Langarian people's right to development. By implementing these regulations, the government of Langaria has abrogated its duty to create favorable conditions for the people's development.

2.5 Are children's rights and child labour laws transgressed when children work with their parents on tobacco farms?

Article 2 of the *African Children's Charter* provides that a child is a person below 18 years. *Article 4* of the *CRC* states that all actions concerning the child should be in 'the best interest' of the child. In the tobacco growing areas in Langaria, it is normal for parents to cultivate their tobacco farms with the help of their children. The facts of the hypothetical case state that Mr. Tumbwii's children work with their parents every morning before going to school, and in the afternoon when they return from school. Is such work in the best interest of the children? It is here submitted that under the circumstances – where poverty levels are high, sources of income are scarce and thus parents cannot afford to hire labour – it is in the best interest of the children who are of an appropriate age to assist their parents to generate an income from which the needs of the family such as food and school fees can be met.

Some proponents of children's rights argue that such work amounts to economic exploitation of children and thus it violates child labour laws. According to the ILO, 'child labour' is work that deprives children of their childhood, their potential and their dignity; and that is harmful to physical and mental development.¹¹ *Article 15(1) of the African Children's Charter* provides that children should be protected from any work that is likely to be hazardous or to interfere with their physical, mental, spiritual, moral or social development. The fact that the African Children's Charter qualifies the type of work which children should be protected from implies that the law acknowledges that children can partake in some work. Where there is no evidence of the children being deprived of the opportunity to play and enjoy their childhood which is protected in *Article 31 of the CRC*; or evidence showing that they are struggling to attend school or to achieve their tasks as pupils due to the fact that they assist their parents in the cultivation of tobacco, it cannot be said that the chores given to them are child labour. Rather, such work is necessary for their development and grooming into responsible adults.

Article 23(1) of the *UDHR* which provides that everyone has the right to 'just and favourable conditions of work'. The ILO defines hazardous work as 'work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children'.¹² In the hypothetical case, it is stated that one of the tasks given to Mr. Tumbwii's children is to spray pesticides. Some contend that that task amounts to hazardous work as spraying pesticides exposes children to chemicals which could harm their health and inhibit their physical development. Indeed, pesticides do have the potential to cause harm to anyone's health, be it a child or an adult. Also, pesticides are used in the cultivation of many crops, not only tobacco. Therefore, what is needed

¹¹<http://www.ilo.org/ipecc/facts/lang-en/index.htm> (Accessed on 16 March 2018 at 15:33).

¹²<https://www.hrw.org/report/2016/05/24/harvest-my-blood/hazardous-child-labor-tobacco-farming-indonesia> (Accessed on 17 March 2018 at 09:38).

is protective work clothing for all who handle pesticides, regardless of age or crop. Instead of stopping children from assisting their parents; or prohibiting the cultivation of tobacco which is a source of livelihood for many farmers and their families, the government should find ways of assisting the poor communities that cultivate tobacco to acquire protective work clothing. In the case of **Gunme and Others v Cameroon (2009)**,¹³ the African Commission on Human and Peoples Rights held that States ought to use their resources in the best way possible to the benefit of the citizens.

2.6 Does tobacco cultivation infringe upon public health?

Public health refers to the health of the population as a whole. According to the World Health Organisation, it is 'the art and science of preventing disease, prolonging life and promoting health through the organised efforts of society'.¹⁴ Every human being has the right to health, which is guaranteed in *Article 12 of the ICESCR* and *Article 16 of the African Charter*. In *General Comment No. 14 of 2000*, the Committee on Economic Social and Cultural Rights interpreted the right to health to be an inclusive right that extends:

not only timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information. A further important aspect is the participation in all health-related decision making at the community, national and international levels.

In the case of **Purohit and Another v The Gambia (2003)**,¹⁵ the African Commission ruled that the State parties to the African Charter have an obligation to take concrete and targeted steps, while taking full advantage of available resources, to ensure that the right to health is fully realised in all its aspects.

In the case of **Philip Morris v Uruguay (2016)**,¹⁶ the State banned the sale of different types of presentations of the same brand of cigarettes manufactured by Phillip Morris International in the interest of public health. Phillip Morris International sued the State and the tribunal ruled in favour of the State. After its victory, the State declared that from 2017 cigarettes in Uruguay would only be sold in generic packaging. Be that as it may, this ruling does not entail that the production of the cigarettes violates the public's right to health. Had it been so, the tribunal would have stated it in no uncertain terms and Phillip Morris International would have been ordered to stop manufacturing cigarettes.

The facts of the case at hand show that 95% of the tobacco grown in Langaria is exported, meaning that only 5% of tobacco is left for consumption in Langaria. Also, the capital city of Langaria alone has 350,000 tuberculosis patients and more than 625,000 child smokers yet it is located in the Central Province where there is no farming land thus

¹³**Gunme and Others v Cameroon (2009)** ACHPR.

¹⁴<http://www.euro.who.int/en/health-topics/Health-systems/public-health-services/public-health-services> (Accessed on 11 April 2018).

¹⁵**Purohit and Another v The Gambia, (2003)** ACHPR.

¹⁶**Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v Oriental Republic of Uruguay (2016)** International Centre for Settlement of Investment Disputes Case No. ARB/10/7.

tobacco is not grown there. It would be inaccurate to conclude based on these statistics that the cultivation of tobacco in Langaria violates the right to health or that it poses a danger to the public's health. If that were so, the above statistics would have been from the tobacco growing areas. Furthermore, IT, the largest stakeholder in the tobacco industry in Langaria, provides adequate training of farmers with respect to tobacco and nowhere in the facts is there evidence of any public health issue in the tobacco growing areas.

To the contrary, as part of its corporate social responsibility, IT has installed 200 community water tanks and boreholes; and built 140 community latrines and 50 bus shelters. It has also built nine clinics in 20 districts across Langaria; and it has rehabilitated the only intensive care unit in the country. The majority of the Langarian citizens live below the poverty line. Through IT's agricultural input scheme, many Langarian citizens are empowered economically, which enables them to access various needs including health care. Thus, through its corporate social responsibility activities and creation of employment, IT contributes to the Langarian citizens' full realisation of their right to health and works towards the highest attainable standard of health.

3 Concluding Remarks

At the just ended April 2018 Agri-Expo in Chisamba, Zambia, President Edgar Lungu urged farmers not to restrict themselves to maize cultivation but embrace other crops because agriculture is a business, and one that must run profitably. Evidence abounds that tobacco is in a league of its own when it comes to profit generation. Additionally, through their corporate social responsibility, tobacco companies give back to society in form of capital, infrastructure, scholarships and various other benefits which enhance the quality of life of many citizens. Thus, on one hand, tobacco is a lucrative industry which contributes to the GDP of the nation. On another, its cultivation has the potential to cause harm in various ways. The question of whether or not the cultivation of tobacco violates human rights and child labour laws cannot be answered with a simply yes or no. The reality of the matter on the ground is by far complex and multi-faceted. Indeed, when engaged in without protective gear, tobacco cultivation has the potential to harm one's health. But the truth is, so do other industries such as mining. Is banning such industries the solution? The ILO classifies agriculture as a whole as 'one of the three most dangerous sectors in terms of work-related fatalities, non-fatal accidents, and occupational diseases'.¹⁷ Does this mean that the sector should be closed? Certainly not – without agriculture, there would be no food, and therefore no human life.

So how best can the conflict between the gains yielded by the tobacco industry and the negative effects of tobacco cultivation be resolved? It is here proposed that in order to find a feasible solution to the problem, Zambia and other African countries that have acceded to or ratified the FCTC must first conduct empirical research documenting all the effects of tobacco cultivation, both negative and positive. Next, parties on both sides of the argument must sit together and deliberate on the best way forward, weighing the pros and cons of both sides.

¹⁷<https://www.hrw.org/report/2016/05/24/harvest-my-blood/hazardous-child-labor-tobacco-farming-indonesia> (accessed on 17 March 2018 at 09:38).

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5 Addendum: The Hypothetical Question

FCTC MOOT COURT COMPETITION
LUSAKA, ZAMBIA
HYPOTHETICAL CASE
IN THE MATTER BETWEEN
THE ASSOCIATION OF LAILA CULTIVATORS OF TOBACCO (LCT ASSOCIATION)
VERSUS
THE LANGARIAN MINISTRY OF HEALTH

1. Langaria is an African state located in Sub – Saharan Africa. It is a member of the Southern African Development Community (SADC) and the African Union (AU). By December 2017, Langaria had ratified the following treaties: the African Charter on Human and Peoples’ Rights (African Charter); the African Charter on the Rights and Welfare of the Child (African Children’s Charter); the United Nations Convention on the Rights of the Child (CRC); the Convention Establishing the World Intellectual Property Organisation (WIPO Convention); the Vienna Convention on the Law of Treaties (VCLT); the World Trade Organisation Agreement on Trade – Related Aspects of Intellectual Property Rights (TRIPS Agreement); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Langaria is a monist state.

2. Langaria has a population of 17.5 million people; of which 11 million are youths and children. The United Nations (UN) describes Langaria as a developing country. Only 3.7 million people are in formal employment. The majority of Langaria’s population lives below the poverty line and heavily relies on agriculture for survival. The main cash crop cultivated in Langaria is tobacco. The tobacco industry employs 1.2 million people, making it the third largest employer in the country.

3. Most of the tobacco cultivation occurs in the Northern and Southern regions of Langaria. In 2017, Langaria was ranked the twentieth (20th) largest producer of tobacco in the world. According to the Langarian Ministry of Agriculture, tobacco has continued to be one of the most important cash crops in Langaria since 1920, as it contributes 37.5% to the Gross Domestic Product (GDP). Records show that annually, 95% of the tobacco grown in Langaria is exported. Langaria produces some of the best tobacco varieties in the world including virginia, burley, darkfire and oriental.

4. Impression Tobacco (IT) is one of the tobacco companies with a large presence in Langaria, which greatly contributes to the agricultural sector. It is a global tobacco company with products sold in over 260 countries. As part of its corporate social responsibility, IT has installed 200 community water tanks and boreholes; and built 140 community latrines and 50 bus shelters. It has also built nine clinics in 20 districts across Langaria; and it has rehabilitated the only intensive care unit in the country. Additionally, IT has constructed 15 secondary schools and awarded scholarships to over 100 pupils in those schools, including the underprivileged and persons with disabilities. The Ministry of Development is particularly pleased with the infrastructure built by IT and the various other forms of assistance that it gives to the people of Langaria. The most recognised

and bestselling product of IT is Blant Cigarette which is made from tobacco grown in Langaria. In 2001, IT established a cigarette manufacturing plant in Langaria, which employs 10,000 people from all over Langaria.

5. In the Northern Province of Langaria, IT has close links with 30 Chiefs and their chiefdoms, whose total population is 850,000 people. IT works with over 16,000 small scale farmers to produce two types of tobacco in the Northern Province: burley and flue-cured virginia. In the 30 chiefdoms, IT has established a tobacco agricultural input scheme through which indigent residents with large portions of traditional land can access funds, tobacco seed and technical knowledge on how to establish successful tobacco farms. Furthermore, IT runs a training programme whereby all who are willing are trained in growing tobacco that meets international standards. The training is thorough and covers all aspects from sowing of the seed and caring for the crop as it grows; to harvesting, sorting and curing of tobacco. Most families participate in the training, and they are highly grateful for the scheme, without which they would have no means to earn a living. The Chiefs too appreciate the impact that IT has on the wellbeing of the community, hence they encourage all family members to participate in tobacco farming as that increases each family's output.

6. Mr. and Mrs. Tumbwii live in one of the 30 chiefdoms. Mr. Tumbwii is a beneficiary of the IT agricultural input scheme. He has been growing tobacco for IT for the last ten years. Mr. Tumbwii has a son aged 17 years; and three daughters aged 13, 6 and 2 years. A normal day in Mr. Tumbwii's home unfolds as follows: his three older children wake up at 04:00 a.m. and together with their parents, they work in the tobacco field. At 06:30 a.m. the three children get ready and leave for school. Upon returning from school, the two oldest children have their lunch and go back to the field to help their parents; while the 6-year-old daughter remains home looking after her younger sibling. The two oldest children spray the field with pesticides and pick the ripe tobacco leaves. This is the norm in most tobacco farms in Langaria. Mr. Tumbwii is an active member of the LCT Association, an association of tobacco growers which engages government on behalf of growers.

7. Honourable Sasu is the 37-year-old educated, exposed and enthused Minister of Health. He is passionate about public health and participates in numerous activities aimed at improving the health of Langarian citizens. In 2016, Mr. Sasu attended a conference on public health organised by the World Health Organisation (WHO) in Paris. Coincidentally, one of the presentations was on the impact of tobacco in the Northern Province of Langaria. The presenter, Dr Azim said:

I conducted a comparative study between eastern and northern Langaria. During interviews and focus group discussions with 789 participants, I learned that children who live in the north, which is a predominantly tobacco growing community, tend to start smoking when they are 12 years old as opposed to those in the east who generally start at the age of 17 years. By far, the number of persons who suffer from tuberculosis and/or cancer is higher in the north than in the east. This is evidence that tobacco growing is harmful to our society and to the health of our farmers.

8. During the question and answer session, Tita, a PhD student who was also conducting research in Langaria, asked Dr Azim if he was aware that the capital city of Langaria alone had 350,000 tuberculosis patients and more than 625,000 child smokers, yet it is located in Central Province where there is no farming land. Thus, the problem is three times worse in urban Langaria than in rural Langaria where tobacco is grown. Tita also submitted that her finding was that most child smokers were not aware of the dangers of smoking hence there was a need for sensitisation.

9. On the second day of the conference, country representatives were encouraged to lobby their governments to ratify the WHO Framework Convention on Tobacco Control (FCTC) which regulates tobacco production and reaffirms the right to the highest standard of health. Mr. Sasu was concerned about Dr Azim's findings. Upon his return, Mr. Sasu scheduled a meeting with the Minister of Agriculture and the Minister of Development. His intention was to discuss with the two ministers the case of tobacco farming in Langaria vis-à-vis the FCTC. Unfortunately, the three failed to meet due to other pressing government business.

10. The following month, the government of Langaria sponsored Mr. Sasu to attend the FCTC Conference of Parties (COP) in Geneva. Moved by his concern for the people's health, Mr. Sasu acceded to the FCTC in Geneva on 23rd November 2016. According to section 5 of the Langarian International Treaties Act of 2000, mere accession to a treaty by a minister does not bind the state to the treaty. All government ministries that are affected by such a treaty must be consulted and they must agree to be bound by the treaty. Together, the affected ministries must sign an instrument in which they declare their willingness to comply with the treaty; and that instrument must be deposited with Parliament.

11. On 4th December 2016, the Langarian Times Newspaper published a press briefing in which the Minister of Health made a ministerial pronouncement on the new Public Health Regulations, stating that:

Come 2030, Langaria will be a tobacco free zone and the campaign begins now! Tobacco farms make use of child labour and that is a violation of children's rights. I hereby declare that with immediate effect, there shall be:

- No child (i.e. person below the age of 18 years) working on a tobacco farm;*
- A limit on the production and export of tobacco by 60%;*
- An increase in tax on all tobacco products from 6% to 11%; and*
- No logos whatsoever on cigarette packaging, only the name and large pictorial warnings about the harmful contents and effects of tobacco.*

12. On 11th December 2016, members of the LCT Association marched in demonstration against the new Public Health Regulations. Standing outside Parliament holding a placard that read "Nothing About Us Without Us", the leader of the LCT Association had this to say as he addressed the media:

We, the members of the LCT Association, are deeply disturbed by the ministerial pronouncement which was released in the newspaper last week. To begin with, the Constitution of Langaria in Article 104 provides that "the Government shall create an economic environment which encourages individual initiative and self-reliance among the people, so as to promote investment, employment and wealth." The preamble of the Tobacco Act states that it is a law that provides "for the promotion, control and regulation of the production, marketing, packaging and export of tobacco; and promotion of research in connection with tobacco." Further, it is stated in Langaria's National Strategic and Development Plan of 2017 – 2021 that "tobacco production is a very lucrative investment opportunity because it is 10 times more profitable than rice production and 14 times more profitable than sunflower." Yet, despite these laws, Honourable Sasu proceeded to make his ministerial pronouncement which has a negative impact on the tobacco industry. We hereby request Parliament to give a clear direction to the nation, taking note of what the superior law of the land provides. I thank you."

13. Despite the LCT Association's demonstration and humble request, Parliament did not reverse the ministerial pronouncement. Instead, by April 2017, due to the new regulations issued by the Ministry of Health, IT's production and export of Blant Cigarettes dropped by 35%. Consequently, IT had to retrench 60% of its employees at the manufacturing plant. Furthermore, IT also reduced the number of farmers on its scheme, leaving 50% of them without means to cultivate tobacco. Mr. Tumbwii and his family were among those who lost support through the IT agricultural input scheme. Desperate for finances, Mr. Tumbwii accepted an offer of a bride price from someone who wanted to marry his 13-year-old daughter, who had since dropped out of school.

14. Realising that the new Public Health Regulations would have too many far-reaching and negative consequences, the LCT Association decided to litigate the matter. It lodged a claim against the Minister of Health before the Constitutional Court of Langaria, and asked the Court to declare that:

- a) The state of Langaria is not bound by the FCTC;
- b) The new Public Health Regulations violate the Constitution and the Tobacco Act;
- c) The new Public Health Regulations violate the tobacco growers' right to employment;
- d) The new Public Health Regulations violate the Langarian people's right to development;
- e) Tobacco growers do not violate any children's rights when their children work with them in the tobacco fields; and
- f) The growing of tobacco does not violate the Langarian people's right to public health.

Prepare heads of argument for the Applicant and Respondent. The matter is scheduled for hearing in the Constitutional Court of Langaria on 5th April 2017.



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