

Case 1¹: Illovo Sugar Ltd. | Malawi | Sugar

The company

Illovo Sugar Africa is the largest sugar producer in sub-Saharan Africa. The company operates agricultural and manufacturing operations in six countries² to produce raw and refined sugar for local, regional, and international markets. The company produces and processes sugarcane grown on its own agricultural operations and through independent outgrowers who supply cane to Illovo. In 2016, Associated British Foods (ABF) acquired Illovo Sugar as a wholly-owned subsidiary. Through the Illovo Group's Guidelines on Land and Land Rights³, the company has made commitments to follow international best practices regarding land tenure and has a zero-tolerance policy on land grabs. The company also publicly reports on its progress to implement its land rights road map with support from international donors and technical assistance providers.⁴

The investment

Illovo Sugar Ltd. started operations in Malawi in 1997 after acquiring sugarcane plantations from Lonrho⁵, a diversified conglomerate, which had acquired the land from the Malawian government in the 1960s in Nchalo and in the 1970s in Dwangwa. Around that time, 40,000 hectares were assigned for sugarcane production and the government began to displace the communities occupying the land. Following the displacement, Lonrho established 8,000 hectares of plantations in Dwangwa and a few smallholder schemes after which people began to return to the remaining land to develop household farms.

Pre-investment actions on land tenure

During the original due diligence on Lonrho's assets, Illovo did not conduct extensive field work on land tenure rights or conflicts in the project site. Rather, it relied on reviewing the legal documentation underpinning Lonrho's lease.

Post-investment actions on land tenure

Given the history of the land under Illovo's lease, there have been on-going disputes between the company and neighboring communities and outsiders. There are significant questions around identifying the rightful owners of the land, since displaced people were compensated and moved back, and there are squatters with no initial claims who also settled on the land.

The dispute around the Dwangwa plantation arose in 1983, before Illovo took over the lease of the land from Lonrho. Community members claim that their traditional authorities only provided a temporary, short-term lease, and not the long-term lease that Illovo claims.⁶ Additionally, community members claim that the original compensation for the land was denied, too small, or provided to illegitimate claimants. As a result, some areas of the plantation were blocked by the community, causing operational problems from Illovo. At Nchalo, the disputes pertain to the original land leases to Lonrho in 1965 and then 1974, and community members claim they were not compensated for the loss of their traditional lands.⁷

Following local NGO support on behalf of the community claimants, a court case was held from 2012-2013 that upheld Illovo's claims to the land; however, to reduce conflict, Illovo agreed to allow community farming on the condition that no deforestation be allowed, and that a formal organization be incorporated so that there could be a legal agreement between the company and the community members. To date, the community has been unable to reach agreement over a formal organization and community farming mechanism.

¹ Based on an interview with Kate Mathias, Development Consultant, Illovo Sugar Ltd. on July 26, 2017.

² Malawi, Mozambique, South Africa, Swaziland, Tanzania, and Zambia;

³ Illovo, "Illovo Group Guidelines on Land and Human Rights." <https://www.illovosugarafrika.com/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>.

⁴ Illovo Sugar, 2017. "Update on Illovo's Land Rights Initiatives." <https://www.illovosugarafrika.com/UserContent/documents/Announcements/2017/Update-on-Illovos-Land-Rights-Initiatives.pdf>.

⁵ <https://mg.co.za/article/1997-05-09-illovo-buys-lonrho-sugar>.

⁶ Landesa. 2015. Malawi Case Study – RIPL.

⁷ Landesa. 2015. Malawi Case Study – RIPL.

Illovo understood that the delay in community action would not halt the threat of encroachment and that other measures to mitigate the effects of insecure land tenure would have to be implemented. Illovo conducted a land assessment process in cooperation with Landesa on the DFID-funded 'C2P' project.⁸ A key finding in this work was that the identities of legitimate community representatives were not always known and, in several cases, were questionable. Illovo then partnered with a local NGO, LandNet, to conduct stakeholder mapping to better understand the history of the communities and individuals in the production area, including those who claim restitution of Illovo land. The stakeholder mapping, which has taken two years, has identified some individuals that have claimed land but have no legitimate right to it. At the same time, the situation has gotten more hostile between the company and community members. Weak governance in the area and corruption has stalled irrigation plans, leading to lower yields and more encroachment on to Illovo land.

In 2014, Illovo undertook a retracement of the Nchalo plantation boundaries at the suggestion of local authorities to address land concerns. The retracement identified areas where Illovo had planted beyond its boundaries and where community members had encroached onto Illovo land. The company and communities are currently in negotiations on how to address the encroached areas.

Illovo is continuing its engagement with the community and implementing its land tenure roadmap, having recently undertaken assessments of land within its supply chain in Malawi through the C2P project, and will shortly publish the findings and country-specific roadmaps to addressing disputes. Illovo is working with partner organizations to improve understanding and communication with the neighboring communities, and to develop grievance mechanisms that aim to address concerns over potential tenure and access rights before they become disputes.

Impacts on the company from acting on land tenure

Illovo has continued to try to resolve the land tenure issues, but it is an on-going process. This has demonstrated to local stakeholders that Illovo is committed to working with legitimate claimants and resolving encroachment. The experience in Malawi has encouraged other Illovo operations, such as the Maragra site in Mozambique, to proactively support the identification and demarcation of legitimate land rights in outgrower areas. There, participatory mapping and certification of outgrowers and other parcel holders in the project area underpin the company's efforts to support local land rights while improving their operational understanding of who supplies the company's processing plant.

Challenges

- **Identifying stakeholders:** Identifying legitimate actors has been a source of considerable frustration; bad actors can influence legitimate players.
- **New encroachments can overlap with or exacerbate previous claims:** Staying aware of new encroachment is necessary to avoid further conflict and build trust with legitimate stakeholders.

Lessons

- **Use multiple sources to verify ownership:** When acquiring land, companies should conduct more rigorous due diligence, including field verification of documents and detailed analysis of how the land was originally acquired.
- **Communication channels:** Translate corporate-level commitments to the project site through increased communications and involve outside technical assistance providers.
- **Invest in understanding the community:** Thorough stakeholder mapping and analysis can support better engagement and a more complete understanding of who might have legitimate claims to the land.

⁸ From Commitment to Practice: Supporting the Operationalization of Private Sector Land Rights Commitments through a Pilot of the New Alliance's Due Diligence Tool. Working title 'Commitment to Practice' (C2P).

- **Training:** Train operational staff on land rights issues and potential for conflict or further dispossession of local communities.
- **Maintain a presence and continue to act:** Articulate the problem and produce a plan to solve it while recognizing that there is no silver bullet to complicated legacy land issues. Addressing land rights challenges is a continuous process and cannot be dealt with through a single intervention. In the absence of stakeholder action, keep attempting to protect resources and solve the problem.
- **Adapt to the local context:** Some land tenure systems are clearer and more functional than others. Make sure the company knows the difference and devotes enough resources to difficult situations.