



# LAWSUITS AGAINST TOBACCO COMPANIES

## MALAWI: EXPLOITATION OF FARMERS

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Malawi has been exporting tobacco since 1893, and is the world's most tobacco-dependent economy. The economy heavily relies on tobacco contributing approx. 47% to the country's total export value in 2023.<sup>1</sup> Malawi is among the top ten producers of tobacco leaf in the world, and is the top producer of burley tobacco, alongside Brazil and the United States. Tobacco is predominantly produced by smallholder farmers in the central and northern regions, largely cultivated under the tenancy system.<sup>2</sup>

Under the tenancy system tenants, along with their families, including children, are allocated a portion of land to use temporarily. The estate owners are also responsible for providing materials and agricultural inputs. In return, the tenant produces agricultural commodities and sells them exclusively to the estate owner. Additionally, the estate owner, often referred to as the „master“, provides the tenants with maize for food. The cost of the maize, materials, and agricultural inputs is deducted from the tenant's annual pay. In many cases, the accumulated costs were higher than the tenants' earnings, trapping them in a cycle of debt and poverty.<sup>3</sup>

In 2015, the tenancy system accounted for 63% of the labour force in Malawi's tobacco estates and farms, associated with low wages, exploitation, and the degradation of workers. As a result, in 2016, the Malawian Government abolished the tenancy system and passed the wage bill. However, despite these legislative efforts, the tenancy system persisted on tobacco farms.<sup>4</sup>

The tobacco trade in Malawi is conducted at auction floors, which are primarily dominated by Alliance One International and Universal Corporation, represented locally by Alliance One Malawi and Limbe Leaf Malawi. They sell the tobacco to cigarette companies, also to British American Tobacco (BAT) and Imperial Brands. The cigarette companies' dominating position in the global leaf buying market allows them to set the buying prices for Malawian tobacco vis-à-vis the leaf merchants.<sup>5</sup>

Despite the apparent profitability of the tobacco sector in Malawi, most local farmers benefit far less than the corporations involved. Malawian tobacco farmers earn an average profit of just 79 USD per acre per annum, significantly lower than the agricultural sector's average profit of 351 USD per acre, with some Malawian tobacco being purchased at some of the world's lowest prices of 2 USD per kilogram. Tobacco farming, therefore, does not generate sufficient income for farmers to sustain a viable livelihood in Malawi.<sup>6</sup>

# MILASI JOSIYA AND 7,262 OTHER MALAWIAN TOBACCO FARMERS

In June 2018, Sarah Boseley, a health journalist at The Guardian, wrote an article exposing child labour, exploitation, and the shattered dreams of young children working in the tobacco fields of Malawi. The article revealed that 63% of children from tobacco-growing families in Malawi were involved in child labour. It also highlighted the huge economic disparity between farmers and CEOs, showing that the interviewed tenant farmers earn an average of just 224 USD per year, while contract farmers make 309 USD. In contrast, a CEO can earn as much as 11 mio. USD, annually. The article further detailed the harsh working conditions faced by these children and their parents. Due to these challenges, the article concluded, many tenant farmers and their families remain trapped in the tenancy system, choosing to stay for survival, as they receive maize, even though their earnings are not enough to sustain them.<sup>7</sup>

Following this, Leigh Day, a leading law firm based in London (UK), investigated in Malawi and, in 2020, filed a lawsuit against BAT and Imperial Brands at the High Court in London. The firm, known for addressing various injustices in areas such as human rights and environmental protection, took legal action over allegations that these companies had been negligent and had unjustly enriched themselves.<sup>8</sup>

## WHO ARE THE PLAINTIFFS? WHAT ARE THE CHARGES?

Leigh Day partners, Martyn Day and Oliver Holland, are representing the plaintiffs – a group of over 7,000 farmers, including their wives and 3,000 children, who claim to have been impoverished and trapped in a cycle of poverty due to the companies' actions to maximize profits. According to Leigh Day, in 2019 alone, BAT made pre-tax profits exceeding 8.3 billion GBP (approx. 10.8 billion USD), and Imperial Brands had pre-tax earnings of 1.6 billion GBP (approx. 2,1 billion USD). In contrast, the tenant farmers in Malawi earned roughly around 100-200 USD annually, showing that tobacco farmers are being exploited. The claim alleges that the companies profited from child labour, exploitation, and hazardous working conditions on Malawian tobacco farms. The plaintiffs also claim that they were only paid after the tobacco sales for the work done throughout the entire ten-month growing season, which runs from September to July. Additionally, the farmers earned incomes so low that they could not repay fertilizer loans and other inputs required. This has left many illiterate farmers, who migrated from the southern region to the central and northern parts of Malawi in search of better opportunities, trapped in debt.<sup>9</sup>



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# AGAINST BRITISH AMERICAN TOBACCO AND IMPERIAL BRANDS



The farmers reported living in terrible conditions, residing in poorly constructed grass-thatched houses with little food, and earnings so little that they could not afford additional maize, the country's staple food. In some extreme cases, some farmers were forced to exchange their daughters to settle debts.<sup>10</sup> The farmers also claimed that they had to make their children work alongside them for excessively long hours, from 6 a.m. to around midnight, picking tobacco leaves to meet the required output. Both the farmers and their children were subjected to hazardous and unsafe working conditions, including exposure to high levels of toxic pesticides and nicotine poisoning, causing green tobacco sickness, without proper protective measures.<sup>11</sup>

The details of this case point to serious violations of international human rights and ILO core labour standards in Malawi tobacco production, including Article 32 of 1989 UN Convention on the Rights of the Child; the 1999 ILO Worst Forms of Child Labour Convention; and the ILO Occupational Safety and Health Convention of 1981, among others.

## **HOW DO THE DEFENDANTS REACT? WHAT IS THE STATUS OF THE CASE?**

The defendants – cigarette companies BAT and Imperial Brands – claimed to take issues of child labour seriously. BAT's strict standards for itself and its suppliers would not condone child exploitation or disruption of education. BAT refused to comment further. Similarly, Imperial Brands pointed to their published codes of conduct on their websites.<sup>12</sup> However, Leigh Day, on behalf of the farmers, argued that the defendants were aware of the working conditions and child labour but did nothing to address them, thus leading to the allegations of negligence.

In March 2021, the defendants filed an application asking the High Court in London to strike out the case and argued that, among other things, incidences of child labour in the tobacco farms could not be directly linked to the defendants. In June 2021, the High Court dismissed the application allowing the case to proceed for trial where the claimants will bring forth evidence to support their claims and the defendants will provide evidence in their defence against the claims.<sup>13</sup>

The case is yet to be concluded, with discovery proceedings still ongoing, and a procedural hearing is scheduled for late 2024 to prepare timelines for trial in 2025.<sup>14</sup>

## FARMERS' VIEWS ON THE CASE

In 2023, interviews were conducted with Malawian tobacco farmer groups in Mzimba District, who are among those being represented by Leigh Day. They are hopeful that justice will prevail in this case and they will be compensated for years of hazardous work and exploitation. A favourable decision for the plaintiffs could also lead to improved working conditions and ultimately, the elimination of child labour, allowing the children to achieve their dreams through education. However, despite their hope, the farmers may also fear an unfavourable judgement, which could create tension on the work premises.<sup>15</sup>

## THE BROADER PICTURE

With regard to the German Act on Corporate Due Diligence Obligations in Supply Chains, the details of this case can be considered substantiated knowledge of these human rights violations in tobacco cultivation in Malawi. Thus tobacco companies in Germany that source leaf tobacco from Malawi, regardless if they buy directly or through another supplier, need to apply due diligence measures aligned with the Act. When buying directly or from a direct supplier, they are even obliged to take remedial measures that lead definitely to an end of the human rights violations.<sup>16</sup>

At the national level, this legal action demonstrates that duty bearers can be held accountable for violations of international human rights and ILO core labour standards that take place in their supply chain, including transnational corporations that operate in the tobacco industry in Malawi. A positive outcome in this case could also empower further farmers to stand up against exploitation.

„We are eagerly awaiting the verdict on the case in London. If we are successful, the rights of women farmers like us and our children will no longer be violated. We have suffered for too long as tobacco farmers.“

Female tobacco farmer, Mzimba, Malawi

„This work is very dangerous to our health. We work without any protective wear. The government knows about our problems, but it does not care about our welfare.“

Tobacco farmer, Mzimba, Malawi

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