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Ref. No. GEN/CAN/1

9 September, 2022

Beatriz Bablin
Chief
Special Procedures Branch
Office of the High Commissioner on Human Rights

Madam,

Reference is made to your letter dated 5 July 2022, Ref. No. AL MWI 2/2022, page 21 in which your office sent a joint communication by the Special Rapporteur on trafficking in persons especially women and children; the Working Group on the issue of human rights and transnational cooperatives and other business enterprises; the Special Rapporteur on the right to food; the Special Rapporteur on the right to everyone to enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Working Group on discrimination against women and girls.

Please find attached a response on the issues raised in the Joint Communication regarding Malawi.

We remain available and open to further engagement on the matter.

Pacharo Kayira
CHARGE D'AFFAIRES

JOINT COMMUNICATION FROM SPEICAL PROCEDURES

1. GENERAL RESPONSE TO ALLEGATIONS LEVELLED AGAINST THE TOBACCO SECTOR

Government acknowledges noting human rights violations in the tobacco sector and has been responding such that significant progress has been made towards addressing violations observed and decent work deficits, in general, targeting the entire supply chain.

Besides the Constitution and the Employment Act together with the Employment (Hazardous Work Order), 2012, a number of laws and strategies have been put in place to address observed violations, including child labour and forced labour. Examples include the following:

- a) Adoption of the Integrated Production System (IPS) in 2012 which was founded on the principle of strict compliance to Good Agricultural Practices (GAP) which was followed by adoption of IPS Regulations in 2014. Tobacco buying companies also adopted Agricultural Labour Practices (ALP) and developed Sustainable Tobacco Production (STP) programs;
- b) Enactment of the Trafficking in Persons (TIP) Act of 2015 which criminalizes has criminalized trafficking of persons for illicit purposes including for forced labour. The Act is operationalized by a National Plan of Action Against Trafficking in Persons (2017-2022). Enforcement officers of the Act were designated in 2018 in line with section 26 of the TIP and they comprise Police Officers, Immigration Officers and Labour Officers. The TIP prohibits the trafficking, including child trafficking, and has criminalized the action (sections 14 and 15) and has also criminalized the exploitation of the victims (section 20). Cases of trafficking are therefore being effectively addressed as an ongoing undertaking.
- c) Enactment of the Tobacco Industry Act (TIA), 2019 which repealed the Tobacco Act of 1970 and the Control of Auction of Floors Act 1970. The TIA has strengthened the legal framework for the regulation of the IPS by the

Tobacco Commission. It obligates a tobacco grower to demonstrate capacity to uphold all labour related international standards as a condition for registration to grow tobacco.

- d) Revision of ALP programs to prohibit anyone under the age of 18 from being involved in any tobacco-related activities and inclusion of a no tenancy labour policy on for contract farmers;
- e) Development of the Tobacco Information Management System (TIMS) in 2022. This allows for the geo-tagging of all registered growers which makes each growers' field and housing location traceable, thereby making tracking of the tobacco supply chain relatively easier.
- f) Tenancy labour was abolished in 2021 and Government is now towards the implementation to realize the abolition in practice. A number of developments have taken place, including the carrying out of qualitative and quantitative surveys to inform the abolition. With the abolition of tenancy labour that has been replaced by direct wage labour, the issue of women having to work alongside their husbands for no pay does not arise.
- g) Conclusion of memoranda of understanding MOUs between Ministry of Labour and major tobacco buying companies, namely Limbe Leaf Tobacco Company, Alliance One Tobacco Limited and JTI Leaf on cooperation on labour inspection and the enforcement of ALPs.

Equipped with the above legal instruments and tools, tobacco companies are implementing a wide range of activities and interventions which included:

- i. Conducting due diligence processes, especially at the beginning of each season to assess grower's previous and upcoming season's compliance to acceptable labour standards;
- ii. Continuous monitoring of the implementation of ALP which is done by Tobacco Buyers' Field Technicians and District Labour Officers from the Ministry of Labour made possible through the MOUs that have been concluded;

- iii. Taking disciplinary action against contract farmers for violations of the ALP requirements;
- iv. Provision and monitoring of non-compulsory loans to meet payment of direct wage to farm workers contract famers which must be at least equivalent to the prevailing minimum wage;
- v. Introduction of and continuous support for Savings Groups for farmer' spouses to increase, and diversify sources of, household income;
- vi. Introduction of formal grower-worker contracts that meet international labour standards;
- vii. Provision of booklets to contracted farmers to record labour-related data including wages paid, advances taken, times off, overtime, etc;
- viii. Conducting sensitization campaigns on acceptable labour standards and practices through radio, drama and face to face meetings; and
- ix. Implementation of Corporate Social Responsibility (CRS) initiatives that uplift the living standards of workers e.g. construct houses for farm workers for decent accommodation, implementing Water, Sanitation and Hygiene (WASH) projects and providing conducive learning environment for farmers' children through construction of classrooms and provision of learning materials.

1.1 Determination of Payment and Purchase Price of Tobacco

The Tobacco Industry Act (TIA) of 2019 in section 70 provides for the setting of tobacco Grade Minimum Prices (GMPs) by the Government through the Minister of Agriculture, taking into account the following aspects:

- i. Current year's Cost of Production (CoP);
- ii. Previous year's price;
- iii. Global demand for tobacco;
- iv. Good Agricultural Practices (GAP);
- v. The need to protect interests of both growers and buyers;

The said section, further states that *“tobacco shall not be bought at a price below the set minimum prices”*. Violations of this provision attract several levels of penalties with the maximum being revocation of a buyer’s license. In addition to this, it is not possible for any buyer to buy tobacco below the set minimum prices because the marketer’s (IT) system is set to automatically reject such a transaction.

To further ensure that tobacco is bought at or above set minimum prices, the following must be adhered to:

- i. All stakeholders, including growers are made aware of the minimum buying prices prior to commencement and during the whole season as price lists are displayed in all selling floors;
- ii. Stakeholders, like Tobacco Growers’ Associations (TGAs) and AHL Tobacco Sales Limited (the licensed tobacco market operator), have Growers’ Representatives in all the selling floors who represent growers’ interests by among other functions making sure that tobacco is not bought cheaply or below the Government set minimum prices;

Once Grade minimum tobacco prices have been set by the minister and communicated to the Tobacco Commission, they are implemented as directed without any manipulation or amendment.

In such an arrangement with clear legal provisions, it is not possible for tobacco industry players on the Commission’s Board to influence tobacco prices. The arrangement also rules out any possibility of buying the tobacco below the minimum prices set by the Minister of Agriculture through collusion between the Tobacco Commission and buying companies.

1.2 Trafficking for Purposes of Forced Labour, Worst Forms of Child Labour and Unjust Working Workers

Following Government decision to embrace contract farming and the adoption of the Agricultural Labour Practices (ALP) for contract farmers which specify in writing the conditions of work for tobacco farm workers, the allegations made in the UN report do not apply to contract farmers. Contract farmers are strictly monitored by Leaf Technicians of tobacco buying companies who are stationed within the communities of the contract farmers. Ministry of Labour has also intensified inspections in line with the terms of the MOUs concluded with the major tobacco companies.

1.2 Allegations of trafficking in persons, including children, for purposes of forced labour, affecting tenant farmers and their families in tobacco farms in Malawi, as well as the related lack of accountability and access to effective remedy for victims of these serious labour-related human rights violations and serious crimes, including contemporary forms of slavery.

Firstly, the Constitution of the Republic of Malawi clearly prohibits slavery and servitude in section 27. Further to this, the Employment Act prohibits forced labour and enforcement is done through labour inspections which the Ministry conducts frequently among contract farmers of major tobacco buying companies through MOUs concluded with the companies. Also, Government passed the Trafficking in Persons Act 2015 to address trafficking for various reasons, including trafficking for purposes of labour exploitation. This Act is being effectively implemented as demonstrated by cases under prosecution or concluded by courts of law. The prohibition of tenancy labour, made through an amendment to the Employment Act represents direct legislative intervention to address the human rights violations and abuses associated with the tenancy system.

Further to this, the tobacco industry has a robust mechanism for victim identification and administrative remedies as elaborated below:

- i. Establishment of reporting mechanisms/channels;

- a. TC through Enforcement and Liaison Section;
 - b. Establishment of the Agricultural Labour Practices Office (ALPO) under the Tobacco Commission, the industry regulator, to spearhead industry compliance to international labour standards. Recently the Commission partnered with ECLT through a Memorandum of Understanding (MoU) signed between the two institutions to work together towards elimination of child labour in tobacco in Malawi;
 - c. Industry Player-Based grievance reporting and management systems e.g. use of toll free numbers to report on any grievance using secret code;
- ii. Tobacco industry-based remediation mechanisms as below:
- a. The Tobacco Commission is empowered by the Tobacco Industry Act (TIA) to deregister non-compliant growers;
 - b. Leaf buyers have provisions in their contracts for termination of the same on grounds of violations of acceptable labour standards;
 - c. Collaboration with MDAs (The Malawi Police Force, Ministries of Labour, Gender and Justice) for remediation on confirmed cases;
 - d. Improved access to health services by farming communities through construction and resourcing of health facilities like health centers through industry CSR programs;

1.3 Obligations of Due Diligence: Tobacco Companies Operating in Malawi or Sourcing Tobacco Leaves from Malawi

The tobacco industry has a robust mechanism for due diligence which includes the following measures:

- i. Restricting grower registration and licensing to only growers who comply with national labour laws and international labour standards ratified by Government;

- ii. Restricting of registration and licensing of growers to persons aged 18 years and above;
- iii. Geo-tagging of registered growers to ascertain their physical location to facilitate traceability and monitoring on compliance issues;
- iv. Monitoring implementation of Agricultural Labour Practices (ALP) code which requires adherence to labour standards. Monitoring agencies include the following:
 - a. Tobacco Commission
 - b. Leaf buyers
 - c. Cigarette manufacturers
 - d. Agricultural Research and Extension Trust (ARET)
 - e. Relevant Government Ministries, Departments and Agencies (MDAs);
- v. On-going self-assessment of human rights due diligence arrangements within the tobacco industry which will check the state of the following conditions:
 - a. Existence and robustness of institutional policies on labour relations management.
 - b. Mechanisms for identification of violations of acceptable labour standards
 - c. Actions being taken or pre-determined for remediation
 - d. Evaluation mechanisms for remediation measures.
 - e. Reporting arrangements to wider audience of the due diligence processes.

1.4 Please provide additional information on additional steps taken by your Excellency's Government to protect against human rights abuses of state owned enterprise, Auction Holdings Limited, including by requiring human rights due diligence

On Auction Holdings Limited (AHL) *owning two tobacco buying companies.*

Auction Holdings Limited (AHL) Group Plc is a public Limited Company. Government, through the Agricultural Development and Marketing Corporation

(ADMARC), owns 42% shareholding and the remaining majority shareholding (58%), is owned by small, medium and large-scale tobacco farmers.

The accusation that the AHL has two subsidiaries that purchase tobacco, namely, Malawi Leaf Company Limited and Tobacco Investments Limited (TIL) is not true. The fact of the matter is that the only licensed tobacco buying subsidiary of the AHL until 2020 was Malawi Leaf Company Limited which is no longer in operation. TIL has never been a subsidiary of AHL. Under the current scheme of the Tobacco Industry Act, TIL operates on the market as a hessian scheme operator and is legally barred from participating on the floors as a tobacco buyer due to the fact that this would bring about conflict of interest which is discouraged by section 106 (1) (b) of the Tobacco Industry Act, 2019.

Government is not aware of human rights violations at AHL whose nature the report has not even specified. Further elaboration to clarify the nature of the human rights violations is therefore requested so that Government institutes an investigation and after which appropriate action will be taken if the allegations are confirmed.

1.5 Protection of Tobacco Farmers from Harmful Chemicals

In order to protect tobacco growers from harmful effects of chemicals used in the production of tobacco, industry players have in place strict safety policy measures. Growers are properly guided on usage of chemicals and disposal of empty containers. The following measures, among others, are in place:

- i. Ensuring provision to growers of personal protective equipment and its use for protection from hazardous chemicals;

- ii. Raising awareness and training to growers on the recommended use of chemicals;
- iii. Raising awareness and training on Occupational Safety and Health (OSH) code;
- iv. Prohibiting untrained individuals, children and pregnant and breast-feeding women from participating in the handling and application of chemicals;
- v. Intensifying use of approved Crop Protection Agents (CPAs) and adherence to recommended sanitary and safety procedures;

1.6 Accommodation and Access to Food

Labour laws of Malawi do not obligate an employer to provide accommodation to employees. However, where tobacco farms are far away from community settlements, contracts farmers are advised by the tobacco companies concerned to support their employees ensuring that the employees have access to habitable housing accommodation and conducive living conditions.

1.7 Indicators of Debt Bondage in The Relationship Between Tenant Farmers and Their Families and Contract Farmers, And of Trafficking for Purposes of Forced Labour

The abolition of tenancy labour through an amendment of the Employment Act represents an important step towards addressing the human rights abuses associated with the tenancy system, one of which is said to be debt bondage. The amendment gives effect to the constitutional provision prohibiting debt bondage (section 27)

1.8 Freedom of Human Rights Defenders to Operate in The Tobacco Industry

The Tobacco Industry Act (TIA) of 2019, which guides operations of the tobacco industry, does not have any provisions barring human rights defenders from

accessing tobacco farms for their inspection and any related work such that anyone desiring to access a tobacco farm gets consent from responsible authorities.

The Labour Relations Act makes a provision for the right to organize, the right to join any trade union of their choice (workers) and grants trade unions the right to access workplaces and freely organize potential members. The same rights are guaranteed under the Republican Constitution.

There are a number of programs by the tobacco Industry being implemented to combat tenancy system and its attendant human rights violations. The programmes target parents and their children as well as surrounding communities in order to curb child labour and improve livelihoods of communities and these include:

- i. Provision of sporting equipment/infrastructure and indoor games to encourage children stay in school, reduce idleness and promote safety and mental/social development:
 - Implemented in six schools in Kasungu, Lilongwe east, Lilongwe west and Mponela;
 - Planning of extending to additional eight schools in Mchinji, Dowa, Kasungu and Lilongwe west.
- ii. Supporting sustainable school feeding programs meant to reduce student absenteeism due to hunger:
 - Established school fields to serve as food resources during lean food periods in five schools in Ntchisi and Dowa.
- iii. Financial Literacy programs - conducting trainings to impart knowledge to farmers in good financial management:
 - Trained over 1300 farmers by 2018.

- Incorporated financial literacy literature in Farmer Record Books.
 - Trained farmers' spouses and surrounding communities' women on Village Savings and Loans Association financial management and entrepreneurship skills.
- iv. Workers' housing project on provision of decent accommodation to farm workers:
- 702 houses constructed so far.
 - Over 65 houses under construction in 2022.
- v. Safe water projects by expanding sources of safe and usable water to increase community access:
- Constructed over 16 Solar powered water systems in clinics.
 - Constructed over 20 solar powered systems for irrigation.
 - Drilled over 150 boreholes; increasing access to safe water for over 8,000 people
- vi. Workers' rights awareness campaigns by educating workers on their rights and responsibilities:
- Over 200 radio programs have been aired on national and community radio stations.
 - Over 10 billboards have been mounted in strategic places.
 - Over 2,500 t-shirts and caps with labour rights messages distributed.
 - 48 days of activations were completed, reaching up to 25,000 people.
 - Over 20,000 campaign posters distributed.
 - 25 shops have been branded with campaign messages across the grower communities

- vii. Formalizing farm workers' employment - making farm employment formal by providing growers with necessary employment documents such as Grower/Worker Agreement template and other documents that record working conditions and wage/salary information:
- Over 50,000 Farm Record Books distributed to growers to track working hours and payment of monthly minimum wage for farm workers among other uses.
- viii. Collaboration with relevant Government agencies and tobacco industry stakeholders in areas of common interest:
- Memorandums of Understanding (MoU) have been signed between Tobacco Industry stakeholders and Government MDAs.
 - Over 113 Tobacco Industry field staff trained by Ministry of Labour on labour rights and laws
- ix. Establishing grievance reporting mechanisms - provision of mechanisms for personnel, growers and farm workers to use to report grievances on infringements of labour and other rights
- Establishment of Toll-free numbers managed by independent agencies such as Deloitte
 - Providing means to easily and directly report to law enforcement agencies
 - Strengthening channels and links for reporting to local authorities.
- h) Field staff trainings on labour rights and laws including conducting training of trainers (Capacity building of staff)
- Over 113 Tobacco Industry field staff trained by Ministry of Labour on labour rights and laws

- i) Establishment of local labour committees comprising growers to collaborate with industry players as first line of community policing and monitoring:
 - Established Community Child Labour Committees (CCLC)
 - Established Agricultural Labour Practices Committees (ALP Committees)
 - Over 1000 zone leaders trained to identify and report unethical behaviour

- j) ALP Monitoring – implementing activities aimed at checking implementation of ALP by Tobacco Industry Stakeholders
 - Tobacco Value Chain Labour inspections.
 - Continuous observations of debt bondage indicators.

- k) Access to Health - expanding farmers’ and their workers’ access to health services
 - Constructed over 16 village clinics in tobacco growing communities

- l) Income diversification programs - helping farmers and their workers increase their sources of income
 - Facilitated the formation of Village Savings and Loan Associations (VSLA) for farmers’ spouses.
 - Carried out crop diversification promotional programs across the country.

- m) Child Labour Specific Projects Implementing projects aimed at reducing the prevalence of Child labour
 - Implementation of “Achieving Reduction of Child Labour in Support of Education” (ARISE) project in tobacco growing districts

1.9 Discrimination Against Women

There are a number of deliberate initiatives such as the Agricultural Labour Practices (ALP) and well defined cooperation between Ministry of Labour and Tobacco companies in the area of labour inspections through MOUs that aim to address the violations and abuses associated with the tenancy system, including involvement of wives of tenants in the carrying out of farming activities together with their husbands when they are not party to the contracts with the farmer. The existence of the supporting legal framework now provides an opportunity for intensification of efforts towards addressing all the human rights violations and abuses that result from the tenancy system.

2. RESPONSE PROVIDING DETAILED AVAILABLE LEGISLATIVE MEASURES AND LEGAL REMEDIES TO THE DIRECT REQUESTS ENUMERATED IN THE REPORT

- 2.1 Please provide information on measures taken by your Excellency's Government in order to ensure that human rights defenders are able to carry out their legitimate human rights work in accordance with existing human rights standards, in an enabling environment.**

The Government of Malawi ensures that human rights defenders are able to carry out their human rights works in accordance with existing human rights standards. The legitimate right to defend human rights is enshrined under section 15 of the Constitution of the Republic of Malawi which states that any person or group of persons, natural or legal, with sufficient interest in the promotion, protection and enforcement of rights under the Constitution shall be entitled to the assistance of the courts, the Ombudsman, the Human Rights Commission and other organs of the Government to ensure the promotion, protection and enforcement of those rights and the redress of any grievances in respect of those rights. The right to enforce and defend any human rights infringements is reiterated under section 46 of the Constitution of Malawi.

In Malawi, human rights defenders operate freely. On 11th December, 2017, a network of Human Rights Organizations and Defenders in Malawi formed the Human Rights Defenders Coalition (HRDC). The coalition has been instrumental in vindicating the rights of Malawians. Specifically, the HRDC were crucial in organizing demonstrations following the May 2019 disputed elections which was adjudged by the High Court, sitting as a Constitutional court, as marred with irregularities. The HRDC also vindicated the rights of the poor by obtaining an injunction against the Government, when it sought to implement a lockdown in May, 2020; following the outbreak of the corona virus in Malawi. For the tobacco sector specifically, there is a trade union known as the Tobacco Workers Union which covers the entire sector. The trade union and its members enjoy protection under the Labour Relations Act.

There are legal guarantees to allow human rights defenders to do their work without persecution under the Constitution of the Republic of Malawi and Acts of Parliament such as the Human Rights Commission Act and the Ombudsman Act which assist human rights defenders in vindicating their rights to ensure they do their work without persecution or hindrance.

2.2 Indicate the steps that your Excellency's Government is taking or is considering taking, to combat human trafficking and to provide protection and assistance to victims of trafficking and contemporary forms of slavery.

The legislative measures being taken by the Government of Malawi to combat trafficking in persons and assisting victims of trafficking and contemporary forms of slavery include:

- (i) The enactment of the Trafficking in Persons Act in 2015. The Act makes provision for the prevention and elimination of trafficking in persons. The Act criminalizes trafficking in persons. When found guilty a person can be

liable to imprisonment for fourteen years without the option of a fine and in the case of trafficking of a child, twenty-one years without the option of a fine. The Act also imposes a punishment of imprisonment for life for aggravated forms of trafficking where, inter alia, the person so trafficked is exposed to a significant health risk; Courts have handed down a number of sentences against traffickers.

- (ii) The Trafficking in Persons Act also establishes the National Coordination Committee against Trafficking in Persons to coordinate the implementation of the provisions of this Act which is actively implementing its mandate;
- (iii) To assist victims of trafficking, the Trafficking in Persons Act provides for the designation of protection officers who are responsible for ensuring that trafficked persons are accorded proper treatment and are provided with the necessary care, assistance and protection; and that all interviews of trafficked persons are conducted in accordance with the Guiding Principles for Conducting Screening Interviews for the Identification of Trafficked Persons; Protection Officers were designated and are carrying out their work. Standard operating procedures have been developed to guide the protection officers in their work;
- (iv) The Trafficking in Persons Act also provides for enforcement officers under section 26 and these were designated in 2018. They are Police officers, immigration officers, and Labour officers.
- (v) The Trafficking in Persons Act further gives power to the Minister to designate any premises to be a shelter for the care and protection of trafficked persons; so far there are four shelters one each in Mchinji, Lilongwe, Blantyre and Zomba districts, and;
- (vi) The Trafficking in Persons Act establishes the Anti-Trafficking Fund whose purpose is to finance the training of enforcement officers, protection officers or any other personnel engaged in any capacity to effect the provisions of the Act; and the provision of care, assistance and support to victims of trafficking in persons, by constructing or commissioning a building as a

reception shelter for such victims; tracing the family of a victim of offences under the Act and where possible facilitating the reintegration of such a victim with his family; repatriation of trafficked persons to their respective homes or countries. Government allocates funds from the regular budget but some additional funding come from proceeds of trafficking after securing convictions of traffickers.

2.3 Please provide information on the measures taken by your Excellency's Government to prevent diseases due to chemicals and ensure the rights to health, including reproductive health, of all the reported workers, including women and children.

The Occupational Safety, Health and Welfare Act makes provision for the regulation of the conditions of employment in workplaces as regards the safety, health and welfare of persons employed therein; for the inspection of certain plant and machinery, and the prevention and regulation of accidents occurring to persons employed or authorized to go into the workplaces. This is the principal legislation that ensures that the health rights in the workplace are protected and respected.

The Act places a duty on employers to ensure the safety, health and welfare at work of all its employees. The Act further mandates health and safety standards including for the use of chemicals. An employer who fails to adhere to the standards commits an offence and is liable to a fine. The Act also empowers the Ministry of Labour to seek an order from the court mandating an employer to comply with health standards specified in the Act. To underscore the commitment to the protection of the workers, Malawi ratified 3 international labour conventions on occupational safety and health, namely the Occupational Safety and Health Convention, number 155, Safety and Health in Agriculture Convention, number 184 and Promotional Framework for Safety and Health.

2.4 Please advise the steps taken by your Excellency's Government to abolish the tenancy system as urged by ILO Committee of Experts and address indicators of debt bondage

Government has since abolished tenancy labour. The abolition took place in 2021 with the amendment of the Employment Act and Government is now moving towards the implementation of the law.

2.5 Please advise the steps taken by your Excellency's Government in providing tenant farmers and their families access to effective remedy for alleged human rights violations, including through domestic judicial mechanisms

Abolition of tenancy labour means that former tenants will have the same access to institutions providing remedies, including legal remedies, just like any other member of the community in which they live.

Tobacco farms are subject to inspections and inspections in the farms contract farmers have been intensified following the signing of MOUs' between Ministry of Labour and major tobacco companies which focuses on cooperation in the inspection of tobacco farms to enforce the minimum labour standards set for contract farmers to observed. The tobacco companies concerned are Limbe Leaf Tobacco, Limited, Alliance One Tobacco Limited, JTI Leaf Malawi Limited and the Eliminating Child Labour in Tobacco Growing (ECLT) Foundation.