

**THE COCA-COLA COMPANY  
REVIEW OF CHILD LABOUR, FORCED LABOUR AND LAND  
RIGHTS IN THE SWAZILAND SUGARCANE SUPPLY CHAIN**



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## EXECUTIVE SUMMARY

This report outlines the results of a 2016 study focusing on The Coca-Cola Company sugar supply chain in Swaziland. The study researched the presence and risks of child labour, forced labour and land rights violations in the supply chain.<sup>1</sup>

The Coca-Cola Company (TCCC or the company) is committed to protecting the land rights of farmers and communities and addressing child and forced labour issues in sugarcane production. The Coca-Cola Company has endorsed the United Nations Guiding Principles on Business and Human Rights, and has signed onto the United Nations Global Compact. Together with enforcement by the state, these industry commitments play a critical role in preventing human rights abuses as cited in the U.S. Department of Labor's 'List of Goods Produced with Child Labor or Forced Labor'. The company's Supplier Guiding Principles, Sustainable Agriculture Guiding Principles and Human Rights Policy have contributed to upholding human and workplace rights within the company's supply chain, and serve as testament to the company's commitment and impact in the global supply chain.

Partner Africa was commissioned by the company to carry out third-party research into the presence of forced labour and child labour in the sugar sector in Swaziland, as well as to provide an understanding of the complexities and issues of land ownership in the same industry and country. The purpose of these reports is to provide an understanding of forced labour, child labour and land rights violations within Swaziland's sugar supply chain. Research was composed of desk research, stakeholder interviews and field research and involved gathering facts and perspectives through research, stakeholder engagement and field based investigations.

This research is part of a series of human rights due diligence studies in a number of countries producing and supplying sugar to TCCC. The results have been summarised into this report, which identifies potential issues, possible needs for remediation, and any underlying knowledge gaps that might require capacity building.

### Overview of the sugar industry in Swaziland

Sugar production is a substantial component of the agricultural sector in Swaziland, accounting for 24% of GDP and 13% of all exports.

During the colonial period in Swaziland between 1914 and 1947, land was divided among the Swazi, British crown and private land owners (concessionaries). Over thirty reserves were created for Swazi occupation, forming patches of communal land all over the country. The Colonial (later Commonwealth) Development Corporation (CDC) first established plantations in Swaziland in the 1950s at Ubombo and Mhlume, the latter in partnership with South African company Huletts in 1958.<sup>2</sup> Initially the industry grew with private investment but in 1977, the iNgwenyama<sup>3</sup> acquired 50% of the CDC's issued share capital (in a trust for the Swazi nation). At the same time, the Swazi government, Tibiyo TakaNgwane (a company owned by the royal family) and CDC worked in close cooperation to expand sugar production in Swaziland. Together they established the Royal Swaziland Sugar Corporation Limited (RSSC) and raised the capital to establish Simunye Sugar Estate (SSE), including over 9,000ha of irrigated sugarcane production and the Simunye mill. By 1994, due to Tibiyo's acquisition and expansion activities, 34% of cane growing and 50% of milling operations had come into Swazi ownership, the majority of which is under direct royal control and not under the supervision of the government. The International Trade Union Confederation (ITUC) accuse Tibiyo as having "exploited its official status as a 'Swazi national empowerment vehicle' to acquire equity at nominal costs in key sectors of the Swazi economy".

<sup>1</sup> Definitions drawn from the International Labor Organization and the Institute for Human Rights and Business.

<sup>2</sup> Dubb et al. (2016) The Political Economy of Sugar in Southern Africa

<sup>3</sup> According to customary law, the iNgwenyama enjoys the same protection and immunity from legal suit or process as the King.

The Swaziland sugar industry is regulated through the provisions of the 1967 Sugar Act which inter alia empowers the Swaziland Sugar Association (SSA) to be a statutory monopoly marketing body, solely responsible for the marketing of all sugar, controlling both the domestic and export markets. The SSA is, in addition, a state owned enterprise under the control of the monarch.<sup>4</sup>

There are three mills in Swaziland: Ubombo mill, Mhlume mill and Simunye mill. Collectively, sugar employs around 15% of all workers in Swaziland.<sup>5</sup> The Royal Swaziland Sugar Corporation (RSSC) manages 15,607 hectares of irrigated sugarcane on two estates leased from the Swazi Nation and manages a further 5,018 hectares on behalf of third parties, which collectively deliver approximately 2.3 million tons of cane per season to the group's two sugar mills (Mhlume mill and Simunye mill).<sup>6</sup>

- Annual Sugar Production: approximately 500,000 MT
- Gross sugar revenue per year: approximately US\$160 million
- Gross sugar revenue as % of GDP: 24%

Overall, 47% of growing companies in the sugar industry are owned by Swazi leadership, and 53% by private sector; while 51% of milling companies are owned by Swazi leadership, and 49% by private sector<sup>7</sup>. Sugar production amounts to 51% of total agricultural production in Swaziland.<sup>8</sup>

## Child Labour

There were no incidences of child labour in the Swazi sugar industry reported or observed by the researchers.

Swaziland has ratified all key international conventions relating to child labour. The Children Protection and Welfare Act, the People Trafficking and People Smuggling (Prohibition) Act, the Constitution, and the Free Primary Education Act include important laws prohibiting child labour practices in Swaziland. The establishment of a child labour unit within the Ministry of Labour and Social Security is another positive measure by the government of Swaziland. The legal working age is 15 years in Swaziland and the minimum age for hazardous work is 18 years.<sup>9</sup>

Despite this legislation, a survey in 2010 showed that 11% of children between the age of 5 and 15 years old are engaged in child labour, and 13% attend school and are working. Current evidence of child labour in sugar harvesting in Swaziland is limited and/or the extent of the problem is unknown. In 2015, The United States Department of Labor found that Swaziland had "made efforts to eliminate the worst forms of child labour, but was also complicit in the use of forced child labour...local chiefs forced children to engage in agricultural work throughout the year. Penalties for refusing to perform this work included evicting families from their village, confiscating livestock, and withholding family wages. Children in Swaziland are also engaged in child labour, including in domestic work and herding cattle. Significant gaps in laws remain, including the lack of a compulsory education age, and social programs do not adequately address child labour in domestic work and livestock herding".<sup>10</sup>

SWADE (Swaziland Water and Agricultural Development Enterprise) argues that child labour is a complex topic in the country. The organisation supports households by organising 5-10 households into one farm company. Some of these households are child-headed households who form part of the shareholders, and who work in the day-to-day running of the business. The organisation is monitoring the situation and trying to discourage school aged children from working on the farms, but they are shareholders with equally divided shares.

<sup>4</sup> Connigarth 2013, "Overview of South African Sugar Industry"

<sup>5</sup> Fairtrade 2013

<sup>6</sup> [http://www.rssc.co.sz/about\\_us/company\\_profile/](http://www.rssc.co.sz/about_us/company_profile/) Accessed 3 August 2016:

<sup>7</sup> SSA Fact Sheet

<sup>8</sup> SSA Fact Sheet

<sup>9</sup> US DoL 2014

<sup>10</sup> <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/swaziland>

At the larger farms and mills there were no reported incidences of child labour that would deprive a child of their childhood, their potential and their dignity or that, which would be harmful to their physical and mental development. All mills and farms visited during fieldwork stated that they do not employ anyone under the age of 18 years old, and most companies employ workers over the age of 20 years old for difficult tasks such as cane cutting because the cane-cutters need to be strong and physically fit. This claim was confirmed by on-site interviews with workers who also stated that they were all required to present identity documents in the form of a National Tax Certificate to prove their legal age.

A small-scale farming company on Swazi Nation Land (SNL) admitted to sometimes employing migrant workers, but only for piece jobs on a day-to-day basis. In these instances, the workers were all required to present identity documents upon employment and also go for a medical exam to ensure that they were over 18 years of age and fit enough for the strenuous work of cane-cutting. One farmworker at a commercial farm said that he had seen young people (possibly 15 years old) working for a subcontractor but he could not be certain.

Since 2011, primary schooling in Swaziland has been made free for all children with the support of EU funding, making it more likely that children will attend school. Illovo Sugar (Pty) Ltd in particular enforces its Guidelines on Child Labour and Forced Labour<sup>11</sup> by ensuring that all contracts signed with its suppliers, require that the supplier's business operations are conducted in accordance with the principles set out in the Illovo Code of Conduct and Business Ethics<sup>12</sup>.

### Forced Labour

There were no incidences of indentured labour seen or reported in the Swazi sugar industry.

A new constitution, signed by King Mswati in 2005, went into force on February 8, 2006. The People Trafficking and People Smuggling (Prohibition) Act, and the Employment Act (including the proposed regulation of labour brokers), also include important laws prohibiting forced labour practices in Swaziland. Although its Bill of Rights includes freedom of expression, assembly, and association, it is silent on the right to form a political party or the right to strike and continues to vest all final authority in the king.<sup>13</sup>

In July 2014, there were the 'Sugar Belt' wage negotiations indicating active representation of workers in the sugar industry. The negotiations involved industrial action and an organised labour strike, which lasted three weeks and resulted in the Ubombo agreement, which included a 10% wage increase amongst other benefits. However in October 2014, the Swaziland government announced an immediate ban on all trade union and employer federations. The decision was condemned by The International Trade Union Confederation (ITUC) as a violation of ILO Convention 87, which guarantees freedom of association for workers and employers.<sup>14</sup> A number of unions are not recognised by the Swazi government, but since 2015, TUCOSWA and other unions were permitted to register again and are formally recognised. Despite the increased conflict between the Swazi government and trade unions, there were no instances where workers said they were not free to join unions.

There were no reported incidences of forced labour or examples of employment practices that could be considered forced labour. All workers interviewed are free to work for their current employers or find alternative employment. No employers were found to be withholding or retaining the identity papers of their employees.

There were no instances where workers said they were not free to join unions. While workers are not pressured or intimidated to join or not join the Swaziland Agricultural & Plantation Workers' Union (SAPWU), there is a general sentiment among workers and management that the unions are largely politicised. For this reason, some workers choose not to join the unions.

<sup>11</sup> <https://www.illovosugar.co.za/Group-Governance/Forced-and-Child-Labour-Guidelines>

<sup>12</sup> <https://www.illovosugar.co.za/Group-Governance/Code-of-Conduct-Business-Ethics>

<sup>13</sup> Solidarity Center 2006

<sup>14</sup> <https://www.ituc-csi.org/swaziland-monarchy-bans-all-union> Accessed 29 November 2016

## Land Rights

There are broadly two types of land tenure in Swaziland: Swazi National Land (SNL) and Title Deed Land (TDL), which account for 54 and 46 per cent of land area respectively. Tenure over SNL is not defined by legislation; the land is being controlled and held in trust by the King and allocated by tribal chiefs according to traditional arrangements. Through stakeholder interviews it was noted that it is customary for Swazi nationals to pay allegiance to their local traditional authorities for permission to occupy and utilise the Swazi Nation Land (SNL). Although Section 28(1) of the Swaziland Constitution guarantees that women have equal rights to social political and economic opportunities, according to customary laws, women cannot be allocated land on their own and can only get land through their husband, male relative, or male children.<sup>15</sup> These observations are not exclusive to the sugar industry. In order for Swazi women to realise their constitutional rights, there needs to be a complete review of the marriage laws in the country.<sup>16</sup>

In an effort to alleviate poverty and facilitate economic development, the Swaziland government, with funding from the EU, has invested in extending irrigation onto customary tenured land in the semi-arid low veld and converting land to sugarcane production. Farming associations and community groups are encouraged to apply to the local chief to allocate a land parcel on SNL. They are required to establish a farming company in order to access finance and capital asset funding support. Prior to EU funding support, small-scale farming companies were expected to take out bank loans to invest in the land, most of which was unplanted cattle grazing land. Farming companies that acquired loans prior to ASMP (EU funding support) were charged interest rates as high as 25%. For these reasons, many struggled to pay back these loans. Other contributing factors included low productivity (yields) and in many cases, debt with the Swaziland Revenue Authority (SRA).

A stakeholder at the Swaziland Water and Agriculture Development Enterprise (SWADE) stated that there are some land issues as a result of developing SNL for sugarcane farming, but they are minimal. The transition from traditional land uses to farming the land for sugarcane has involved relocating some homesteads. Once a parcel of land suitable for farming sugarcane has been identified, community members are engaged in discussions to decide which homesteads should be relocated. Although homesteads are resettled closer to better infrastructure such as roads and electricity, they are removed from the arable land and can no longer plant or graze cattle on the arable land that has been commercialised. This situation could be viewed as a food security risk, however, SWADE is in the process of also developing feed lots to create commercial cattle farming businesses. The process for developing the land takes time and the benefits far outweigh the losses according to the stakeholder at SWADE. There are many reported and observable benefits of the investments in sugarcane for rural small-scale growers and farming companies, however it remains uncertain what the future implications of this land allocation and the commercialisation of SNL will entail.

All three mills supplying sugar to The Coca Cola Company are committed by law to receive all sugarcane produced by all farms with sugar quotas in their region, which ensures that small-scale and large growers alike have a guaranteed off-taker or market.

All sugarcane growers are required to apply for a water allocation from the Water Board, which is said to enforce fair and equitable access and use of water according to these allocations. The Sugar Act stipulates that cane growers must also apply to the Sugar Quota Board annually for a quota to produce and sell sugarcane to the mill. Cane growers are required to submit proof of access to the land, which can be in the form of title deeds, lease agreements or a letter from the chief concerning the farming of SNL. There were no land rights or land use issues or concerns raised about the land acquired or leased by private companies in the Swazi sugar industry. Furthermore, SSA and various private companies in the sugarcane industry have adopted corporate policies relating to land rights such as the UN Global Compact, Fairtrade certification and Illovo's Group Guidelines on Land and Land Rights. No land use disputes or claims to SNL or private land in Swaziland's sugar industry were reported or uncovered during the study.

<sup>15</sup> <http://www.impowr.org/content/current-legal-framework-ownership-and-administration-property-swaziland>

<sup>16</sup> <http://www.osisa.org/womens-rights/blog/one-more-right-swazi-women>

## INTRODUCTION

The Coca-Cola Company (TCCC or the company) is committed to protecting the land rights of farmers and communities and addressing child and forced labour issues in sugarcane production. The Coca-Cola Company has endorsed the United Nations Guiding Principles on Business and Human Rights, and has signed onto the United Nations Global Compact. Together with enforcement by the state, these industry commitments play a critical role in preventing human rights abuses as cited in the U.S. Department of Labor's 'List of Goods Produced with Child Labor or Forced Labor'. The company's Supplier Guiding Principles, Sustainable Agriculture Guiding Principles and Human Rights Policy have contributed to upholding human and workplace rights within the company's supply chain, and serve as testament to the company's commitment and impact in the global supply chain.

Partner Africa was commissioned by The Coca-Cola Company to carry out third-party research on the prevalence of forced labour and child labour in the sugar sector in Swaziland, as well as to provide an understanding of the complexities and issues of land ownership in the same industry and country. The purpose of these reports is to provide evidence for the existence or absence of forced labour, child labour and land rights violations within TCCC's sugar supply chain and the broader context of the sugar industry in Swaziland, in order to ensure TCCC is upholding the principles and guidelines to which it has committed. Research was composed of desk research, stakeholder interviews and field research over a period of three months.

Definitions to determine the scope of the three themes were drawn from 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.

Forced labour was defined as a situation 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. Child labour was defined as work that deprives children of their childhood, their potential and their dignity and that is harmful to their physical and mental development. Land rights referred to rights related to land and land use and may include 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 local law of Swaziland, the company's Supplier Guiding Principles, the Voluntary Guidelines on the Responsible Governance of Tenure of Land (VGGT), the International Finance Corporation's Performance Standards, as well as the Free Prior and Informed Consent guidelines.<sup>17</sup> These standards and guidelines are briefly explained in the appendix.

It is important to take into account various overarching standards that inform human rights and land rights. Such international standards include the United Nations Declaration on the Rights of Indigenous Peoples, the African Union's Guiding Principles on Large-Scale Land Based Investments in Africa (LSLBI) and The Analytical Framework for Land-Based Investments in African Agriculture (Analytical Framework). The UN's Declaration on the Rights of Indigenous Peoples is important in determining international standards, and the AU's Guiding Principles on LSLBI and the Analytical Framework place these principles in an African context. These principles and international standards are briefly outlined in the appendix.

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<sup>17</sup> FPIC Guidelines as defined by Oxfam Australia, 'Guide to Free Prior and Informed Consent' published June 2010.

## METHODOLOGY

The project comprised of a review of all relevant literature, stakeholder interviews, on-site interviews by a team of independent researchers and on-site documentation review.

<b>Review of Relevant Literature</b>	<p>A systematic and comprehensive review of relevant literature was undertaken. Literature consulted 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.</p> <p>Please see Appendix 1 for a detailed list of country specific development reports.</p>
<b>Stakeholder Interviews</b>	<p>A full stakeholder analysis was undertaken to identify key stakeholders and role players in and out of The Coca-Cola Company sugar supply chain. A team of researchers have conducted interviews in person, over telephone and through internet calls with all identified stakeholders. Stakeholders involved include:</p> <ul style="list-style-type: none"> <li>• Sugarcane growers and processors</li> <li>• Local and international research organisations</li> <li>• Local and international NGOs</li> <li>• Human rights organisations</li> <li>• Government officials</li> </ul> <p>Stakeholders have thus far been divided into two categories: over-arching stakeholders who were relevant to all countries and country specific stakeholders. Specific interview schedules were used for interviews with mill and farm workers, mill and farm management, adjacent farm owners, government officials and stakeholders. See Methodology Reference booklet for interview outlines.</p>
<b>On-site Interviews and Observations</b>	<p>A mix of in-depth, group and individual interviews were conducted. On site interviews were conducted at a range of locations including the mill, interviewees' homes and government offices. Fieldworkers ensured certain standards for interviews such as ensuring all worker interviews were carried out in private without the attendance of a mill manager or supervisors and in venues not associated with disciplinary hearings or management boardrooms.</p> <p>On-site interviews were undertaken with:</p> <ol style="list-style-type: none"> <li>1. Sugar mill management</li> <li>2. Small to medium sugar farm owners or management</li> <li>3. Large sugar farms owners or management</li> <li>4. Sugar farm and mill workers</li> <li>5. Adjacent property owners</li> <li>6. Government officials</li> <li>7. Community members</li> </ol> <p>Specifically, on-site interviews focused on the following:</p> <p><b>Child Labour:</b></p> <ul style="list-style-type: none"> <li>• Workers were asked whether they have seen or knew of any children working on the farm or mill and whether this would be possible.</li> <li>• Farm and mill owners were asked about what policy, management and monitoring systems were in place to ensure no child labour occurred in the supply chain.</li> <li>• Official mill and farm policy documents were checked to ensure a written commitment against child labour in the supply chain.</li> </ul> <p><b>Forced Labour:</b></p>

- Workers were asked whether they had to hand over any important documents in order to be employed and whether these documents were being held by mill and farm management.
- Workers were also asked whether they were allowed to be members of unions or workers groups.
- Workers were asked about violence and intimidation on the site.
- Farm and mill owners and management were asked about grievance settlement mechanisms with workers on site.

#### **Land Rights:**

- Workers, community members, adjacent farm owners and small farm owners were asked about their land ownership.
- Inquiry was made into how land was acquired and how any expansion in the future was planned.
- Land acquired more than 20 years ago was considered beyond the scope of this report.
- Original land title documents, lease agreements and/or land management agreements were checked.
- Government officials were asked about land policy and land lease arrangements between large- and small-scale farm owners and the state.

See Methodology Reference booklet for interview outlines.

In order to verify and further clarify the standards and measures utilised by the mill and farm, and to ensure that there is no child labour, there has been responsible land sourcing and that labour rights are upheld, interviews were conducted in English and Swati, utilising interview tools specifically formulated to inquire about the research themes. Landesa assisted with the development of the land rights components of these tools. In addition, The Coca-Cola Company Workplace Accountability SGP Agriculture and Farm Assessment Protocol were used (see Methodology Reference booklet).

In addition to interviews, documentation was reviewed on site to determine evidence of compliance and triangulate between observations and worker interviews to determine compliance with legal requirements and complement or verify claims and observations.

#### **Documents required from Mill Owners**

- Mill (and farm, if appropriate) land ownership or lease documents (titles, deeds, certificates, tax assessments, lease contracts, permits, and other).
- Any documents related to the process of acquiring land parcels, including evidence:
  - Related to government compulsory acquisition of some or all of the mill land on behalf of the mill owner.
  - Related to consequent concessions for the compulsorily acquired land to the mill owner.
  - Related to negotiations for purchase and sale or lease of some or all of the mill land.
  - Of whether a social impact or other assessment (environmental, resettlement, other) was conducted prior to land acquisition.
  - Demonstrating that the mill land purchaser/lessor engaged in a consultation and/or consent process when negotiating the mill or farm land acquisition.
  - Reflecting any past or current disputes or grievances related to the land on which the mill is located, including whether and how disputes or grievances were resolved.
  - Indicating any plans to acquire additional or alternative land for mill facility operations.

#### **On-site Documentation Review**

**Documents required from Small, Medium and Large Farm Owners**

- Farmland ownership or lease documents (titles, certificates, tax assessments, lease contracts, and other).
- Any documents related to the process of acquiring land parcels, including written evidence:
  - Related to land claim court proceedings, or gazetted notifications of land claims
  - Related to negotiations for purchase and sale or lease of some or all of the farmland.
  - Demonstrating that the land purchaser/lessor engaged in a consultation and/or consent process when negotiating the farmland acquisition.
  - Reflecting any past or current disputes or grievances related to the land on which the farm is located, including whether and how disputes or grievances were acknowledging and resolved.
  - Indicating any plans to acquire additional farmland.
  - Showing that the previous farmland users (both male and female) were fairly compensated for the land on which the farm is now located.
  - Related to government compulsory acquisition of some or all of the farmland.
  - Related to government concessions of land to the farm.
  - Related to negotiations for purchase and sale or lease of some or all of the farmland.
  - Of whether a social impact or other assessment (environmental, resettlement, other) was conducted prior to land acquisition.
  - Demonstrating that the land purchaser/lessor engaged in a consultation and/or consent process when negotiating the farmland acquisition.
  - Reflecting any past or current disputes or grievances related to the land on which the farm is located, including whether and how disputes or grievances were acknowledging and resolved.
  - Indicating any plans to acquire additional farmland.
  - Showing that the previous farmland users (both male and female) were fairly compensated for the land on which the farm is now located.

## Interview Schedule

In Swaziland, the following on-site interviews were conducted:

- Sugar mill management
  - Illovo (Ubombo Mill)
  - RSCC (Simunye and Mhlume Mills)
- Large sugar farms owners or management
  - 2 private farms supplying Illovo
  - 2 farms owned by subsidiaries of the royal family supplying RSCC
- Small scale farming companies on SNL (owners or management)
  - 1 farm supplying Illovo-Ubombo
  - 3 farms supplying RSCC-Simunye
  - 2 farms supplying RSCC-Mhlume
- Sugar farm and mill workers
  - 37 farm workers
  - 100 mill workers
- Subcontractor providing harvesting/cane cutting: 1
- Union Representatives
  - Independent: 1
  - Mill or farm workers: 5
- Community members:
  - Primary School teacher in Ubombo

In total, 3 mills and 10 farms were visited, and 142 workers in Swaziland were interviewed. These on-site interviews are complemented with stakeholder interviews as well as previous TCCC SGP audit assessment reports conducted by Partner Africa prior to this study.

Together with the Swaziland Sugar Association, a variety of stakeholders were identified and contacted and interviewed by phone. The following stakeholders were contacted and valuable insight was gained:

Non-government organisations:

- Coordinating Assembly of NGOs
- Fairtrade Foundation
- WWF
- The Solidarity Center
- International Labour Organization
- Oxfam

International Organisations:

- EU Delegation
- TechnoServe (Swaziland)
- Bonsucro
- Solidaridad

Trade Unions:

- The Swaziland Business Coalition on Health and AIDS (SWABCHA)
- Swaziland National Association of Teachers (TUCOSWA)
- Swaziland Agricultural & Plantation Workers' Union (SAPWU)
- Federation of Swaziland Employers and Chamber of Commerce

Governmental departments:

- The Swaziland Water and Agricultural Development Enterprise (SWADE)

Other:

- University of Swaziland UNISWA Research Centre
- Independent consultant Mike Ogg

## OVERVIEW OF SWAZILAND'S SUGAR INDUSTRY

### *History of the Sugar Industry in Swaziland*

The Colonial (later Commonwealth) Development Corporation (CDC) first established plantations in Swaziland in the 1950s. CDC and South African investors commissioned the Ubombo mill and sugar estates in 1958.<sup>18</sup> In partnership with South African company Hulett's, CDC also established Mhlume Sugar Estates and commissioned the Mhlume mill in 1960 but by 1966, CDC acquired sole ownership of Mhlume mill and cane estates by buying out Hulett's shares. In 1977, the iNgwenyama<sup>19</sup> acquired 50% of the company's issued share capital (in a trust for the Swazi nation). At the same time, the Swazi government, Tibiyo TakaNgwane (a company owned by the royal family) and CDC worked in close cooperation to expand sugar production in Swaziland. Together, they established the Royal Swaziland Sugar Corporation Limited (RSSC) and raised the capital to establish Simunye Sugar Estate (SSE), including over 9,000ha of irrigated sugarcane production and the Simunye mill.

In 1982, Tibiyo TakaNgwane (Tibiyo) acquired the Vuvulane Irrigated Farms (VIF), which was originally established in 1962 as a smallholder project for 275 farmers. The farmers had been given 20-year lease agreements, but despite the success of the project, the title deed land was transferred to the Swaziland National Agricultural Development Corporation (SNADC), and then eventually acquired by Tibiyo as Swazi National Land (SNL). The International Trade Union Confederation (ITUC) accuse Tibiyo as having "exploited its official status as a 'Swazi national empowerment vehicle' to acquire equity at nominal costs in key sectors of the Swazi economy".<sup>20</sup>

By 1994, due to Tibiyo's acquisition and expansion activities, 34% of cane growing and 50% of milling operations had come into Swazi ownership, the majority of which is under direct royal control and not under the supervision of the government.<sup>21</sup>

Also in 1994, Mhlume Sugar Estates acquired 3,800ha of sugarcane growing operations, which were developed through the Inyoni ami Swaziland Irrigation Scheme (IYSIS).

In 2000, RSSC expanded the Simunye mill to accommodate cane purchased from new independent cane farmer schemes. In 2002, RSSC agreed to merge with Mhlume Sugar Estates, which involved a harmonisation process between the two mills and relevant sugarcane estates.

### *Swaziland Sugar Industry Today*

The Swaziland sugar industry is regulated through the provisions of the 1967 Sugar Act which inter alia empowers the Swaziland Sugar Association (SSA) to be a statutory monopoly marketing body, solely responsible for the marketing of all sugar, controlling both the domestic and export markets. The SSA is, in addition, a state owned enterprise under the control of the monarch.<sup>22</sup>

- Annual Sugar Production: approximately 500,000 MT.
- Gross sugar revenue per year: approx. US\$160 million
- Gross sugar revenue as % of GDP: 24%
- Large-scale growers (over 1000ha, including 3 millers and 4 large growers produce 77% of the crop): 7
- Medium-scale growers (between 50ha and 1000ha): 15
- Small-scale growers (below 50ha): 295
- Direct employment: 16,000
- Indirect employment: 80,000<sup>23</sup>
- Approximately 15% of all workers in Swaziland.<sup>24</sup>

<sup>18</sup> Dubb et al. (2016) The Political Economy of Sugar in Southern Africa - Introduction

<sup>19</sup> According to customary law, the iNgwenyama enjoys the same protection and immunity from legal suit or process as the King.

<sup>20</sup> ITUC (2016)

<sup>21</sup> Terry and Ogg (2016)

<sup>22</sup> Connigarth (2013), "Overview of South African Sugar Industry"

<sup>23</sup> SSA Fact Sheet

<sup>24</sup> Fairtrade 2013

Like other countries in Southern Africa, the Swaziland government has welcomed commercial investment in sugarcane production for the opportunity to “rehabilitate degraded infrastructure and productive capacity, increase direct employment and supply opportunities for local land holders in addition to augmenting its tax base while raising scarce foreign exchange from export earnings”.<sup>25</sup>

### *Milling Companies*

As shown in the map overleaf, there are three sugar mills in Swaziland: Ubombo mill, Mhlume mill and Simunye mill.

The Royal Swaziland Sugar Corporation (RSSC) owns and operates two of the three sugar mills: Simunye and Mhlume. RSSC also manages 15 607 hectares of irrigated sugarcane on two estates leased from the Swazi Nation and manages a further 5,018 hectares on behalf of third parties, which collectively deliver approximately 2.3 million tons of cane per season to RSSC’s two sugar mills.<sup>26</sup>

RSSC is owned by various shareholders: Tibiyo TakaNgwane own 53.1%, followed by TSB Sugar International (Proprietary) Limited with 26.3%. Other shareholders include the Swaziland Government, the Nigerian Government, Coca-Cola Export Corporation Limited and Booker Tate Limited.<sup>27</sup>

Illovo Sugar (Pty) Ltd has a 60% share in Ubombo Sugar Limited, with the balance of shares held on behalf of the Swazi nation by Tibiyo TakaNgwane.<sup>28</sup> Ubombo mill is situated adjacent to the Usuthu River in the south-east of the country. Ubombo Sugar Limited produced 35% of Swaziland’s sugar in 2012/13. The company owns 21,000 hectares of land in the local area (of which about 8,600 is under cane), and also manages 2,381 ha of land under cane, which is owned by Tibiyo TakaNgwane.<sup>29</sup> Around 40% of Ubombo’s current sugar production is refined and sold into the SACU region, with other preferential and regional markets.

Overall, SSA states that 51% of milling companies are owned by Swazi leadership, and 49% by private sector.<sup>30</sup>

### *Planters or Sugarcane growers*

There are 7 large-scale growers (over 1,000ha in size), including 3 millers and 4 large growers. Collectively they produce 77% of the crop.

There are 15 medium-scale growers (between 50ha and 1,000ha in size).

There are 295 small-scale growers (below 50ha in size) and each with a number of members/shareholders.

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<sup>25</sup> Dubb et al 2016

<sup>26</sup> [http://www.rssc.co.sz/about\\_us/company\\_profile/](http://www.rssc.co.sz/about_us/company_profile/) Accessed 3 August 2016:

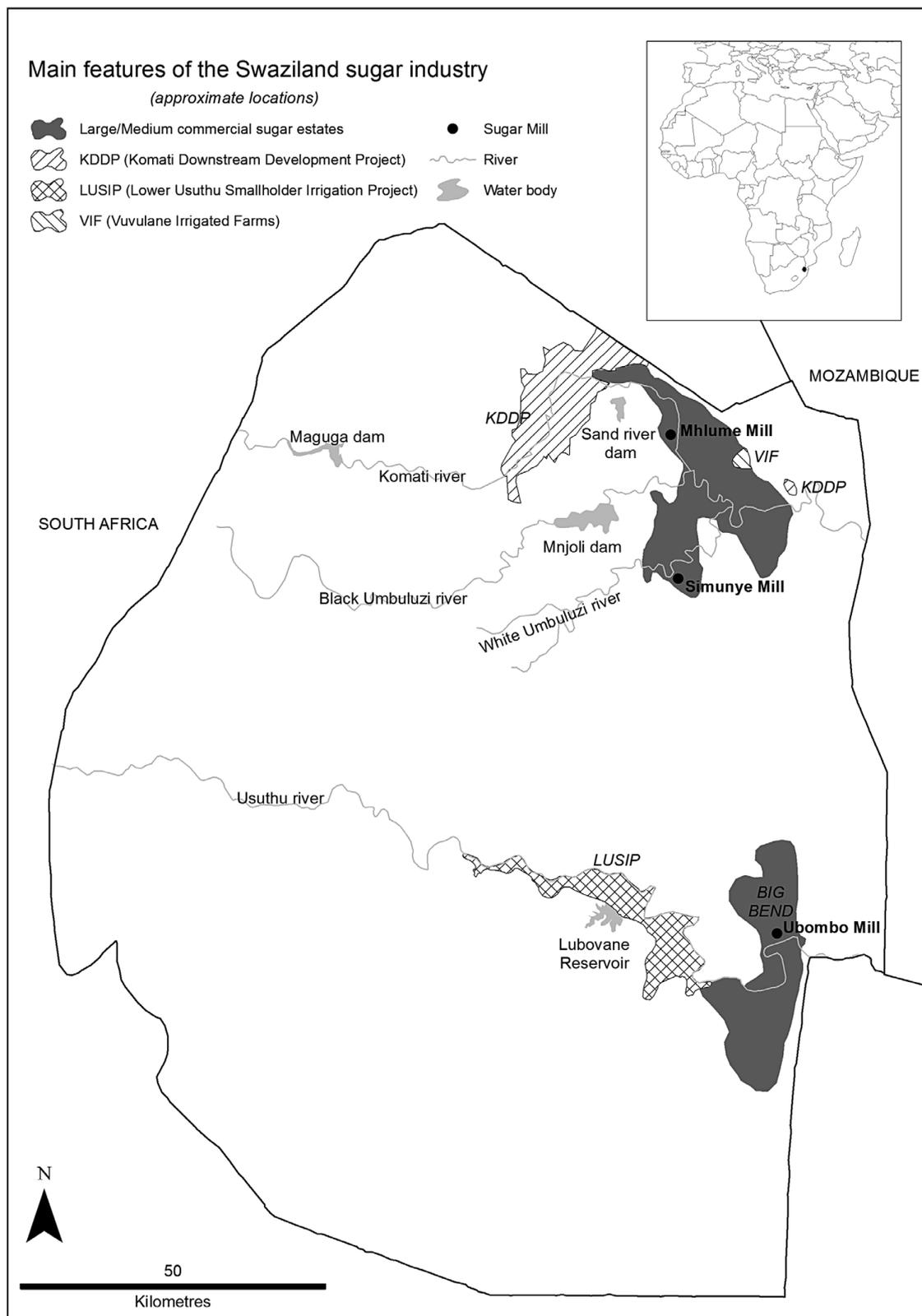
<sup>27</sup> [http://www.rssc.co.sz/about\\_us/company\\_profile/](http://www.rssc.co.sz/about_us/company_profile/) Accessed 3 August 2016

<sup>28</sup> <https://www.illovosugar.co.za/About-us/Swaziland> Accessed 5 August 2016

<sup>29</sup> Illovo 2014

<sup>30</sup> SSA Fact Sheet

Figure 1 Map of the main features of the Swaziland sugar industry (Source: Terry and Ogg, 2016)



### *Domestic and Export Markets*

The Swaziland Government maintains an import permit system that restricts imports into Swaziland. Although Swaziland is a member of the Southern African Customs Union (SACU),<sup>31</sup> South African sugar access to Swaziland is restricted through import licensing. The price of sugar in Swaziland is controlled under the Price Control Order, 1973, that provides for the fixing of maximum prices for a number of products, including sugar. Sugarcane growing is controlled through a quota issued by the Sugar Industry Quota Board. A sugar export levy is levied on all Swaziland sugar exports except to its SACU partner states.<sup>32</sup> Sugar exports amount to approximately 13% of all exports from Swaziland.<sup>33</sup>

Swaziland has benefited from preferential trading agreements with the US<sup>34</sup> and European Union (EU). From 1975, the EU accepted sugar quotas at the same price offered to domestic beet sugar suppliers from 18 African, Caribbean and Pacific (ACP) countries, one of which was Swaziland. The protocol guaranteed duty-free quotas for 1.3 million tonnes a year and high prices equivalent to those paid to EU beet farmers.<sup>35</sup> This lasted until 2006, when the EU implemented Reforms to the Sugar Protocol resulted in a 36% reduction in the EU price by 2009-10.<sup>36</sup> Aware of how vulnerable countries like Swaziland would be, the EU established a new mechanism to support the ACP countries: Accompanying Measures for Sugar Protocol countries (AMSP), which were to be implemented through the National Adaptation Strategy (NAS). As a result, EU funding was leveraged with funding from the Swazi government to invest in two projects: The Komati Downstream Development Project (KDDP) and the Lower Usuthu Smallholder Irrigation Project (LUSIP).

The KDDP was established in 2000 and is made up of three elements: the Maguga dam, the Agricultural Project Area and the expansion of the Mhlume sugar mill (funded by RSSC). The dam allows for the irrigation of SNL for both sugarcane production and vegetable farming. By 2010, 2,500 smallholders were cultivating 3,095 ha of irrigated land in the Komati Basin – of which 90% is under sugarcane, and supplying half of all sugarcane processed by Mhlume mill and a quarter of that processed by Simunye mill. The smallholders were members of 29 farming associations, ranging from 37 to 220 members, with an average membership of 86.<sup>37</sup>

LUSIP commenced in 2003. Of the planned 11,600ha, 3,050ha of sugarcane and 321ha of alternative crops have been established by smallholder farming associations. By May 2014, 15,202 people had benefited directly, with a further 5,277 benefiting indirectly.<sup>38</sup>

Total sugar production in Swaziland since 2001 has increased from less than 4 million tons to a steady 5 million tons in 2011, as shown in the graph. Sugar production amounts to 51% of total agricultural production in Swaziland, considerably larger than the production of maize or roots and tuber crops.<sup>39</sup>

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<sup>31</sup> SACU comprises of South Africa, Swaziland, Lesotho, Botswana and Namibia

<sup>32</sup> Connigarth (2013) Overview of South African Sugar Industry

<sup>33</sup> SSA Fact Sheet

<sup>34</sup> According to the ITUC report, “sales to the US benefited from a Tariff Rate Quota (TRQ), which permits access on preferential terms for a limited volume. Exports to the US have amounted to about 16.000 tons per annum. Notably, Swaziland lost trade benefits under African Growth and Opportunity Act (AGOA) in 2015 due to its systemic labour rights violations.”

<sup>35</sup> Fairtrade 2013

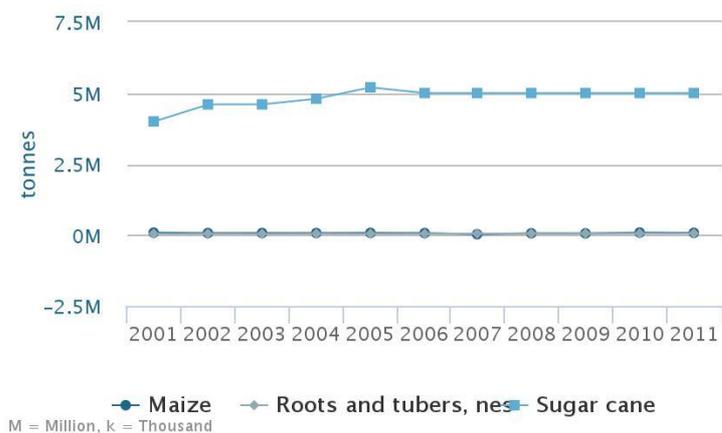
<sup>36</sup> Terry and Ogg 2016

<sup>37</sup> Terry and Ogg 2016

<sup>38</sup> Terry and Ogg 2016

<sup>39</sup> SSA Fact Sheet

**Figure 2 Sugar Production in Swaziland compared to Maize and Roots and tubers from 2001 – 2011, Source FOA<sup>40</sup>**



Due to the 2015/2016 drought, sugarcane production in Swaziland is expected to decrease by 21% from 5,836,553 MT in the 2015/16 milling year to 4,600,000 MT in the 2016/17 milling year. The drought has severely impact the availability of irrigation water.<sup>41</sup>

### Legislation

A number of pieces of legislation have important bearing on forced labour, child labour and land rights relevant in the Swaziland Sugar industry, namely:

- Sugar Act of 1967
- Swaziland, Wages Act of 1964
- Constitution, 2005
- People Trafficking and People Smuggling (Prohibition) Act 7 of 2009
- Free Primary Education Act 2010
- The Children Protection and Welfare Act 6 of 2012
- Common/customary law
- Commercial law

<sup>40</sup> <http://faostat3.fao.org/browse/area/209/E> Accessed 5 August 2016

<sup>41</sup> Global Agriculture Information Network Report. [http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Sugar%20Annual Pretoria Swaziland 3-31-2016.pdf](http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Sugar%20Annual%20Annual%20Pretoria%20Swaziland%203-31-2016.pdf) Accessed 29 November 2016

## CHILD LABOUR, FORCED LABOUR AND LAND RIGHTS IN SWAZILAND

### Child Labour in Swaziland

According to the 2015 U.S. Trafficking in Persons report, Swazi girls, particularly orphans, are subjected to sex trafficking and domestic servitude, primarily in Swaziland and South Africa. Swazi chiefs may coerce children and adults – through threats and intimidation – to work for the king. Swazi boys and foreign children are forced to labour in commercial agriculture, including cattle herding, and market vending within the country.<sup>42</sup>

Swaziland has ratified all key international conventions relating to child labour<sup>43</sup>:

- ILO C. 138, Minimum Age
- ILO C. 182, Worst Forms of Child Labor
- UN Convention on the Rights of the Child (CRC)
- UN CRC Optional Protocol on Armed Conflict
- UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
- Palermo Protocol on Trafficking in Persons

The Children Protection and Welfare Act, the People Trafficking and People Smuggling (Prohibition) Act; the Constitution, and the Free Primary Education Act include important laws prohibiting child labour practices in Swaziland. The establishment of a child labour unit within the Ministry of Labour and Social Security is another positive measure by the government of Swaziland. The legal working age is 15 years in Swaziland and the minimum age for hazardous work is 18 years.<sup>44</sup>

It is widely recognised that addressing the social and economic conditions that give rise to child labour, are crucial to eliminating child labour practices. Access to education, in particular, is considered a critical measure in preventing child labour. The table below shows that 11% of children between the age of 5 and 15 years old are engaged in some form of child labour, and 13% attend school and are working – this data refers to economic activities across all industries. Although the government of Swaziland paid some school fees for orphans and vulnerable children, it is reported that the government failed to pay school fees in half of the country's schools and significant gaps in laws remain, including the lack of a compulsory education age.<sup>45</sup>

**Figure 3 Statistics on children's work and education<sup>46</sup>**

Children	Age	Percent
Working (% and population)	5-14 yrs.	11.7 (35,368)
Attending School (%)	5-14 yrs.	92.5
Combining Work and School (%)	7-14 yrs.	13.0
Primary Completion Rate (%)		76.8

Source for primary completion rate: Data from 2011, published by UNESCO Institute for Statistics, 2014.(3)

Source for all other data: Understanding Children's Work Project's analysis of statistics from MICS 4 Survey, 2010.(4)

The evidence of child labour in sugar harvesting in Swaziland is limited and/or the extent of the problem is unknown. In a report published by the Solidarity Center in 2006 there was a quote included from a 14-year-old girl who works in a sugarcane field; she explained, "I am working alone, eight hours a day, daily. There is quite a time pressure on me to reach my daily target...I get headaches

<sup>42</sup> 2015 Trafficking in Persons Report

<sup>43</sup> US DoL 2014

<sup>44</sup> US DoL 2014

<sup>45</sup> US DoL 2014

<sup>46</sup> US DoL 2014

from work. That could be because it is very hot and I am exposed to the sun for many hours".<sup>47</sup> When approached about this, the Solidarity Center stated that they had not observed any recent incidences of child labour in the sugar industry.

In 2015, The United States Department of Labor found that Swaziland had "made efforts to eliminate the worst forms of child labor, but was also complicit in the use of forced child labor. While the Government continued its Free Public Education Program by paying school fees for children to attend primary school and expanded this program to cover grade seven, Swaziland is receiving an assessment of no advancement because the Minister of Education and Training closed schools for 7 days and forced more than 30,000 children and adults to carry out national duties, including weeding the King's fields. In addition, local chiefs forced children to engage in agricultural work throughout the year. Penalties for refusing to perform this work included evicting families from their village, confiscating livestock, and withholding family wages. Children in Swaziland are also engaged in child labor, including in domestic work and herding cattle. Significant gaps in laws remain, including the lack of a compulsory education age, and social programs do not adequately address child labor in domestic work and livestock herding".<sup>48</sup>

Interviews with stakeholders in the sugar industry were not aware of children being forced to engage in agricultural work in the Swazi sugar industry in 2015 or any other time.

SWADE is a government parastatal whose main objective is to improve livelihood of people, through commercialisation of agricultural enterprises, and to mobilise the community to venture into agriculture; the main product was sugarcane, but now they are encouraging farmers to diversify into other agri- businesses like livestock, vegetables, etc. SWADE argues that child labour is a complex topic here. Their organisation targets households and organises 5-10 households into one farm company. Some of these households are child-headed households who form part of the shareholders, and who work in the day-to-day running of the business. Further, some children are involved in work on a casual basis, for example assisting with fertiliser etc. The stakeholder interviewed in this study stated that SWADE is monitoring the situation and trying to discourage school-aged children from working on the farms, but they are shareholders with equal divided shares, so this is difficult.

## Forced Labour in Swaziland

Reports suggest labour brokers fraudulently recruit and charge excessive fees to Swazi nationals for work in South African mines.<sup>49</sup> This was widely evident during the colonial period between 1914 and 1947.<sup>50</sup> *The Struggle for Workers Rights in Swaziland* published by Solidarity Center in 2006, reports that female Swazi workers, who have a low status in Swazi society, make up a large percentage of the workforce, yet Swaziland is far behind other countries in Southern Africa in terms of addressing discrimination against women, workplace sexual harassment and violence, rape, and political rights for women. In addition, traditional structures and culture, combined with the absolute rule of the king, create circumstances that could lead to forced labour and child labour. The failure of the government to address forced labour and child labour is a violation of its international obligations.<sup>51</sup>

A new constitution, signed by King Mswati in 2005, went into force on February 8, 2006. Although its Bill of Rights includes freedom of expression, assembly, and association, it is silent on the right to form a political party or the right to strike, and continues to vest all final authority in the king. However, the People Trafficking and People Smuggling (Prohibition) Act, and the Employment Act (including the proposed regulation of labour brokers), also include important laws prohibiting forced labour practices in Swaziland.<sup>52</sup>

Two prominent trade unions in Swaziland: The Swaziland Federation of Trade Unions (SFTU) and the Swaziland Federation of Labor (SFL) amalgamated in 2012. Swaziland Agriculture and Plantation

<sup>47</sup> Solidarity Center 2006

<sup>48</sup> <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/swaziland>

<sup>49</sup> 2015 Trafficking in Persons Report

<sup>50</sup> Simelane 1998

<sup>51</sup> Solidarity Center 2006

<sup>52</sup> Solidarity Center 2006

Workers' Union (SAPWU) and the Swaziland National Association of Teachers (TUCOSWA) are under this umbrella organisation. A representative of TUCOSWA argued that Labour Act, Terrorism Act, Public Order Act, and Public Service Act all prohibit people speaking negatively about the royal business and affairs. In October 2014, Swaziland's government announced an immediate ban on all trade union and employer federations. The decision was condemned by the ITUC as a violation of ILO Convention 87, which guarantees freedom of association for workers and employers.<sup>53</sup> This decision has resulted in increased conflict existing between the government and trade unions in Swaziland. The International Trade Union Confederation (ITUC) lists Swaziland as a category 5 – meaning that the ITUC found that there is 'no guarantee of rights' for trade unions in the country.<sup>54</sup> A number of unions are not recognised by the Swazi Government for political reasons, but since 2015 TUCOSWA and other unions were permitted to register again and are formally recognised.

In July 2014, there were the 'Sugar Belt' wage negotiations. The negotiations involved industrial action and an organised labour strike, which lasted three weeks and resulted in the Ubombo agreement, which included a 10% wage increase amongst other benefits.

### Land Rights in Swaziland

There are two types of land tenure: customary tenure of Swazi National Lands (SNL) and Title Deed Land (TDL), which account for 54 and 46 per cent of total land area respectively. Customary tenure over SNL is not defined by legislation, and cannot be bought, mortgaged, leased or sold. The land is being controlled and held in trust by the King and allocated by tribal chiefs according to customary practices. Nearly half (19 of the 54%) of SNL is run as privately owned land by Tibiyo Taka Ngwane and is not under the control of a chief.<sup>55</sup> Two such farms were visited. Tibiyo Taka Ngwane is the Swazi investment house under the direct control of the King and its output is intended for the benefit of the Swazi nation as a whole.

The Land Policy drafted in 1999 intended to address a number of issues, i.e. improving gender equity in land allocation and protection of property rights, the use of SNL as collateral for loans, and the introduction of an efficient, effective and comprehensive system of land administration, and rangeland management. Unfortunately the policy was never formally endorsed and land tenure and land reform remains one of the most controversial national policy issues.<sup>56</sup>

Section 28(1) of the Swaziland Constitution guarantees that women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. However women cannot be allocated land on their own and can only get land through their husband, male relative, or male children.<sup>57</sup> Under common law, the property of spouses falls into a common pool, which – although jointly owned by the spouses – is entirely controlled by the husband unless the spouses execute an ante-nuptial contract before their marriage. This situation places the wife, in relation to the property of the marriage, in almost the same position as a minor child. A women's rights organisation stated that, in order for Swazi women to realise their constitutional rights, there needs to be a complete review of the marriage laws in the country.<sup>58</sup>

All three sugar mills supplying sugar to The Coca Cola Company are committed by law to receive all sugarcane produced by all farms with sugar quotas in their region, ensuring that small-scale and large growers alike have a guaranteed off-taker or market.

<sup>53</sup> <https://www.ituc-csi.org/swaziland-monarchy-bans-all-union> Accessed 29 November 2016

<sup>54</sup> <http://survey.ituc-csi.org/Swaziland.html>

<sup>55</sup> Terry and Ogg (2016, p6): "This non-customary type of SNL expanded from 2 per cent to 19 per cent of Swaziland by 1997"

<sup>56</sup> <https://www.ifad.org/documents/10180/19c94d55-7d78-4fdc-a494-3a6702e9f8b6> Accessed 29 November 2016

<sup>57</sup> <http://www.impowr.org/content/current-legal-framework-ownership-and-administration-property-swaziland>

<sup>58</sup> <http://www.osisa.org/womens-rights/blog/one-more-right-swazi-women>

## FINDINGS

### Child Labour Findings

There were no reported or observed incidences of child labour in the sugar industry, which would deprive a child of their childhood, their potential and their dignity or that, which would be harmful to their physical and mental development. All mills and farms stated that they do not employ anyone under the age of 18 years old, and most companies employ workers over the age of 20 years old for difficult tasks such as cane cutting because the cane-cutters need to be strong and physically fit; this was confirmed by on-site interviews with workers who also stated that they were all required to present identity documents in the form of a National Tax Certificate to prove their legal age. Farm workers and stakeholders interviewed during this study did not know of any incidences of child labour in the sugar industry.

Since 2011, primary schooling in Swaziland has been made free for all children with the support of EU funding, making it more likely that children will attend school and not be found working in the fields. At RSSC mills and farms, education assistance in the form of a 75% subsidy on school fees is available for workers whose children attend high school.

In one instance, a small-scale farming company on Swazi Nation Land (SNL) admitted to sometimes employing migrant workers, but only for piece jobs on a day-to-day basis. In these instances, they estimate how old the workers are because they do not always have identity documents or official papers. In principle, they do not employ anyone younger than 18 years of age.

In general, sugarcane growers in Swaziland subcontract harvesting (cane-cutting) services. Several workers employed by a harvesting subcontractor were interviewed. The subcontractor provides services to farms supplying both Simunye and Ubombo mills. The workers were all required to present identity documents upon employment and also go for a medical exam to ensure that they were over 18 years of age and fit enough for the strenuous work of cane-cutting. One farmworker at a commercial farm said that he had seen young people (possibly 15 years old) working for a subcontractor but he could not be certain.

Illovo Sugar (Pty) Ltd, in particular, enforces its Guidelines on Child Labour and Forced Labour<sup>59</sup> by ensuring that all contracts signed with its suppliers, require that the supplier's business operations are conducted in accordance with the principles set out in the Illovo Code of Conduct and Business Ethics<sup>60</sup>.

### Forced Labour Findings

There were no reported incidences of forced labour or examples of employment practices that could be considered forced labour in the Swazi sugar industry. All workers interviewed are free to work for their current employers or find alternative employment. No employers were found to be withholding or retaining the identity papers of their employees and it was found that there was no discrimination against migrant labour or non-Swazi labour – they are treated the same as Swazi labour. Foreign nationals to Swaziland may apply for a National Tax Certificate, with which they can apply for employment in the same way that Swazi nationals do.

All three mills and most commercial farming operations with international investors were found to be paying above the minimum wage and providing benefits, which include legislated rations, medical assistance and accommodation. Additional benefits such as primary schooling for workers' children are provided by some companies. At some of the large commercial farms, employees are allowed to request an advance on their wages up to 3 months – it is necessary to assess whether this is acceptable by Swazi law.

<sup>59</sup> <https://www.illovosugar.co.za/Group-Governance/Forced-and-Child-Labour-Guidelines>

<sup>60</sup> <https://www.illovosugar.co.za/Group-Governance/Code-of-Conduct-Business-Ethics>

Based on on-site interviews with workers, they viewed working conditions and benefits to be very good in comparison to other farms and industries. It was reported in a stakeholder interview that workers on farms owned by Tibiyo and small scale growers are typically paid the legislated minimum wage of between E400 and 600 per month (US\$28-42 per month).<sup>61</sup>

Seasonal workers are at risk of not having work the following season if, for instance, there is a drought. At a commercial farm supplying Ubombo, the total number of employees decreased from 127 in 2015 to 97 in 2016 due the drought; the farm required 30 less seasonal workers in 2016. The farm workers were also aggrieved that overtime was only paid in time off instead of additional pay – they understood this to be due to the drought. At RSSC, only about half of the seasonal employees were employed in 2016 due to the drought.

There were no reported or identified instances where workers were not free to join unions. Swaziland Agriculture and Plantation Workers' Union (SAPWU) is the main union representing workers in the Swaziland sugar industry. Membership fees range between E27 (US\$1.89) and E30 (US\$ 2.10) per month.<sup>62</sup> While workers are not pressured or intimidated to join or not join SAPWU, there is a general sentiment among workers and management that the unions are largely politicised. For this reason, some workers choose not to join the unions.

SWADE states that they are not aware of any incidences of forced labour, and that the organisation gives lots of training on these issues before work begins. Furthermore, each farm is required to develop a constitution that enforces these principles.

## Land Rights Findings

In Swaziland, it is necessary to irrigate sugarcane fields, and to do so, growers must apply for a water allocation from the Water Board. This enables the government to manage the fair distribution of water and control disease. Cane growers also need to apply to the Sugar Quota Board annually for a quota to produce and sell sugarcane to the mill. The mills are committed to accept all cane produced according to these quotas. Cane growers are required to submit proof of access to the land, which can be in the form of title deeds, lease agreements or a letter from the chief concerning the farming of SNL. They are also required to submit maps of the land that they have access to, and are not able to expand the land that they have under sugarcane production without obtaining a quota.

Without a quota for growing sugarcane, farmers cannot sell sugarcane to the mill. However, there are incidences of farmers growing sugarcane without a quota and selling the cane to other farmers who do have a quota and who can sell the sugar to the mill. This undermines the fair and efficient governance of water and land resources.

As per the provisions of the Sugar Act, the members of Sugar Quota Board are appointed by the minister and include representatives of the mills, independent growers, small-scale and large-scale growers. The Quota Board tracks production throughout the season to monitor whether farms are producing according to their estimates and their quotas. If a farmer chooses to farm another crop or can no longer produce sugarcane, the quota will fall away after 3 years.

### *Mills, miller-cum-planters and private farms*

Ubombo Mill is operated and run by Illovo Sugar (Pty) Ltd. In May 2016, Illovo purchased 160ha of private land at public auction – they paid E11,000,000 (US\$ 770,000) for 160ha.

Simunye and Mhlume mills are owned and operated by RSSC. When RSSC took over from CBC in 2002, the company sold the majority of the land back to the Swazi government, which became SNL, and which they now lease from the government. RSSC have a long-term lease with the Swazi

<sup>61</sup> According to Minimumwage.org: "Swaziland's minimum wage rate is 531.6 Swazi emalangeni a month for a domestic worker, 420 emalangeni a month for an unskilled worker, and 600 emalangeni a month for a skilled worker. Swaziland's minimum wage was last changed in 1-Jan-2011.

<sup>62</sup> The exchange rate applied in this report: Swazi currency E14.28 = US\$1

government until 2025. In 2014, RSSC acquired 800ha of private land with title deeds on auction from a private owner.

Various private companies in the sugarcane industry have adopted corporate policies relating to land rights. In March 2015, Illovo Sugar published its unprecedented Group Guidelines on Land and Land Rights (Group Guidelines)<sup>63</sup>, which is applicable to all six of its operational countries, including Swaziland. In November 2015, Illovo Sugar also released its Road Map on Land Rights (Road Map)<sup>64</sup>, which includes a timeline for how the company intends to implement its Group Guidelines. Furthermore, Illovo Sugar has partnered with organisations, such as Landesa and USAID, to address and mitigate existing land rights issues throughout its supply chain in Mozambique, Malawi and Tanzania, as well as develop strategies for preventing the occurrence of such issues in the future. It is expected that the lessons and achievements in these countries will be transferred across all the countries where they operate.

Tongaat Hulett, which owns Tambankulu Estate<sup>65</sup> in Swaziland, is a member of the United Nations Global Compact. As such, Tongaat Hulett is committed to accelerating its disaster risk reduction activities and to make food production systems more resilient and capable of absorbing the impact of disruptive events. In Zimbabwe for example, Tongaat Hulett participated in a winter maize production project in 2015/16 in partnership with the Zimbabwe government. Maize is Zimbabwe's staple crop with approximately 2.1 million metric tons required for the nation to be food secure. Fully funded by Tongaat Hulett, the project produced 1,300 tons of maize to alleviate the severe shortage experienced over the last 2 years.<sup>66</sup>

There were no land rights or land use issues or concerns raised about the land acquired or leased by private companies in the Swazi sugar industry. Land acquired more than 20 years ago was considered beyond the scope of this report, and the majority of farms and mills interviewed have had legal tenure and title deeds of their land for more than 20 years. Only one private commercial farm, (operating on land acquired more than 50 years ago) recalled an incident of arson (sugarcane fields set a light) during the 2014 'Sugar Belt' wage negotiations. This incident however seemed to be as a result of wage disputes and was not related to land rights or land use violations.

The water allocated to commercial farms is managed and monitored by the Water Board, ensuring that access to water for all is upheld. It was reported by a few respondents that people from the Water Board had recently visited the surrounding farms to check that all farmers and businesses were adhering to the water allocations.

In one unique case, a commercial sugarcane grower explained that when they acquired new land on auction, it was fallow, and some of the former employees had remained as squatters even though farming had ceased. In this case, the commercial grower approached community leaders to engage with the squatters and resettle those that did not want to be employed as farm workers for the new landowners. It was in the company's interest to find a solution with the workers because disgruntled staff could commit arson or cause other problems to harm the farm. In addition to the squatters, the fallow land provided easy access to the river for neighbouring cattle herders. Because the land was purchased to plant sugarcane, the new fences would prevent the cattle from accessing the sugarcane and the river. Again the commercial grower worked with neighbouring farmers and the Swaziland Water and Agriculture Development Enterprise (SWADE) to find an alternative solution for the cattle to access water. At one point they planned to build a canal, but the neighbouring distillery was able to divert and filter water at a lower cost for the benefit of the cattle herders.

### ***Small-scale growers farming Swazi Nation Land (SNL)***

Small-scale growers in Swaziland are typically farming associations made up of voluntary members from a specific community, which have permission to occupy Swazi Nation Land (SNL). In order to

<sup>63</sup> <https://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>

<sup>64</sup> [https://www.illovosugar.co.za/UserContent/documents/group-gov/2016/RoadMaponLandRightsEnglishAndPortugueseVersion\\_25May16.pdf](https://www.illovosugar.co.za/UserContent/documents/group-gov/2016/RoadMaponLandRightsEnglishAndPortugueseVersion_25May16.pdf)

<sup>65</sup> Tambankulu Estate comprises of 3 767 hectares of fully irrigated cane; producing 62 000 tons of sucrose annually and is the largest independent sugar estate in Swaziland.

<sup>66</sup> <http://www.tongaat.co.za/downloads/Winter%20maize%20project%20case%20study.pdf>

access grant funding or bank loans, the farming associations are encouraged to form farming companies and request a chief's letter of consent describing what land has been allocated to whom.

In an effort to alleviate poverty and facilitate economic development, the government, with funding from the EU, has invested in extending irrigation onto customary tenured land in the semi-arid lowveld and converting land to sugarcane production.<sup>67</sup> In an interview with a representative from SWADE (Swaziland Water and Agricultural Development Enterprise), it was acknowledged that there are some land issues with the development of small-scale farming, but they are minimal.

The transition from traditional land uses to farming the land for sugarcane has involved relocating some homesteads. Once a parcel of land suitable for farming sugarcane has been identified by SWADE, community members are engaged in discussions to decide which homesteads should be relocated. Although homesteads are resettled closer to better infrastructure such as roads and electricity, they are removed from the arable land and can no longer plant or graze cattle on the arable land that has been commercialised. This situation could be viewed as a food security risk, however research has shown that if farmers adopt an irrigated home garden as a supplement to the cash crop, then food security may be improved. Two of the small-scale farming companies interviewed had their own policies to ensure that a portion of the land was set-aside for shareholders to grow food gardens. In a unique case, where Illovo is farming sugarcane on land leased from the St Peter's Mission, the condition is that irrigation and farming support be provided to the community for growing vegetables and livestock on small neighbouring fields set aside by the Mission. SWADE is also in the process of developing feed lots to create commercial cattle farming businesses. The process for developing the land takes time and the benefits far outweigh the losses according to the stakeholder at SWADE



Picture 4: St Peter's Mission vegetable gardens

One of the small-scale farming companies interviewed stated that the constitution of their company declares that a certain portion of the land is reserved for members to grow food gardens. The St Peter's Mission in Ubombo also reserved land for community gardens and vegetable farming, leasing the remaining land to Illovo Sugar Ltd. The land belongs to the Roman Catholic Church and it is a unique case for Illovo Sugar Ltd which has a 20 year lease commitment to farm sugarcane. Starting in 2015, the annual lease payment is E1mil (US\$ 70,000) per year.

A small-scale farming company on SNL explained that they paid the value of one cow to the local chief in order to acquire rights to occupy the land (in the form of a letter from the chief). Thereafter, they pay E5,000 (US\$350) per year as allegiance to the chief. Although it is sometimes not feasible to do so, they are obliged to pay allegiance to the chief because this is a customary practice. The amount paid varies among different traditional authorities.

Another small-scale farming company was originally established as an association in 1998 but struggled to acquire loans from the banks without a formal legal identity. The government therefore recommended that associations register themselves as companies in order to apply for loans, which is what this company did in 2002. Initially they had 60ha of SNL allocated by the chief and then added

<sup>67</sup> Terry (2007)

84 hectares in 2007. There is no national land policy governing how and to whom SNL should be allocated by local chiefs.

The farming companies interviewed were established between 2001 and 2014. Prior to EU funding support, small-scale farming companies were expected to take out bank loans to invest in the land, most of which was unplanted cattle grazing land. According to the Illovo Agriculture Operations Director and Ubombo, the cost of developing this land is approximately E90,000 (US\$6,300) per hectare. He said that the return on investment for developing fallow fields (or virgin land) is so low, and that commercial development is not viable without grant funding. Farming companies that acquired loans prior to ASMP (EU funding support) were charged interest rates as high as 25%. For these reasons, many struggled to pay back these loans. Other contributing factors included low productivity (yields) and in many cases, debt with the Swaziland Revenue Authority (SRA).

The farms that were forced to liquidate left the land in debt and other small-scale farming companies have been unable to take on the debt in order to continue farming the land. To avoid the land lying fallow and to ensure that the bank loans are repaid, the banks involve commercial farmers (such as Tibiyo) to take over the land until the debt is repaid. Fortunately, this has not been the case for those farming companies who have received EU funding in the form of 70% development grants. Such small-scale farming companies have been able to pay off the 30% development finance debt within 3 years.

In 2016, SWADE conducted governance training with small-scale growers across the country. This training is intended to improve the financial reporting and business management skills of the small-scale growers.

Support in the form of extension officers (paid for by SSA and provided by the mills) was highly appreciated by the small-scale farming companies. The technical expertise and support includes, soil sampling and guidance about what fertilizer, herbicides etc. to apply when and how to source these inputs. Although one small-scale grower sincerely appreciated this support, he questioned whether policies and programmes were actually developing the people or only the land because the tax burden that some small-scale farmers face were not assisting the development of the people.

There are many reported and observable benefits of the investments in sugarcane for rural small-scale growers and farming companies, however it remains uncertain what the future implications of this land allocation and the commercialisation of SNL will entail. Engagement with the stakeholders resulted in some more questions around land and land rights. These questions include: will farming associations/companies have security of tenure if they choose to diversify? Will others want to buy into such farming companies? Are farmers permitted to buy in, or is it exclusively for those who started the projects? Will the government develop a national land policy to ameliorate those who do not benefit from sugarcane farming?

## CONCLUSION

A survey in 2010 showed that 11% of children between the age of 5 and 15 years old in Swaziland are engaged in child labour across all industries, and 13% both attend school and are working. Current evidence of child labour in sugar harvesting in Swaziland is limited and/or the extent of the problem is unknown. At the larger farms and mills there were no reported incidences of child labour, nor that which would deprive a child of their childhood, their potential and their dignity or that, which would be harmful to their physical and mental development. All mills and farms visited during fieldwork stated that they do not employ anyone under the age of 18 years old, and most companies employ workers over the age of 20 years old for difficult tasks such as cane cutting because the cane-cutters need to be strong and physically fit. This was confirmed by on-site interviews with workers who also stated that they were all required to present identity documents in the form of a National Tax Certificate to prove their legal age.

There were no reported incidences of forced labour or examples of employment practices that could be considered forced labour. All workers interviewed are free to work for their current employers or

find alternative employment. No employers were found to be withholding/retaining the identity papers of their employees.

In July 2014, there were the ‘Sugar Belt’ wage negotiations indicating active representation of workers in the sugar industry. The negotiations involved industrial action and an organised labour strike, which lasted three weeks and resulted in the Ubombo agreement, which included a 10% wage increase amongst other benefits. However in October 2014, the Swaziland government announced an immediate ban on all trade union and employer federations, despite this being a violation of ILO Convention 87, which guarantees freedom of association for workers and employers.<sup>68</sup> A number of unions are not recognised by the Swazi Government, but since 2015, TUCOSWA and other unions were permitted to register again and are formally recognised. Despite the increased conflict between the Swazi government and trade unions, there were no instances where workers said they were not free to join unions.

Tenure over Swazi National Land (SNL) is not defined by legislation; the land is being controlled and held in trust by the king and allocated by tribal chiefs according to traditional arrangements and no formalised processes. Women cannot be allocated land on their own and can only get land through their husband, male relative, or male children.<sup>69</sup> In order for Swazi women to realise their constitutional rights, there needs to be a complete review of the marriage laws in the country.<sup>70</sup>

The transition from traditional land uses to farming the land for sugarcane has involved relocating some homesteads in the SNL. Although the land allocation process involves engaging with the community members and determining which homesteads should be relocated, and although homesteads are resettled closer to better infrastructure such as roads and electricity, they are removed from the arable land and can no longer plant food or graze cattle on the arable land that has been commercialised, which could be viewed as a food security risk. There are many reported and observable benefits of the investments in sugarcane for rural small-scale growers and farming companies, however it remains uncertain what the future implications of this land allocation and the commercialisation of SNL will entail.

All sugarcane growers are required to apply for a water allocation from the Water Board, which is said to enforce fair and equitable access and use of water according to these allocations. The Sugar Act stipulates that cane growers must also apply to the Sugar Quota Board annually for a quota to produce and sell sugarcane to the mill. Cane growers are required to submit proof of access to the land, which can be in the form of title deeds, lease agreements or a letter from the chief concerning the farming of SNL. There were no land rights or land use issues or concerns raised about the land acquired or leased by private companies in the Swazi sugar industry. SSA and various private companies in the sugarcane industry have also adopted corporate policies relating to land rights such as the UN Global Compact, Fairtrade certification and Group Guidelines on Land and Land Rights. No land use disputes or claims to SNL or private land in Swaziland’s sugar industry were reported or uncovered during the study.

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<sup>68</sup> <https://www.ituc-csi.org/swaziland-monarchy-bans-all-union> Accessed 29 November 2016

<sup>69</sup> <http://www.impowr.org/content/current-legal-framework-ownership-and-administration-property-swaziland>

<sup>70</sup> <http://www.osisa.org/womens-rights/blog/one-more-right-swazi-women>

## APPENDIX: ADDITIONAL INFORMATION

### 1. Definitions:

#### CHILD LABOUR

The term 'child labour' is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling by:

- depriving them of the opportunity to attend school;
- obliging them to leave school prematurely; or
- requiring them to attempt to combine school attendance with excessively long and heavy work.

#### FORCED LABOUR

Forced labour refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.

#### LAND RIGHTS

Land rights refer to a broad and complex set of rights related to land and water and associated aspects such as housing. These include:

- Indigenous land rights
- Women's rights
- The right to housing
- The right to food
- The right to water
- Environmental rights and
- Land sovereignty

There is no singular global rights framework which is specifically focused on land rights as land rights are cross-cutting and interdependent.

### 2. The Coca Cola Company Supplier Guiding Principles and Sustainable Agriculture Guiding Principles and Human Rights Policy

The company's Supplier Guiding Principles, Sustainable Agriculture Guiding Principles and Human Rights Policy have contributed to upholding human and workplace rights within the company's supply chain, and serve as testament to the company's commitment and impact in the global supply chain. TCCC's Supplier Guiding Principles Good Practices include:

1. Demonstrating that acquisition has not been assembled through expropriation or other form of legal seizure without Fair, Prior, Informed Consent (FPIC) process and fair compensation for land, resettlement and economic impact to the affected communities.
2. Demonstrating that alternatives to a specific land acquisition were considered to avoid or minimise adverse impacts on the affected communities.
3. Ensuring the presence of grievance mechanisms to receive and address specific concerns about fair compensation and relocation, if applicable.<sup>71</sup>

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<sup>71</sup> TCCC. 2013. <http://assets.coca-colacompany.com/35/0e/62529fc346efbdb5dee0b9e4c581/issuance-guidance.pdf> [23/01/2017].

Based on TCCC's commitments to FPIC, the VGGT, and the IFC Performance Standards, its obligations include:

- Recognising and respecting all legitimate tenure rights and the people who hold them;
- Utilising principles of 'Free, Prior and Informed Consent';
- Avoiding/minimising displacement, and avoiding forced eviction;
- Avoiding/minimising adverse social and economic impacts from land acquisition including disputes, conflict and corruption;
- Providing adequate compensation for assets and restoring/improving livelihoods and standards of living of displaced persons;
- Promoting sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner;
- Ensuring that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of indigenous peoples;
- Establishing and maintaining an ongoing relationship based on Informed Consultation and Participation (ICP) with the indigenous peoples affected by a project throughout the project's life-cycle; and
- Providing access to justice when tenure rights are infringed upon.

TCCC commits to principles of Free, Prior and Informed Consent. Furthermore, TCCC subscribes to 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 (VGGT). These are described briefly below.

### **3. FAO Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)**

TCCC also subscribes to 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 (VGGT). The VGGT principles "seek to improve governance of tenure of land, fisheries and forests. They seek to do so for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development".<sup>72</sup> The VGGT is aimed at the state, but argues that all non-state actors (including business enterprises) have a responsibility to respect human rights and legitimate tenure rights.

The VGGT's founding principles include:

- Recognising and respecting all legitimate tenure right holders and their rights. Reasonable measures should be taken to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
- Safeguarding legitimate tenure rights against threats and infringements. Efforts should be made to protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
- Promoting and facilitating the enjoyment of legitimate tenure rights. Active measures should be taken to promote and facilitate the full realisation of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.

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<sup>72</sup> FAO.2012. Voluntary Guidelines on the Governance of Tenure. <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> [18/04/17].

- Providing access to justice to deal with infringements of legitimate tenure rights. Efforts should be made to provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights and to provide affordable and prompt enforcement of outcomes.
- Preventing tenure disputes, violent conflicts and corruption. Active measures should be taken to prevent tenure disputes from arising and from escalating into violent conflicts. Efforts should be made to prevent corruption in all forms, at all levels, and in all settings.<sup>73</sup>

#### 4. International Finance Corporation's Performance Standards

TCCC also commits to the principles in International Finance Corporation's Performance Standard 5 dealing with Land Acquisition and Involuntary Resettlement and Performance Standard 7 dealing with Indigenous Peoples.<sup>74</sup>

Performance Standard 5 deals with Land Acquisition and Involuntary Resettlement and contains the following objectives:

- To avoid, and when avoidance is not possible, minimise displacement by exploring alternative project designs.
- To avoid forced eviction.
- To anticipate and avoid, or where avoidance is not possible, minimise adverse social and economic impacts from land acquisition or restrictions on land use by (i) providing compensation for loss of assets at replacement cost and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- To improve, or restore, the livelihoods and standards of living of displaced persons.
- To improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.<sup>75</sup>

Performance Standard 7 deals with indigenous peoples. The objects are as follows: to ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of indigenous peoples.

- To anticipate and avoid adverse impacts of projects on communities of indigenous peoples, or when avoidance is not possible, to minimise and/or compensate for such impacts.
- To promote sustainable development benefits and opportunities for indigenous peoples in a culturally appropriate manner.
- To establish and maintain an ongoing relationship based on informed consultation and participation (ICP) with the indigenous peoples affected by a project throughout the project's life-cycle.
- To ensure the Free, Prior, and Informed Consent (FPIC) of the affected communities of indigenous peoples when the circumstances described in this performance standard are present.
- To respect and preserve the culture, knowledge, and practices of indigenous peoples.<sup>76</sup>

<sup>73</sup> FAO. 2012. Voluntary Guidelines on the Governance of Tenure. <http://www.fao.org/docrep/016/i3016e/i3016e.pdf> [01/11/2016].

<sup>74</sup> IFC. 2012. IFC Performance Standards.

[https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC\\_Performance\\_Standards.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES) [23/01/2017].

<sup>75</sup> IFC. 2012. IFC Performance Standards.

[https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC\\_Performance\\_Standards.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES) [23/01/2017].

<sup>76</sup> IFC. 2012. IFC Performance Standards.

[https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC\\_Performance\\_Standards.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES) [23/01/2017].

## 5. Free Prior and Informed Consent (FPIC)

TCCC subscribes to the principle of Free, Prior, Informed Consent, mentioned in the IFC's performance standards, which means that TCCC requires "consent from indigenous and/or local communities prior to actions that affect their land and resource rights".<sup>77</sup> The principle describes the four pillars of the process: 'free' means that there is no coercion or manipulation of the indigenous people when negotiating about the land; 'prior' states that no actions were started or authorised before the consultation process was started; 'informed' means that all relevant information is given to the indigenous people in an accessible way and is understood; and 'consent' is the ultimate agreement given after the other conditions have been met. This process includes discussions with developers, discussions within the community, along with advice from independent sources. It a long process and could take years to reach consensus however the process is seen as vital in ensuring ethical negotiations on land acquisition.

## 6. United Nations Declaration on the Rights of Indigenous Peoples

The following articles are relevant in this context:

*Article 3 which provides that:* Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 8 which provides that:* 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture; 2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving Indigenous people of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

*Article 10 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.<sup>78</sup>

## 7. The African Union's Guiding Principles on Large-Scale Land Based Investments in Africa (LSLBI)

The African Union's Guiding Principles on Large-Scale Land Based Investments in Africa (LSLBI) deal specifically with large-scale farming in an African context. The AU describes the principles saying, "These Guiding Principles are African-owned. They were drafted and reviewed by teams of experts on land governance and agricultural investment in Africa before being finalised based on the outcomes of a multi-pronged consultation exercise with a wide range of constituencies and stakeholders involved with land governance in the Africa region".<sup>79</sup>The Fundamental Principles are as follows:

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<sup>77</sup> Mahanty, S. and McDermott, C. 2013.

<http://www.sciencedirect.com/science/article/pii/S0264837713001294>

<sup>78</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>79</sup> African Union, African Development Bank and United Nations Economic Commission for Africa. 2014. Guiding Principles On Large Scale Land Based Investments In Africa.

[http://www.unece.org/sites/default/files/PublicationFiles/guiding\\_principles\\_eng\\_rev\\_era\\_size.pdf](http://www.unece.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf) [01/11/2016]

“1: LSLBI respect human rights of communities, contribute to the responsible governance of land and land-based resources, including respecting customary land rights and are conducted in compliance with the rule of law.

2: Decisions on LSLBI are guided by a national strategy for sustainable agricultural development, which recognises the strategic importance of African agricultural land and the role of smallholder farmers in achieving food security, poverty reduction and economic growth.

3: Decisions on LSLBI and their implementation are based on good governance, including transparency, subsidiarity, inclusiveness, prior informed participation and social acceptance of affected communities.

4: LSLBI respect the land rights of women, recognise their voice, generate meaningful opportunities for women alongside men, and do not exacerbate the marginalisation of women.

5: Decisions on the desirability and feasibility of LSLBI are made based on independent, holistic assessment of the economic, financial, social and environmental costs and benefits associated with the proposed investment, throughout the lifetime of the investment. Fundamental Principle 6: Member States uphold high standards of co-operation, collaboration and mutual accountability to ensure that LSLBI are beneficial to African economies and their people”.<sup>80</sup>

## 8. The Analytical Framework for Land-Based Investments in African Agriculture

The Analytical Framework for Land-Based Investments in African Agriculture, by the New Alliance is a framework developed for financial investors, agricultural project operators and supply chain companies investing in agricultural land in developing countries. This framework, while cautioning investors from taking on the role of government, indicates the importance of investors supporting and supplementing the activities of government. In some cases, it will be in the investors' best interests to go beyond the minimum legal requirements, as identified in the VGGT. The Framework was jointly developed by land experts from the African Union, UN Food and Agriculture Organisation (FAO), and several donor governments. The Framework contains a series of thematic recommendations contained in the FAO Guide, along with cross-references to relevant sections of the VGGT and of the LSLBI Fundamental Principles prepared by AU, ADB and UNECA; it suggests a series of questions that an investor should ask to assess whether it is following the recommendations; it suggests a series of actions that an investor must take to correct deficiencies identified by the answers to the suggested questions; and contains references to additional resources, including the operational guides developed to date by individual donors, that the investor could use to help implement the actions suggested.<sup>81</sup>

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<sup>80</sup> African Union, African Development Bank and United Nations Economic Commission for Africa. 2014. Guiding Principles On Large Scale Land Based Investments In Africa. [http://www.uneca.org/sites/default/files/PublicationFiles/guiding\\_principles\\_eng\\_rev\\_era\\_size.pdf](http://www.uneca.org/sites/default/files/PublicationFiles/guiding_principles_eng_rev_era_size.pdf) [01/11/2016]

<sup>81</sup>New Alliance. The Analytical Framework for Land-Based Investments in African Agriculture. [https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture\\_0.pdf](https://new-alliance.org/sites/default/files/resources/Analytical-framework-for-land-based-investments-in-African-agriculture_0.pdf) [01/11/2016]

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