

FCTC MOOT COURT COMPETITION

LUSAKA, ZAMBIA

4 – 7 APRIL 2018

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.