

**THE COCA-COLA COMPANY
REVIEW OF CHILD LABOUR, FORCED LABOUR AND LAND
RIGHTS IN THE SOUTH AFRICAN 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 South Africa. The study researched the presence and risks of child labour, forced labour and land rights violations in the supply chain.¹

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 South Africa, 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 South Africa'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 South Africa

The sugar industry in South Africa stretches across two provinces in the country, namely KwaZulu-Natal, and Mpumalanga. The sugarcane produced in the coastal regions of KwaZulu-Natal is predominantly rain-fed while the sugarcane production in Mpumalanga is irrigated. Almost all sugarcane is manually harvested.

The industry is grouped into growers and millers. The sugar industry is comprised of three major companies, namely Illovo Sugar (South Africa) Ltd, Tongaat Hulett Ltd and RCL Foods Ltd as well as a number of smaller producers. In South Africa, sugarcane farming has a total area usage of 391,483 ha. There are a total of 29,130 cane growers, of which 1,550 are commercial growers and 27,580 are developing farmers. In total, these farms produce 19.9 million tons of cane a year.

Since 2014, South Africa has experienced one of the worst droughts in its recorded history, with the majority of the country now declared a disaster zone due to the low rainfall. The drought in South Africa has had a large impact on the sugar industry, particularly KwaZulu-Natal's sugarcane production because the province's sugarcane is rain-fed. Irrigated land in the Mpumalanga region will also suffer from the drought. SASA (South African Sugar Association) estimates that there has been a 28% reduction in sugarcane produced in the 2015/2016 season.

¹ Definitions drawn from the International Labour Organization and the Institute for Human Rights and Business.

Overview of findings:

Child Labour

The South African Children's Act 38 of 2005 defines 'child labour' as work by a child which is "exploitative, hazardous or otherwise inappropriate for a person of that age; and places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development". Furthermore, the Act incorporates the Hague Convention on Human Trafficking. Statistics SA published the third Survey of Activity of Young People (SAYP) in 2015. The publication includes child labour statistics, however criminal enforcement data is not made publically available by the South African government. The total number of children involved in child labour decreased from 779,000 in 2010 to 577,000 in 2015. Geographically, children in non-urban areas were more likely to be involved in child labour compared to those in urban areas. The evidence of child labour specifically in sugar harvesting in South Africa is limited and/or the extent of the problem is unknown.

In 2001, incidents of child labour were found on 15 farms in Mpumalanga's Onderberg region, as a result of a raid carried out by the Department of Labour. Since then, no evidence of child labour has emerged on sugarcane farms.

There were no incidences of child labour reported by the stakeholders interviewed or observed by the researchers. 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. All the farms interviewed during this research require the presentation of identity books in the hiring process, and this was confirmed in interviews with farm workers.

Large-scale and medium-scale farms are frequently audited by the Department of Labour to ensure that there is no child labour (or forced labour). Based on the findings of this study, there is no apparent risk of child labour on large, medium or small-scale farms in South Africa. Several small-scale growers with plots of 5-10ha each were visited and all the growers interviewed were elderly women and men. They all stated that the next generation are not interested in farming. Another stakeholder argued that because South Africa has a high level of unemployment, children are less likely to be offered work before adults if there is any work available.

On smaller farms, it is possible that children assist their parents during school holidays; this coincides with the off-season and there are only a few small non-hazardous jobs to offer them. These types of work that occur, particularly on smaller farms, do not meet the criteria of depriving them of their childhood, their potential and their dignity. If the work is minimal, as stated, it seems unlikely that is harmful to their physical and mental development.

Forced Labour

There were two incidences of indentured labour reported as part of this research. This goes against South African labour law and practises. In terms of legislation, South Africa subscribes to the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work and its follow-up. It has also incorporated the ILO recommendations into South Africa legislation and further subscribes to the ILO call for 'Decent Work'.

Since 1994, a strong labour movement has developed in South Africa, which is underpinned by numerous laws and regulations. Trade unions, such as the Food and Allied Workers Union (FAWU), have been successful in mobilising smaller unions, and demanding wage increases and other employee benefits for labour in the South African sugar industry.

There were two cases of identity documents being withheld by farm management. Both instances have since been addressed and resolved. One independent private farmer in the Eston region of KwaZulu-Natal admitted to collecting workers from the Transkei at his own cost and keeping the identity documents of these workers for three months. He said that he did this to ensure that the cost of collecting the workers was repaid in working days at his farm and that they did not abscond without repaying their debt. When the matter was addressed by the local mill management, the farmer came

to understand that this practice is wrong and prohibited, and he gave the general manager personal assurance that this would not happen again in the future.

Another independent private farmer in the North Coast region of KwaZulu-Natal admitted to holding onto the identity documents of his new employees for one week to ensure that they did not leave within a few days of receiving free protective equipment and tools required to work on his farm. There were no other examples whereby ID books or passports were kept from workers. When the matter was addressed by the local mill management, the farmer was extremely apologetic, and immediately changed the farm's procedures for issuing personal protective equipment – new employees would present their identity documents for photocopying and the documents would be returned immediately to the workers. The Gledhow management highlighted that the grower plays a leading role in partnering with communities and especially land reform beneficiaries in his area of operation as his contribution to overall social responsibility. In both incidences, the farmers were unaware that their actions constituted forced labour. These issues have been successfully resolved.

The Department of Labour is known to be very active in the sugarcane industry; employment contracts, payslips, working and living conditions are checked regularly. All mill and farm workers interviewed did not pay fees to a third party, or otherwise, when they applied for employment.

Subcontracting labour for cane cutting in particular is a common strategy to externalise labour. The majority of cane cutters employed in the South African sugar industry are also migrant workers: many are isiXhosa speaking from Transkei (South Africa), Sotho speaking from Matatiele (South Africa) and Lesotho, Shangan speaking from Mozambique, and a few workers come from Zimbabwe and Malawi. One stakeholder stated that if there were to be labour rights violations, it was most likely to be in this group as they are the most vulnerable, although she is unaware of any examples of this in the sugarcane industry. No incidences of forced labour were identified among the cane cutters interviewed, but it is not known whether subcontractors are regularly inspected or audited by the Department of Labour.

The majority of management and workers on small- to medium-scale farms did not see much value in existing union representation, which they attribute to infrequent visits by union representative to the farms where they work. All management and workers interviewed were satisfied with the existing channels of communication and grievance processes. Cane cutters in particular prefer to down tools or sit down on the job until their grievance is addressed. Unionised mills and farms participate in annual wage negotiations via a bargaining council and have successfully negotiated for wage increases for their members.

Land Rights

There were no incidences of 'land grabbing' or unlawful expropriation of land. All beneficiaries of land claims and new freehold title farmers interviewed during fieldwork in South Africa confirmed that the land had been acquired following the appropriate land reform policies and procedures. Likewise, all commercial sugarcane farms visited during fieldwork, were acquired legally according to historic and current South African laws and held the appropriate title deeds or lease agreements.

There are complicated land reform and redistribution processes with multiple objectives in South Africa. The Restitution of Land Rights Act was passed in 1994 in order to redress the previous discrimination against Black, Indian and Coloured South Africans during apartheid. The goal of the Act was to offer a solution to people who had lost their land as a result of racially discriminatory practices such as forced removals. Currently, there are two processes for land in South Africa to be redistributed to previously disadvantaged people: land restitution and land reform. In line with these policies, large commercial growers and milling companies in the sugar industry support small-scale farmers in communal areas managed by traditional authorities as well as beneficiaries of the land reform programmes through extension services. The small-scale cane growers and black emerging farmers interviewed were highly appreciative of these services.

The sugar industry is leading the redistribution of agricultural land in South Africa. According to the Cane Growers Annual report 2015, 22% of the industry's freehold agricultural land under cane (74,624 hectares) has been successfully transferred from white farmers to black farmers through the

land reform programme. 124,000 hectares of freehold land in the sugar industry was still under land claims at the end of the 2014/15 season. Resolving and settling these land claims is important for tenure security and continued investment and productivity. Furthermore the main milling companies also demonstrated commitment to the principle of Free, Prior, and Informed Consent (FPIC) through internationally recognised platforms such as SUSFARMS, THRIVE, Bonsucro, ProTerra and the UN Global Compact.

The Communal Land Rights Act and other relevant laws also protect the land rights of people living on communal land, and require traditional authorities to obtain free prior and informed consent from all affected parties before entering into any land use change or lease agreements. The National Water Act also protects the rights to water of private and communal landowners. In the last 20 years, there were no instances where communities occupying communal land have been displaced by commercial sugar farming operations.

INTRODUCTION

The Coca-Cola Company (TCCC or the company) is committed to both protecting the land rights of farmers and communities in the world's top sugarcane-producing regions, and addressing child and forced labour issues in the countries associated with 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 into the prevalence of forced labour and child labour in the sugar sector in South Africa, 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 also the broader context of the sugar industry in South Africa in order to ensure TCCC is upholding the principles and conforming to the 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 Organization, 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. These rights 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 South Africa, 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.² These standards and guidelines are briefly explained in the appendix.

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 Labour's List of Goods Produced with Child Labour or Forced Labour.

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.

² 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, and on-site interviews by a team of independent researchers and on-site documentation review.

<p>Review of Relevant Literature</p>	<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>
<p>Stakeholder Interviews</p>	<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"> • Sugarcane growers and processors • Local and international research organisations • Local and international NGOs • Human rights organisations • Government officials <p>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>
<p>On-site Interviews and Observations</p>	<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> <ul style="list-style-type: none"> • Sugar mill management • Small to medium sugar farm owners or management • Large sugar farms owners or management • Sugar farm and mill workers • Adjacent property owners • Government officials • Community members <p>Specifically, on-site interviews focused on the following:</p> <p>Child Labour:</p> <ul style="list-style-type: none"> • Workers were asked whether they have seen or knew of any children working on the farm or mill and whether this would be possible. • 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. • Official mill and farm policy documents were checked to ensure a written commitment against child labour in the supply chain. <p>Forced Labour:</p> <ul style="list-style-type: none"> • 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, isiZulu, 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.

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 South Africa, the following on-site interviews were conducted:

- Sugar mill management
 - Illovo (Sezela, Eston, Noodsberg and Gledhow Mills)
 - Tongaat Hulett (Maidstone, Darnall, Amatikulu, and Felixton Mills)
 - RCL (Malelane, Pongola and Komati Mills)
- Miller-cum-planter (MCP) farm owners or management
 - 2 MCP farms supplying Illovo
 - 1 MCP farm supplying Tongaat Hulett mills
 - 1 MCP farm supplying RCL mills
- Large sugar farm owners or management
 - 9 private farms supplying Illovo Mills
 - 2 JV farms supplying RCL mills
- Medium sugar farm owners or management
 - 7 private, new freehold or beneficiary farms supplying Illovo mills
 - 1 new freehold farm supplying Tongaat Hulett mills
- Small scale farming co-operatives (members or management)
 - 3 SSG farms supplying Illovo mills
 - 3 SSG farms supplying RCL mills
 - 1 SSG farm supplying Tongaat Hulett mills
- Sugar farm and mill workers
 - 131 farm workers
 - 421 mill workers
- Union representatives (shop-stewards)
 - 9 mill or farm shop-stewards representing 3 unions
- Community members:
 - Primary School Principal in Sezela
 - Social Club Chairperson in Eston

In total, 11 mills and 30 farms were visited, and 561 workers in South Africa were interviewed. These on-site interviews are complemented with stakeholder interviews conducted telephonically as well as previous TCCC SGP audit assessment reports conducted by Partner Africa.

A variety of stakeholders were identified and contacted to ensure that broad input and valuable insight was gained. The organisations included:

Non-government organisations:

- SA Sugar Association (SASA)
- The Salvation Army
- The Open Door
- Land Access Movement of South Africa (LAMOSA)
- Fairtrade Foundation
- WWF
- The Solidarity Center
- International Labour Organization
- Oxfam (OZA)
- RAPCAN (child rights)
- Molo Songololo (child rights)
- PLAAS
- SUSFARMS

International organisations:

- Agri IQ
- TechnoServe

Governmental departments:

- Department of Rural Development and Land Reform (DRDLR)
- Department of Agriculture, Forestry and Fisheries (DAFF)

- Department of Labour

Other

- Congress of Traditional leaders in SA
- SA Sugar Research Institute (SASRI)
- Cedara - KZN DARD
- Sugar Milling Research Institute (SMRI)
- Shukela Training Centre
- Lotar Schulz

OVERVIEW OF SOUTH AFRICA'S SUGAR INDUSTRY

The sugar industry in South Africa stretches across three provinces in the country, namely KwaZulu-Natal, with substantial operations in Mpumalanga.³ The industry is grouped into growers and millers. Unlike the integrated model of production where cane production and milling are organised within a single estate, sugar production in South Africa was founded upon competing capital interests: growers and millers. Still to this day, millers compete with independent sugarcane growers or planters for a share of the market profits.⁴⁵ The South African Sugar Association (SASA) is funded by a small levy on all sugarcane produced and serves the interests of both millers and planters, providing research, training and advocacy work.

History of Sugar Production in South Africa

The first sugar plantations in South Africa were established along the east coast in the early 1800s. Farms in Zululand, Natal, were made available to white settlers and indentured Indian labourers were brought to work on the sugar plantations. Post-war investments extending to Malelane and Pongola were intended to offer war veterans opportunities to earn livelihoods. These areas needed irrigation, and relied on government subsidies for irrigation infrastructure.

In the 1960s due to favourable international sugar prices, the sugarcane milling and production capacity expanded across Southern Africa and the industry launched the 'Financial Aid Fund'. This revolving credit scheme was offered to black South Africans in the former Bantustan areas (today these areas are under tribal authority). The milling companies also benefited from promoting small-scale sugar production via subsidiary 'development companies'. They were able "to leverage government funding (via Bantustan agricultural development agencies) and also to claim their own 'development company' expenditures as costs to be accounted in the Division of Proceeds – effectively at the expense of the white planters".⁶

During apartheid, South Africa's (almost exclusively) white commercial farmers benefited from direct and indirect subsidies, state-controlled marketing boards with floor prices and pan-territorial pricing, cheap credit and tax breaks. However, due to low international sugar prices in the 1980s, the industry experienced sharp increases in the prices of key farming inputs, particularly diesel and electricity followed by the rapid liberalisation of trade in agricultural produces in the 1990s. Basic labour rights for farm workers were also first introduced in the 1990s and as apartheid was officially dismantled, the Restitution of Land Rights Act, 22 of 1994 was promulgated. This Act provided the means for affected parties (former black occupiers of the land) to place historical land claims to large areas of commercial farmland. In response to these pressures, Dubb et al. (2016) explain that many of South Africa's white farmers have chosen to either exit farming (selling their land and starting new careers), diversify into up- and downstream activities as well as non-agricultural services, or move out of South Africa to elsewhere on the continent.⁷

Planters or Sugarcane Growers

The following statistics describe the industry as a whole:

- Total area: 391 483 Ha,
- Total cane growers: 29 130
 - Commercial growers: 1 550
 - Developing farmers: 27 580
- Total production: 19.9 million tons
- Small scale: 8.59% of the total.
- Sugar estates: 6.72% of the total
- Foreign earnings: R6 billion.

³ <http://www.sasa.org.za/HomePage1.aspx> Accessed 28 November 2016

⁴ The Sugar Act of 1936 made provisions for the 'Division of Proceeds', which allocated the national sugar revenue according to average costs incurred by miller and planter sections.

⁵ Dubb et al. (2016)

⁶ Dubb et al. (2016)

⁷ Hall (2011)

- Direct & indirect jobs: 350 000⁸

According to 2010 figures, there were 33,742 small-scale cane growers and only 1,577 large-scale cane growers in South Africa.⁹ Small-scale cane growers produce approximately 9.4% of total sugar production¹⁰, while large-scale cane growers supply the rest.

In 2015, Fairtrade South Africa capacitated 230 KwaZulu-Natal small-scale sugar farmers to become Fairtrade certified. The individual small-scale farmers have collectively formed two co-operatives: Sakh'okuhle Farmers Primary Co-operative Limited and Inzwakhele Trading Enterprise Primary Co-operative Limited, and together they are expected to initially produce in excess of 1,000 metric tons of Fairtrade sugar per annum.¹¹

In South Africa, millers support outgrower schemes with independent growers and small-scale growers to foster sustainable local indigenous farming. Illovo reportedly purchased 218 666 tons of sugarcane from certified Fairtrade growers in the 2014/15 season.¹²

Most sugarcane is produced within 40-50 km of a mill because of the high costs of transport and the quick speed with which cane's sucrose content degrades over time.¹³ Therefore the further the harvest is from the mill, the less valuable and profitable it is to produce. In South Africa, growers are largely responsible for transporting harvested sugarcane to the mill. However, some mills, such as Illovo, subsidise the cost of transport in the form of supplementary payments to outgrowers located more than 50-60 km from Illovo's mills.¹⁴

Milling companies

The Sugar Industry is comprised of three major companies, namely Illovo Sugar (South Africa) Ltd, Tongaat Hulett Ltd and RCL Foods Ltd as well as a number of smaller producers. The table below describes all milling and refining companies operating in South Africa; they collectively produce approximately 19.9 million tons per year. In 2016, Coca-Cola sourced sugar produced by Gledhow, Noodsberg, Malelane mills and Rosburgh refinery, which receives brown sugar from Maidstone, Darnall, Amatikulu and Felixton mills).

Table 1 Sugar Milling and Refining companies in South Africa¹⁵

<p>Illovo Sugar Limited</p> <ul style="list-style-type: none"> – Umzimkulu (0.85mil tons crushed) – Eston (1.12mil tons crushed) – Noodsberg (1.32mil tons crushed) – Sezela (1.75mil tons crushed) 	<p>Illovo Sugar presently operates four sugar mills in South Africa, one of which has a refinery and two of which have packaging plants. It has three cane growing estates and, in addition to producing specialty sugars and syrup, also produces a variety of high-value downstream products.</p>
<p>Tongaat Hulett Sugar Limited South Africa.</p> <ul style="list-style-type: none"> – Darnall (0.86 mil tons crushed) – Amatikulu (1.0mil tons crushed) – Maidstone (0.84mil tons crushed) – Felixton (1.87mil tons crushed) 	<p>Tongaat Hulett Sugar Limited operates four sugar mills in South Africa, two of which have packaging plants, a central refinery in Durban which has its own packaging plant, various sugar estates and an animal feed operation.</p>

⁸ DAFF 2012

⁹ Connigarth, 2013

¹⁰ SA Cane Growers' Association Annual Report 2014/15 for the Board of Directors

¹¹ <http://www.fairtrade.org.za/news/entry/fairtrade-sugar-launched-in-south-africa> Accessed 1 August 2016.

¹² Illovo Socio-Economic Impact Report 2015/2016

¹³ Connigarth, 2013

¹⁴ Illovo Socio-Economic Impact Report 2015/2016

¹⁵ Connigarth, 2013

RCL Foods (prev. TSB Sugar RSA Ltd) – Pongola (1.3mil tons cane delivered) – Komati (2.23mil tons crushed) – Malelane (1.74mil tons crushed)	RCL Foods operates three sugar mills, two of which have refineries, a packaging plant, sugar estates, cane and sugar transport and an animal feed division.
Gledhow Sugar Company (PTY) Ltd. – Gledhow Mill (1.25mil tons crushed)	On 10 September 2009, Gledhow came into being. The company ownership is comprised of supplying growers with 25.1% equity; a long established miller (Illovo Sugar Ltd) with 30.0% equity; a paper manufacturer (Sappi Ltd) with 10% equity, and a BEE partner (The Sokhela Family Trust) with 34.9% equity. The mill has a 35 ton per hour refinery.
UCL Company Ltd (0.83mil tons)	UCL operates a sugar mill, a wattle extract factory, two saw mills, a number of mixed farms and a trading division.
Umfolozi Sugar Mill (Pty) Limited – Umfolozi (1.1mil tons crushed)	The Umfolozi Mill is owned by a group of four investors comprising a large cane growing company, the largest cane grower in northern KwaZulu-Natal, an unlisted public company whose shareholders grow sugarcane, and an alcohol producing company (NCP Alcohols).

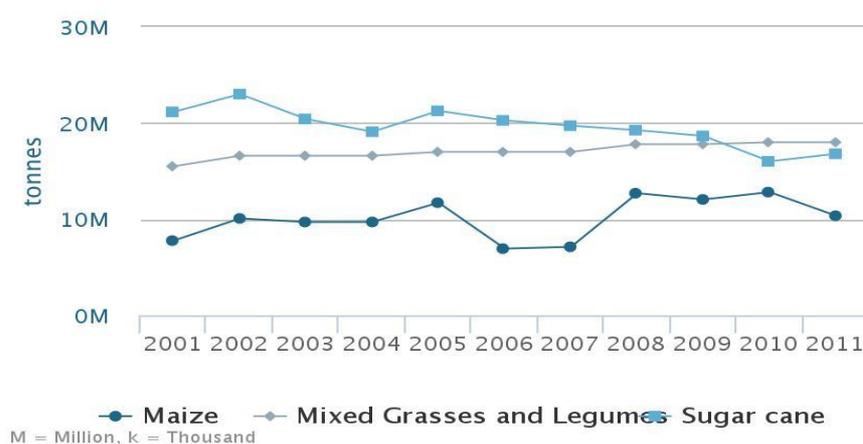
Note: The volumes of cane crushed per mill were recorded in the 2014/15 season.¹⁶

Domestic and Export markets:

South Africa is a member of two regional organisations, the Southern African Customs Union (SACU) and the Southern African Development Community (SADC). These organisations apply relevant trade regulations upon the sugar industry.¹⁷ Due to volatile global sugar prices, the Sugar Act of 1978 (as amended) and the Sugar Industry Agreement (SIA 2000) also regulate the sugar import tariff, a central export mechanism and a local market proceeds-sharing agreement between millers and growers.

South Africa's total sugar production has steadily decreased from over 20 million tons in 2001 to less than 19 million tons in 2011 due to decreased demand globally, as can be seen in Figure 1 below.

Figure 1 Total Sugar Production in South Africa compared to Maize and Mixed Grasses and Legumes from 2001 – 2011, Source FOA¹⁸



The table below shows that South Africa remains a net exporter of raw and refined sugar, although this fluctuates significantly due to volatile sugar prices in the global market.

¹⁶ SA Cane Growers' Association Annual Report 2014/15 for the Board of Directors

¹⁷ Connigarth, 2013.

¹⁸ <http://faostat3.fao.org/browse/area/202/E> Accessed 4 August 2014

Table 2 Total Import/Export of Sugar in South Africa (ton)¹⁹

	2012/2013	2013/2014	2014/2015
Export of Raw Sugar	126992	527785	408343
Export of Refined Sugar	213774	318170	340528
Import of Raw Sugar	43116	207795	352179
Import of Refined Sugar	163965	365399	143690
Net export of Raw Sugar	83876	319990	56164
Net export of Refined Sugar	49809	-47229	196838

The drought in 2015/2016 has had a devastating impact upon the sugar industry. Government declared eight provinces, including KwaZulu-Natal, disaster areas due to insufficient rainfall.²⁰ Sugar production was already well below normal levels in 2015 and it was projected to remain at similar levels for the second consecutive year in 2016, representing a 28% reduction from the normal harvest in 2014.²¹ The coastal region depends on rainfall, while the Mpumalanga region needs to irrigate. Illovo closed the Umzimkulu mill for the 2015-2016 season, citing the drought as a primary contributor to the low sugarcane production.²² Tongaat Hulett Sugar did not open the Darnall mill in the 2015/16 season for the same reason, citing a total operating loss of R5 million as a result of substantially low production volumes.²³ The Department of Water and Sanitation stated that it will take 2-3 years for the country to recover from the drought conditions.²⁴

SASA (South African Sugar Association) has predicted that there will be a total of 14 936 159 tons produced in the 2016/2017 season, with a saleable sugar production of 1 602 140.²⁵

Legislation

A number of pieces of legislation have important bearing on the South African Sugar industry, namely the:

- Constitution of South Africa, 108 of 1996
- Sugar Act, 9 of 1978 (with Amendments dated: March 1984, September 1987, June 1992)
- National Water Act of 1998
- Labour Relations Act, 66 of 1995
- Basic Conditions of Employment Act
- Children's Act 38 of 2005
- Employment Equity Act 55 of 1995 (including Sectoral Determination 13 for the Farmworker Sector)
- Occupational Health and Safety Act of 1993
- Restitution of Land Rights Act 22 of 1994 (including all subsequent Amendments)
- Restitution of Land Rights Amendment Act of 2014
- Communal Land Rights Act of 2004
- Ingonyama Trust Act of 1994
- Extension of Security of Tenure Act (1997)
- Interim Protection of Informal Land Rights Act of 2006
- Customary law
- Commercial law

¹⁹ Sugar Annual 2016: *The supply and demand of sugar in South Africa*

²⁰ <http://www.sabc.co.za/news/a/474c21804ef80667a3c6bb6fac0ce3bc-20161411>

²¹ http://www.bfap.co.za/documents/research%20reports/BFAP_Drought%20Policy%20Brief_5%20February%202016.pdf Accessed 28 November 2016

²² <http://www.iol.co.za/business/companies/drought-closes-kzn-sugar-mill-1806304>

²³ <http://www.tongaat.co.za/gr/sustain.asp> Accessed 8 January 2017

²⁴ <http://www.sabc.co.za/news/a/474c21804ef80667a3c6bb6fac0ce3bc-20161411>

²⁵ http://www.sasa.org.za/sugar_industry/FactsandFigures.aspx Accessed 28 November 2016

The Sustainability Initiative of South Africa (SIZA) lists the following ILO Conventions ratified by South Africa, and thereby incorporated into South African legislation relating to the sugar industry:

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up:

- C87, Freedom of Association and Protection of the Right to Organise Convention, 1948
- C98, Right to Organise and Collective Bargaining Convention, 1949
- C29, Forced Labour Convention, 1930
- C105, Abolition of Forced Labour Convention, 1957
- C138, Minimum Age Convention, 1973
- C182, Worst Forms of Child Labour Convention, 1999
- C100, Equal Remuneration Convention, 1951
- C111, Discrimination (Employment and Occupation) Convention, 1958
- C95, Protection of Wages Convention, 1949
- C131, Minimum Wage Fixing Convention, 1970
- C135, Workers' Representatives Convention, 1971
- C155, Occupational Safety and Health Convention, 1981
- C161, Occupational Health Services Convention, 1985

The following ILO Recommendations are also incorporated into South Africa legislation:

- R85, Protection of Wages Recommendation, 1949
- R116, Reduction of Hours of Work Recommendation, 1962
- R135, Minimum Wage Fixing Recommendation, 1970
- R164, Occupational Safety and Health Recommendation, 1981
- R190, Worst Forms of Child Labour Convention Recommendation, 1999

South Africa further subscribes to the ILO call for Decent Work.

CHILD LABOUR, FORCED LABOUR AND LAND RIGHTS IN SOUTH AFRICA

Child Labour in South Africa

The South African Children's Act 38 of 2005 defines 'child labour' as work by a child which is "exploitative, hazardous or otherwise inappropriate for a person of that age; and places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development". Furthermore, the Act incorporates the Hague Convention on Human Trafficking.²⁶

Although South Africa has ratified and integrated all ILO Conventions listed above relating to anti-child labour practices into national legislation, South Africa is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. South Africans constitute the largest number of victims within the country.²⁷

South African children are also recruited from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein, where girls are subjected to sex trafficking and domestic servitude, and boys are forced to work in street vending, food service, begging, criminal activities, and agriculture. Large numbers of children, including those with disabilities, are exploited in forced begging. The tradition of *ukuthwala*, the forced marriage of girls as young as 12 to adult men, is practiced in some remote villages in Eastern and Western Cape provinces, leaving these girls vulnerable to forced labour and sex slavery.²⁸

Reports indicate that orphaned children in South Africa are especially vulnerable to human trafficking.²⁹ It is widely recognised that addressing the social and economic conditions, which give rise to child labour, are crucial to eliminating child labour practises. A number of social welfare grants (such as the child support grant) and access to education at 'no fee schools' are provided by the South African government as a means to prevent child labour. However, birth certificates are required to qualify for these services, including education, yet more than 20% of babies are not registered by their first birthday.³⁰ These circumstances leave children at risk for being forced into child labour as a means to survive.

There was an incident, in 2001, of child labour occurring on 15 farms in Mpumalanga's Onderberg region. Inspectors from the Department of Labour found that children as young as six were forced to work on the citrus and sugar plantations of Mpumalanga, earning as little as R2.08 per day. Many of these children were from impoverished areas of Mozambique and were living in South Africa illegally.³¹ The Department of Labour charged one farmer, and all 15 were issued with notices, warning them to comply with the Basic Conditions of Employment Act or they would face criminal charges.³²

Statistics SA published the third Survey of Activity of Young People (SAYP) in 2015. The publication includes child labour statistics, however criminal enforcement data is not made publically available by the South African government³³. The total number of children involved in child labour decreased from 779,000 in 2010 to 577,000 in 2015. This is shown in the table below.

²⁶ Lois Law, 2006.

²⁷ 2015 Trafficking in Persons Report

²⁸ 2015 Trafficking in Persons Report

²⁹ 2014 Report on Child Labor in South Africa

³⁰ 2014 Report on Child Labor in South Africa

³¹ Lois Law, 2006.

³² African Eye News Service (AENS) 26 May 2001 cited by Molo Songololo

<http://www.molosongololo.com/wp-content/uploads/2015/07/Trafficking-in-children-in-the-Western-Cape-Province.pdf> Accessed 28 November 2016

³³ 2014 Report on Child Labor in South Africa

Table 3 Child Labour Composite Indicators from StatsSA SAYP 2015

Child Labour composite indicators	2010	2015	Changes (2015 – 2010)
	Thousand		
Where a child appears to be doing work prohibited by Basic Conditions of Employment Act (BCEA)	112	81	-41
Where a child appears to have worked long hours on all types of work combined	417	349	-68
Where a child was doing 'market activities' that interfered with schooling	11	1	-10
Where a child appeared to be absent from school or experienced difficulties at school because of work related activities	35	4	-31
Where a child was doing hazardous work	291	203	-88
Overall (where a child is implicated by at least one of the indicators above)	779	577	-202

The SAYP 2015 also states that geographically, children in non-urban areas were more likely to be involved in child labour compared to those in urban areas³⁴. The evidence of child labour specifically in sugar harvesting in South Africa is limited and/or the extent of the problem is unknown.³⁵

Forced Labour in South Africa

Forced labour in South Africa is prevalent in sex trafficking industries in urban cities. Forced labour apparently occurs in the agricultural sector although limited evidence is available.³⁶ The South African government has investigated but failed to prosecute the suspected Nigerian, Thai, Chinese, Russian or Bulgarian syndicates of traffickers who dominate the sex trade in several South African cities.

Since 1994, a strong labour movement has developed in South Africa, which is underpinned by the following legislation:

- Labour Relations Act 66 of 1995, Chapters 1, 2 and 3
- Employment Equity Act 55 of 1995
- Sectoral Determination 13 for the Farmworker Sector
- Basic Conditions of Employment Act, 75 of 1997, Chapter 6
- Occupational Health and Safety Act of 1993 and the following regulations: General Safety Regulations 1031; Facilities Regulations 1593; Hazardous Chemical Substances Regulations 1179; OHS Asbestos Regulations 155
- Constitution of South Africa, 108 of 1996

Trade unions such as the Food and Allied Workers Union (FAWU) have been successful in mobilising smaller unions, and demanding wage increases and other employee benefits for labour in the South African sugar industry. In 2014, FAWU successfully demanded an 11% wage increment and a higher housing allowance, among other demands.³⁷ In 2016, FAWU demanded a further 9.5% wage increase and permanent positions of employment among other things.³⁸ A 6.5% wage increase was negotiated in light of the impact of the drought and the parties agreed to a “terms of reference” regarding outstanding issues: a reduction of the working hours without income loss, housing arrangements, fixed term contracts (FTC) and transportation.³⁹

³⁴ 2015 Survey of Activities of Young People, StatsSA

³⁵ 2014 Report on Child Labor in South Africa

³⁶ 2015 Trafficking in Persons Report

³⁷ <http://af.reuters.com/article/southAfricaNews/idAFL6N0OC30A20140526>

³⁸ <http://www.fawu.org.za/show.php?ID=594&categ=Press%20Room>

³⁹ <http://www.iuf.org/sugarworkers/south-africa-wage-agreement-reached-sugar-bargaining-council/>

Land Rights in South Africa

South Africa's land rights history is a contentious one. As a result of apartheid, legislation was passed that discriminated against Black, Indian and Coloured South Africans. This legislation included the Native Trust and Land Act, Natives (Urban Areas) Act, Trading and Occupation of Land Restriction Act and the Pegging Act.⁴⁰ With the end of apartheid and beginning of democracy in 1994, the Restitution of Land Rights Act (No. 22 of 1994) was passed; its goal was to offer a solution to people who had lost their land as a result of racially discriminatory practices such as forced removals and included people who were resettled in Bantustans (territories put aside by the apartheid government for black South Africans) and put under the authority of traditional leaders.

Essentially there are two main processes for land in South Africa to be redistributed to previously disadvantaged people:

1. **Land restitution:** This involves submitting a claim on a specific piece of land. The claim can be settled in or outside of court. Successful claimants are awarded title deeds to the land. Claimants can be individuals but they are usually families and are often large communities. Beneficiaries are expected to commercially farm the land and there are restrictions upon the resale, leasing and residential settlement or alternative property development of the land.
2. **Land reform:** Farm owners are able to sell their land to the government at an agreed market price. This land is then owned by the government and leased to individuals or cooperatives that intend to commercially farm the land. These cooperatives are usually groups of people who submitted a claim, although a court resolution was never reached. There are usually land use restrictions in the lease agreement to ensure that the land is farmed and not settled upon. There are also restrictions upon sub-letting the land to other commercial farmers.

Both these processes are underpinned by the willing-buyer, willing-seller principle. This principle ensures that private land is purchased from the current property owner at an acceptable market value according to general property law. The land reform policy was intentionally developed to redistribute land more equitably but also to assure economic stability and the maintenance of national productive capacities and food security according to the Department of Agriculture. However there is strong criticism of this market-led approach, arguing that it takes too long. At the Land Summit in 2004, there was intense disagreement on the best model for land reform given its slow pace, and only a minority (including the World Bank, the South African government, some tribal leaders and commercial farmers) supported the market-led approach of willing-buyer, willing-seller. In Anseeuw and Alden's (2011) review of land reform politics in South Africa, they observe that despite the fears of white farmers and the discontent of South Africa's rural poor and urbanised unemployed, the land reform process has continued at a very slow pace based on the willing-buyer, willing-seller market-led approach and Zimbabwean-style expropriation has not been adopted.⁴¹

Originally, communities and individuals were entitled to lodge land claims until 31 December 1998. However when the Restitution of Land Rights Amendment Act was passed in June 2014, the claims lodgement period was reopened on 1 July 2014 and the cut-off date for claims to be submitted has been extended from 31 December 1998 to 31 December 2018. However, concerns about the Act remain. Disputes around historical authority and how to determine original and rightful occupancy are difficult and there are overlapping claims by different royal houses. Furthermore, "land reform advocates have been sceptical and have questioned whether the new claims window is for the benefit of communities — or for traditional leaders such as Zulu King Goodwill Zwelithini". Land rights researchers Nomboniso Gasa and Nolundi Luwaya suspect that the new act was passed purely to placate traditional leaders and they argue that the amended act offers virtually nothing new to communities either by way of budget or administrative mechanisms to expedite claims.⁴²

⁴⁰ <http://www.sahistory.org.za/topic/land-act-dispossession-segregation-and-restitution> Accessed 28 November 2016

⁴¹ Anseeuw and Alden 2011

⁴² <http://www.customcontested.co.za/new-land-restitution-process-set-messy/>

However, in May 2016, parliament passed the Expropriation Bill, which, if enacted, would establish the office of valuer-general and provide scope for the government to determine “just and equitable” compensation for compulsory purchases of land. Under the willing-buyer, willing-seller approach, the government relied only on the market value to determine the rand value paid to landowners. The proposed Expropriation Bill enables the state to determine the rand amount based on “market value”, the “history of the acquisition”, “the current use of the property”, and “the purpose of expropriation”.⁴³ If enacted, land-owners will be permitted to appeal the determined value in court. The legislation could expedite the acquisition and redistribution of land that is subject to historical claims.⁴⁴

There has been much criticism of the land reform policies and who really benefits from them – it is argued that the majority of rural South Africans do not benefit from the current land reform process.⁴⁵ Furthermore, many of the redistributed farms are no longer productive due to insufficient support mechanisms and capacity building. The Land Redistribution for Agricultural Development (LRAD) programme was officially launched in August 2001. It replaced the previous policy (Settlement/Land Acquisition Grant) in an effort to make the land claims procedure more user-friendly, and to tap into improved structures for inter-departmental cooperation and to foster public/ private partnerships.⁴⁶ The programme has focussed on progressive farming sectors such as the sugar and timber industries with less attention to rural non-farm groups or food safety projects.

The sugar industry is leading the redistribution of agricultural land in South Africa. According to the Cane Growers Annual report 2015, 74,624 hectares of land has been successfully transferred from white farmers to black farmers through the land reform programme. This figure represents about 22% of the industry's freehold agricultural land under cane. However, 124,000 hectares of freehold land in the sugar industry was still under claim at the end of the 2014/15 season.⁴⁷ Resolving and settling these land claims is important for tenure security and continued investment and productivity.

Despite industry-led and government-led initiatives to support beneficiaries of land reform programmes, many farms have failed to remain economically viable and productive. According to some reports, up to 90% of land distributed to black farmers across South Africa since 1994 is no longer productive.⁴⁸ However due to the investment in outgrower programmes by mills, redistributed land in Illovo's supply chain for example, tends to achieve around 94% of its potential, which is in marked contrast to the average performance of redistributed land nationally.⁴⁹

The Proactive Land Acquisition Strategy (2006), which was subsequently replaced by the Recapitalisation and Development Policy Programme in 2014, was designed to re-establish the productivity of redistributed farms. The programme promotes sustainable production based on capacity building prior to transfer through incubators, mentorships and other accelerated forms of training, as well as enhancing opportunities for commercial farmers and organised industry to contribute through mentorship, training, commodity chain integration and preferential procurement. It is the intention of the policy that black emerging farmers are deliberately ushered into the agricultural value chain as quickly as possible. These programmes are criticised for not sufficiently addressing agrarian reform by favouring large commercial farming methods, as well as inadequately addressing rural development.⁵⁰

In addition to land reform policies designed to rectify the injustices of the past, South African legislation upholds the principle of free, prior and informed consent (FPIC) in the Communal Land Rights Act of 2004 and the Interim Protection of Informal Land Rights Act of 2006. This Act requires that communal land cannot be disposed without a decision in terms of its customary law and the consent of a general meeting of affected community members. In such land and property matters, the

⁴³ <http://mg.co.za/article/2016-05-26-parliament-approves-land-expropriation-bill>

⁴⁴ Branson 2016

⁴⁵ Branson 2016

⁴⁶ Cross and Hornby 2002.

⁴⁷ SA Cane Growers' Association Annual Report 2014/15 for the Board of Directors

⁴⁸ Iob, E 2012 <https://www.voanews.com/a/black-farmers-in-south-africa-still-struggling-with-land-reform/1535152.html>

⁴⁹ Illovo 2014 Socio-Economic Impact in South Africa

⁵⁰ Branson 2016

South African constitution insists on the recognition of customary law.⁵¹ A number of mining ventures have been halted by opposing community groups occupying communal land through processes of stakeholder engagement required by law. The principles of FPIC are advocated in such instances, but critics argue that “there is a growing feeling in South Africa that customary land rights are only respected in the absence of lucrative business opportunities” and when traditional leaders are faced with a choice between personal profit and rural livelihoods, some evidently opt for the former.⁵² No such opposition from communities occupying communal land have been found in the sugar industry.

In KwaZulu-Natal, the Zulu King Zwelithini administers approximately 2.8 million ha of land on behalf of the Ingonyama Trust as defined by the Ingonyama Trust Act of 1994. Section 2(4) of the Act establishes that the Ingonyama may administer the land in accordance with Zulu customary law, and Section 2(5) of the Act states:

“The Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the traditional authority or community authority concerned.”⁵³

A study about women’s land access in South Africa⁵⁴ referred to a case study in Mangete area, along the north coast of KwaZulu-Natal. The land was restored to the Traditional Authority, headed by Inkosi Mathaba, in 1993, following a court judgment. Since 1993, the traditional authorities have allocated a substantial number of women in the Mangete community Permits to Occupy (PTO) and operate profitable small-scale farms. However, this example is not commonplace. The land administration system and procedures to allocate land in many ‘communal’ areas varies widely and are often *ad hoc*: Permission to Occupy certificates (PTOs) may or may not be issued to occupiers of land, and registers of rights holders are seldom kept up to date.⁵⁵ Tenure security, whether within the communal tenure⁵⁶ arrangements or individual title deeds, is therefore a principle element of land reform policy and the Extension of Security of Tenure Act (1997)⁵⁷ in South Africa.⁵⁸ The future authority of traditional leaders concerning matters of communal land is still uncertain while the proposed Traditional and Khoi-San Leadership Bill (TKLB) and the Traditional Courts Bill are contested. The current neo-feudal system under traditional authority is criticised for depriving the rural poor of the opportunity to own their land and perpetuates Bantustan politics and rural poverty.⁵⁹

In terms of rights to water, the National Water Act of 1998 makes the government responsible for overall water resources management as public trustee, and provides for licensing of water uses. Catchment Management Agencies (CMAs) and catchment management committees are tasked with stakeholder engagement to ensure: equity in access to water resources, benefits and services; sustainability; optimal beneficial use; redress of past racial and gender discrimination and inequities; ‘representivity’ to ensure consideration of all stakeholder needs, interests and values; and other principles.⁶⁰

In the sugar industry, large commercial growers and milling companies support small-scale farmers in communal areas managed by traditional authorities as well as beneficiaries of the land reform programmes through extension services. Supply agreements between millers and small-scale farming associations and/or smallholder outgrower schemes ensure that a guaranteed price and quantity of sugarcane will be bought from the farmers. Other benefits of outgrower schemes may also accrue to

⁵¹ Smith Nindi and Bekhaus 2011

⁵² Branson 2016

⁵³ http://www.cls.uct.ac.za/usr/lrg/downloads/FactsheetIngonyama_Final_Feb2015.pdf

⁵⁴ Cross and Hornby 2002.

⁵⁵ Cousins 2007.

⁵⁶ The Communal Land Rights Act of 2004 transfers title of communal land from the state to a ‘community’. The community can only be recognised as a ‘juristic personality’ legally capable of owning land if its rules and boundaries are registered accordingly.

⁵⁷ According to the Extension of Security of Tenure Act of 1997 (ESTA), a long-term occupant, who has resided on a farm for more than 10 years and is over 60 years of age or cannot provide labour to a landowner as a result of ill health, disability or injury, may not be evicted.

⁵⁸ Cousins 2007.

⁵⁹ Mazibuko 2014

⁶⁰ Wester, 2003

both farmers (such as access to finance, infrastructure, training and food security programmes) and millers (such as improved quality and yields of sugarcane, and steady supply).

FINDINGS

Child Labour Findings

There were no reported incidences or observations of child labour, 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. All mills and most large-scale farms require the presentation of ID books in the hiring process; this was validated by interviews with farm and mill workers, who confirmed that they were all required to present identity documents proving that they were older than 18 years old before being employed.

Large-scale and medium-scale farms are frequently audited by the Department of Labour to ensure that there is no child labour (or forced labour). Based on interviews with small-scale farmers, there is no apparent risk of child labour on small-scale farms either. In an interview with a stakeholder at the Department of Labour who has been leading audits of all farms, mills, factories and businesses in the Stanger region of KZN, confirmed that they have not found any instances of child labour on any of the sugarcane farms or mills that they have inspected in the last 10 years.

Several small-scale growers with plots of 5-10ha each were visited and all the growers interviewed were elderly women and men. They all stated that the next generation are not interested in farming. One of the small-scale growers presented us with a list of all the growers that are part of the same small-growers' association. The list included names and ID numbers showing that the majority of growers were older than 40 years old. The interviewee also stated that the majority of the growers were women. Although she has help from her husband to do the crop spraying, she is responsible for most of the planting and contracting. Her children and grandchildren do not assist with the sugar farming, but she states that they sometimes help with the poultry and goats.

A 70-year old man was interviewed in the South Coast of KwaZulu-Natal and explained that his children and his neighbours' children and even grandchildren are not interested in farming. When he started farming, he used oxen to plough the earth, then he bought a tractor in 1984 and provided services to the neighbouring farmers. Due to civil unrest and conflict, he stopped this in 1994 and has since employed subcontractors to prepare the fields and harvest sugarcane. These small-scale farmers are not known to employ family members or coerce family members to work on the farms.



Picture: 1 70-year old Small Scale grower, KwaZulu-Natal

Another stakeholder argued that because South Africa has a high level of unemployment, children are less likely to be offered work before adults if there is any work available.

Many commercial farms provide housing for permanent and seasonal workers on the farm – many provide this housing at no charge and a few charge below the permissible amount deductible according to South African labour law. In most cases, the families and children of permanent and sometimes seasonal workers are allowed to live in the housing provided. Children are therefore present on the farms, but none were permitted to work on the fields. Many farmers offered support to

schools in their area for the benefit of their workers' children. Smaller farms offer neighbourly support in the form of building and maintenance of school buildings, while larger farms dedicate a portion of their corporate social responsibility budget to community projects and schools. No children of farm workers in the sugarcane industry are denied access to education. It is possible, however, that children assist their parents on smaller farms during school holidays. Although it was not observed, it was stated that teenage children do look for ways to earn 'pocket money' during school holidays, but this coincides with the off-season and there are only a few small non-hazardous jobs to offer them. The types of work that could be offered, particularly on smaller farms, do not meet the criteria of depriving them of their childhood, their potential and their dignity.

Forced Labour Findings

There were no reported incidences of forced labour or examples of employment practices that could be considered forced labour, except for two cases that have since been addressed and resolved. One independent private farmer in the Eston region of KwaZulu-Natal admitted to collecting workers from the Transkei at his own cost and keeping the identity documents of these workers for three months. He said that he did this to ensure that the cost of collecting the workers was repaid in working days at his farm, and that they did not abscond without repaying their debt. When the matter was addressed by the local mill management, the farmer came to understand that this practice is wrong and prohibited, and he gave the general manager personal assurance that this would not happen again in the future.

Another independent private farmer in the North Coast region of KwaZulu-Natal admitted to holding onto the identity documents of his new employees for one week to ensure that they did not leave within a few days of receiving free protective equipment and tools required to work on his farm. When the matter was addressed by the local mill (Gledhow) management, the farmer was extremely apologetic and had not realised that his actions amounted to "forced labour" in terms of Illovo's Code of Conduct and Business Ethics. He had then hastened to change his procedures in respect of the withholding of ID documentation forthwith and his revised procedure would now entail the following:

- All new employees will be taken in person to his nearest office where photo copies of their ID books will be taken for his files and the ID Books will thereafter be immediately returned to such employees.
- If any new employee leaves immediately after taking his issue of new personal protective equipment (PPE), then the name of such employee will be recorded by the grower and if such person returns for employment at a later stage, then the issue of the non-returned PPE will be dealt with at that stage.

The Gledhow management highlighted that the grower plays a leading role in partnering with communities and especially land reform beneficiaries in his area of operation as his contribution to overall social responsibility. In both incidences, the farmers were unaware that their actions constituted forced labour. These issues have been successfully resolved.

In the past, farmers would arrange a farm vehicle to drive to the former 'homelands' such as Transkei, and collect people who wanted seasonal work on their farm. Farmers stopped doing this because vehicles were not built for passengers and they did not want to be held liable if there was an accident. Migrant workers now travel at their own cost to find employment at the farm gate.

All mill and farm workers interviewed did not pay fees to a third party, or otherwise, when they applied for employment. The mills and large-scale commercial farms typically have a Human Resources (HR) department to recruit employees, while small and medium scale farms typically 'put the word out' and their workers invite or recommend people to apply. Except for the incidences of withholding identity documents mentioned above, the farm workers interviewed are free to work for their current employers or find alternative employment.

Although most commercial farmers and even small-scale growers presented copies of payslips and contracts for all their employees, farmers did not believe that these "pieces of paper" would do much to prevent labourers from a breach of contract. While workers are able to take employees to the

CCMA⁶¹, several farmers stated that they are not able to take any action when workers leave without notice, or do not arrive at work.

Most permanent labour is sourced from local communities of South African nationals and employed as farm supervisors, irrigators, tractor drivers and all types of general labour. Seasonal labour is sourced from local communities, which include local and foreign nationals; they are employed for 3 to 9 months in the year, which coincides with the harvesting season (April to December).

Subcontracting labour for cane cutting in particular is a common strategy to externalise labour. The majority of cane cutters employed in the South African sugar industry are also migrant workers: many are isiXhosa speaking from Transkei, Sotho speaking from Matatiele and Lesotho, Shangan speaking from Mozambique, and a few workers come from Zimbabwe and Malawi. In many interviews, farm managers explained how difficult it is to find local labour to cut cane. In northern KwaZulu-Natal, the Department of Labour insisted that farmers employ local labour. Obliging, Tongaat Hullett agricultural operations hosted an open day to attract local labour. Approximately 130 locals attended



Picture: 2 Cane Cutters, KwaZulu-Natal

but of those that agreed to work as cane cutters, only 2 remain. While local isiZulu speaking labour find cane cutting to be the lowest skilled work, migrant labourers are known to think that you have to be strong to be a cane cutter and that locals are too lazy. Although local and foreign workers can be distinguished from each other in the field, there were no complaints from the workers interviewed. In all cases, the workers agreed that they were all treated the same. One stakeholder stated that if there were to be labour rights violations, it was most likely to be in this group as they are the most vulnerable, although she is unaware of any examples of this in the sugarcane industry. Besides the two previously mentioned, there were no examples where ID books or passports were kept from the workers.

No incidences of forced labour were identified among the cane cutters interviewed, but it is not known whether subcontractors are regularly inspected or audited by the Department of Labour. Some subcontractors have formal contracts with farmers but the documentation reviewed did not include detailed basic conditions of employment.

Many farmers provide feeding schemes for cane cutters and expect them to have medicals before starting work to ensure that they are strong and fit for the strenuous work. They are not excluded if they test positive for HIV, but they are expected to take the necessary medication and stay healthy.

The Department of Labour is known to be very active in the sugarcane industry. A number of farms supplying Eston and Noodsberg mills are also Fairtrade certified and/or complete voluntary SUSFARMS progress trackers. SUSFARMS ensures that farms continuously manage the threats of degradation of freshwater resources adjacent to their operations and river buffer areas, preventing biodiversity loss, soil erosion, land degradation, as well as managing sugarcane burning and greenhouse gas emissions. During the year under review, Illovo's agricultural operations in South Africa undertook the SUSFARMS® V2 "Progress Tracker" self-audit, with the majority of farms achieving high scores for both legal and social compliance.⁶² There is a noteworthy effort by farmers to comply with all lawful labour, Fairtrade and SUSFARMS requirements.

⁶¹ The Commission for Conciliation, Mediation and Arbitration (CCMA) is a dispute resolution body established in terms of the Labour Relations Act, 66 of 1995 (see: www.ccma.org.za)

⁶² http://annualreport.illovo.co.za/additional/Climate_Change_Report/HTML/files/assets/common/downloads/publication.pdf

At all mills and farms, labourers are free to join unions and form workers' associations or committees. Most grievance processes involve line management, speaking to supervisors who then refer the matter to the farm manager.

The majority of management and workers on independent farms questioned the value of union representation, which they attribute to infrequent visits by union representative to the farms where they work. Despite paying for union membership monthly, management and workers did not see the direct benefit of union representation. Union representation is more common on miller-cum-planter farms than on other large or medium scale farms. Few cane cutters belong to unions and prefer to down tools or sit down on the job until their grievance is addressed. Because cane cutters are paid per ton or 'per rope' their grievances usually relate to supervisors not correctly measuring the volume of their work done. A stakeholder at the Department of Labour (DoL) explained that workers prefer the production-/ target-based approach (known in isiZulu as "umjaho") to the minimum wage. It was explained that strong efficient workers are able to exceed the daily target and earn more than minimum wage. They can also choose to cut cane early in the morning or late into the evenings when it is cooler, and at their own pace. If they do not reach the target however, they are only paid minimum wage for the hours worked in the field. There have been instances when cane cutters have complained to their Ward Councillors (local area political leaders), who raised the matter with the DoL. The complaints related to circumstances where the cane cutters have been unable to meet the daily targets set by farmers, and therefore only earn the minimum wage. When the DoL hosted briefing sessions to discuss the complaints, the workers did not agree with their suggestion to do away with the target-based approach, with workers preferring the target-based approach.

Unionised mills and farms participate in annual wage negotiations via a bargaining council. The different unions representing sugarcane mill and farm workers are: Farm and Allied Workers Union (FAWU), UASA and the National Sugar and Refining Employees Union (NASAREU). The shop-stewards interviewed during this fieldwork confirmed that the last industrial strike action took place in 2014. On behalf of the smaller unions, FAWU successfully demanded an 11% wage increment and a higher housing allowance, among other demands.⁶³

Land Rights Findings

All sugarcane farms visited during fieldwork in South Africa were acquired legally according to historic and current South African laws. 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. There were no reported allegations of illegal land tenure, land grabbing or other violations of land rights during interviews with farm and mill workers, farm and mill management, or stakeholders.

Independent farm owners and claimants (engaged in the land claim process) interviewed highlighted the high legal costs of submitting a claim and defending land ownership in the Land Claims Court. In many cases, small- to medium-scale farm owners have been willing to sell their land to the Department of Rural Development and Land Reform (DRDLR) to avoid these legal fees, however the land redistribution process can take several years. Another factor influencing willingness to sell is economies of scale; many small or medium size commercial farms struggled to remain economically viable for commercial scale sugarcane production due to market liberalisation policies and exposure to global market prices. Depending on productivity, soil quality, rainfall and other factors, it was estimated that sugarcane farms need to be at least 200-250ha to achieve economies of scale. For the same reasons, the profitability of small-scale farmers is low. In 2017, the average earning for small-scale farmers was estimated at R630 per ton.⁶⁴ One small-scale farmer in KwaZulu-Natal, farming 1.5 hectares on communal land, said she earned approximately R12,000 after deducting all expenses at the end of the year when the sugarcane was harvested. Tending the fields requires her daily attention but she pays for contractors to plant, fertilise and spray the fields as well as to harvest and transport the cane.

⁶³ <http://af.reuters.com/article/southAfricaNews/idAFL6N0OC30A20140526>

⁶⁴ Illovo Sugar South Africa, 05/06/17

The land reform and restitution policies of South Africa are underpinned by a market-led approach of willing-seller, willing-buyer. Although widely criticised, these laws adhere to the Free Prior and Informed Consent guidelines and are supported by the World Bank, the South African government, some tribal leaders and commercial farmers. Customary law and commercial law also entitle women to own and inherit land without prejudice. There are no documented or reported instances in the last 20 years where communities occupying communal land have been displaced by commercial sugar farming operations without the free prior and informed consent of communities and traditional authorities.

Various private companies in the sugarcane industry have adopted corporate policies relating to land rights. In March 2015, Illovo Sugar, one of TCCC's biggest suppliers in the country, published its Group Guidelines on Land and Land Rights (Group Guidelines), which is available on its website (see link below)⁶⁵ and is applicable to all six of its operational countries, including South Africa. In November 2015, Illovo Sugar also released its Road Map on Land Rights (Road Map), which is available on its website (see link below)⁶⁶, and 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, as well as develop strategies for preventing the occurrence of such issues in the future. The timeline for the completion of the self-assessment of their land matters will be 30th of June 2017 for their own land, and 31st of March 2018, for outgrower land. These various policies, initiatives, and partnerships, demonstrates Illovo Sugar's commitment to respecting land rights, as well as human rights, throughout its supply chain.

In South Africa, SUSFARMS has been developed as a nationally appropriate standard in the sugar industry and is endorsed by Bonsucro, meeting the appropriate requirements for land title and use rights as well as Free Prior and Informed consent of local communities. Illovo subscribes to the SUSFARMS scheme and during this fieldwork, many of the cane growers supplying Illovo mills to the Eston and Noodsberg Mills were preparing voluntary SUSFARMS progress trackers. RCL are members of Bonsucro and also subscribe to the principles of SUSFARMS. (At the time of this research SUSFARMS had not yet been finalised for irrigated sugarcane farming.) In 2015, RCL Foods obtained a certificate of compliance from THRIVE, confirming that RCL complies with the minimum requirements of the TCCC Sustainable Agriculture Guiding Principles.

Tongaat Hulett Sugar 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 1300 tons of maize to alleviate the severe shortage experienced over the last 2 years.⁶⁷ Tongaat Hulett is also a member of ProTerra. Both ProTerra and the Global Compact have explicit requirements for land title and use rights as well as Free Prior and Informed consent of local communities.

With support from the South African Sugar Association (SASA), the main milling companies have applied different business models in the various sugarcane farming regions to sustain the commercially viable production of sugarcane. Technical farming support is provided to 'new' sugarcane growers (such as the beneficiaries of land restitution and land reform), as well as small-scale growers which typically have permission to occupy and farm communal land under a traditional authority. This technical support is critical because beneficiaries are not required to have farming experience or the necessary business management skills to productively farm the land.

The beneficiaries of land restitution and land reform range in size in terms of membership and scale of farming land; some of the beneficiaries interviewed ranged from a 261ha farm belonging to one family, to a 3000ha farm belonging to a community of 600 members or claimants. With title deeds, the beneficiaries are able to apply for bank loans and operate as a business. While some of these farms

⁶⁵ <https://www.illovosugar.co.za/Group-Governance/Group-Guidelines-on-Land-and-Land-Rights>

⁶⁶ <https://www.illovosugar.co.za/UserContent/documents/Announcements/Road-Map-on-Land-Rights-6Nov2015.pdf>

⁶⁷ <http://www.tongaat.co.za/downloads/Winter%20maize%20project%20case%20study.pdf>

have been successful, other farms have suffered from mismanagement and internal politics. Executive committees tasked with managing the farms on behalf of the community trust have been accused of corruption and some beneficiaries are suspicious if dividends are not paid annually. Some farms were seen to be deserted and land previously growing sugarcane is now lying fallow.

Many beneficiaries have sought the professional assistance of commercial farming companies. In Mpumalanga, several joint ventures (JV) have been established where the land is wholly owned by the beneficiary and the JV acts as the management company (with a 50:50 profit share between beneficiaries and the commercial farming company). In other areas, beneficiaries hire commercial farming companies to farm the land on concession (with an agreed percentage of the harvest income). Such agreements range from 3 to 10 years.

Small-scale growers on the other hand are individually allocated between 5 and 20ha of land by their local chief. They are encouraged to form cooperatives to access grant funding and share capital expenses such as irrigation pumps and storage containers, however in South Africa, they tend to manage their fields as individual fields separately. These fields are usually located adjacent to their homestead or village. The technical support provided by extension officers is very valuable to small-scale growers; many commented that they were glad to see the extension officers visiting their farm as they offer technical advice, soil sampling and access to suppliers and service providers. There are a variety of models applied by the milling companies to support small-scale growers:

- Illovo manages a fund for small-scale growers, which allows them to pay for land preparation and harvesting in advance. When the cane from their fields is harvested, these costs are deducted from their earnings. SASA plays an important third party role in calculating the value of sugarcane delivered by all growers to the mill. Although small profits are not attractive to the younger generation, the older generation is glad to do something with the land and earn money.
- RCL (formerly TSB) set up a subsidiary called TSGrow to provide farming services to small-scale growers. At a cost of R1900/ha (US\$133) per year, TSGrow provides a farm supervisor to work with the small-scale growers and ensure the farms are properly managed.

The extension services and technical support provided to beneficiaries of land restitution or reform programmes and small-scale cane growers is indicative of the conscious effort of private companies in the South African Sugar industry to accommodate land reform.

Conclusion

Research indicated that no one under the age of 18 years old was employed on any mills or farms, and most companies employ workers over the age of 20 years old, especially for difficult tasks such as cane cutting. All the farm and mill workers interviewed confirmed that they were required to present identity documents as proof of their age when applying for employment. Large-scale and medium-scale farms are frequently audited by the Department of Labour to ensure that there is no child labour. Interviews with stakeholders at the Department of Labour confirmed that they have not found any instances of child labour on any of the sugarcane farms or mills that they have inspected. The small-scale farms are farmed mainly by older women and men, who stated that children were not interested in farming. A further stakeholder added that with the high rate of unemployment in the country, children are less likely to be offered work before adults if there is any work available.

Regarding forced labour, there were only two incidences of workers' identity documents being held for a certain period of time by independent farmers. After the incidences were reported, Illovo Mill Management and the farm managers in question immediately resolved the problems and it was made clear that withholding identity documentation is not permitted. Since 1994, a strong labour movement has developed in South Africa, which is underpinned by extensive legislation. Labour unions are involved in negotiating the legislated minimum wage and freely advocate for fair pay and good working conditions. The Department of Labour is also active in the sugarcane industry, ensuring that people's rights are enforced.

As a result of the country's apartheid history, there are complicated land reform and redistribution processes with multiple objectives. The Restitution of Land Rights Act of 1994 allows people who had lost their land as a result of racially discriminatory practices such as forced removals to reclaim the land. The Act is underpinned by the willing-buyer, willing-seller principle, whereby landowners are offered market value for the land under claim. Many critics and civil society organisations blame this market-led approach for the slow pace of land redistribution. Cane growers interviewed during this study agreed that processing the land claims has taken several years and involves high legal costs. The process has involved free, prior and informed consent and there were no incidences of land grabbing or expropriation.

All beneficiaries of land claims and new freehold title farmers interviewed during fieldwork in South Africa confirmed that the land had been acquired with free, prior and informed consent (FPIC), following the appropriate land reform policies and procedures. Likewise, all commercial sugarcane farms visited during fieldwork, were acquired legally according to historic and current South African laws and held the appropriate title deeds or lease agreements. The main milling companies also demonstrated commitment to the principles of FPIC through internationally recognised platforms such as SUSFARMS, THRIVE, Bonsucro, ProTerra and the UN Global Compact.

In 2015, 22% of the sugar industry's freehold agricultural land under cane (74 624 hectares) had been successfully transferred from white farmers to black farmers through the land reform programme. A further 124 000 hectares of freehold land in the sugar industry was still under land claims at the end of the 2014/15 season.⁶⁸ Resolving and settling these land claims is important for tenure security and continued investment.

In line with the Proactive Land Acquisition Strategy (2006), which was subsequently replaced by the Recapitalisation and Development Policy Programme in 2014, large commercial growers and milling companies in the sugar industry support small-scale farmers in communal areas managed by traditional authorities as well as beneficiaries of the land reform programmes through extension services. The small-scale cane growers and black emerging farmers interviewed were highly appreciative of these services.

The Communal Land Rights Act and other relevant laws also protect the land rights of people living on communal land, and require traditional authorities to obtain free prior and informed consent from all affected parties before entering into any land use change or lease agreements. The National Water Act also protects the rights to water of private and communal landowners. In the last 20 years, there were no instances where communities occupying communal land have been displaced by commercial sugar farming operations.

⁶⁸ SA Cane Growers' Association Annual Report 2014/15 for the Board of Directors

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.⁶⁹

⁶⁹ 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".⁷⁰ 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.

⁷⁰ 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.⁷¹

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.⁷²

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.⁷³

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.⁷⁴

⁷¹ FAO. 2012. Voluntary Guidelines on the Governance of Tenure. <http://www.fao.org/docrep/016/i3016e/i3016e.pdf> [01/11/2016].

⁷² IFC. 2012. IFC Performance Standards. https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES [23/01/2017].

⁷³ IFC. 2012. IFC Performance Standards. https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES [23/01/2017].

⁷⁴ IFC. 2012. IFC Performance Standards. https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/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".⁷⁵ 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.⁷⁶

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".⁷⁷ The Fundamental Principles are as follows:

⁷⁵ Mahanty, S. and McDermott, C. 2013.
<http://www.sciencedirect.com/science/article/pii/S0264837713001294>

⁷⁶ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁷⁷ 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
[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 recognizes 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, recognize 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”.⁷⁸

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.⁷⁹

⁷⁸ 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 [01/11/2016]

⁷⁹New 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 [01/11/2016]

9. Country Specific Development and Research Reports:

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- Anseeuw and Alden (2011) *From Freedom Charter to Cautious Land Reform - The Politics of Land in South Africa*. Discussion Paper published by the Postgraduate School of Agriculture and Rural Development, University of Pretoria, Pretoria 0002, South Africa.
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