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Illovo Sugar LTD

Seeking Lasting Solutions to Land Disputes



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Illovo Sugar Ltd: Seeking Lasting Solutions to Land Disputes

In December 2015, a report written by the Centre for Research on Multinational Corporations (SOMO), a Netherlands-based non-profit organisation that focussed on investigating the impact of multinational corporations on people and the environment, arrived on the desk of Prof Phinda Madi, the chair of the social and ethics committee at Illovo Sugar Ltd. The report related to a land dispute between the Chipakuza and Thom communities and Illovo Malawi.

In it SOMO accused Illovo Malawi of being “seemingly blind to the fact that their lease is on land that was illegitimately expropriated, and that the victims of that process were forced by the government to resettle in an area that may be within the boundaries of the same lease.” It continued to say, “By pushing these villagers again off these now customary governed lands, without the free and prior consent of all of the affected community members, for the purpose of enlarging their operations, Illovo Malawi effectively is committing an act of land grabbing.”¹ (See **Appendix A** for more detail from the report.)

An important component of the group's strategy was “to be welcomed in the communities in which it operates because of what it does, how well it does it and be accepted as a progressive company by all communities.”² Land and land rights were a very contentious issue for Illovo, not only in Malawi, but also across the African continent, where its operations were based. In the past few years, Illovo had gone to great lengths to make progress in ensuring that it could not only resolve these disputes in a fair and equitable fashion, but be seen to be doing so by the communities among which it operated.

Reading the report made Prof Madi wonder if Illovo was indeed on the right track, or if company needed to rethink its approach yet again.

Background on Illovo Sugar

Illovo Sugar Ltd was the largest sugar producer in southern Africa, producing about 1.8 million tonnes of cane per year. It had extensive processing and agricultural operations in Malawi, Mozambique, South Africa, Swaziland, Tanzania and Zambia. The Illovo group's land was held under a combination of title deed and 99 year lease. The company had acquired this land along with the manufacturing assets of the companies in which it had invested over the years, among them Lonrho and its operations in Malawi.

Illovo was the only sugar producer in Malawi and played a significant role in the Malawian economy, where the GDP per capita was the lowest in the world. The company owned two production estates in the country, both of these under 99 year leases which Lonrho had obtained in the 1960s and 1970s. More than 80% of the company's sugar was sourced from these estates. The remainder was sourced from about 3 700 independent outgrowers.

Land Disputes

Land disputes between local communities and the Illovo group as a whole were an ongoing challenge. This was in part because of the history and nature of land use in the areas in which it operated. The small-scale farmers operated predominantly on customary land, which was held under tribal tenure. These farmers therefore had only informal – and therefore less secure – rights to the land they farmed. In other areas, particularly where irrigation was required, smallholders farmed collectively and pooled their customary land, which was then managed by representative bodies. In some cases, these community outgrower schemes malfunctioned because of a breakdown of trust between the landholders and the community leaders or representatives who managed this land.

Conflict also arose when smallholder farms encroached on Illovo's cane farms and the company wanted to assert its right to farm that land. Likewise, disputes could occur when Illovo's land encroached on smallholders' customary land holdings.

¹ Bittersweet document.

² Illovo Malawi Annual Report, 2015.

In other disputes, community members questioned the legitimacy of Illovo's land tenure. They accused Illovo of land grabbing and viewed the concessions given by governments or community leaders as illegitimate, saying that these concessions had come at the cost of important community rights and that the communities had not been properly compensated.³

In 2009, Illovo and its subsidiaries adopted a Code of Conduct and Business Ethics. Among other things, this code committed the group to respecting and protecting the legitimate land tenure rights of others, and to requiring that all suppliers adhere to the same principles and adopt a similar approach throughout their supply chains. (See **Appendix B** for some of the commitments in this Code.)

More recently, as land matters in Africa had risen to prominence, the group sought to address these issues more publicly through a stepped process which engaged all relevant stakeholders. The result was that, with support from international non-government organisations and experts in land and land rights, Illovo developed and published its own Group Guidelines on Land and Land Rights in March 2015. The Guidelines set out a policy of zero tolerance towards land grabs and outlined the company's commitment to resolving land disputes in its supply chain and working with communities to ensure secure land rights.⁴ (See **Appendix C** for some of the commitments in these Guidelines.)

Land Disputes in Malawi

In Malawi, Illovo had found itself having to deal with a number of land disputes that affected operations on both of its estates. These disputes centred on the critical questions of land ownership, and rights of possession and use, as well as compensation claimed for historical relocations of communities. These relocations had occurred prior to Illovo's acquisition of Lonhro and to the best of Illovo's knowledge, all claimants had received the compensation due to them at the time that they were relocated.

Most of the rural population in Malawi held land under customary tenure.⁵ The PLAAS Institute for Poverty, Land and Agrarian Studies at the University of the Western Cape noted in June 2015, that, in the context of increasing agricultural commercialisation, the prevailing legal framework in Malawi did not adequately protect the smallholders' land rights or safeguard the interests of customary land users.

PLAAS observed that the processes involved in land-use changes had often been coercive, non-transparent and non-participatory. The organisation asserted that in many instances, land transfer negotiations with local communities had been unbalanced, involving only superficial consultation, and leading to insufficient compensation for loss of land and related resources.⁶

Efforts to Resolve Disputes

In May 2015, in an attempt to resolve these disputes, Illovo Malawi engaged with Landesa, an international NGO focusing on land access and tenure security, in a case study connected to the Responsible Investments in Property and Land project (RIPL), which was funded by the United Kingdom's Department for International Development. RIPL's aim was to guide investors, governments and communities in making and benefiting from responsible investments in land. This case study, in addition to providing direction to the RIPL project, increased Illovo's understanding of the underlying issues in ongoing land conflicts.

An outcome of Illovo Malawi's involvement in the case study was the successful settlement of a long-standing and litigious dispute between the company and the Mlala community, using an approach of participatory communication and stakeholder engagement.

In addition to this, in a move to implement its Guidelines across the group and take a more proactive approach to addressing land rights, Illovo engaged with a number of external experts and NGO's to develop a Road Map on Land Rights. This Roadmap was published in November 2015 and included clear time-driven actions that the group would follow over a three-year period to meet the commitments outlined in the guidelines. (See **Appendix D** for some of the commitments in the Road Map.)

³ Blesdoe, D., Hannay, L. and Mathias, K. (2016), "Corporate Journey: Challenges Of Implementing The Voluntary Guidelines On The Responsible Governance Of Tenure Of Land, Fisheries, And Forests In The Private Sector", Paper Prepared for Presentation at The "2016 World Bank Conference On Land And Poverty", The World Bank - Washington DC, March 14-18, 2016.

⁴ Landesa (2015), Malawi Case Study: A Case Study for the RIPE Project, October, available at: <http://www.landesa.org/wp-content/uploads/Malawi-Case-Study-FINAL-10.6.15.pdf> (accessed 3 April 2017).

⁵ SOMO.

⁶ http://www.plaas.org.za/sites/default/files/publications-pdf/PLAAS_ADC%20policy%20brief_Malawi_Web.pdf

What next...?

It was therefore very disappointing for Prof Madi to read the SOMO report and find that despite all of its efforts in this arena, Illovo was still perceived by some to be involved in land grabs and to be unwilling to make the necessary moves to ensure a fair and equitable solution to land disputes. He wondered how the Illovo group should respond to the report.

Questions



Appendix A

Extracts from Stichting Oderzoek Multinationale Ondernemingen Report - Bittersweet: Sustainability Issues in the Sugar Cane Supply Chain

This case study involves the people of Chipakuza and Thom Villages in the jurisdiction of paramount chief Lundu in Chikwawa District. They accuse Illovo Malawi of land grabbing. The people of these two villages claimed that, in 2008, Illovo Malawi forced the people out of their customary land that was being used for subsistence farming. According to the 43 victims interviewed, villagers have been using this land since the 1960s.

The villagers insist that this disputed land has belonged to them since the 1960s, when the government relocated them from the Shire river bank to give way for the Sugar Company of Malawi (SUCOMA). Since the government at that time - under the dictatorship of the first president of Malawi, Hastings Kamuzu Banda - was so powerful, the villagers could not resist nor ask for compensation.

In the early 1970s, the Sugar Company of Malawi (SUCOMA) in which Lonrho Sugar Corporation was the largest shareholder, embarked on an expansion programme. The sugar company started buying off villages surrounding the Nchalo Sugar Estate. This exercise saw the following villages bought off: Biasi, Chazuka, Nthipiya, Mangulenge and some parts of Thom Villages. Those affected by this pressure were compensated for the loss of land and settlements. The government identified a new area where the affected people in question were supposed to be relocated. The villagers claimed that all the people who were compensated moved out of the area, and SUCOMA (through Lonrho) immediately converted the newly acquired area into sugar plantations.

According to the villagers interviewed, the whole of Chipakuza and some of Thom's villagers remained on their land, but Lonrho officials promised them that they would come back to buy their land at a later date. In the end however, these Lonrho officials never came back to these two villages; the people stayed put and continued using their land for subsistence farming.

The land dispute started in 1984 when Lonrho tried to take over the land by force. Security officers were sent in to forcefully vacate the villagers from their fields. This first land dispute was settled by a Malawi Congress Party District chairman who defended the villagers and made sure they could continue using this disputed land. The villagers were not bothered again until early 2000, when Illovo Malawi took over the sugar estate from Lonrho.

In 2002, Illovo Malawi started constructing roads and irrigation furrows in this disputed land. When villagers protested, Illovo Malawi assured them that the company was not taking over the land, but just minimizing transportation costs by constructing roads and trenches. A trench was dug to indicate a border line, and the company instructed the villagers not to use land beyond that demarcation. Approximately 20 villagers witnessed this agreement. In 2008 Illovo Malawi staked a claim to the land. Officials from the company and from the Chikwawa land department arrived to notify the villagers to vacate the land, arguing that the new paramount chief had agreed to Illovo Malawi's use of it as the legal title holder.

The villagers resisted; the police intervened and arrested some of them. Since then, Illovo Malawi has been using the disputed land with the backing of Traditional Authority Lundu and the office of the District Commissioner. About 60 villagers lost their lands on that occasion. Forty-three villagers have since been demanding proper compensation by raising the issue with various authorities (new paramount chief, district commissioner, office of the ombudsman, members of authorities) and seeking legal assistance, but so far, to no avail.

At one of these occasions the affected villagers also met the company and asked it in vain to produce the Illovo Malawi map showing the disputed land to be under Illovo Malawi title deeds. On another occasion in the village, the company claimed that compensation would be paid, but, according to the villagers, only farmers that leased their plot subsequently received compensation for crop loss. Villagers whose families had been cultivating and using areas of this land since 1964 received no compensation at all.

Appendix A (continued)

To shed some light on the conflict, CARER visited the Ministry of Lands in September 2015, where they were told that a title deed is a private matter and only Illovo Malawi's Land Officer could assist in this issue. However, maps showed by the Regional Lands official to the affected villagers and Malawi CARER from 1976 displayed the disputed land as not leased. It should also be said that senior lands officers refused to meet with the villagers to discuss the matter.

Malawi CARER asked Illovo Malawi in October 2015 to provide them with Illovo Malawi's land claim, a map of the 1974 and current boundaries of the Illovo estate, and the list of people who were compensated in 1974 and 2008. In their reaction to the draft findings of this report presented to them by SOMO, the company shared the lease document and produced a map of what appears to be the area of the plantation bordering with Thom village. For the lists of villagers compensated in 1974 and 2008, Illovo referred to the District officer.

The company also noted that the compensation paid to affected villagers in 2008 amounted to MK 4,788,200 (€ 21,589). This constituted compensation for loss of crops not for loss of land or income, as the company underlines that the affected villagers illegally occupied their land.

In its response to the above account, Illovo Sugar notes that "land is an extremely contentious issue across Malawi". By referring to a number of activities and policies, the company also provides some evidence of its eagerness and willingness to deal with land conflict in good faith. In March 2015, for instance, they adopted guidelines on land and land rights for which a so-called road map for Malawi is being developed. Another recent example is a participatory boundary retracement of the Nchalo estate they initiated in 2014, which also shows they are aware of the specific conflict raised in this report.

Despite these positive developments, the company clearly states that they are not grabbing land around their Nchalo operations, but have a long-term lease of a large area that not only includes the current plantation but also its surroundings. The boundaries of this lease are however still not clear to the victims, and despite several efforts to this end, neither the company nor district officers have yet come forth with a map of the lease.

Consequently, while their new company policy and elements of the company reaction to this research seem to provide some perspective on a settlement of this conflict, a more critical self-reflection on the part of the company may be needed to make this a reality.

Source: Kiezebrink, V., Van der Wal, S., Theuws, M. and Kachusa, P. (2015), "Bittersweet: Sustainability Issues in the Sugar Cane Supply Chain", December, SOMO, Amsterdam, available at: <https://www.somo.nl/wp-content/uploads/2015/12/Bittersweet.pdf> (accessed 4 April 2017).

Appendix B

Some of Illovo's Commitments in its Code of Conduct

In terms of the Code of Conduct and Business Ethics, Illovo Group businesses are required, among other things to:

- Support and respect the protection of internationally recognised human rights;
- Avoid causing or contributing to human rights abuses and to adopt practices to protect against such abuses, both in their activities and in their business relationships with others'
- Conduct business in compliance with all applicable legal requirements and in a manner that respects the internationally proclaimed human rights and dignity of their employees and those of the local communities in which they operate;
- Respect and protect the legitimate land tenure rights of others in accordance with the Illovo Group Guidelines in Land and Land Rights;
- Adhere to the principle of free, prior and informed consent in all dealings with the local communities in which our businesses operate;
- Seek, wherever possible, to avoid or minimise adverse impacts resulting from their activities; and
- Require that all suppliers adhere to the same principles or adopt a similar approach throughout their supply chains.

Appendix C

Elements of Illovo's Guidelines on Land and Land Rights

The guidelines commit Illovo to:

- Engaging in free, prior and informed consent before any greenfield or other land-related investments or developments, and prioritising the avoidance of displacing other persons;
- Working with stakeholders to promote good land practices;
- Establishing monitoring and grievance procedures; and
- Embedding compliance across the business to promote an ethical supply chain.

Appendix D

Commitments in Illovo's Road Map on Land Rights

In terms of its Road Map, Illovo will:

- Publish a communications and reporting plan;
- Develop a country and culture appropriate grievance and dispute resolution mechanism for all stakeholders;
- Undertake a comprehensive stakeholder mapping exercise in each country, perform land-related self-assessments at each of Illovo's operations, where necessary with the assistance of external experts and publish the findings;
- Develop and publish strategies for the resolution of identified areas of concern, along with timelines, resource requirements and budgets;
- Integrate the Land Guidelines with Illovo's operations and management approaches; and
- Continuously engage with international forums, civil society and other organisations on land related matters in the area in which Illovo operates.

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