

**An Assessment of the Malawi Sugar Supply Chain:  
Child Labour, Forced Labour and Land Rights**

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This study sought to examine child and forced labor and land rights violations/compliance in The Coca-Cola Company's (TCCC) sugar supply chain in Malawi under the three themes of Child Labour, Forced Labour and Land Rights. This includes Illovo Sugar (Pty) Ltd mills, and outgrower farms linked to Illovo Sugar (Pty) Ltd mills. The study was conducted by Ethical Trade Services Africa Limited in cooperation with Illovo Sugar (Pty) Ltd between August and November 2016. This is within the context of Illovo's explicit commitments under their Group Guidelines and the TCCC's commitments and guidelines on Child Labour, Forced Labour and Land Rights. Child labor, forced labor/human trafficking and land rights violations remain significant social compliance system issues in large agricultural investments. The research methodology included desk research, relevant stakeholder interviews and onsite observations/ field work.

## **Child Labour**

Malawi does not have a national identification system. This renders the determination of the age of potential employees difficult thereby increasing the risk of hiring underage persons for employers without robust recruitment procedures. However, there are relatively established alternative age verification methods in Malawi like national voter's cards, birth certificates, church baptism cards, medical examination certificates or sworn affidavits. No incidence of child labor was encountered at Illovo Sugar (Pty) Ltd facilities during the onsite observations. The research team attributes this performance to Illovo Sugar (Pty) Ltd.'s internal policies and procedures on child protection, which in effect prohibit child labor. However, at 3 outgrowers and 3 smallholders observed locations, young persons aged between 15 and 17 years participated in sugar cane production tasks such as weeding and application of fertilizer during non-school days as part of family labour and training.

Section 23 of the Constitution, Employment Act No. 6 of 2000, Child Care, Protection and Justice Act, 2010, Employment (Prohibition of Hazardous Work for Children) Order, 2012, Education Act, 2013 provides the legal safeguards for children and young persons. Besides these legislations, in commercial agriculture such as sugar farming, children are further protected by the various compliance standards (TCCC Supplier Guiding Principles for instance) that the commercial agriculture entities subscribe such as Illovo Sugar (Pty) Ltd.

## **Forced Labour**

The study did not uncover forced labour or human trafficking incidents in the country's sugar supply chain. Illovo Sugar (Pty) Ltd has policies and procedures which prohibit forced labor. The Coca-Cola Company Supplier Guiding Principles (SGP) is a protocol all Company suppliers including Illovo are audited against periodically. Other than SGP, Fair Trade and Rain Forest Alliance standards implemented at outgrower cooperative level, also have child protection as part of their critical criteria. Sugar cane smallholder outgrower cooperatives that conform to and are certified by Fair Trade and Rainforest Alliance standards have forced labour prevention in their monitoring strategies and work plans.

Nevertheless, while outsourced agency workers in the two Illovo estates (Dwangwa and Nchalo) had signed employment contracts, the contracts were not availed to them. As a consequence, more than 20% of the workers interviewed were not aware of the terms and conditions of their employment. This posed a risk of violation of their right to free employment due to lack of information on what to do should one want to resign.

The porous and open border between Malawi and Mozambique and the lack of age verification documents facilitates illegal cross-border migration of workers. Furthermore, stakeholder engagement and literature review points to Malawi as being a source country for men, women and children subjected to forced labor and sex trafficking. It is also, to a lesser extent, a

destination country for women, children and men from Zambia, Mozambique and Tanzania subjected to forced labour and sex trafficking.

## **Land Rights**

Illovo Sugar (Pty) Ltd has published Group Guidelines on Land and Land Rights<sup>1</sup>, which is applicable to all the six countries it operates in, including Malawi. Illovo has also released its Road Map on Land Rights, which has a timeline for how the company intends to implement its Group Guidelines. Moreover, it has partnered with organizations, such as Landesa and USAID, to address and mitigate existing land rights issues throughout its supply chain, and to develop strategies for preventing the occurrence of land issues in the future. These initiatives and partnerships demonstrate Illovo Sugar's commitment to respecting land rights throughout its supply chain.

However, Illovo Sugar (Pty) Ltd has a number of legacy land issues affecting its operations on both estates, the resolution of which are cited as priority action items in the Group's land guidelines implementation process. These disputes centre on the question of land ownership and rights of possession, as well as compensation owed for past 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 the National Government and /or local chiefs back in the 1990s.

Whereas Illovo Sugar (Pty) Ltd parcels of land are legally leased through a 99-year lease, it was noted that Dwangwa Sugar Corporation had land rent payment arrears owed to the Government dating back to 2005. The outstanding balance based on the documents made available to the researchers at the time of the study was approximately USD 136, 057.5. Besides Dwangwa, Kasinthula Cane Growers farmers group (an outgrower co-operative affiliated to Illovo Sugar (Pty) Ltd also had outstanding land rent arrears (approximately USD 238.89) dating back to 2014. The study further found claims of land grabbing and encroachment against both Illovo-owned sugar estates of Nchalo and Dwangwa by their respective surrounding communities and vice versa. Beside recruiting and dedicating senior member of management to handle land and community relationships, Illovo Sugar (Pty) Ltd is partnering with organizations, such as Landesa, USAID, Indufor and Moringa Partnership<sup>2</sup> to address and mitigate existing land rights issues throughout its supply chain, as well as develop strategies for preventing the occurrence of such issues in the future.

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<sup>1</sup> Illovo Sugar Group, Illovo Group Guidelines on Land and Land Rights available at <https://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>

<sup>2</sup> Indufor, Indufor in Partnership with Moringa Partnership, Illovo Sugar and USAID to Promote Responsible Land-Based Investments <http://www.indufor.fi/news-hot-topics/indufor-partnership-moringa-partnership-illovo-sugar-and-usaid-promote-responsible>

Agriculture is considered a hazardous sector to work in for adults and children alike. Children are however at a greater risk because they are still growing. The agriculture sector has the largest share of child labourers. It accounts for 60 percent or 129 million of the 215 million children engaged in child labour.<sup>3</sup> Nearly 21 million people globally are victims of forced labour with women and girls comprising 11.4 million and men and boys 9.5 million. Of these, 19 million are exploited by private individuals or enterprises. Migrant workers and indigenous people are especially prone to forced labour and contemporary forms of slavery.<sup>4</sup> The increasing pressure on land, driven in part by agricultural investments, more often than not comes at the detriment of vulnerable persons. Significant amounts of land in hectares have shifted from smallholder production, local community use, or ecosystem service provision to commercial use.<sup>5</sup> According to Land Matrix, an independent online public database on land deals, there have been 1,004 concluded large-scale agricultural land acquisitions covering 26.7 million hectares since the year 2000 globally. Africa remains the most significant targeted region with its share of the overall concluded deals accounting for 42 percent or 10 million hectares.<sup>6</sup>

This report provides an assessment of child and forced labor and land conflicts in TCCC sugar supply chain in Malawi. The study used desk research, relevant stakeholder's interviews agreed upon in consultation with TCCC and onsite observations/ field work. The research elements were extended to the entire sugar sub-sector in the country, however, the field visits were only conducted at TCCC suppliers of Illovo Sugar Malawi two mills at Nchalo and Dwangwa, the two mills' estates with their management, and a sampling of the mills' supporting outgrower farms, their management and workers leaving out the non-TCCC sugar producing mills and outgrowers who are not affiliated to Illovo Sugar, Malawi.

Sugar is one of the three most important export crops for Malawi. Illovo Sugar (Pty) Limited (hereafter referred to as Illovo Sugar (Pty) Ltd), is a major sugar producer in Malawi. The TCCC supply chain in Malawi includes, Illovo Sugar (Pty) Ltd mills at Dwangwa and Nchalo and outgrower farms. The study, commissioned by TCCC to Ethical Trade Services Africa Limited, is part of the Company's continued efforts to expand its understanding of labor and human rights conditions and land rights in its supply chain. It provides information for TCCC, its sugar suppliers, bottling partners and stakeholders including the government of Malawi to continuously mitigate the impact of these issues where they exist, on workers and the communities in its supply chain.

The study complements the Company's system already in place to evaluate bottlers, sugar mills' and suppliers' performance—a system strongly guided by TCCC's Supplier Guiding Principles (SGP) which are a part of the Company's commitments to continuously address human rights issues. The study entailed a review of the country's legal framework on child labour, forced labour and land rights; social and economic factors contributing to these issues, initiatives and organizations working to address these issues, and the actual presence of these issues in Malawi and TCCC's supply chain specifically. The research was undertaken between August and November 2016.

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<sup>3</sup> Food and Agriculture Organization of the United Nations, Preventing hazardous child labour in agriculture <http://www.fao.org/gender/gender-home/gender-news/gender-newsdet/en/c/80169/>

<sup>4</sup> International Labour Organization, Forced labour, modern slavery and human trafficking <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm>

<sup>5</sup> Oxfam Briefing Note, Sugar Rush; Land rights and the supply chains of the biggest food and beverage companies, October, 2013.

<sup>6</sup> Nolte, Kerstin; Chamberlain, Wytse; Giger, Markus (2016). International Land Deals for Agriculture. Fresh insights from the Land Matrix: Analytical Report II. Bern, Montpellier, Hamburg, Pretoria: Centre for Development and Environment, University of Bern; Centre de coopération internationale en recherche agronomique pour le développement; German Institute of Global and Area Studies; University of Pretoria; Bern Open Publishing

The report is divided into seven sections. The first section presents an introduction and background to the study. It is followed by the executive summary which highlights key findings of the research. The third section is the methodology employed in the study. The fourth section describes the ILO conventions and the National Legal Framework on the three themes under review. The fifth section is a Desk Review of the Malawi context around the issues of child and forced labor and land conflicts, while the sixth section focuses on field findings describing how these problems manifest, their current state, and cites evidence specific to the sugar industry. The seventh and last section is the conclusion with the main takeaways from the study.

The country sugar study is intended to provide an overview of child and forced labor and land conflicts in Malawi and quantify these occurrences in TCCC's supply chain. To do so, Ethical Trade Services Africa Limited implemented the following activities in line with the published methodology<sup>7</sup>:

### **Desk Research:**

ETSA Limited researchers reviewed relevant publications on forced and child labor and land rights and conflicts to understand root causes, efforts to eliminate these human rights abuses, and to obtain national statistics on their incidence. Desk research also examined the prevalence of these issues in the agriculture sector in general and the sugar industry in particular. The research also explored specific links between the mills that are part of the study and these labor and land rights violations. The legal framework on child and forced labor as well as land rights was also reviewed. Publications reviewed included, but was not limited to, official reports, media reporting, Coca-Cola Supplier Guiding Principles Audit Reports, NGO and human rights organisation reports, country-specific legislation, and country-specific development reports. A detailed list of relevant literature reviewed is provided as appendix 2 of this report.

### **Stakeholder Interviews:**

Prior to the actual research, ETSA Limited in consultation with TCCC identified and carried out stakeholder analysis to identify key stakeholders and other players in and out of The Coca-Cola Company sugar supply chain. They included:

- Sugarcane smallholder farmers and outgrowers cooperatives
- Sugar cane millers / processors
- Local and international research organisations
- Local and international NGOs
- Human rights organisations
- Government officials
- Traditional Authority (TA) Leaders

A team of researchers conducted interviews in person, and over telephone calls with all identified stakeholders. Researchers conducted focus group and individual interviews with stakeholders at the national and local level to corroborate and complement desk research findings. Researchers used a semi-structured questionnaire to guide interviews and the questionnaires were aligned to the stakeholder's area of work. Additional questionnaires were directed at government officials and civil society organizations to investigate child and forced labour as well as land rights and land conflicts in the country.

To all stakeholders, the researchers posed general questions around the existence, prevalence, and trends of improvement or worsening, and root causes of the problem (child labor, forced labor, and/or land rights) in the country in general and sugar industry in particular. When applicable, researchers asked directly about Illovo Sugar (Pty) Ltd sugar mills' involvement in these labor and land issues. Finally, researchers conducted interviews with traditional leaders in the two regions where Illovo Sugar (Pty) Ltd Sugar Dwangwa and Nchalo estates are located. The researchers verified land ownership documents during these interviews for a number of farms and estates that were part of the study sample.

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<sup>7</sup> The Coca-Cola Company, Country Sugar Study Methodology Overview <http://www.coca-colacompany.com/content/dam/journey/us/en/private/fileassets/pdf/human-and-workplace-rights/Country-Sugar-Study-Methodology-Overview.pdf>



To verify that there is no child or forced labour, and that responsible land sourcing and labour rights are upheld, interviews were conducted in English and the local dialect Chichewa, utilising interview tools specifically formulated to investigate these research themes. The land tools were developed by Landesa Rural Development Institute. Additionally, The Coca-Cola Company's Supplier Guiding Principles and the Agriculture and Farm Assessment Protocol were used. In total, 50 respondents (25 from each mill) working at Illovo Sugar (Pty) Ltd Dwangwa and Nchalo sugar estates and in mills' operations of Illovo Sugar (Pty) Ltd (permanent, seasonal and agency workers from 3 contracted cane cutters), 8 Malawi government officials, 6 International and 6 Local NGOs representatives; 6 farming and non-farming villagers and 3 traditional leaders who either neighbour the sugar estates or have been affected by the existence and operations of Illovo Sugar, Malawi and 3 outgrower cane farmers cooperatives were interviewed.

### ***Onsite observation:***

Mill and farm visits were carried out to review sugar cultural practices, presence of child and forced labor and management systems including monitoring strategies, as well as potential land use issues. The 2 Illovo mills (Dwangwa and Nchalo) that supply sugar to TCCC in Malawi were visited for purposes of this study. Site visits to 3 outgrower cooperatives that supply to 2 Illovo Sugar (Pty) Ltd sugar mills and 3 farms not involved in sugar production were also conducted to get their perspective and general comments on the study themes.

Additionally, researchers verified land ownership documents (e.g. land title / lease certificates) where available during the visits to the farms where outgrower offices and/or homes of the farm owners were located nearby. In two out of the three farm visits, researchers were able to review proof of land ownership documents and/or a document that indicated the ownership of the land by the farmer. The sample of 6 farms to be visited was selected based on: 1) the farms that were being harvested at the time of the field visit; 2) the location of farms from the mills; and 3) the farms' ownership structure (mill owned, outgrower owned, and independent farmer).

Activities highlighted above, which were implemented as part of the methodology for this study provided opportunities to triangulate and obtain information on child and forced labor as well as land conflicts in TCCC's sugar supply chain. Detailed desktop research uncovered a number of reports on these issues. The reports relied on representative surveys and engagement with stakeholders that have had a deep understanding of the three issues over the years in Malawi.

Additionally, the extensive stakeholder engagement process conducted, especially at the local community level, allowed for information to be provided on these three thematic issues and on the two Illovo mills' operations without any interference from mill management and government officials. The stakeholder interviews and information gathering during the mill and farm visits were done away from mills management and matched onsite observations and farm worker statements collected during visits to sampled farms, thus validating the methodology of the study.

Finally, onsite visits enabled the assessment of physical infrastructure and amenities available to local communities and the workers. Infrastructure and amenities assessed gave an insight into the working and living conditions of employees and the surrounding community. Onsite visits further provided an opportunity for the researchers to evaluate if monitoring systems for child labour, forced labour and land rights were in place at the two mills and whether in fact the monitoring systems were being enforced.

## ***Research team***

Ethical Trade Services Africa (ETSA) Limited is a consulting firm that specializes in labor and human rights assessments in global supply chains. ETSA's research team for this study comprised local field experts with years of experience in monitoring and supply chain work across Africa. The team included experts in monitoring human rights, environmental management, community development programs, and workers' needs assessments as well as sugarcane production and supply-chain traceability. The field teams were supported by a Kenyan researcher who conducted desk research, stakeholder outreach and field data analysis, as well as a senior project manager from ETSA who has led hundreds of CSR supply chain audits in numerous countries in Africa.

## Desk Research

### Country Overview

Malawi is a landlocked country with a predominantly agricultural-based economy. The agricultural sector contributes one-third of the GDP and close to 80 percent of employment.<sup>8</sup> Malawi is in the low human development category, ranked 173 out of 188 countries and territories in the 2014 Human Development Index.<sup>9</sup> Malawi has the lowest GDP per capita in the world<sup>10</sup>, and official development assistance (ODA), which indicates the level of dependency on aid, is high at nearly a third of its GDP.<sup>11</sup> It is also ranked lowest in the World Bank Ease of Doing Business Index.<sup>12</sup> Illovo is the major sugar producing company in Malawi accounting for 60 percent of total sugar sales to domestic consumer and industrial markets with the balance exported to preferential markets (EU, USA and the region).<sup>13</sup> Illovo grows its own cane but also sources cane from independent out-growers. A diagram showing the typical Illovo Sugar (Pty) Ltd supply chain is included in the report as appendix 2. Sugar is among Malawi's third most important crops in terms of foreign exchange generation. In 2015, Malawi exported raw cane sugar, in solid form, worth 93,730.81 million USDs.<sup>14</sup> There are about 7 million people within the age group of 15-64 in the Labour force according to the latest Malawi Labour Force Survey (2013).

### Child Labor

The relevant child labour protection laws, minimum employment age and relevant country policies are detailed in Chapter 4 under ILO Conventions and National Legal Framework above. According to the FAO, 37 percent of children between the ages of 15 and 17 are involved in Labour with the majority in agriculture.<sup>15</sup> The work in agriculture includes weeding, tending to seedlings, applying fertilizers and pesticides and carrying heavy loads. The intensity of work increases during peak production periods i.e. planting, weeding and harvesting.<sup>16</sup> Notably, the policies on child Labour focus more on commercial agriculture and industrial Labour and as such does not efficiently deal with child Labour in subsistence agriculture and the informal economy.<sup>17]</sup>

The minimum age is unclear i.e. section 23 of the Constitution holds that children under the age of 16 are entitled to protection from hazardous work, Section 22 of Employment Act sets 18 years as the minimum age for hazardous Labour, Child Care, Protection and Justice Act defines children as persons aged 16 and under, Section 21 of the Employment Act sets the minimum age for employment in agricultural, industrial, or non-industrial work at 14 years. Poverty remains the root cause of child labour in Malawi. Other causes include a repressive tenancy system within the

<sup>8</sup>The World Bank, Country Overview; Malawi <http://www.worldbank.org/en/country/malawi/overview>

<sup>9</sup> United Nations Development Programme, Human Development Report; Work for Human Development, New York: Oxford University Press, 2015

<sup>10</sup> "World Development Indicators: GDP Per Capita (current US\$)," World Bank Group

<sup>11</sup> "World Development Indicators: GDP (current US\$), World Bank Group, 2015 and "World Development Indicators: Net official development assistance and official aid received (current US\$)." World Bank Group, 2015

<sup>12</sup> World Bank Doing Business Report 2014

<sup>13</sup> Illovo Sugar Group; Malawi <https://www.illovosugar.co.za/About-us/Malawi>

<sup>14</sup> The World Bank, World Integrated Trade Solution; Trade Summary for Malawi <http://wits.worldbank.org/CountrySnapshot/en/MWI/textview>

<sup>15</sup> Food and Agriculture Organization of the United Nations, decreasing child labour through promoting decent rural employment <http://www.fao.org/in-action/decreasing-child-labour-through-promoting-decent-rural-employment/en/>

<sup>16</sup> United States Department of Labour, Findings on the Worst Forms of Child Labour; Malawi, 2014

<sup>17</sup> Ibid, Food and Agriculture Organization of the United Nations

agricultural sector, prevalence of HIV/AIDS, cultural and traditional beliefs, and non-compulsory primary education, weak/poor implementation of laws and policies and inadequate information on the effects of child labour.<sup>18</sup>

The government has not fully implemented key legislation/policies on the worst forms of child labor. Nonetheless, it has continued to support social programs to address child labor i.e. expanding the social cash transfer program by an additional 34, 000 households according to a UNITED STATES DEPARTMENT OF LABOR 2014 report on Worst Forms of Child Labor. The report however makes it clear that evidence of child labour in the sugar sector is limited and/or the extent of the problem unknown. Besides government efforts, local NGOs and INGOs, trade unions, development partners, civil society networks have also strived to address child labour in Malawi

## **Forced Labor/ Human Trafficking**

The relevant forced labour laws, and relevant country policies are detailed in Chapter 4 under ILO Conventions and National Legal Framework above. The law does not however define what constitutes forced labour thus resulting in a gap in effectively mitigating potential forced labour issues in the country. According to the US Department of State, Malawi is a source country for men, women and children subjected to forced labor and sex trafficking. It is also, to a lesser extent, a destination country for women, children and men from Zambia, Mozambique and Tanzania subjected to the same.<sup>19</sup>

## **Land Rights**

The legal frameworks governing land in Malawi are as follows; The Land Act, 1965, (amended in 2003); The Registered Land Act, 1967 (amended in 1970); The Adjudication of Title Act, 1971 (amended in 1988); The Customary Land Development Act, 1967 (amended in 1988); The Local Land Boards Act, 1967; 2002 Land Policy and now the most recently passed Land Act, 2016. There are three categories of land in Malawi namely: customary land, public land and private land. Tenure types in Malawi include freehold, leasehold, and customary tenure. Majority of the smallholder farmers in Malawi operate under the customary land tenure system. According to Food and Agriculture Organization, customary land accounts for 70 to 80 percent of the country's total land.<sup>20</sup> Availability of cultivable land is dwindling as a result of increasing population and land use.

Land in the agriculture sector is made up of smallholders and estates. More than 90 percent of the rural population (more than 2.5 million households), are smallholder farmers with customary land tenure. The estate land is mainly under freehold or leasehold tenure. The land sector in Malawi faces a number of challenges including inequitable distribution, limited access to land and benefits arising from it, insecure tenure regimes, weak institutional capacity, unsustainable utilization leading to different forms of degradation, limited investment, and conflicting sectoral land related policies.<sup>21</sup>

The 2002 National Land Policy proposed tenure-related and land categorization changes i.e. redistribution of land from large estates to smallholders, formalization of customary tenure and having only two categories of land; public and private. There have been failed attempts at making amendments in line with the National Land Policy since 2006. Despite an opposition walkout<sup>22</sup>,

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<sup>18</sup> Child Rights Information and Documentation Centre, Child Labour  
[http://www.cridoc.info/key\\_child\\_labour.php](http://www.cridoc.info/key_child_labour.php)

<sup>19</sup> United States Department of State, Trafficking in Persons Report, 2013

<sup>20</sup> Food and Agriculture Organization of the United Nations, Gender and Land Rights Database. See:  
[http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country\\_iso3=MWI](http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=MWI)

<sup>21</sup> The World Bank, Improving Land Sector Governance in Malawi; Implementation of the Land Governance Assessment Framework, 2012

<sup>22</sup> Malawi Opposition walkout as reported by Nyasa Times. See: <http://www.nyasatimes.com/exodus-malawi-opposition-mps-walk-parliament-land-bill/>

Parliament on 14<sup>th</sup> of July passed four bills: Land Bill, Physical Planning Bill, Land Survey Bill and Customary Land Bill which have since been enacted into law as of June, 2016.

A 2015 SOMO (Centre for Research on Multinational Corporations) report on sustainability issues in the sugar cane supply chain, points out cases of villagers in Nchalo and Chikwawo districts who claim to have been victims of land grabbing. These allegations have since been dismissed by Illovo (Malawi), citing its code of conduct and business ethics and guidelines on land and land rights. The company has long-term leases (leased from the Malawian government) on all of its estates- a total of 34225 ha of land. It has however faced protests from locals who claim that some land leases were unfairly transferred to Illovo by their forefathers or local chiefs. In some instances, Illovo has abandoned land which people have settled on and begun to farm and in others, where the company has evicted people; it has paid for repatriation and/or compensation. Whereas the government, local NGOs and INGOs have contributed to efforts to address land issues in Malawi, land remains a very contentious issue in Malawi.

## ***ILO Conventions and National Legal Framework***

### ***Child Labour***

According to the International Labour Organisation, child labour is defined as work that deprives children of their childhood, their potential and their dignity and that is harmful to their physical and mental development.

### **ILO Conventions and National Legal Framework on Children**

Age 18 is the dividing line between childhood and adulthood according to the ILO child labour Conventions, Nos. 138 and 182, and the United Nations Convention on the Rights of the Child (CRC). Although many cultural traditions and personal characteristics could arguably call for a higher or lower age, in first crafting and then in ratifying these Conventions, the international community has determined that persons under 18 years are children and have the right to special protection. Regarding child labour within this protected realm of childhood, ILO Convention No. 138 marks out a minimum age for different types of employment: age 15 for ordinary work; age 18 for hazardous work; and age 13 for light work. Child labour, therefore, is simply work done by children who are younger than the designated minimum age in one or another of these categories. This is the general rule. However, Convention No. 138 is somewhat flexible, in that it allows for some exceptions (artistic performances, supervised apprenticeships, etc.).

ILO Convention No. 182, which defines the worst forms of child labour (WFCL), goes a step further by including hazardous work as one of the four worst forms. This convention, which requires immediate action, (paragraph d below) does not allow exceptions and prohibits children from being engaged in these types of work. The ILO's Worst Forms of Child Labour Recommendation, 1999 (No. 190), the non-binding guidelines that accompany Convention No. 182, gives indication as to what work should be prohibited and urges member States to give consideration to the same.

When countries ratify Convention No. 182 and Convention No. 138, they commit themselves to determining work to be prohibited for persons under 18 years of age. Malawi has ratified the Minimum Age Convention, 1973 (ILO C. 138) and Worst Forms of Child Labour, 1999 (ILO C.182), UN Convention on the Rights of the Child, UN Convention on the Rights of the Child Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the Palermo Protocol on Trafficking in Persons.

Domestically, the Constitution- Section 23, Employment Act No. 6 of 2000, Child Care, Protection and Justice Act, 2010, Employment (Prohibition of Hazardous Work for Children) Order, 2012, Education Act, 2013 provide legal safeguards for children and young persons. Malawi has adopted the following national policies: National Action Plan on Child Labour for Malawi (2010-2016), Child Protection Strategic Plan, National Youth Policy, UNDAF (2012-2016), Malawi Growth

and Development Strategy II (2011-2016), and National Education Sector Plan (2008-2017). These constitute the key policy and strategic government documents on the protection, needs and welfare of children and young persons.

## **Current Situation**

Protection against child labour extends over most productive activities undertaken by children, whether or not there is a formal employment relationship or an employer as such (e.g. as in self-employment), whether paid or unpaid, for a few hours or full time, casual or regular, seasonal or year-round, legal or illegal. Productive work within families in Malawi falls under this protected category; unpaid family work for home-based manufacturing, family businesses or family farms. Fetching water or firewood for the household's consumption also comes under this category of productive activities. However, the research's main focus was on formal employment relationship.

In Malawi, poverty and HIV/AIDS are among the main drivers of child labour. Many families face economic pressures that compel children to work to help support their households. The planting, weeding, fertilizer application and harvest of crops coincides with the schooling months, therefore, many children drop out of school or register poor attendance during such times. Limited opportunity in rural areas is also a driver of child labour in Malawi. As noted from stakeholder engagements, children from rural areas unlike their urban counterparts do engage in agricultural work, including planting, weeding and harvesting of crops. Those in urban areas regularly engage in income generating activities such as selling of fritters, roast maize and groundnuts and provision of house help services or at times in commercial sex according to interviewed stakeholders.

The issue surrounding productive work done by children in rural Malawi raises concerns relating to compliance with ILO Convention No. 138 which outlines a minimum age for different types of employment: age 15 for ordinary work; age 18 for hazardous work; and age 13 for light work, and therefore may require mitigation by stakeholders at family, community and national level.

Children in rural Malawi helping with applying fertilizer on crops as part of family labour arguably constitutes working in an unhealthy environment, which may, expose them to hazardous substances, agents or processes thus bringing into focus consistency or lack thereof with Convention No. 182 which gives direction as to what work should be prohibited and urges member States to give consideration to the same.

The cost of education, school fees and books, and the distance to learning institutions as well as early marriages and early pregnancies among girls were cited by no less than 80% of the stakeholders interviewed at national and 90% at the local levels as factors inhibiting access to education thus contributing to school dropouts.

To contribute to the alleviation of this challenge, Dwangwa Sugar Corporation has donated 256 desks to Nyavuu, Ukasi, Matiki, Central and Majiga schools, constructed a brick wall fence to enhance security; maintained existing and constructed new toilet facilities at Matiki Girls' Primary School (a public school), overseen electrification of the class 8 block at Central Primary School, rehabilitated the school laboratory at Lozi Secondary school, and completed 2 teachers' houses at Ukasi Primary School under its Corporate Social Responsibility plan in its catchment. This has promoted a conducive learning environment.

## **Initiatives Combating Child Labour**

The researchers noted that in commercial agriculture such as sugar, children are protected by the compliance standards to which that the commercial agriculture entities subscribe. The commercial enterprises have policies and procedures on child protection which prohibit child labor. The Coca-Cola Company Supplier Guiding Principles (SGP) is a protocol all Company suppliers are audited against periodically. Fair Trade and Rain Forest Alliance standards have child protection as part of their critical assessment criteria. Sugar cane Smallholder Outgrower Cooperatives that are

certified by Fair Trade and Rainforest Alliance and conform to these standards have child protection in their monitoring strategies and work plans.

An awareness campaign encouraging communities to prioritize child education was conducted by the Food and Agriculture Organization in 2015 in partnership with the National Smallholder Farmers' Association of Malawi. The campaign entailed radio programmes on national media channels produced by NASFAM. The farmers' organization also dedicated its 2015 thematic calendar to the topic "child labour in agriculture". It featured messages targeting small-farmers throughout the agricultural year with its 6,000 clubs receiving at least a copy of the calendar. Moreover, the Ministry of Agriculture, Irrigation and Water Development (MoAIWD) included child labour-related messages into their extension materials and produced a 15-minute video documentary in Chichewa (the country's lingua franca) on child labour that was screened in villages where child labour is rampant.<sup>23</sup>

Whereas the government has not fully implemented key legislation/policies on the worst forms of child labor, it continues to support social programs to address child labor i.e. expanding the social cash transfer program by an additional 74, 000 households according to the ministry of Education and Social Affairs and a United States Department of Labor 2014 report on Worst Forms of Child Labor. The UNITED STATES DEPARTMENT OF LABOR 2014 report notably points out that evidence of child Labour in the sugar sector is limited and/or the extent of the problem is unknown. Besides government efforts, local NGOs and INGOs, trade unions, development partners and civil society networks have and continue to strive to address child labour in Malawi.

### ***Forced Labour***

Forced Labour according to the International Labour Organisation, The Institute for Human Rights and Business, The Coca-Cola Company Human Rights Policy, The Coca-Cola Company Supplier Guiding Principles, The Coca-Cola Company Global Workplace Rights – Human and Workplace Rights Issue Guidance, and the United Nations Guiding Principles, is a situation in which people are coerced into work through the use of violence or intimidation, or by subtler means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.

### **ILO Conventions and National Legal Framework on Forced Labour**

Article (1) of C029; of the ILO convention on Forced Labour requires each Member of the International Labour Organisation which ratifies this Convention to undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. Article 1 on Abolition of Forced Labour Convention, 1957 (No. 105) requires each Member of the International Labour Organisation which ratifies the Convention to suppress and not to make use of any form of forced or compulsory labour--(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; (e) as a means of racial, social, national or religious discrimination. Article 2 provides that; Each Member of the International Labour Organisation which ratifies the Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1.

In Malawi, the Employment Act, 2000, Penal Code and Trafficking in Persons Act, 2015 are the main domestic legal instruments that regulate forced Labour. Article 4 (1) of the Employment Act, 2000 provides that; No person shall be required to perform forced labour, (2) Any person who exacts or imposes forced labour or causes or permits forced labour shall be guilty of an offence and

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<sup>23</sup> FAO Regional Office for Africa, Reducing and Preventing Child Labour in Agriculture for a brighter future in Malawi. See: <http://www.fao.org/africa/news/detail-news/en/c/411574/>

liable to a fine of K 10,000 and imprisonment for two years. The law does not however define what constitutes forced labour thus resulting in a gap in effectively mitigating potential forced labour issues in the country. Malawi has ratified both ILO Conventions on forced Labour; ILO Convention No. 29 and the Convention No. 105 on the Abolition of Forced Labour. However, Malawi is among the many countries that are yet to ratify the new legally binding ILO Protocol of 2014 to the Forced Labour Convention, 1930 which entered into force on 9<sup>th</sup> of November 2016.<sup>24</sup>

## **Current Situation**

According to ILO statistics on Labour in Malawi, 16.7% of the population are youth not in employment, education or training, and 69.84% of the population is employable. The Real GDP per employed person (constant 2011 PPP \$) as of 2014 stands at 1,837<sup>25</sup> and the unemployment rate according to the National Statistical Office, in the 2013 labour force survey report, at 21 percent.<sup>26</sup> The US Department of State<sup>27</sup>, points out Malawi as a source country for men, women and children subjected to forced labor and sex trafficking. It is also a destination country for women, children and men from Zambia, Mozambique and Tanzania subjected to the same, albeit to a limited extent.

## **Initiatives Combating Forced Labour**

The researchers noted that in commercial agriculture such as sugar farming, the compliance standards that the commercial agriculture entities subscribe to, provide protection against situations in which people are coerced to work through the use of violence or intimidation, or by subtler means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities. The commercial sugar enterprises have policies and procedures which prohibit forced labor. The Coca-Cola Company Supplier Guiding Principles is a protocol all Company suppliers are audited against from time to time. Fair Trade and Rain Forest Alliance standards have Forced Labour as part of their critical criteria. Sugar cane smallholder outgrower cooperatives that are certified by Fair Trade and Rainforest Alliance and conform to their standards have forced labour prevention in their monitoring strategies and work plans.

## **Land Conflicts**

The Coca-Cola Company Human Rights Policy, The Coca-Cola Company Supplier Guiding Principles, The Coca-Cola Company Global Workplace Rights – Human and Workplace Rights Issue Guidance, and the United Nations Guiding Principles, define land rights as including indigenous land rights, women’s rights, access to housing, food and water, environmental rights, and land sovereignty. The measurement of land rights was against the domestic laws of Malawi as well as the Free Prior and Informed Consent guidelines.

## **ILO Conventions and National Legal Framework on Land Rights**

The United Nations Declaration on Rights of Indigenous People, Articles, 3, 8 and 10 which emphasize respecting free, prior, and informed consent in land acquisition outline the necessary conditions that large scale commercial agriculture enterprises should adhere to. IFC Performance Standard 1 of January 2013 on Land Acquisition and Involuntary Resettlement underscores the

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<sup>24</sup> International Labour Organization, Ratifications of P029- Protocol of 2014 to the Forced Labour Convention, 1930, available at:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:3174672](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:3174672)

<sup>25</sup> The World Bank, GDP per Employed Person- Malawi available at

<http://data.worldbank.org/indicator/SL.GDP.PCAP.EM.KD>

<sup>26</sup> National Statistics Office, Malawi Labour Survey Force, 2013. See:

[http://www.nsomalawi.mw/index.php?option=com\\_content&view=article&id=209:malawi-labour-force-survey-2013&catid=8:reports&Itemid=97](http://www.nsomalawi.mw/index.php?option=com_content&view=article&id=209:malawi-labour-force-survey-2013&catid=8:reports&Itemid=97)

<sup>27</sup> The United States Department of State (2015) Trafficking in Persons Report



importance of (i) integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects; (ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly affect them; and (iii) the client's management of environmental and social performance throughout the life of the project.

Performance Standard 5 notes that; project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons that use this land. According to this performance standard; Involuntary resettlement applies both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) as a result of project-related land acquisition and/or restrictions on land use. In the context of IFC guidelines, resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

The performance standards further hold that; unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for the Affected Communities and persons, as well as environmental damage and adverse socio-economic impacts in areas to which they have been displaced. For these reasons, it is recommended that involuntary resettlement should be avoided. However, where involuntary resettlement is unavoidable, it should be minimized and appropriate measures to mitigate adverse impacts on displaced persons and host communities should be carefully planned and implemented. The government often plays a central role in the land acquisition and resettlement process, including the determination of compensation, and is therefore an important third party in many situations. However, the direct involvement of the client in resettlement activities can result in more cost-effective, efficient, and timely implementation of those activities, as well as in the introduction of innovative approaches to improving the livelihoods of those affected by resettlement.

Performance Standard 7 recognizes that Indigenous Peoples, as social groups with identities that are distinct from mainstream groups in national societies, are often among the most marginalized and vulnerable segments of the population. In many cases, their economic, social, and legal status limits their capacity to defend their rights to, and interests in, lands and natural and cultural resources, and may restrict their ability to participate in and benefit from development. The Standard further notes that Indigenous People are particularly vulnerable if their land and resources are transformed, encroached upon, or significantly degraded.

The Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the context of National Food Security, Rome 2012, emphasize the importance of identification of land rights holders and users, proper consultation, just compensation, as well as accessible and functioning grievance mechanisms. According to FAO; tenure systems should define and regulate how people, communities and others gain access to natural resources, whether through formal law or informal arrangements. The rules of tenure determine who can use which resources, for how long, and under what conditions. They may be based on written policies and laws.

The new Malawi Land Act, 2016 names two categories of land; "public land" and "private land". Public land comprises "Government land" and "unallocated customary land used for the benefit of the community as a whole". Private land comprises of "freehold land", "leasehold land", and customary estates". The new land law repeals the former Land Act (Cap 57:01). Illovo Sugar (Pty) Ltd mills and estates are under 99 years' leasehold land, while the local community cane outgrower cooperatives operate on customary estates. Illovo's estates are held under long-term leases acquired mainly in the 1960s and 1970s by the Lonhron Sugar Corporation, which was

acquired by Illovo in 1997.<sup>28</sup> Unlike before where customary land was vested in the President and the Minister administered and controlled all customary land and mineral rights thereof, the new Land Act, of 2016 stipulates that all land is vested in perpetuity in the Republic.

Attempts aimed at addressing 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. The Land Policy 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 outdated land legislation.

About 8 percent of Malawi's land is under leaseholds governed by the Land Act, 1965 with lease terms varying by use, including twenty-one-year leases on agricultural land and twenty-two- to ninety-nine-year leases for property and infrastructure development. The Land Act, 2016 gives provisions on land designated for investment purposes which shall be identified, published in the Gazette and allocated to the Malawi Investment and Trade Centre Limited. On powers of corporation to hold land, the Land Act, 2016 requires corporations' land acquisition to be licensed by the Minister of Lands in consultation with the President, unless incorporated in Malawi in accordance with the Companies Act, or is established under a written law which empowers it to hold land in Malawi. The Land Act, 2016 also empowers the Minister for Lands to dispose public land classified as Government land as he or she may think fit.

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.<sup>29</sup> 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. The Land Act, 2016 formalizes the powers and duties of traditional leaders in land administration and management through the creation of committees and tribunals which will be empowered to carry out the function of allocation, adjudication and management of land and settlement of customary land disputes. Customary land is vested in the President (in the Land Act, 2016, all land is vested in the perpetuity of the Republic) 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.<sup>30</sup>

The legal frameworks governing land in Malawi currently (a new land bill has since been passed by parliament and assented to by the President) are; The Land Act, 1965, (amended in 2003); The Registered Land Act, 1967 (amended in 1970); The Adjudication of Title Act, 1971 (amended in 1988); The Customary Land Development Act, 1967 (amended in 1988); The Local Land Boards Act, 1967; and the 2002 Land Policy.

## **Current Situation**

There are three categories of land in Malawi namely: customary land, public land and private land. Tenure types in Malawi include freehold, leasehold and customary tenure. Most of the smallholder farmers in Malawi operate under the customary land tenure system. According to the Food and Agriculture Organization, customary land accounts for 70 to 80 percent of the country's

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<sup>28</sup> David Bledsoe, Reem Gaafar & Leslie Hannay, Malawi Case Study: Responsible Investments in Property and Land (RIPL) Project, Landesa, 2015

<sup>29</sup> USAID Country Profile-Property Rights and Resource Governance: Malawi," USAID, 2015, Cited in Malawi Case Study: Responsible Investments in Property and Land (RIPL) Project, Landesa, 2015

<sup>30</sup> Ibid

total land.<sup>31</sup> Malawi's population suffers from chronic food insecurity, land scarcity, land degradation and pervasive poverty. A colonial legacy, under 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 kilometre is among the highest in Africa and is four times the rate at independence in 1963.<sup>32</sup>

## Access to Land Rights

Access to land rights in Malawi is primarily through inheritance, marriage and traditional authorities. Rights to land is accessed largely through inheritance accounting (52 percent) and marriage (18 percent). This is governed by the matrilineal system prevalent in the central and southern regions of the country, where land is handed down through the female lineage and by the patrilineal system prevalent in the northern region, where land is transferred from fathers to sons. Land is also obtained from traditional authorities and this represents 20 percent of how land rights are accessed. The remainder of transfers is through land purchase, leases and government land programs. Land tenure security 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 is low. The Malawi 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. It (the policy) recommends surveying and recording customary land and requiring local governments to identify existing customary land rights when developing land use plans.<sup>33</sup>

## Women's Land Rights

Poverty affects women-headed households (25 percent of households are headed by women) disproportionately in Malawi. 63 percent of women-headed rural households live below the poverty line. Women-headed households possess smaller landholdings and fewer livestock than their male counterparts, and they produce significantly less maize, which is the main food 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, gendered cultural norms can impede equal access, control, and ownership of land. 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 allows individuals to draft wills that transfer all their interests in their property, which may trigger some of the biases that negate protection of women's land rights under the law. Notably, just like in the patrilineal system, in the matrilineal systems, women are often no better off, as they are dependent on their spouses (while alive) or maternal uncles for access to land.<sup>34</sup>

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<sup>31</sup> Food and Agriculture Organization of the United Nations, Gender and Land Rights Database [http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country\\_iso3=MWI](http://www.fao.org/gender-landrights-database/country-profiles/countries-list/land-tenure-and-related-institutions/en/?country_iso3=MWI)

<sup>32</sup> David Bledsoe, Reem Gaafar & Leslie Hannay, Malawi Case Study: Responsible Investments in Property and Land (RIPL) Project, Landesa, 2015

<sup>33</sup> David Bledsoe, Reem Gaafar & Leslie Hannay, Malawi Case Study: Responsible Investments in Property and Land (RIPL) Project, Landesa, 2015

<sup>34</sup> Ibid

## Initiatives to Promote Land Rights

In March 2015, Illovo Sugar published its first ever Group Guidelines on Land and Land Rights<sup>35</sup>, which is applicable to all six of the countries it is operating in, including Malawi. In November 2015, Illovo Sugar also released its Road Map on Land Rights (Road Map), which includes a timeline on when the company intends to implement its Group Guidelines. In addition, Illovo Sugar has partnered with organizations, such as Landesa, USAID, Indufor and Moringa Partnership<sup>36</sup> to address and mitigate existing land rights issues throughout its supply chain, as well as develop strategies for preventing the occurrence of such issues in the future. The various policies, initiatives and partnerships, demonstrate Illovo Sugar's commitment to respecting land rights throughout its supply chain.

Presently, Illovo engages the local communities primarily through discussions with heads of growers' associations and the traditional authorities. This approach facilitates to some extent, non-interference with local governance structures, but has the potential to 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 (widows, single mothers and physically challenged) are much less likely to hold these leadership positions than men.

The research team found that most if not all leadership positions in community organisations are taken up by men because most women cannot read and write or understand English and yet most leadership positions require interactions with visitors and other stakeholders who speak English. For example, out of 12 Board Members of Lakeshore Cane Growers Association only 1 is a woman.

It is worth noting that in recent years, Illovo Group 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. A review of the current leadership structure in the community that will ensure inclusive representation of various segments of the community is worth considering.

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<sup>35</sup> Illovo Sugar Group, Illovo Group Guidelines on Land and Land Rights available at <https://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>

<sup>36</sup> Indufor, Indufor in Partnership with Moringa Partnership, Illovo Sugar and USAID to Promote Responsible Land-Based Investments <http://www.indufor.fi/news-hot-topics/indufor-partnership-moringa-partnership-illovo-sugar-and-usaid-promote-responsible>

### ***Child Labour Findings***

Verification of child labour incidences at the Illovo facilities and in the outgrower farms involved information gathering through documentation review, private interviews with Illovo Sugar (Pty) Ltd workers, Illovo Sugar (Pty) Ltd management, community leaders, local and international NGOs, Government of Malawi officials, as well as through visual observation during visits to farms, mills and outsourced cane cutters accommodation areas. The collected information was analysed to assess indicators and actual occurrences of child labour.

Currently, Malawi does not have a national identification system. As a consequence, determination of age at the point of employment remains a challenge for potential employers as they rely on prospective employees' testimonies on age, voter registration cards and health passbooks or schooling credentials (e.g. school leaving and academic certificates) where such is available. The age for eligibility to vote in Malawi is 18 years. During the voter registration process, if there is no health passbook to verify the age, the traditional leader and or a guardian would normally escort the person in question to the age verification centre to expedite the process. From records reviews and interviews with 99% of smallholder cooperatives management, contractors and outsourced cane cutting workers, the most preferred, reliable or "close to the truth" document they would use when hiring an employee is the Government voter's registration card.

According to Illovo Group, "child" means a person less than 18 year of age, unless local law stipulates a higher age for work or mandatory schooling, in which case the higher age will apply. To the Group, "child labour" means any work involving a child that is mentally, physically, socially or morally dangerous and harmful to a child; or prevents him or her from attending school, or concentrating at school; or negatively impacts on the health, social, cultural, psychological, moral, religious and related dimensions of the child's upbringing.

The lack of national age identification system predisposes the employers who do not demand any form of age verification documents from their potential employees to the risk of employing persons under the employment age. This was noted at one out of the three cane cutting contractors sampled by the assessment team during the field research. According to the Country Employment Law, the legal employment age in the agriculture industry is 18 years. Article 22 (1) of the Employment Act, 2000 provides that; No person between the age of fourteen and eighteen years shall work or be employed in any occupation or activity that is likely to be: (a) harmful to the health, safety, education, morals or development of such a person; or (b) prejudicial to his or her attendance at school or any other vocational or training programme.

Interviews with 6 sampled smallholder farmers and 3 cane farmers outgrower cooperatives revealed that one to two young persons in a family aged between 15 and 17 years, did participate in the sugar cane production tasks such as weeding and application of fertilizer. This happened during non-school days as part of family labour and training where youths help their parents on family farms whilst get trained on how to tend crops.

The ILO's Worst Forms of Child Labour Recommendation, 1999 (No. 190), the non-binding guidelines that accompany Convention No. 182, paragraph (d) list fertilizer application as work in an unhealthy environment, which may, expose children to hazardous substances thus damaging to their health. Consequently, outgrower farms having children aged between 15 and 17 years applying fertiliser could be contravening the ILOs provisions on worst forms of child labour. Illovo and its smallholder supply base may therefore need to intervene on this issue.

Illovo recognises that child labour remains a significant problem in many parts of the world and that the government's capacity to address this may be limited, especially in Least Developed Countries such as Malawi. However, despite the difficult nature of the problem, Illovo has committed to playing a positive role in helping to eliminate exploitative labour practices, by working

with stakeholders, including suppliers, industry organizations, non-governmental organisations and government bodies to address abuses that may exist in their global supply chain.

To demonstrate this commitment, Illovo Group has issued guidelines to be implemented by all companies in the Illovo Group. In addition, Illovo Group has a Code of Conduct and Business Ethics, which all its suppliers, contractors, service provider's representatives and other persons contracting with its suppliers are required to comply with. Accordingly, all Illovo Group suppliers are contractually bound to adhere to the Illovo Group Code of Conduct and Business Ethics as a requirement for an on-going business relationship with the Illovo Group, and are encouraged to ensure their own suppliers adhere to these principles.

At the Illovo Sugar (Pty) Ltd mills, there exists a system for verifying and tracking employment age. Both Dwangwa and Nchalo mills had policies on non-employment of children and minors. The policy and procedure reviewed at the mills provides that; no Illovo Group business may engage or, contract the services of: -any person under the age of 18 years, in its factories or agricultural operations; or any person under the age of 16 years, on secretarial, or clerical office work. Use of Child Labour in the Group operations is strictly forbidden. Illovo Sugar (Pty) Ltd does not tolerate the use of Child Labour by any of its Suppliers. This policy and procedures were applied to suppliers, outsourced contractors and smallholder farmers and outgrower cooperatives through provisions in the service level agreements signed by both parties as referenced in the group's guideline above.

To implement the age policy, all prospective new employees should have a pre-employment medical examination done by the Company's (Illovo Sugar Group) appointed medical practitioner using a designated HR form. This is not only a legal requirement for persons to work in a food processing facility, but is also a strategy for the Company to validate the age of prospective employee. The test does not cover HIV/Aids and pregnancy. Both mills had hiring systems that included age verification, identification and control mechanisms, in form of voter registration cards, use of birth certificates, or any other reasonably acceptable documents such as hospital or clinic cards, religious and baptismal certificates or school documents to avoid the illegal hiring of young workers. Alternatively, in the absence of any such documents, a sworn affidavit is relied upon wherever necessary and applicable.

In the suppliers/contractor's contracts, there was a provision that required them to comply with the Company (Illovo Sugar Group) policies and local labour laws. However, observation results from the field visits show both mills did not have a mechanism to verify if the contracted suppliers and labour providers adhered to and respected such policies and procedures in practice. Whereas the mills strategy to monitor Child Labour is by arranging regular impromptu self-audits and external supplier audits to monitor compliance with the policy and guidelines, this study found that Illovo relied heavily on external assessments/audits reports and or complaints regarding the use of Child Labour within the supply chain. Other than the policy prohibiting the use of child labour, all the sampled Illovo employee personal files reviewed had copies of age verification in the form of voter's card, baptism card or birth notifications. According to Malawi electoral laws, only persons above the age of 18 years and holders of a voter's card are eligible to vote. This was in compliance with the Group's employment policy and procedures.

Children's participation in commercial agricultural activities increases the likelihood that the next generation of children could become involved in child labour. There are however child labour initiatives by organizations such as Eye of the Child (local NGO), NASFAM (local NGO), Concern Universal, Save the Children (International NGO) and commercial farming enterprises such as Illovo Sugar (Pty) Ltd and others that subscribe to ethical social compliance monitoring schemes such as The Coca Cola Company Supplier Guiding Principles (SGP), Fair Trade and Rainforest Alliance that complement government's efforts in addressing the drivers of child labour, with some reported successes. The local and international NGOs efforts have been through projects like ECLT (Elimination of Child Labour in Tobacco) and CLEAR (Child Labour Elimination Actions for Real Change).

Capacity building and support from International NGOs such as Concern Universal<sup>37</sup>, Save the Children and UNICEF is in place. These NGOs are working with stakeholders in the sugar industry to mitigate child and under age working. Outcomes of this support are evidenced in cases where the smallholder growers' associations have been certified for Fair-Trade and Rainforest Alliance certification schemes thus enforcing the tracking and ensuring of compliance with non-use of child labour on smallholder cane farms.

Concern Universal through its project on 'Capacity Building for Sugar Outgrowers in Malawi' with support from The European Union, the Government of Malawi and Solidaridad, is implementing programs that help in eradicating child labor, forced labor and land rights violations, directly and indirectly by: 1) stronger emphasis of women in economic participation and 2) supporting income diversification sources, through the introduction of other non-traditional crops like irish potatoes that add income to households, thus enhancing support for more children's education. 3) community engagement in a) adult literacy programs to enhance more understanding and support of children's education and rights b) community level discussions on sexual & reproductive health and general health, which can influence decision making by parents, thus preventing child labor and early pregnancies. 4) supporting the outgrower cooperatives to comply with Fairtrade Standards.

During field observation, the researchers did not encounter any incidents of child labour on Illovo facilities during both mills and farm visits. Despite this, child labour in the wider agriculture sector in the country is present as reported by the United States Department of Labour<sup>38</sup>, the Food and Agriculture Organization of the United Nations<sup>39</sup> and international media<sup>40</sup> and indeed remains a risk among vulnerable families especially in rural Malawi due to Poverty and HIV/Aids.

In specific reference to informal employment, feedback from international NGOs and local stakeholders point to smallholder farms/outgrowers level having elements of productive activities being undertaken by young persons, as paid or unpaid family labour. These productive activities could be in contravention of the ILO provisions on protection against child labour which extends over to most productive activities undertaken by children in Malawi. To conclude, it is important to point out that Malawi has made a renewed effort to ensure that all children are in school, at least until the minimum age of employment.

### **Forced Labour Findings**

Verification of forced labour incidences at the Illovo Sugar (Pty) Ltd facilities and in the outgrower farms involved information gathering through documentation review, private interviews, and visual observation during visits to farms, mills and outsourced cane cutters accommodation areas. An analysis of the information gathered from national and local stakeholders was then done to assess indicators and actual occurrences of forced labour.

During review of personnel files, and employee interviews, the researchers noted that the Company does not retain original documents of workers; only copies of original employees' documents are taken and are maintained on their files. The researchers did not find any incidences of forced or bonded labour at the two Illovo mills in Malawi. Interviewed workers at both Dwangwa and Nchalo mills were found to be in employment out of their own free will and were not aware of any cases of forced labour. Overtime work is requested and consented to by employees and documentation on the same clearly and accurately maintained. Workers had in their custody their

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<sup>37</sup> European Union and Concern Universal, Capacity building for sugar outgrowers in Malawi, Phase III [http://ec.europa.eu/europeaid/projects/capacity-building-sugar-outgrowers-malawi-phase-iii\\_en](http://ec.europa.eu/europeaid/projects/capacity-building-sugar-outgrowers-malawi-phase-iii_en)

<sup>38</sup> USDOL 2015 Report, Findings on Worst Forms of Child Labour in Malawi

<sup>39</sup> Ibid, FAO

<sup>40</sup> Al Jazeera, People and Power, Malawi's Children of Tobacco <http://www.aljazeera.com/programmes/peopleandpower/2014/01/malawi-children-tobacco-2014114957377398.html> and The Guardian Newspaper, Child labour: the tobacco industry's smoking gun <https://www.theguardian.com/global-development/2011/sep/14/malawi-child-labour-tobacco-industry>

original documents, had signed employment contracts/appointment letters which contained very clear terms and conditions of employment and exhibited understanding of the terms and conditions of employment. The workers were fully aware of their rights with regard to overtime work and notice period to terminate the employment relationship. Review of tasks allocated to Illovo Sugar (Pty) Ltd workers revealed that hazardous work such as application of agro-chemicals, operating machines and working in noisy areas were done by persons above 20 years old in full personal protective equipment to mitigate any process risk.

Through its policy and interviews with Illovo management, Illovo recognises that forced labour just like child labour, remains a significant problem in many parts of the world. Governments' capacity especially in developing and Least Developed Countries such as Malawi to address this may be limited. Illovo has committed to playing a positive role in helping to eliminate exploitative labour practices, by working with stakeholders, including suppliers, industry organizations, non-governmental organisations and government bodies to address abuses that may exist in their global supply chain. Illovo Group has issued guidelines to be implemented by all companies in the organization. Moreover, Illovo has a Group Code of Conduct and Business Ethics whose provisions all its suppliers, contractors, service provider's representatives and other persons contracting with its suppliers are required to comply with. Accordingly, all Illovo Group suppliers are contractually bound to adhere to the Illovo Group Code of Conduct and Business Ethics as a requirement for a continuous business relationship with Illovo Group, and are encouraged to have a requirement for their own suppliers to adhere to these principles as well.

Forced labour as defined in the ILO Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No 105) as well as in Principle 4 of the United Nations Global Compact, and includes work or services exacted from a person under threat or penalty, or where the person has not offered him or herself voluntarily, slavery and abductions, misuse of public and prison work, forced recruitment, debt bondage, workers under forced labour situations, internal or international human trafficking, slavery, or practices defined as slavery and human trafficking in section 54 of the UK Modern Day Slavery Act of 2015.

As a significant employer in Malawi, the Illovo Group is committed to the effective abolition of all forms of Forced Labour, and Human Trafficking, as stipulated in the principles of the International Labour Organisation (ILO) conventions, the United Nations Global Compact and the UK Modern Day Slavery Act of 2015. This commitment is enshrined in the Illovo Group Code of Conduct and Business Ethics, by which all Illovo group companies are bound. The use of Forced Labour in Illovo Sugar Malawi operations is strictly prohibited. The Group also does not tolerate the use of Forced Labour by any of its suppliers and neither is Illovo Group business to engage or contract the services of: any person in circumstances which would constitute Forced Labour as defined in its guidelines.

During outgrowers cooperatives management and cane cutters worker interviews, the researchers were informed about and noted existence of migrant workers from Mozambique. According to the sources, these migrant workers' employment conditions and their treatment at the workplace is the same as the locals with no biases based on their nationality.

It was historically common for production workers at the mill level to voluntarily work (especially during peak months and whenever there was an emergency), in excess of 12 hours per day (8 hours regular and 4 hours' overtime). The mills have effectively managed this issue through their shift working system. The mills operate three shifts a day, seven days in a week: early morning: 6am to 2pm, early afternoon: 2pm to 10pm; and night shift: 10pm to 6am. All hours worked (including overtime) are accurately recorded by employees themselves. Employees' consent to work overtime is sought prior to any overtime work being done through overtime requisition and an approval procedure which requires senior management approvals and non-exceeding of the capped total overtime hours (12 hours) per week. The country's employment law regulates working hours. Article 37. of the Employment Act, 2000 provides that; No employer shall require or permit-(a) a guard or shift worker to work for more than eight hours on any day; (b) any employee, other than a



guard or shift worker; who normally works not more than five days during a week, to work for more than twelve hours on any day; or (ii) who normally works six days during a week, to work for more than eight hours on any day. To this extent, it could be observed that the Illovo Sugar (Pty) Ltd mills were in compliance with the local law and Coca Cola Company Policy on regular and overtime work hours.

Vacancies in the mills are advertised internally and externally through local newspapers and radio stations. There exists a separation clause in the labour contracts/appointment letters where each party is to give the other a notice period of 30 days should they wish to terminate the employment relationship. Employees' personnel files showed this practice is being enforced. Article 29. (1) of the Employment Act, 2000 provides that; A contract of employment for an unspecified period of time may be terminated by either party upon giving the other party the following minimum period of notice in writing; (a) where the contract is to pay wages at a monthly rate, one month's notice; (b) where the contract is to pay wages at a fortnightly rate; one fortnight's notice where the employee has been employed for less than five years; and one month's notice where the employee has been continuously employed for at least five years. (c) where the contract is to pay wages at a weekly rate; one week's notice where the employee has been employed for less than two years; (ii) one fortnight's notice where the employee has been continuously employed for a period of not less than two years but not exceeding five years; and one month's notice where the employee has been continuously employed for at least five years; (d) where the contract is to pay wages at a daily or hourly rate; one day's notice where the employee has been employed for less than six months.

Through interviews with sampled outgrower farmers and contracted cane cutters, it was noted that employees worked an average of 4.5 hours per day, six days in a week. Ethical Trade Services found that the lowest average wage paid per farm worker/cane cutter was more than the minimum wage. It was further found that contracted cane cutters at Dwangwa mill had signed labour contracts drafted in English, a language they did not understand, and neither had they been issued with copies of the signed contracts. At Nchalo mill, whereas the contracts for outsourced cane cutters were drafted in the local language (Chichewa), workers were not issued with copies of their signed contracts which contain their terms and conditions of employment. The issue surrounding non-provisions of copies of employment to workers raises concerns relating to adherence of Article 27. (1, 2 and 3) Of the Employment Act, 2000. These issues were however being addressed by the mills management through amending English language to one that is understood by the workers and issuing amended labour contracts to workers who had not received the same.

Both outgrower cooperatives and contracted cane cutting agencies have as their employees more than the number stipulated in the law (they had between 10 and 100 workers) and therefore legally required to comply with the above provisions on making basic terms and conditions of employment accessible to their employees. Lack of access to and awareness of terms and conditions of employment may pose a risk of the employer violating the right to employees' free employment especially at the point of separation in employment relationship.

Interviewed cane cutters and outgrowers' workers in both Dwangwa and Nchalo estates were found to be in employment out of their own free will and were not aware of any cases of forced labour. They viewed overtime (doing extra tasks) as an opportunity to make more money and thus could not wait to be requested to do such extra tasks. They had in their custody their original documents, had signed employment contracts/appointment letters which contained very clear terms and conditions of employment but copies of the same were not availed to them. Consequently, they exhibited lack of understanding of their terms and conditions of employment. This could be contrary to Article 27. (1) Of the Employment Act, 2000 which provides that; every employer shall give to each employee a written statement of particulars of their employment.

Review of tasks allocated to workers revealed that hazardous work such as cutting of cane, operating machines and applying agro-chemicals were done by the employees, and since there is no consistent age verification process and documentation at this level, the researchers could not

determine if persons involved in this task were of the requisite age provided in the local law and ILO convention on hazardous work.

Migrant workers from either Malawi or Mozambique easily cross over, due to the porous border and seek and secure employment without necessarily having any legal paper work. The traditional leaders interviewed acknowledge existence of cross border employment but are not aware of the legal implications. They view it as a cross-border business opportunity for the locals. The migrant workers live in rented premises paid for by the agencies employing them. The premises were found to provide adequate and safe living conditions for the employees.

The Illovo Sugar Malawi policies are applied to contractors and outgrower farmers through provisions in the service level agreements that require the contractors to uphold and respect the Company policies and applicable labour laws and regulations. Both mills' management reported formal procedures that generally involved internally monitoring and investigating the issue, notifying the relevant senior management of the problem, and, in the case of out-grower farmers, involving relevant stakeholders (e.g. traditional leaders, trade unions and relevant Government departments). The monitoring strategies include arranging for regular impromptu self-audits and supplier audits to monitor compliance with the guidelines. There was also a mechanism to receive reports and/or complaints regarding the use of Forced Labour within the Group and/or the supply chain and external audit protocols to check compliance with not only the Illovo Group guidelines but also customer and local law requirements.

The stakeholders interviewed (contracted cane cutting agencies and outgrower farmers cooperatives) were in an employment/business/commercial relationship through signed contractual agreements. Employees of these entities had entered into an employment relationship through mutual and free consent, and out of their own volition.

Despite the fact that researchers did not uncover forced labour or human trafficking incidents in the country's sugar supply chain, forced labour still remains a problem in the wider agriculture industry as well as at small scale household level.

### ***Land Rights Findings***

As part of TCCC's commitment to prevent land grabs, it is dedicated to complying with the principles of Free, Prior and Informed Consent (FPIC); the IFC Performance Standards in cases where indigenous peoples are impacted; and the Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs). The TCCC's land rights policies and commitments explicitly include adherence to the IFC Performance Standards, FPIC, and the VGGTs throughout its supply chain.

Malawi's land tenure issues stem from weak institutional land frameworks and lack of transparency in institutions, which are tied to poor institutional capacities of public agencies in charge of land administration in the country. As a consequence, there has been unbalanced expropriation and redistribution of land which has in effect played a part in Illovo Company being accused of land grab by communities neighboring its two mills and Estates; Dwangwa and Nchalo Sugar Corporation. The research brings to the fore information from communities around the two Illovo sugar mills and plantations who accuse the company of grabbing their ancestral land which they claim to have been using for subsistence agriculture and grazing of their livestock.

Illovo's acquisition of the land in Malawi dates back to 1997 when it purchased the Lonrho Sugar business which had acquired the land in the 1960's through a negotiated lease arrangement with the Government of Malawi. According to the local respondents, initial discussions on this matter were between Lonrho and the Government (where in line with the government's plans for sugar industry development, Lonrho expressed interest in acquiring land for large scale commercial agriculture enterprise), then the Government with the local leaders. This was followed by discussions between the Government, the Traditional Authority and local leaders in the affected communities. Since the Government was involved, it was easy for the community to accept Lonrho acquisition of land considering the type of Government in place at the time (one-party authoritarian

rule). The issue surrounding the role of the Government in the process of Lonrho acquiring community land has resulted in legacy land issues to be addressed by Illovo which raises concerns relating to compliance with TCCC's land rights policies and commitments which explicitly include adherence to the IFC Performance Standards, FPIC and the VGGTs throughout its supply chain although the acquisition of the land preceded these standards. Illovo is addressing land issues through the implementation of its guidelines and through programmes to assess and address land rights challenges in partnership with Landesa.

Villagers claim that they were promised availability of social amenities in the area where they would be relocated. This could explain why the communities see Illovo as responsible for providing villagers with social amenities. In Dwangwa for example, the community from the targeted area was relocated to Kawongozi. Some community members were happy with the relocation but the majority were skeptical as they had to restart their lives. However, they accepted the move because they were also promised development and employment opportunities, thus improving their lives. The Government played a role as a coordinating agent between Illovo and the communities through its district structures and traditional leadership, in sensitization meetings, compensations and the actual relocations. Persons of older generations who have lived through different regimes were unwilling to divulge details pertaining to the acquisition thus making it unclear if individuals or communities were provided any form or amount of compensation when the land was originally acquired.

The study found, consistent with the Landesa case study report (2015) on Malawi<sup>41</sup> that access to land is primarily through inheritance, marriage and traditional authorities as well as by transfers through land purchase, leases and government land programs. Tenure insecurity remains higher for women than men in the regions where the two Illovo mills are located. Women have no control over land, and cannot make any decision on the use of money from the cane sales. When the man dies, his relatives inherit the land and property thus leaving the woman with nothing. Many times, such women are forced by circumstances to eventually leave for their village.

During document review and management interviews, it was noted that both Illovo mills supplying sugar to TCCC in Malawi and three sampled outgrower farmer groups had in their possession, documentation demonstrating legal ownership or authorized use of the land through renting via leasehold and customary estates valid for 99 years. However, the researchers found that Dwangwa Sugar Corporation land rent payment to the Government of Malawi was in arrears dating back to June 2005. Progress towards settling the arrears was ongoing at the time of this research. Prior to making the initial part payment, the Government's Regional Commissioner for Lands had served the Estate with a demand notice through Land Rent Notice for the Plot No. CR/KK/286 dated 30th March 2016. The period covered by the Land Rent demand notice was dated 1st July 2005 to 30th June 2016.

The delay in payment of the lease rent by Dwangwa raises questions relating to Article 14 (1) of the Land law, 2016 which provides that: if any money due to the Government in respect of any rent payable under the lease, right to occupancy of land or any other agreements relating to the occupation or use of land made under this Act, or any other law remains unpaid at the end of a period of ninety days after the same become due and payable, the amount so remaining unpaid shall, at the end of such period, be paid with simple interest at ten percent and the interest payable under this section shall be deemed to be part of such money and shall be recoverable by the Government in the manner as such moneys are recoverable.

It was further noted that both estates, had contentions of land and claims of land grabbing and/or encroachment against them and by the surrounding communities. At Dwangwa Estate for example, the Malala community went to court and filed a Civil Case No. 539 of 2012 contesting grabbing of its traditional land (estimated to be 52 hectares) by the Estate. The matter was ruled by the Principle Judge in the High Court of Malawi on 28th April 2015 in favour of Illovo Estate. The

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<sup>41</sup> David Bledsoe, Reem Gaafar & Leslie Hannay, Malawi Case Study: Responsible Investments in Property and Land (RIPL) Project, Landesa, 2015

judge based the ruling and order for Illovo to take possession of the land in question on grounds that the original title deed belonged to and was executed by the Government of Malawi to Illovo. Consequently, the Judge further noted in the said ruling that “if the community has any misgiving as to the way the land was taken away from them, then the culprit would be the Malawi Government and not the estate” thus absolving Illovo from any wrong doing.

This action and judgment by a government institution raises concerns on Article 8 of the United Nations Declaration on the Rights of Indigenous people which provides that; States shall provide effective mechanisms for prevention of, and redress for: any action which has the aim or effect of dispossessing them of their lands, territories or resources; and any form of forced population transfer which has the aim or effect of violating or undermining any of their rights. At the time of this research, the Malala community was engaging in an out of court discussion with the Estate, Local Government and Traditional Leaders on a land use proposal arrangement in which the Estate proposes to initiate projects on part of the contested land for the benefit of the entire community instead of subdividing it in pieces then allocating the same to individual families in affected villages as counter proposed by the Malala community.

The position taken by Illovo Dwangwa Estate may not be consistent with Article 10 of the UN Declaration on the Rights of Indigenous People which provides that; Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

At Nchalo estate, the Estate management sought the involvement of the Ministry of Lands by commissioning the Boundary Retracement survey following complaints of encroachment from the community. The ministry through a participatory process (involving all stakeholders) carried out a boundary retracement survey and released a report dated March 2013 which show both Illovo Estate and the surrounding community had encroached on each other’s parcels of land. The report indicates Illovo estate as having encroached on 17.324 Ha of customary land through cane plantation going beyond the boundary line into customary land while the community on the other part had encroached on part of the 1434.041 Ha Estate land for settlement and cultivation.

Whereas Section 45 (1) of the Land law provides that; where a person-a) trespasses or encroaches upon any public land or any private land other than a customary estate, or b) is deemed under this Act, to be unlawful use or occupation of any such land a magistrate having jurisdiction in the area where such land is situated may, upon a sworn complaint being made by a person who claims to have a lawful title to the land, issue summons to the alleged trespasser, encroacher, or unlawful user or occupier, (hereinafter referred to as the “defendant”) requiring him or her to attend court to respond to such a complaint. Both parties (Nchalo and the community) have opted to engage to reach a resolution on this issue rather than go to court.

The same report points out an increase in population growth around the estate as culminating into encroachment. Besides, the report cites existence of parcels of ideal land around the Estate attracting landless community members to encroach into the private land of Illovo Estate. The report further notes that some encroachers may not have seen any boundary mark demarcating the estate from customary land hence the reason for encroachment.

During document review and outgrowers cooperative management interviews, it was noted that three sampled outgrower farmer groups had in their possession, documentation demonstrating legal ownership or authorized use of the land through renting via customary estates valid for 99 years. However, like in the case for Dwangwa, Kasinthula Cane Growers farmers group had land rent payment in arrears dating back to 2014. According to the Government set payment rate per hectare; the lease is K1000 (approximately USD1.39) for each hectare rented. The outgrowers outstanding land rent fees according to the demand note from the Government Land commissioner was K172, 000 (approximately USD238.89) for the 3-year period. This could be a contravention of Article 14 (1) of the new Land law, 2016.

The researchers found that Illovo Sugar (Pty) Ltd had policies and procedures regarding the protection of land rights and access to land. This included the community grievance procedure which stipulates how a community could raise their concern(s) on land rights and other matters of concern to them. ETSA Limited noted that the mill management team had an open-door policy and informal system where community issues were received, discussed and addressed through consultative meetings and actions. For example, a grievance from a community accusing Nchalo Sugar Corporation of encroachment into their community land. The management of Nchalo called for a stakeholder meeting that involved government officials from relevant ministries and traditional leaders, discussed and worked to resolve the matter by undertaking a boundary mapping exercise to show the real boundaries of the mill/estate. The exercise was conducted independently, results released and were under discussion at the time of this research. The aim of the retracing/mapping exercise is to solve boundary land issues between the estate and the neighbouring communities.

Within Illovo Sugar (Pty) Ltd, the group has designated a senior member of management the responsibility for liaison and coordination of community issues. One of the key responsibilities of the manager is to roll out and monitor implementation of the company community grievance procedures which provide for step by step raising and communication of issues from the community to the group, a copy of which is easily accessible to all stakeholders.

Although the government has and continues to implement land reform initiatives, with the most recent being the passing into law of the Land Bill 2016 by Parliament, efforts to expropriate and redistribute land still remain a source of conflict between local communities, traditional authorities, the Government and Agri-business enterprises in Malawi largely because of growth in population, need for expanding farming land to maximise production and environmental effects on land such as flooding. For instance, the retracement survey report notes that the large perimeter of the estate is defined by rivers and therefore local communities do take advantage whenever the rivers flow shift in either direction.

Malawi has made a renewed effort to ensure that all children are in school, at least until the minimum age of employment, but a centralized national identification system would be a critical foundational measure in averting the risks of child labour incidences. Strengthening workplace safety and health for all workers, with specific safeguards for youth between the minimum age of employment and the age of 18, and provision of the crucial legal foundation for action against hazardous child work, with the support of workers and employers, remains critical going forward. Continued efforts by non-governmental organizations and Illovo through its corporate social responsibility programmes help to address the root causes of child labour and are encouraged.

Illovo is a significant employer of labour in Malawi and has demonstrated commitment to the effective abolition of all forms of child labour and forced labour and human trafficking, in accordance with the principles of the International Labour Organisation (ILO) conventions, the United Nations Global Compact and the UK Modern Day Slavery Act of 2015. This commitment is enshrined in Illovo Group Code of Conduct and Business Ethics, by which all Illovo group companies are bound. The non-use of Child Labour and Forced Labour in Illovo Sugar Malawi operations is strictly prohibited. The Group also does not tolerate the use of Child or Forced Labour in any of its suppliers and neither is Illovo Group business to engage or contract the services of: any person in circumstances which would constitute Child or Forced Labour as defined in its guidelines.

Malawi's land tenure issues stem from weak institutional land frameworks and lack of transparency in institutions, which are tied to poor institutional capacities of public agencies in charge of land administration in the country according to stakeholder sources. As a consequence, there has been unbalanced expropriation and redistribution of land thus resulting in Illovo Company being accused of land grab by communities neighbouring its two mills and estates: Dwangwa and Nchalo Sugar Corporation. To address land conflicts in its sugar supply base, Illovo Sugar Malawi has developed policies and procedures regarding the protection of land rights and access to land. This includes the community grievance procedure which stipulates how a community could raise their concerns on land rights and other matters of concern to them.

The government has continued to implement land reform initiatives, the most recent being the Land Act of 2016. Efforts to expropriate and redistribute land still remain a source of conflict between local communities, traditional authorities, the Government and Agri-business enterprises in Malawi largely because of growth in population, need for expanding farming land to maximise production and environmental effects on land such as flooding.

## **Appendix 1 – Relevant Literature Review**

Below is the list of reports that were part of the literature review:

1. The United Nations Human Development Report 2015
2. The World Bank Economic Update for the Republic of Malawi 2014
3. The United Nations Declaration for the Rights of Indigenous People 2008
4. ILO Geneva, Children in Hazardous Work, What We Know, What We Need to Do
5. IIED Reports on Free, Informed and Prior Consent 2013
6. IIED annual report 2014/2015: Shaping a Fairer Future
7. IFC Performance Standards on Environmental and Social Sustainability 2012
8. The United States Department of Labour 2014 Findings on the Worst Forms of Child Labour in Malawi
9. The United States Department of State (2015) Trafficking in Persons Report
10. United States Dept. of Labour: List of Goods Produced by Child Labor or Forced Labor (2014)
11. The ILO convention on Forced Labour, 1930 (No.29)
12. ILO Convention No. 182 on the worst forms of child labour, 1999
13. ILO Convention No. 138 on the minimum age for admission to employment and work
14. Food and Agriculture Organization: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)
15. African Union: Guiding Principles on Large-Scale Land Based Investment in Africa (AU Guiding Principles)
16. Bittersweet: Sustainability issues in the sugar cane supply chain (SOMO), December 2015
17. Malawi Case Study for the RIPL Project, Landesa-October 2015

## Appendix 2 – Diagram showing typical Illovo Sugar (Pty) Ltd supply chain

