
Malawi Case Study

A Case Study for the
RIPL Project

Landesa – October 2015



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Development

**Malawi Case Study: A Case Study Prepared by Landesa for the
DFID-funded Responsible Investments in Property and Land (RIPL) Project
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Disclaimer: The authors' views expressed in this report do not necessarily reflect the views of the Department for International Development or Illovo Sugar Ltd.



Landesa is a U.S.-based international NGO that partners with governments of developing countries to improve the legal framework governing land, with the primary goal of improving land tenure security, especially for the rural poor. Landesa specialists have land property rights experience in over 50 nations throughout Africa, Asia, Latin America, the Mid-East, Eastern Europe, and the former Soviet Union.

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A CASE STUDY FOR THE RIPL PROJECT

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EXECUTIVE SUMMARY

The Responsible Investments in Property and Land (RIPL) project, with funding from the Department for International Development (DFID), contributes to ongoing global efforts to support the implementation of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (VGGT) by developing how-to-guides called “Playbooks” to support participation by smallholders/communities, governments, and investors in equitable, socially responsible, and sustainable land-related agricultural investments. The primary output of the RIPL project will be the development of Playbooks for each stakeholder group (one for communities, one for investors, and one for government) in two focus countries—Tanzania and Ghana—as well as Model Playbooks that can be used as templates in other country settings.

Malawi Case Study

This is the first in a series of case studies intended to: inform the methodology for development of the Playbooks; increase the RIPL team’s understanding of the key issues and challenges facing different stakeholders when dealing with land-based investments; and gather information about the three RIPL stakeholder groups (smallholders/communities, governments, and investors). This and subsequent case studies will directly inform development of the Country-Specific and Model Playbooks.

This study was conducted in cooperation with Illovo Sugar Ltd. in May 2015 and focused on Illovo’s operations in Malawi, on several land disputes faced by Illovo and others in Malawi, and on the company’s impacts on and relations with government, smallholders, communities, and civil society. In addition to the objectives listed above, a secondary aim of this study was to identify key land-related challenges facing Illovo’s operations in Malawi within the context of the company’s explicit commitments under their *Guidelines on Land and Land Rights*, described below.

Key Findings

The below list summarizes the five key case study findings.

- **Key Finding #1: Communication and community engagement are critical, but difficult, for all stakeholders.** Clear, consistent, and multidirectional communication among investors, international development partners, communities, government, and other stakeholders is essential for the promotion of positive community relations, equitable benefit sharing, and sustainable business operations. Communication with local communities must go beyond the leadership to reach a broader cross-section of landholders and ensure that accurate information is reaching the appropriate parties. Good communication must be context-specific and responsive to local communities and stakeholders, and it must occur regularly to facilitate the development of positive relations between investors and communities. The Playbooks must consistently make the case for investors to strongly prioritize two-way communication as a means to develop and

maintain positive relations and social legitimacy with local communities. The Playbooks should also provide clear guidance on specific strategies and modes of engagement to support the adoption of inclusive and effective communications approaches that reach all affected men and women in communities.

- **Key Finding #2: Investors must earn a social license to operate effectively within a community.** While investors' legal rights to land often enjoy stronger protections under formal laws than those of the local community, legal rights alone are not sufficient for efficient operations, as Illovo has learned in Malawi. Historical disputes and the legacy of colonialism in Malawi, while not the responsibility of investors to resolve, nevertheless impact the ability of investors to operate in the country, as the legitimacy of their legal claim may be questioned or ignored by the local people. In Malawi and similarly impoverished countries, investors should take a long-term view of both their role in the larger community and the importance of relationship building. Investors also need to distinguish between their duty to promote and respect secure land rights, which is necessary to limit risk; abide by international and local norms; and promote the sustainability of their business and their corporate social responsibility (CSR) initiatives, which companies often view as "extra" efforts that go beyond the company's obligations. Framing land rights mitigation activities as CSR add-ons can result in such efforts being given a lower priority. The Investor Playbook will have to strongly articulate the financial incentives for treating land rights and related obligations differently from CSR initiatives; in particular, it will highlight the potential financial risks that can arise if land rights issues are not effectively addressed by investors. The Community and Government Playbooks should also directly address the issues of corporate responsibility (and the limits thereof) in the context of weak local governance.
- **Key Finding #3: Diversity and complexity of investments make it a challenge to create useful tools.** A diversity of investment types, investing parties, and investment structures were observed throughout the study, highlighting the need for the Playbooks to be responsive and complete while also avoiding a level of complication that makes them incomprehensible, inaccessible, or unadaptable for different contexts. The Playbooks must therefore be developed to enable each stakeholder group to articulate its circumstances, interests, and needs and determine appropriate approaches.
- **Key Finding #4: Near-absent social services, infrastructure deficits, and governance gaps leave the company as the "last man standing" for community development.** Malawi's government is particularly under-resourced and lacking in both physical and human capacity, particularly at the district level. The country's low GDP and high rate of poverty mean that investors like Illovo have a high profile and a large impact on the national economy; Illovo, for example, is the single largest taxpayer in Malawi and contributes about 10 percent to Malawi's GDP. The lack of capacity within government coupled with Illovo's high visibility creates an expectation among Illovo's neighbors that the company will provide tangible support to the community and fill the void left by government. This situation is not limited to Malawi and Illovo: in many lower-income

countries, companies and other investors are expected to provide services and support that would normally be the responsibility of the government. The Playbooks must therefore anticipate that local level capacity will be lacking, and that communities may expect companies to make up the gap in local services, infrastructure, and even governance capacity.

- **Key Finding #5: Addressing intrahousehold issues within supply chains is difficult but critically important.** The study highlighted the challenges involved in ensuring that women are included among the beneficiaries of land-based investments and are not made worse off as a result of the investment. Beyond the ethical rationale, the financial implications on business operations for explicitly addressing women's land and resource rights is not obvious and must be made clearer to companies, which may otherwise view addressing women's issues as being outside the scope of their commitments and obligations. Assessing the impacts on women can be complicated; assessing such impacts throughout the supply chain is even more difficult, further discouraging companies from addressing the impacts of their investments on women's livelihoods. These challenges may be amplified by customary systems that often disadvantage women in many areas of life, including land and property rights. These findings confirm the importance of truly integrating gender through the design and implementation of the RIPL project in order to address the unique challenges involved in supporting women's land and resource rights within the context of large-scale land-based investments.

BACKGROUND

With funding support from the Department for International Development (DFID), the Responsible Investments in Property and Land (RIPL) project contributes to global efforts to support the implementation of the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (VGGT) through the development of how-to-guides, or “Playbooks,” which will guide smallholder communities, governments, and investors as they engage on land-related agricultural investments, in order to ensure that such investments are equitable, socially inclusive, and sustainable. The Playbooks will be based on field research and stakeholder input, adaptable to different country contexts, and tested within an investment project. The first phase is to develop Country-Specific Playbooks for two focus countries—Tanzania and Ghana. For each country, three Playbooks will be developed—one each for investors, for government, and for communities.

Using the knowledge and experience derived from the creation of the Country-Specific Playbooks, the second project phase will focus on the development of Model Playbooks that can be used as templates in other country settings. The Model Playbooks will guide smallholders and communities, governments, and investors through generalized adaptations of the processes included within the Country-Specific Playbooks and will be designed as working documents for the users to contextualize and adapt as required. Finally, the project team will field test the Model Playbooks on an investment in a third country, in collaboration with the private sector, government, and a local community or group of smallholders.

The RIPL team identified the need to conduct short case studies on existing, evolving, or proposed investments outside the focus countries. This Malawi study is the first such case study to be carried out in the project. The studies have four purposes:

1. To inform the development of the research methodology for the Country-Specific Playbooks.
2. To validate the team’s understanding of key issues and challenges faced by stakeholders involved in or impacted by land-related investments.
3. To gather information about the three RIPL stakeholder groups (smallholders and communities, governments, and investors).
4. To serve as a cost-effective and fruitful source of content and perspective for the Model Playbooks.

Though they will be shared with a wider audience and will be made publicly available on the project website, the intended audience of these case studies is the RIPL project team, other Landesa personnel, collaborators and stakeholders in Tanzania and Ghana (during Playbook development), and consultants and partners with an interest in the project. These studies will help to ensure that the project’s processes and products have a broad relevance and application and are informed by a range of experiences and tested in a number of contexts.

Landesa conducted the study in cooperation with Illovo Sugar Ltd. in May 2015 and focused on Illovo's operations in Malawi and on several land disputes faced by Illovo and others in Malawi. The research team met with government, smallholders, and civil society. The case study team consisted of Reem Gaafar and David Bledsoe from Landesa and Leslie Hannay from Resource Equity.

Malawi and Illovo Context

Illovo is the largest producer of sugar in Africa, with a total of sixteen agricultural and manufacturing operations in six countries: South Africa, Malawi, Mozambique, Swaziland, Tanzania, and Zambia. In March 2015, Illovo, joining a growing number of companies declaring zero tolerance for land grabs within their operations, released its *Group Guidelines on Land and Land Rights*, affirming the company's commitment to respecting international human rights, including rights to land. The *Guidelines* lay out a zero-tolerance policy for land grabs and outline the company's commitment to Free, Prior, and Informed Consent (FPIC), its aim to resolve land disputes in its supply chain, and its intention to work with communities to establish secure land rights.

In Malawi, over 80 percent of Illovo's sugar is sourced from its own farms—Nchalo in the south and Dwangwa in central Malawi; the remaining 19 percent comes from independent outgrower farmers—smallholders who grow cane on privately-held or family land and sell to Illovo, either as individuals or as members of larger sugar farming cooperatives and associations, through formal Cane Supply Agreements. Illovo's estates are held under long-term leases acquired mainly in the 1960s and 1970s by the Lonhro Sugar Corporation, which was acquired by Illovo in 1997. The company has a number of active land issues affecting its operations on both estates, the resolution of which are cited as priority action items in Illovo's land guidelines implementation process. These disputes center on the critical questions of land ownership and rights of possession and use, as well as compensation claimed for forced historical relocations of communities.¹

Malawi has the lowest GDP per capita in the world,² and high official development assistance (ODA)—which indicates level of dependency on aid—at nearly one-third of its GDP.³ Malawi's population suffers from chronic food insecurity, land scarcity, land degradation, and pervasive poverty. The majority of the rural population holds land under customary tenure (comprising 65–75 percent of land in Malawi) and has small and increasingly fragmented holdings. The inadequacy of the legal framework, local governance institutions, physical infrastructure, and social supports at the district level are both symptoms of and contributors to local poverty. The

¹ Illovo representatives note that these relocations occurred prior to Illovo's acquisition of Lonhro's leases and claim that, to the best of Illovo's knowledge, the legally-required compensation was paid to claimants at the time of removal.

² "World Development Indicators: GDP Per Capita (current US\$)," World Bank Group, accessed July 27, 2015, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

³ See "World Development Indicators: GDP (current US\$)," World Bank Group, accessed October 1, 2015, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>, and "World Development Indicators: Net official development assistance and official aid received (current US\$)." World Bank Group, accessed October 1, 2015, <http://data.worldbank.org/indicator/DT.ODA.ALLD.CD>.

country also suffers from a colonial legacy in which indigenous African populations were frequently removed from high quality land in favor of Europeans and African elites. This context has significant implications for investments in Malawi and similar countries; it is critical for large investors like Illovo to understand the historical dynamics at play and evaluate their impact on local communities and their broader societal role in developing countries.

METHODOLOGY

The case study included the following activities:

1. Development of the case study log frame (fieldwork approach, topical focus, and schedule), including integration of the RIPL gender strategy into the case study framework.
2. Desk research into Illovo land-related operational and policy documents; other sugar industry operational and policy information (such as land-audit questionnaires developed for assessments of a multinational beverage company's sugar supply chain in Brazil); applicable Malawian policies, laws, and regulations; international policies and standards of socially responsible agricultural investment; and other good/better/best practices documentation.
3. Two-day consultation and workshop in Durban with the Illovo development consultant, Illovo senior management, and several other NGOs (including Oxfam). The consultation included a presentation to Illovo management of RIPL goals and activities, an explanation of the Malawi case study activities, and information and analysis required to both inform the case study and guide Illovo with thinking about how to resolve its Malawi land issues and implement its land guidelines.
4. Malawi fieldwork in the southern (Nchalo Estate) and central regions (Dwangwa Estate) that included meetings with representatives from Illovo's operations (mills, farms, cane suppliers, and others); local, regional, and national government representatives; NGOs/CSOs; and both smallholder and landless rural families.

Although the case study focused on a single investor in a single country, the case study team obtained useful information and perspective relevant to the project objectives from a variety of actors:⁴

- Local and national government on land policy and laws, investment climate and facilitation, and land administration, planning, and dispute resolution.
- Customary authorities—including women leaders in local communities—on land allocation and management, land disputes, needs, women's rights to land, and stakeholder expectations.

⁴ See [Annex III](#) for a list of persons and groups consulted.

- Squatters and displaced claimants on land access, security of tenure, expectations, livelihoods, and disputes.
- Men and women smallholders on land use, agricultural practices, participation in growing schemes and associations, disputes, successes, and needs.
- Civil society on capacities, missions and programs, disputes, and needs.
- Other stakeholders, including farming trusts, farming scheme managers, growers' associations, and international development partners.

The team also focused on developing and refining the general methodology for conducting case studies for the RIPL project. The team considered such things as: the appropriate primary focus of the case study (commodity, investment type, stakeholder group, scale farming as opposed to smallholder models, etc.); breadth of investigation; the risks of having a single stakeholder serve as the centerpiece and logistics provider (in this case, Illovo); staffing; length; funding (RIPL, stakeholder contribution, or combination); and other issues.

Conclusions about the case study methodology and qualifying factors:

- The fieldwork would have benefited from additional days; more time could have profitably been used to interview smallholders, women, NGOs, and national government.
- Logistics will require more time if the case study team is to rely less on the company's staff to identify interviewees, arrange meetings, and follow up on useful leads.
- Given the aim of the case study to understand the company's perspective on investment in the Malawi context, there was no significant disadvantage to focusing on the Illovo operations and in having Illovo handle a significant part of the logistics. For example, Illovo staff members were not permitted to attend many of the interviews, and the team hired its own interpreter, which eliminated the need for Illovo staff to interpret and relay information to the team during interviews.
- It was useful and substantively fertile to have a three-person team, although a two-person team could have satisfactorily performed the activities.
- By design, this case study had a limited scope and narrowly defined objectives; the study did not attempt to undertake a comprehensive assessment of Illovo's operations, nor was the intent to recommend specific procedures or courses of action related to existing disputes or implementation of its corporate policies on land. Such efforts would be worthwhile and would require a more in-depth review and analysis of the company's local and international operations.

KEY FINDINGS

This section contains the five key case study findings.



Key Finding #1 Communication and community engagement are critical, but difficult, for all stakeholders.

Key Finding #1: Communication and community engagement are critical, but difficult, for all stakeholders.

- Companies need specific guidance on appropriate and effective community engagement models to foster more positive relationships with local communities and more socially responsible investments.
- Company engagement should honor existing structures while also reaching beyond local leaders to foster improved communications and relations with communities.
- Implementation of company policies on land should be supported through monitoring and review of progress towards implementation, the results of which should form the basis for ongoing dialogue with communities.
- Good communication and engagement will need to be context-specific, responsive, and multi-touch to facilitate positive, longer-term relations with communities.

Clear communication between Illovo and outgrowers, as well as between Illovo and neighboring communities, is critical to improving community relations and allowing for the type of engagement necessary to fulfill commitments to make socially responsible investments in land, such as those outlined in Illovo’s land guidelines.⁵ Monitoring performance on such commitments, and engaging with communities to discuss progress and challenges identified through monitoring activities, should also be an element of any company’s efforts to implement land guidelines. Insufficient local NGO presence and capacity and inaccessible local governance institutions render local communities without support as they engage with Illovo or other

⁵ Illovo Sugar Ltd., *Group Guidelines on Land and Land Rights*, March 2015, accessed July 27, 2015, <http://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>.

companies. To ensure meaningful, bidirectional communication with affected communities, companies need to be prepared to develop monitoring plans, formal grievance mechanisms, robust and multi-touch communications pathways, and forums for direct engagement with local people. To ensure that both men and women in affected communities participate and benefit from these communications and engagement efforts, companies need to proactively consider and accommodate the different opportunities and means by which men and women receive and convey information. For example, sharing information with local communities by radio may be an effective means to reach men, but in some places could leave out women, who may be less likely to own or have access to a radio during the day. Understanding and overcoming these barriers in the particular communities in which the company operates is essential for ensuring that both women and men are able to learn about and participate in land-related investment decisions and interactions with investors.

Presently, Illovo lacks a communications or engagement strategy, communicating with local communities in an ad hoc manner, primarily through discussions with heads of growers' associations and the traditional authorities. This approach is necessary to some extent to respect local governance structures, but it can create challenges as it encourages more limited, uni-directional communication between the company and local farmers and other landholders. This also leaves women particularly vulnerable because women are much less likely to hold these leadership positions than men. A potential solution is the establishment of a designated forum composed of company representatives, smallholders, and community members who are typically not part of the leadership structure. Such a forum would provide a more direct way to discuss issues without the community members' views being filtered through traditional authorities and elites within the community who may have incentives that often do not support complete transparency. Assessments of the investment area should be used to identify vulnerable groups in need of representation on the forum as well as de facto 'leaders' (e.g., heads of women's savings groups) who are trusted by community members. By communicating primarily through traditional authorities, the company also cannot be sure that accurate, complete information is reaching the people affected by Illovo's operations, who are the intended targets of communications efforts. This can lead to conflicts with local communities that can disproportionately impact less powerful individuals and groups within communities.

Where the company's decisions are not favorable to the community, local leaders may not be willing to divulge the details of the company's plans and may attempt to avoid being the bearer of bad news to communities. In addition, withholding information prevents the community from seeing the powerlessness of their local leaders, which could reduce their influence and power. The study team heard of more than one instance in which a leader claimed not to know the outcome of a dispute that had reportedly been resolved. For example, in its communications over a minor boundary dispute in Nchalo, Illovo staff said they had informed local leaders of the need for community members to relocate, yet community members reported that the company had told their leaders that they would be allocated new land by the company. Though the company had no intention to allocate new land to these individuals, the community members remained on the disputed land, waiting for the company to tell them where to go. In this case, it appears community leaders did not inform the community members directly affected by the company's decisions about the outcome of the dispute, and the company's efforts to communicate with those impacted by its operations were ineffective.

In recent years, the company has put a greater focus on community engagement, particularly at the Nchalo Estate, where Illovo hired an assistant human resources manager specifically

designated to lead community engagement around land issues. The addition of this position seems to have improved the company's understanding of local land conflicts pertaining to its own land holdings, but it has done little to facilitate broader dialogue and relations between the company and communities in the surrounding area. This land and human resources manager currently focuses strictly on demarcation of the company's boundaries and related land disputes. Although addressing issues related to company land is an important first step, this manager does not yet consider engagement with neighboring communities or Illovo suppliers a significant part of her job duties and no staff person has yet been assigned responsibility to address similar issues occurring on land in the rest of Illovo's supply chain. This narrow interpretation of Illovo's land-related concerns impacts the breadth and quality of information received and strategies for community engagement that result. Given Illovo's commitment to dealing with land issues across its supply chain, this seems an area deserving of additional attention.

Further, rather than support a more holistic discussion of the relationship and opportunities for cooperation between the company and surrounding communities, the current information gathered primarily relates to current problems and conflicts. There is a clear need to expand the focus of this community engagement and to create official channels for communication that are accessible to local community members, including those who are outside the company's direct supply chain, but whose lives and livelihoods are impacted by Illovo's presence in their communities and by their role in the local economy.

The Illovo example also suggests that improved communication with local audiences about company policies and practices could improve their relations with local communities and contribute to the accuracy of information available about the state of corporate investments in land. Companies need guidance in developing communications strategies. The company leadership cited numerous examples of Illovo's investments in local communities, including building schools and health centers and donating maize to local families, but much of that community work is not well publicized or widely known within and around the local community. In the case of Illovo's cropping of maize for public benefit, distribution goes through the local district government, as well as traditional authorities, and Illovo appears to have no influence in determining the final beneficiaries. It also is not clear whether the beneficiaries are informed that Illovo supplies the maize.

Likewise, Illovo and other companies could help to reduce conflicts in their local operations and minimize negative publicity and reputational issues by proactively communicating about their policies, practices, and community engagement initiatives, particularly those concerning land within the communities they operate in. Negative, but somewhat misleading, reports in the international media about Illovo and its linkages to a failed cane growing trust that was to be a supplier to its Dwangwa mill have brought international attention to the company's Malawi operations and may have reinforced an impression among locals that the company is taking advantage of local communities. Such experiences point to a need for companies to improve the way they communicate with an international audience about their business models and company standards.

Implications for RIPL

Companies are looking for specific guidance on appropriate and effective community engagement models that create more positive relationships with local communities and that

improve their ability to invest in a socially responsible manner. The Playbooks need to emphasize company engagement with communities that reaches beyond local leaders while also honoring and working with the existing structures. To support local legitimacy and create long-term social capital and to improve the quality and accuracy of information about local expectations, needs, and contexts, companies will need to dedicate resources and efforts toward good communication and engagement that is based on ongoing monitoring of internal compliance with their own land policies and that is context-specific, responsive, and recurs regularly over the life of the investment. To be effective, the Playbooks will need to consistently make the case to investors that strong prioritization of monitoring and communication efforts is a necessary and fundamental step in developing and maintaining positive relations and social legitimacy with local communities. The Playbooks should also provide clear guidance on specific strategies and modes of engagement to support the adoption of inclusive and effective monitoring and communications approaches that reach all affected men and women in communities.

Key Finding #2: Investors must earn a social license to operate effectively within a community

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- Companies must distinguish between CSR initiatives and fulfilling commitments related to land rights to recognize that corporate land rights commitments are a necessary component of responsible, profitable, and sustainable business practice.
- Companies need to prioritize the communication and understanding of the financial implications of land rights issues throughout corporate supply chains.
- NGOs must increase their understanding of the complexities surrounding investments in land to give them the capacity to better assist companies in promoting land rights.
- Playbooks should help companies identify and examine historical issues related to their land investments. For many investments, addressing all underlying issues may be beyond the scope of the Playbooks and corporate commitments to land rights; the Playbooks will help companies to address "live" conflicts impeding tenure stability by developing a set of principles for identifying and addressing issues.

Illovo's land conflicts in Malawi demonstrate the difference between holding a legal right and having a "social license" recognized by local communities. Based on the existing leases and a recent court decision, the company has a legal right to operate on nearly all the land it currently holds and is, in fact, having its land rights encroached upon in many areas. However, these legal rights are not recognized by many local communities. In some cases, this is because community members have been using the land in question for a significant period of time; in others, it is due to the circumstances surrounding the issuance of the original lease.⁶

⁶Most of Illovo's leases appear to have been issued to Lonhro Sugar Corp. during the one-party rule of Hastings Banda; many of those interviewed indicated that resisting orders from the government at that time resulted in significant danger and, in the Mlala case, claimants indicated that the original lease may have been

Regardless of the specific history of Illovo's land, there is recognition on all sides that the company, as a successor to the Lonhro leases, benefitted from the unjust legal system that was in place when Lonhro acquired the leases, and that those benefits came at some cost to the neighboring communities. This is the reality for many companies with investments in land dating back as far as Illovo's (in Malawi and elsewhere). Where undemocratic governments are, or were recently, in power, such issues may even pertain to much more recently allocated leases. While it is unrealistic to expect companies to resolve all historical injustices that benefitted elites and private investors at the expense of local African communities, acknowledging the historical context and its impact on modern economic conditions is necessary to pave the way for more honest and transparent communications and relations with local communities. Unsurprisingly, there are few examples of a company making such an acknowledgement; this approach may be viewed unfavorably by companies as it potentially opens them up to unfair criticisms for failing to return all such land to the original owners and their descendants. Understanding the historical dynamics at play, recognizing and addressing the role the company plays in contributing to and alleviating local poverty, and acknowledging the company's role in sustaining the national and local economy are good starting points for a company to consider when designing policies on land and developing roadmaps for their implementation. Taking a long-term view of the company's position within the community and working to build better relationships to balance existing negative perceptions and inequities are critical to effectively fulfilling commitments to socially responsible investments in land.

Implications for RIPL

Companies like Illovo need help to begin seeing their land rights commitments as a necessary component of responsible, profitable, and sustainable business practice, rather than as an "extra" CSR add-on. A key takeaway from the Illovo study is the need for companies and communities to distinguish between CSR initiatives and fulfilling their commitments related to land rights. Illovo's land guidelines are considered a CSR initiative by many of the company employees, and on multiple occasions Illovo staff noted that the downturn in the sugar market has dampened enthusiasm for CSR activities, which are seen as extra initiatives lying outside the company's usual business needs. The Company Playbooks and other project advocacy should demonstrate the financial incentives for companies to respect and promote land rights throughout corporate supply chains and should highlight the significant business risks that arise from not doing so. This type of education should extend beyond companies to NGOs in order to increase their understanding of the complexities surrounding investments in land and to improve their capacity to support companies in promoting land rights.

Companies need to be shown both the financial incentive and ethical imperative of respecting and promoting land rights in the context of historical dynamics that continue to impact company operations and relations with communities today. Beyond the Playbooks, this will require advocacy and engagement with companies and NGOs (Oxfam et al.), as well as continued efforts to understand, quantify, and communicate the business case for socially

acquired "illegally." Illovo representatives assert that the original landholders were compensated when they were relocated and that the current group of claimants has no right to additional compensation.

responsible investments in land to employees at different levels of a company's operations. This engagement should be sustained over the medium- to long-term, will need to be specific to local contexts, and require a familiarity with companies' business activities and countries of operation.

It may be unrealistic to expect companies to address all the historical issues underlying their investments in land. Such an expectation may well be beyond the scope of the Playbooks and beyond the intent of many companies' commitments to respect and promote land rights. However, while acknowledging that a company or other private actor benefitted historically from an unjust legal system may potentially feed into criticism from international media outlets, it can also pave the way for productive negotiations with affected local communities. In addition, in some cases companies may be dealing with "live" issues pertaining to the way in which land was originally acquired. The Playbooks can help to address these issues by developing a set of principles for identifying and addressing active issues, so as to promote meaningful improvements in the quality, equity, and sustainability of such deals.

Key Finding #3: Diversity and complexity of investments make it a challenge to create useful tools.

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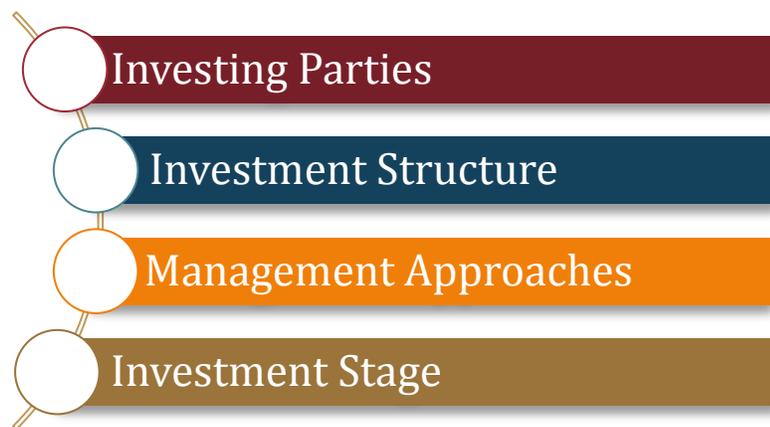
- The Playbooks, and indeed all socially responsible investments in land, must be designed to accommodate a diversity of conditions and options; therefore, country-specific work will necessarily revolve around discovering, categorizing, and planning for diversity.
- The design of the Playbooks must be user friendly, inclusive, and comprehensible.
- Playbooks should anticipate and provide for differences and dynamics among stakeholders; the Playbooks, and in fact all investments in land, should support equitable and democratic governance while preventing elite capture of benefits and inequalities in information and participation.
- The Playbooks must enable each stakeholder group to articulate its own circumstances, interests, and needs and consequently, determine how investment-related assessment, planning, implementation, and benefit-sharing are devised.

The Malawi case study and Landesa's other LSLBI experiences reveal there is great diversity and complexity among investments. It will be a challenge to create Country-Specific and Model Playbooks that are responsive and complete, while avoiding a level of complication that makes them incomprehensible or unadaptable. With relative ease, stakeholders must be able to contextualize the prospective investment and the surrounding situation and then add detail and context from each stakeholder group perspective as they use the Playbooks to address local circumstances and investments.

The case study observations and conclusions suggest that the diversity of investment types is relevant to the Playbooks in at least two ways. First, each investment will be driven by a diverse set of existing conditions and requirements that are linked to the particular sector or enterprise involved and that will determine the design and operation of the investment. Second, government and smallholder realities (linked to capacity and livelihoods, for example) will shape the possible investment characteristics that will in turn be incorporated into design and implementation.

The Malawi case study illuminated four types of diversity that should be considered in developing the Playbooks to ensure they are relevant to current and likely realities and are supportive of effective and socially responsible investment approaches more generally. This is not an exhaustive list but rather an attempt to characterize the types of variation that can be observed in Malawi in order to anticipate the breadth of scenarios that the Country-Specific and Model Playbooks will

seek to address. In the Malawi context, the research team found that investments are diverse in terms of investing parties, investment structures, management approaches, and the stage of the investment (e.g., prospective/exploration stage vs. longstanding operation).



EXAMPLES OF INVESTMENT DIVERSITY

Diversity of investing parties, for example, could include two or more of the following in a number of different combinations: (1) a single commercial investor (Illovo Sugar, for example) and smallholder rights holders/beneficiaries; (2) multiple commercial investors; (3) capital-contributing smallholders; (4) smallholder outgrowers; (5) holding entities (trust, co-operative, joint stock company, joint venture); (6) associations that provide extension, inputs, field preparation, harvesting, transportation, and marketing; (7) management entities (both for-profit and nonprofit); (8) Public-Private Partnerships comprised of government, private sector, and multilateral or bilateral development partners; and even perhaps other models.

Diversity of investment structure may reflect different combinations of investing parties, as well as varying ways of contributing different types of capital. Smallholder parcels may be contributed by rights holders to a trust or other entity as capital in exchange for enterprise shares that are proportional to parcel size. A contributing smallholder may commit to providing the labor to farm only the contributed parcel, in which case proceeds may be proportional to yield or to the size of the contributed parcel. Or the contributing smallholders and capital investors may conclude that hired labor should be used to farm the consolidated parcels at scale. A contributing smallholder may consequently choose to serve as an employee

of the scale operation, while also sharing in proceeds based on the contributed land. Many other investment structures and combinations are possible.

Management approaches vary as well. A single holding entity (trust, co-operative, joint stock company, sole corporation, or other) may manage the operation and finances. Or a separate management entity (corporation, joint venture, association, partnership, or other) may manage the operation and finances, while the land may be held separately by a holding entity. Such issues have profound implications for the efficiency and ultimate profitability of an investment and on the manner in which benefits from participation in a production scheme or supply chain are distributed; the extent to which smallholders and other parties can access grievance mechanisms; and their ability to exercise voice and decision-making rights. Compensation for management services could be based upon a percentage of total proceeds, fees for services provided, or a lump sum negotiated in advance. Here too, other approaches could be used. This complexity presents a challenge in developing the Community Playbook, which will need to present clear and relevant guidance to community members facing a wide range of options and considerations.

The stage or status of investments can vary as well. The Malawi case study yielded examples of investments that were already underway but that were dysfunctional or stalled. These investments call for extraordinary interventions that should probably include restructuring and infusion of additional capital. Other smallholder schemes were operational and yielding profits or surpluses but were at a point where they would benefit from adjustments or expansion. Yet other investments were at the inception phase, awaiting capital or other conditions to be met. Ideally, application of the Playbooks would occur at the very inception of an investment, permitting the shape of the investment to be optimally informed by the characteristics and needs of all the stakeholders. However, the Playbooks should be flexible enough that they can be used with investments at any stage, as a means of curing problems and providing benefits to all stakeholders.

Implications for RIPL

Diversity of investments will shape the activities and the development of the Country-Specific Playbooks, as well as the final Model Playbooks intended to serve as templates and guides for investments in other countries. The assessments, stakeholder engagement, and Playbook designs linked to Tanzania and Ghana will appropriately be shaped by the diverse characteristics, needs, politics, capacities, and demographics encountered in each country. In essence, the country-specific work will necessarily revolve around discovering, categorizing, and planning for diversity. And the Model Playbooks will necessarily focus on incorporating, accommodating, and capitalizing on diversity. The models must guide each stakeholder in making use of the Model Playbooks to participate in a specific investment.

In all likelihood, one of the stakeholders will take the lead on a discrete investment, and the Model Playbooks must provide for this role as well. In some cases, the investor will take the lead because it will often be the entity that is pursuing a prospective investment by identifying the opportunity and being the primary source of funding capital. In other cases, a government may take the lead in order to facilitate investment in the agricultural sector or within a

designated agricultural zone. In fewer cases, a group of smallholders (perhaps facilitated by a donor, an NGO, or a grower's association) may trigger an investment by indicating a willingness to contribute land parcels as capital or to grow a single crop for sale to an investor. The Model Playbooks must anticipate and provide for the leadership role, while preventing inequality in negotiations, asymmetric information, and capture of benefits.

The Model Playbooks must enable each stakeholder group to articulate its own circumstances, interests, and needs and consequently, to determine:

- Assessment methodologies
- Consultation approaches
- Inputs on investment configuration
- Beneficiary groups
- Formalization of land rights
- Benefits, payments, and damages
- Governing rules and procedures
- Byproducts (laws, regulations, models, capacity building, others)
- Monitoring and evaluation plans
- Enforcement
- Sanctions
- Triggers for amendment and winding up

In short, the Model Playbooks (and indeed any socially responsible investment) must be designed to accommodate a diversity of conditions and options. These Playbooks will have a core focus on situation assessment and a corresponding development and selection of options and alternatives. The Model Playbooks must be user-friendly, inclusive, and comprehensible. These Playbooks must permit stakeholders to make wise decisions that will mesh with the decisions made by other stakeholders. Elite capture, favoritism, information disparity, and loser/winner dichotomies must be eliminated by way of smart design and implementation. The prospect of one of the stakeholder groups taking the lead—in a fiduciary capacity—on the investment should be accommodated. In Malawi, a lack of governance frameworks and capacity probably means that government could probably not serve in this role. Civil society, as a champion for smallholders, also lacks needed capacity. These realities probably mean that business investors would need to take the lead in the Malawian (or similar) context.

Key Finding #4: Near-absent social services, infrastructure deficits, and governance gaps leave the company as the “last man standing” for community development.

Key Finding #4: Near-absent social services, infrastructure deficits, and governance gaps leave the company as the “last man standing” for community development.

- The Playbooks will need to anticipate and accommodate circumstances in which one or more stakeholder groups has extremely limited or no capacity. It will be a challenge to identify resources from within the investment to fund and build capacity.
- Establishing reasonable expectations of minimum and maximum corporate performance of this proxy role should be a central concern of the Investor and Community Playbooks.
- Playbooks should provide guidance on what companies must do to ensure they are responsible neighbors while managing expectations that they take on the role of the state.

Even in comparison to its neighbors in the region, Malawi’s government is markedly under-resourced, with limited physical and human resources capacity at the district level, offering few services and limited entry points for the rural population to seek and receive assistance.⁷ Malawi is the most aid-dependent country in the world, with official development assistance comprising an estimated 29 percent of Malawi’s GDP,⁸ a figure that is nearly double that of the region’s second most aid-dependent country.⁹ This is especially relevant to Illovo’s operations and to the context of large-scale investments in land for several reasons.

First, Illovo is the single biggest taxpayer in the country and contributes about 10 percent of Malawi’s GDP and 35 percent of the country’s agricultural sector production. The company directly employs 11,552 people in Malawi and estimates that it supports the livelihoods of between 82,722 and 128,220 people, including dependents through direct, indirect, and

⁷ See Tam O’Neil and Diane Cammack, “Fragmented governance and local service delivery in Malawi,” Overseas Development Institute, February 2014, <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/8943.pdf>. The report attributes Malawi’s dismal social services and local governance provision to institutional and governance problems rooted in an incoherent policy framework and poor coordination.

⁸ See “World Development Indicators: GDP (current US\$), World Bank Group, accessed October 1, 2015, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries>, and “World Development Indicators: Net official development assistance and official aid received (current US\$).” World Bank Group, accessed October 1, 2015, <http://data.worldbank.org/indicator/DT.ODA.ALLD.CD>.

⁹ *Id.*

induced employment.¹⁰ Though these contributions are a point of pride for the company leadership, the company's high profile raises expectations among the general population that the company provide conspicuous, tangible support. Contributing to the local population's sense that the company "takes the land but gives nothing back" is that Malawi's tax revenues are collected by the national government and there are no provisions for directing a larger portion of these revenues back to the local areas most affected by the company's operations.

Related to this issue is a lack of infrastructure, social support systems, and functional governance structures that limit the quality and availability of support for both community members and the company itself. Malawi's government remains strongly centralized, though efforts to devolve to local government are underway. Traditional authorities have strong local influence but limited authority at the national level and uncertain authority vis-à-vis large investors such as Illovo. This vacuum of local authority and functioning municipal governance systems has a disproportionate impact on communities, which tend to lack the ability to attract resources or support from the central government and also the means, organizing capacity, and/or opportunity to develop alternative structures. Thus, local government support—weak though it may be—tends to disproportionately benefit the company while offering little support to communities. The company's importance to the national economy also gives it considerable influence and potentially dampens the government's incentive or interest in imposing restrictions or taking up citizens' grievances against the company.

These realities combine to put Illovo in a difficult position. The company is expected to provide services and support that ordinarily would fall to the government to provide. The overwhelming poverty of the country, and the state's inability to provide basic services create a nearly limitless demand for basic services and support; Illovo is a highly visible, conspicuously prosperous entity whose substantial tax contributions are absorbed centrally and have no visible impact locally. Unfortunately, this is not a challenge that can be easily overcome. An initial step is to clearly understand this dynamic and to assert a proactive strategy for supporting clear, equitable, and locally legitimate operations in a locality. Clear, bidirectional communications with communities will also help to foster improved relations and for companies, provide better understanding on what community needs are and what solutions they can help support.

Implications for RIPL

Though perhaps more pronounced in Malawi than elsewhere, this situation is the norm for investments in many developing contexts; many companies find they are expected to provide services, infrastructure, and opportunities that should fall within the purview of government.

The Playbooks (especially the Community Playbooks and Government Playbooks) will therefore need to anticipate the "worst case scenario," i.e., the least possible capacity among

¹⁰ Corporate Citizenship, *The Impact of Illovo on Africa: Socio-Economic Impact Assessment*, Illovo Sugar Ltd., May 2014, accessed July 27, 2015, <http://www.illovosugar.co.za/UserContent/Documents/2014-05-23-Illovo-Group-Socio-Economic-Impact-Summary-Report.pdf>.

local stakeholders. It will be a challenge to identify resources from within the investment or elsewhere to fund and build capacity that supplants community and government capacity. The best case under these circumstances may be a business plan that increases this kind of proxy support over time as the investment yields greater revenues. This support could even be indexed to revenue.

Establishing “how much is enough”— the reasonable limits for expected corporate performance of this proxy role—in a context of overwhelming need and expectations should be a central concern of the Investor and Community Playbooks. These should answer this question to the extent possible: what can companies do to ensure they are responsible neighbors while managing expectations that they take on the role of the state (or expend all their resources on social development)?

Key Finding #5: Addressing intrahousehold issues within supply chains is difficult but critically important.

**Key Finding #5:
Addressing
intrahousehold issues
within supply chains is
difficult but critically
important.**

- Intrahousehold dynamics is an important factor in determining who benefits from, or is harmed by, an investment in land; however, assessing and remediating household-level impacts in a land investment is challenging. Establishing realistic goals for gender equity will be important if the Playbooks are to provide meaningful and coherent guidance.
- The interaction between the investor and the "community" needs to be at the individual level and not the household level. That is, the community is a heterogeneous group made up of women and men, each with different roles and responsibilities.
- Targeted efforts should focus on anticipating, identifying, and addressing gender issues through a well-defined, multi-touch, and adaptive design and implementation.
- True integration of gender throughout a project is imperative to address these challenges. Adequate budget and staffing allocations and targeted activities (as outlined in the gender strategy) are good starting points.
- Undertaking a case study to identify cost-effective good practices for protecting and promoting women's rights in the context of land-based agricultural investments would strongly contribute to the quality and impact of the Playbooks.

The case study highlights the following challenges for investors, governments, and communities:

- Ensuring that women are equal beneficiaries of investments in land.
- Ensuring that economic and social practices that disadvantage women are not further entrenched by the investment.
- Ensuring that women are not worse off as a result of such investments.

Companies arrive at their land practices, policies, and guidelines for a range of reasons; many are pushed by external criticism—as was the case with Illovo, Coca-Cola, and other corporations targeted by Oxfam and others—to adopt guidelines in response to public campaigns against land grabs. These campaigns focus broadly on communities without defining the community. The financial benefits to companies and ethical rationales for explicitly addressing impacts on women’s land and resource rights may not be clear to companies, which often view addressing women’s issues as an additional consideration to be dealt with at some later stage, once land rights issues are better understood and integrated into corporate practice. In the interim, women seldom have sufficient voice to bring attention to intrahousehold impacts of using land to produce inputs or products for supply chains. This is particularly problematic in customary settings, where women’s land and property rights are often secondary to those of men, putting them at higher risk for dispossession without compensation and other negative impacts as the land attracts increased investment.

As a practical matter, assessing impacts on women within the supply chain can be difficult. The reality that household income may increase while household wellbeing may decrease is difficult to discern without quantitative monitoring. Additionally, by the time a company procures cane from outgrowers, land allocation to the scheme or nucleus farm has been completed, usually many years hence. Uncovering intrahousehold impacts of allocating land to a scheme and determining whether consent of all rights holders was obtained, present significant logistical and pragmatic challenges.

Beyond land allocation, it is important to safeguard women’s economic rights in the context of large-scale or smallholder outgrower crop production. For example, in the Phata Outgrower Scheme, which is largely regarded as a success and an example of a scheme that is getting the social issues “right,” women fell victim to exploitive practices in accessing employment opportunities, had their earnings from scheme participation taken from them by spouses, and are underrepresented in scheme leadership and decision making. These issues are being dealt with through a number of remedial measures but would have been handled better had they been foreseen in the design phase.

Implications for RIPL

The case study highlights the challenges faced when trying to address issues that affect women as well as issues that affect men. It is certainly easier to focus only on the head of the household, but as the case study indicates, women will most likely end up without a voice and potentially in a worse position than they were before the investment. Developing cost-effective and practical ways to improve women’s ability to participate in and benefit from outgrower and other cash crop activities will be important in any project. Although there are few good examples to draw from, the Phata scheme has implemented a few measures that could prove to be effective, such as creating a gender committee and emphasizing literacy training for employees and scheme participants.

The key finding is that targeted efforts to anticipate, identify, and address gender differences must be well-defined, multi-touch, and implemented through adaptive design. Strong and

consistent efforts to educate companies about the relevance of women's land rights to their operations and to their corporate commitments on socially responsible investments are needed to ensure that women participate in and benefit from these investments.

Understanding and addressing gender differences throughout a project is the only way to address these challenges. Adequate budget and staffing allocations and targeted activities (as outlined in the gender strategy) are good starting points. Undertaking a case study to identify good practices for protecting and promoting women's rights in the context of land-based agricultural investments would strongly contribute to the quality and impact of the Playbooks. Establishing objective baselines against which to compare outcomes and impacts will also be important.

CONCLUSION

The successes and challenges facing Illovo's operations in Malawi provide several useful lessons from which Illovo and other investors can learn in order to ensure that land rights in the investment area are appropriately protected and investors' business operations are sustainable in the short-, medium-, and long-term.

Within the Malawian context (and many others), deeply entrenched poverty coupled with low capacity on the part of local government and civil society to support smallholder and community land rights and encourage responsible investment has created a situation where local populations expect investors to provide the social services and infrastructure that would typically be the responsibility of the government. Clear, consistent communication with farmers and neighboring landholders is also a challenge for Illovo and other companies operating in countries like Malawi, where traditional leadership structures can often impede direct communication with land users. Investors also need to be shown the economic value of promoting land rights as part of their corporate risk mitigation strategies rather than as a CSR initiative, particularly when it comes to impacts on women's land and resource rights. Integrating efforts to protect and promote women's rights to land, resources, and economic participation in investments and land-related projects will help to ensure that these investments benefit both women and men and will help to anticipate and mitigate negative gender-related impacts. Finally, the study highlighted the diversity and complexity of investments in land and the need for the RIPL Playbooks to be adaptable to a variety of contexts.

RIPL Playbooks will be developed with an eye to addressing these and other challenges facing key stakeholders involved with land-based investments at any stage, with the aim of ensuring that companies are investing responsibly in land and communities are sharing equitably in the benefits of investment.

ANNEX I: MALAWI CONTEXT

Malawi has the lowest GDP per capita in the world, and official development assistance (ODA), which indicates level of dependency on aid, is high at nearly a third of its GDP. In comparison to its neighbors and regional peers, Malawi has the poorest performance for GDP, GDP per capita, and aid dependency and is ranked lowest in the WB Doing Business Index.¹¹

Malawi's population suffers from chronic food insecurity, land scarcity, land degradation, and pervasive poverty. Soil erosion and deforestation are major issues posing serious threats to the immediate economic and environmental well-being of the country. A colonial legacy, in which land was consolidated into estates—albeit with some amount of compensation, but generally at the expense of indigenous populations comprised primarily of customary land holders—continues to skew land holdings, with the majority of landholders cultivating small, rain-fed plots to grow subsistence crops. A small number of large commercial estates produce cash crops on irrigated land, largely for export. The majority of the rural population holds land under customary tenure and has small and increasingly fragmented holdings. This decreasing size and fragmentation of smallholder parcels is due to the country's rising population density, which at 134.3 per square kilometer is among the highest in Africa and is four times the rate at independence in 1963.

Legal and Institutional Framework

Efforts to address the inefficiencies and inequity of land distribution and administration in Malawi began in 1994 with the adoption of a new Constitution and the subsequent development of a National Land Policy in 2002, which called for the redistribution of land from large estates to smallholders, formalization of customary tenure to address tenure insecurity, and the creation of a commission to review and revise badly outdated existing land legislation.¹² Delays in passing implementing legislation for this promising policy impede the realization of the reforms' potential. Plus, little study has been done on the impact of divesting large-scale landholders of land concessions.

Malawi has recently joined the G8's New Alliance for Food Security and Nutrition and has restarted its reform efforts through a Country Cooperation Framework that links food security with improved land governance.

Three categories of land are recognized in Malawi: public land, private land, and customary land. There are also three types of land tenure in Malawi: freehold, leasehold, and customary tenure. An estimated 8 percent of Malawi's land is under leaseholds governed by the Land Act, with lease terms varying by use, including twenty-one-year leases on agricultural land and

¹¹ UNCTAD database 2012, World Economic Forum competitiveness report 2014, World Bank *Doing Business Report 2014*, World Bank Development Indicators 2012. Cited in Monitor Deloitte (2015) *Final Report: Malawi Investment and Trade Center - One Stop Service Centre Business Process Re-Engineering Engagement*. (On file with author.)

¹² The current legal framework for land largely dates back to the independence era.

twenty-two- to ninety-nine-year leases for property and infrastructure development. The state has the authority to lease customary land and public land to private users.

Customary law governs land allocation, land use, land transfers, inheritance, and land-dispute resolution related to Malawi's customary land, which accounts for between 65–75 percent of land in Malawi.¹³ The 2002 Land Policy recognizes the authority of customary law and traditional authorities and calls for traditional authorities to be incorporated into the land administration structure. Customary land is vested in the President in trust for the people of Malawi and is under the jurisdiction of customary traditional authorities. Customary land may be held communally or individualized in the names of a lineage, family, or individual.

Land that has been individualized carries a presumption of exclusive use in perpetuity, and the family or individual can lease the land or bequeath it. The National Land Policy provides that the community retains a residual interest in the land, suggesting that the land cannot be sold outside the community. Traditional leaders may reclaim and reallocate land if it is abandoned. Land that is not individualized (e.g., grazing land, markets, burial grounds) is considered communal land with customary law dictating rights of access.¹⁴

Methods of Establishing Land Rights

Access to land in Malawi is primarily through inheritance, marriage, and traditional authorities. Rights to land through inheritance (52 percent) and marriage (18 percent) are governed by the matrilineal system prevalent in the central and southern regions of the country, where land is handed down through the female line and by the patrilineal system prevalent in the northern region, where land is transferred from fathers to sons. Landholders also obtain land from traditional authorities (20 percent), and the remainder of transfers is through land purchase, leases, government land programs, and other means.

Tenure insecurity is greatest for women in patrilineal societies, men in matrilineal groups, orphans, non-citizens, and some recipients of land programs and irrigation schemes where the beneficiaries do not receive land title. The Land Policy recognizes the importance of tenure security, the need to protect against arbitrary conversion to public or private land, and the permanent loss of customary land rights. The policy recommends surveying and recording customary land and requiring local governments to identify existing customary land rights when developing land use plans.

Women's Land Rights

Poverty affects women-headed households at high rates in Malawi: 25 percent of households are headed by women, and 63 percent of rural women-headed households live below the poverty line. Typically, women-headed households possess smaller landholdings and fewer livestock than their male counterparts, and they produce significantly less maize, the main food

¹³ "USAID Country Profile-Property Rights and Resource Governance: Malawi," USAID, accessed July 27, 2015, http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Malawi_Profile.pdf.

¹⁴ *Id.*

crop. Although women and men have the right to own land individually or jointly with others under formal law, and the Constitution prohibits gender discrimination, women can be blocked from enjoying equal access, control, and ownership of land by cultural biases. Widows (under patrilineal regimes), for example, are vulnerable to property grabbing by their husbands' relatives, and some laws such as the 2004 Deceased Estates Act allow individuals to draft wills that transfer all their interests in their property, which may trigger some of the biases to negate protections for women's land rights under the law.

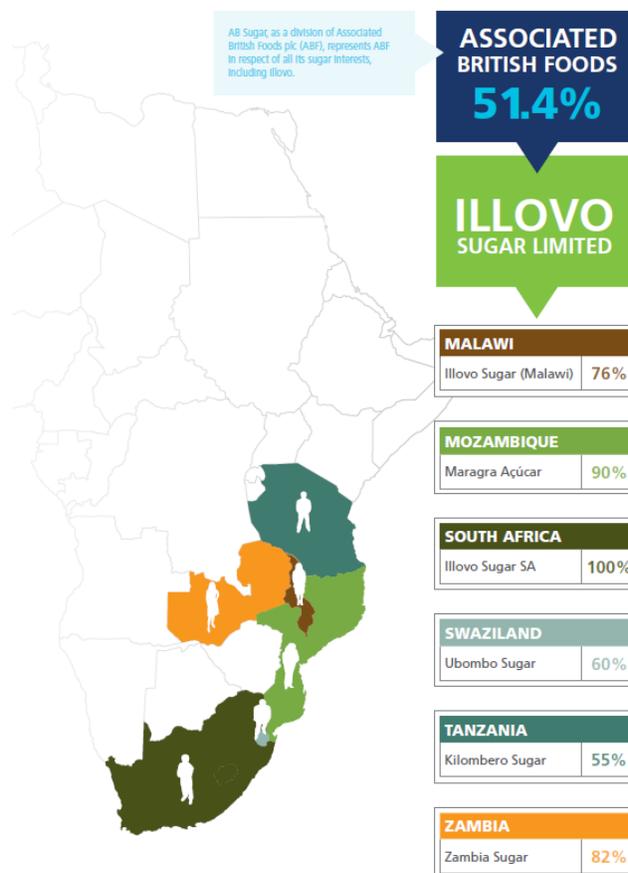
Land ownership and inheritance are governed by customary law and traditional practices in most areas of Malawi, and in the north—where ethnic groups embrace patrilineal customs—women's land rights are vulnerable. Under the patrilineal system, the man's village becomes the marital home, and he pays a bride price to the bride's family. Women do not own property and only the sons, not daughters, inherit property. Payment of bride price leads many men to believe they own their wives and children and that, when they die, their spouses and children become the property of the man's family. In matrilineal systems, women are often no better off, as they are dependent on their spouse (while he is living) or maternal uncles for access to land.

ANNEX II: ILLOVO SUGAR LTD. and Illovo Sugar (MALAWI) LTD.

Illovo Sugar Ltd

Illovo Sugar Ltd. (Illovo) is Africa's biggest sugar producer and has a total of sixteen agricultural and manufacturing operations in Malawi, Mozambique, South Africa, Swaziland, Tanzania, and Zambia.¹⁵ Illovo is a subsidiary of Associated British Foods (ABF), one of the world's largest food companies, with annual sales of £11.1 billion.¹⁶ It produces both refined and raw sugar for consumer and industrial markets domestically in each of its countries of operations and exports sugar and specialty products to UK and US markets.

Illovo sources its sugar from its own agricultural operations, as well as from independent growers that supply sugar cane to Illovo mills. In the 2013–14 season, the company produced 6.1 million tons of sugar cane. The company employs 13,000 permanent employees and 22,000 seasonal workers.¹⁷ In total, Illovo holds approximately 64,000 hectares of land and receives sugar cane from independent outgrowers occupying 112,000 hectares of land. Illovo's own land is held under either deed or long-term lease, while land cultivated by small-scale growers is held under customary/tribal tenure or is part of government-controlled land distribution systems.¹⁸



Source: Illovo Group Integrated Annual Report 2014

ILLOVO SUGAR LTD OPERATIONS

¹⁵ "Group Overview," Illovo Sugar Ltd., <http://www.illovosugar.co.za/About-Us/Group-Overview>, accessed August 22, 2015.

¹⁶ "About Us," Associated British Foods, http://www.abf.co.uk/about_us, accessed August 22, 2015.

¹⁷ *Id.*

¹⁸ "Group Overview: Land," Illovo Sugar Ltd., <http://www.illovosugar.co.za/About-us/Group-Overview/Land>, accessed August 22, 2015.

Illovo's parent company, ABF, is among ten companies targeted by Oxfam's [Behind the Brands](#) campaign, an initiative launched in February 2013 that ranked the world's ten largest food and beverage companies on a range of issues, including land rights. In March 2015, Illovo Sugar Ltd released its [Group Guidelines on Land and Land Rights](#), affirming the company's commitment to respecting international human rights and to protecting against human rights abuses, including land rights.¹⁹ The *Guidelines* pertain to all six countries of the company's operations and are to be implemented through a phased approach that was initiated at a workshop held at company headquarters in Durban in May 2015. The *Guidelines* lay out a zero-tolerance policy for land grabs and outline the company's intention to work with communities to establish secure land rights, commitment to Free, Prior, and Informed Consent (FPIC), and aim to resolve land disputes in its supply chain. The *Guidelines* are notably silent on the subject of women's land rights and gender issues.

*Illovo Sugar (Malawi) Ltd.*²⁰

Illovo is the sole sugar producer and miller in Malawi²¹; it produces raw and refined sugar, bagasse (biomass for energy production), and specialty sugar products for export. More than 60 percent of total sugar sales are sold domestically, while the remaining 40



ILLOVO OPERATIONS IN DWANGWA & NCHALO

¹⁹ Illovo Sugar Ltd, "Illovo Sugar Limited Launches its Group Guidelines on Land and Land Rights," news release, March 19, 2014, accessed July 27, 2015, <http://www.illovosugar.co.za/UserContent/Documents/Announcements/Illovo-Launches-Group-Guidelines-on-Land-and-Land-Rights.pdf>.

²⁰ Map attributed to Landell Mills (2012) Study into land allocation and dispute resolution within the sugar sector and other EU irrigation development programmes in Malawi 2012/2841154, Final Report, October 2012, Landell Mills: Trowbridge, UK.

²¹ Traditionally, Illovo was the sole cane producer in the country. Though it continues to dominate cane production, there are a few enterprises now in operation that process cane for ethanol production.

percent is sold to preferential markets in Europe, the US, and the surrounding region.²² Sugar is Malawi's third largest agricultural industry and third largest agricultural export commodity after tobacco and tea, valued at over \$61 million USD.²³ The company employs 5,480 permanent employees and 4,520 seasonal agricultural workers and is the single largest private-sector employer and the largest taxpayer in the country.²⁴

Illovo's Malawi operations comprise two agricultural estates, each centering on a cane refinery. Total sugar production for the most recent season totaled 283,000 tons, earning a combined profit of 23 billion Kw (~\$52.9 million USD), a decline of 18 percent from the previous year's profits.²⁵ The company also operates five distribution centers for sugar sales throughout Malawi.

Illovo Sugar (Malawi) Ltd. buys approximately 19 percent of its sugar cane (about 450,000 tons) from independent outgrower farmers. The remaining 81 percent of cane is grown on company land, by far the highest proportion in the Illovo Group. Relative to the rest of the Illovo Group, this is a very low rate of outgrower sourcing, due in part to the lack of larger cane farms in the country, as well as to climactic challenges in the south of the country and the need for irrigation. The company is seeking to increase the amount of cane that it buys from outgrowers.

Over 90 percent of Illovo's outgrower cane is produced by 1,888 smallholder farmers, many of them members of larger associations including the Dwangwa Cane Growers Trust, Shire Valley Cane Growers Trust, Kasinthula Cane Growers Association, and Lakeshore Cane Growers Association. The remaining 10 percent of Illovo's outgrower cane is produced by the Community Development Trust, an initiative of the Nchalo Business Linkages Project, which operates a pivot-irrigated Community Trust Farm in Kaombe, near Illovo's Nchalo Estate.²⁶ In total, outgrowers supplying Illovo in Malawi occupy over 5,000 hectares of land and earn an estimated 99 percent of their incomes from selling cane to the company.²⁷ Only registered cane growers are able to sell cane to Illovo, and they do so at a price established in cane supply agreements between growers' associations and the company. Under these agreements, growers receive 60% of divisible proceeds from sugar and molasses sales; growers are paid

²² "About Us: Malawi," Illovo Sugar Ltd., <http://www.illovosugar.co.za/About-us/Malawi>, accessed July 27, 2015.

²³ Barry Pound and Alex Phiri, "Longitudinal Impact Assessment Study of Sugar Producers in Malawi," Natural Resources Institute, January 2010.

²⁴ Corporate Citizenship, *The Impact of Illovo on Africa: Socio-economic Impact Assessment*, Illovo Sugar Ltd., May 2014, accessed July 27, 2015, <http://www.illovosugar.co.za/UserContent/Documents/2014-05-23-Illovo-Group-Socio-Economic-Impact-Summary-Report.pdf>. Illovo's direct and indirect tax payments amount to ZAR 254 million, or about 3.5 percent of the government's total tax revenues.

²⁵ Illovo Sugar (Malawi) Ltd., *Audited Financial Statements for the year ended 31 March 2015*, accessed July 27, 2015, <http://www.illovosugar.co.za/UserContent/documents/Announcements/Illovo-Malawi-Financial-Result-31March2015.pdf>.

²⁶ Corporate Citizenship, *The Impact of Illovo on Africa: Socio-economic Impact Assessment*, Illovo Sugar Ltd., May 2014, accessed July 27, 2015. Socio-economic Impact Assessment

²⁷ *Id.*

based on the sucrose content of their cane. Illovo mills are currently operating at capacity, which imposes a ceiling on the amount of cane the company can process.

Three of the growers associations are Fair Trade registered. Illovo supported the associations through the process of obtaining this certification and provides additional annual fertilizer and herbicide at cost, as well as other inputs and services as requested, to help these grower organizations. Certification yields an additional \$60 per ton of sugar, which is paid directly by the Fairtrade Foundation to the associations for investment in social, environmental, or economic development projects, as determined by each association.

Illovo's Land Issues in Malawi

Illovo has a number of active land issues affecting its operations on both estates, the resolution of which are cited as priority action items in Illovo's land guidelines implementation process. These disputes center on the question of land ownership and rights of possession, as well as compensation owed for historical relocation of communities. Illovo has long-term leases on all of its estates in compliance with Malawi's Land Act, but it has faced protests from locals who believe that some land leases were unfairly transferred to Illovo by their forefathers or local chiefs. In some cases, Illovo has effectively abandoned land upon which people have settled and begun to farm; in others, where the company has evicted people, company management maintains that it has paid for repatriation and/or compensation for their crops.²⁸

Dwangwa

Dwangwa Estate is located in Central Malawi and is bounded on its eastern side by Lake Malawi. Seventy-five percent of the cane processed at Dwangwa is from its own land; the remaining 25 percent is sourced from outgrowers, half of which is grown on irrigated land. According to the company, approximately 6,000 people are employed at Dwangwa.

Issues commonly arising among Dwangwa's eleven rain-fed outgrower associations concern disputes around allocation of land, though this issue is not nearly as common as in irrigated schemes. Interfamily conflict also arises, because family members disagree about the use of family land. Such disputes are reportedly resolved through recourse to the traditional authorities and tend not to involve Illovo.

The main land conflict currently at issue in Dwangwa is an ongoing legal dispute that was very recently decided in Illovo's favor. The dispute, which began in 1983, before Illovo obtained lease rights from Lonhro, centered on whether Illovo (then Lonhro) had been granted a temporary or long-term (lease) right to land granted in Kakuyu by a Traditional Authority during a period of flooding. Community members also claim that they were denied compensation, and/or that compensation was inadequate or was paid to the wrong people. Community claimants that have occupied some of the disputed land are growing both sugar cane and other crops. After the claimants' occupation blocked Illovo's access to its leased land, Illovo management decided to take the matter to court after seeking input from the District

²⁸ *Id.*

Commissioner's Office. Illovo asserts that it did so in order to ascertain clear and certain boundaries and rights. Claimants are adamant that they will not end their occupation or abandon their claims. Some of the pockets of encroachment in the area are seen by the company as the community 'testing the waters' to see how tolerant/active Illovo will be about the squatting.

Illovo has the best land²⁹ in the area, and there is no land available for community members—land scarcity and the population boom combine to create a great deal of land pressure in this area. Because cane is profitable, cane cultivation is an attractive prospect that is driving encroachment and land conflicts.

Nchalo

As in Dwangwa, the potential profitability of cane cultivation for farmers having access to land near the mill has driven up demand for land on and around Illovo's boundaries. Mutual claims of encroachment by both local farmers and Illovo led the company to undertake—at the initial suggestion of local district authorities—a retracement of its boundaries at Nchalo Estate. This exercise was undertaken in 2014 with the aim of clarifying the company's rights and territory. Using the deed plan and government surveys, the company enlisted the cooperation of the Regional Commissioner for Lands and the District Commissioner to retrace the estate boundaries in collaboration with and under the observation of community members. The retracement identified a few areas in which the community had encroached and some areas in which the company had exceeded its boundaries. These results have not yet been shared with the community.

The biggest land issue at Nchalo is a historical issue that stems from the original land grants in 1965 and 1974 to Lonhro (which Illovo acquired in 1997) by government. Residual and unresolved claims are linked to the question of compensation, with some community members claiming they have a traditional right to land where Illovo claims they are in fact encroaching.³⁰ The company hired a land specialist in 2012 to help sort out these issues. The length of time that has passed since the original allocation and the staged expansion of the company's estate has resulted in a complex arrangement of "encumbrances" within the estate boundaries, which encompass houses, schools, cemeteries, churches, and garden plots. Company leadership acknowledges that this is a historical issue that will be difficult to deal with but affirms that doing so is a top priority.

²⁹ Illovo representatives suggest that the difference in land quality is a result of the company's application of good agronomic practices that ensure long-term sustainability. Community members, in contrast, argue that the company land is located in more naturally fertile areas in the lowlands while local communities have been pushed into the more rocky highlands.

³⁰ [See note 6.](#)

ANNEX III: CONTACTS CONSULTED

Persons and Organizations Consulted Malawi Case Study May 2015	
Organization	Position
Illovo Sugar Ltd. Headquarters Durban, South Africa	
Illovo Group	Commercial Director General Manager Group Operations Director Human Resources Director Group Compliance Manager Regional Manager for Sustainability and Corporate Citizenship Investor Relations Development Consultant South Africa Country Director Unnamed Employee EU Project Manager, Maragra Sugar, Mozambique
RMI Outgrower Development	Managing Director Associate Consultant
DFID Pretoria, SA	Private Sector Advisor
Oxfam	Oxfam America Representative Oxfam Mozambique Representative
Illovo Sugar (Malawi) Ltd. Interviews	
Limbe office	Finance Manager/Company Secretary Malawi Group Human Resources Manager
Nchalo office	General Manager-Nchalo Human Resources Manager Assistant Human Resources Manager, Land Administration
Dwangwa office	Assistant Human Resources Manager Extension Services Agent General Manager - Dwangwa Assistant Human Resources Manager Unnamed official Human Resources Manager
Nchalo Field Interviews	
Nchalo local leaders	Paramount Chief of Managa'anja Paramountcy Traditional Authority
Kasinthula Outgrower Scheme	General Manager, Kasinthula Cane Growers Ltd. Manager, Shire Valley Cane Growers Trust

Phata Sugarcane Outgrowers Cooperative	General Manager Accountant
Chikhwawa District Government	District Commissioner District Land Officer
Dwangwa Field Interviews	
Dwangwa Cane Growers Trust	Chief Executive Officer of Trust
Lakeshore Cane Growers Assoc	Representative for LCGA
Mlala community members	Chairman
	Secretary
	Community Members (chiefs)
Dwangwa Area Community Members	Senior Traditional Authority and Community
District Administration - Nkohtakota	District Lands Officer District Planning and Development Director Survey Officer
Mphonde Community and Outgrowers Association	Chief and men and women community members
Lilongwe Interviews	
European Union	Attache, Rural Development and Food Security Section Programme Manager, Rural Development and Food Security
Malawi Investment and Trade Center	Director
Ministry Agriculture	Official Representative Official Representative
Ministry of Lands and Urban Development	Official Representative
Ministry of Gender	Official Representative Official Representative
Ministry of Trade	Official Representative