



Mozambique

mobilizing extractive
resources for development



Mozambique: Extractives for Prosperity, Volume II

Capstone Report:

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Acknowledgements



This report is the final deliverable of a capstone project realized at Columbia University's School of International and Public Affairs. The capstone usually constitutes the final project for graduate students who bring their diverse professional and educational backgrounds to the project and are in their final semester of a rigorous, two-year degree program.

The Mozambique Capstone team would like to acknowledge the many individuals and organizations that provided invaluable assistance in the creation of this report:

- Professor Jenik Radon, the capstone advisor, for his outstanding wisdom and mentorship.
- The Mozambique Governance Watch team, led by Dionisio Nambora, for sharing their insight, hosting the capstone team, and assisting in arranging our work in-country.
- William Telfer, for his knowledge, input, and assistance in arranging meetings with Government Ministries in Maputo.
- Columbia University's School of International and Public Affairs and the Earth Institute, for providing financial support for this project.
- The over 40 interviewees from government organizations, parliament, civil society, donor community, the mining and oil and gas industry, academia and others who generously offered their time to meet with us in Mozambique and elsewhere, for their candor and guidance.
- The authors of the previous report in this series, *Oil: Uganda's Opportunity for Prosperity*, for their research and advice.
- Gorongosa National Park, for the stunning cover photograph.

Photo: Gorongosa National Park
Mozambique
Piotr Nasrecki

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Abbreviations

ADIA	Abu Dhabi Investment Authority
AICD	Africa Infrastructure Country Diagnostic
ANE	Administração Nacional de Estradas
ARTC	Australian Rail Track Corporation
ASM	Artisanal and Small-scale Mining
AT	Administrative Tribunal
BAGC	Beira Agricultural Growth Corridor
BBOP	Biodiversity and Business Offset Program
BSEE	Bureau of Safety and Environment Enforcement
BTU (MMBtu)	British Thermal Unit (Million BTUs)
CCEP	Central Public Ethics Commission
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CEP	Central Ethics Commission
CESUL	Projeto Regional de Transporte de Energia Centro-Sul
CFM	Caminhos de Ferro de Moçambique
CLIN	Corredor Logístico Integrado do Norte
CoM	Council of Ministers
CONDES	National Council for Sustainable Development
CRC	Convention of the Rights of the Child
CRVP	Commission for Receipt and Verification
DMP	Government of Western Australia Department of Mines and Petroleum
DNAC	National Directorate for Conservation Areas
DNM	The National Director of Mines
DOI	Department of Interior
EDM	Electricidade de Moçambique
EFC	Estrada de Ferro Carajás
EFVM	Estrada de Ferro Vitória a Minas
EIA	Environmental Impact Assessments
EITI	Extractive Industry Transparency Initiative
EMIS	Environmental Management and Information Systems
ENH	Empresa Nacional de Hidrocarbonetos (National Hydrocarbon Company)
EPCC	Exploration and Production Concession Contract
ESI	Estimated Sustainable Income
eSISTAFE	electronic State Financial Administration System
EU	European Union
FDI	Foreign Direct Investment
FPSO	Floating Production Storage and Offloading Vessels
FUNAE	Fundo de Energia
GAP	The World Bank's Gender Action Plan
GAPP	Generally Accepted Principals and Practices
GCCC	Central Office for Combating Corruption
GCPV	Central Victim Protection Office
GDP	Gross Domestic Product
GGFR	Global Gas Flaring Reduction partnership
GTL	Gas-to-Liquids
G 19	Group of 19 Partners for Program Aid
HCB	Hidroeletrica de Cahora Bassa
HDI	Human Development Index

HVCC	Hunter Valley Coal Chain
ICCPR	International Covenant on Civil and Political Rights
ICSID	International Centre for the Settlement of Investment Disputes
ICT	Information and Communication Technology
IEA	International Energy Agency
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IGF	Inspector-General of Finance
IIED	The International Institute for Environment and Development
ILO	International Labor Organization
IMF	International Monetary Fund
INP	Instituto Nacional de Petroleo (National Petroleum Institute)
IOC	International Oil Company
IPEC	International Programme on the Elimination of Child Labour
IRR	Internal Rate of Return
IUCN	International Union for the Conservation of Nature
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
MCE	Maputaland Centre of Endemism
MDGs	Millennium Development Goals
MICOA	Ministry of Coordination of Environmental Affairs of Mozambique
MINAG	Ministry of Agriculture
MIREM	Ministry of Mineral Resources of Mozambique
MML	Minas Moatize Limitada
Model EPCC	Model Exploration and Production Concession Contract
MoF	Ministry of Finance
MP	Members of Parliament or National Assembly Deputies
Mtpa	Million-tons-per-annum
NBSAP	National Biodiversity Strategies and Action Plans
NEMP	National Environmental Management Plan
ODAMOZ	Overseas Development Assistance (Database) for Mozambique
ODI	Overseas Development Institute
OECD	Organization for Economic Cooperation and Development
OHCHR	UN Office of the High Commissioner for Human Rights
PAH	Polycyclic, aromatic and hydrocarbons
PARP	Republic of Mozambique Poverty Reduction Action Plan 2011-2014
PCI	Pulverized Coal Injection
PFCC	Petroleum Fund Consultative Council
POM	President of the Republic of Mozambique
PSSA	Particular Sensitive Sea Areas
PSC	Production Sharing Contract
SASOL	South Africa Synthetic Oil Liquid
SAIEA	Southern African Institute for Environmental Assessment
SEA	Strategic Environment Assessment
SIDA	Swedish International Development Cooperation Agency
SME	Small-and-Medium-sized Enterprise
SOE	State-Owned Enterprise
SPA	Sales and Purchase Agreement
SWF	Sovereign Wealth Fund
Tcf	Trillion cubic feet
UNCLOS	United Nations Convention On the Law of the Sea
WHO	The World Health Organization
WWF	World Wildlife Fund

Executive Summary

The development of Mozambique's significant mineral and hydrocarbon reserves has the potential to generate substantial wealth and prosperity for the country. The magnitude of possible benefits for Mozambique has powerful implications for one of the poorest nations in the world. It is up to the Government, and the people of Mozambique, to decide when, where, and, most importantly, how to utilize their reserves over the next few decades. Fundamentally, Mozambique is confronted with several challenges to transform its abundant extractive resource wealth – residing primarily in the country's inland coal deposits and its deep-water natural gas basins – into sustained, long-term economic development. This is a task of significant but not insurmountable complexity, encompassing a range of political, economic, and social dimensions. It will require collaborative and coordinated efforts by a variety of different stakeholders, some with conflicting objectives and priorities. It is thus incumbent upon Mozambique's leadership to manage this transition with purpose and develop and implement an industrial strategy that mobilizes the country's extractive resource development in a manner that achieves a prosperous outcome for its people.

Expectations of stakeholders are high, and this will not be an easy undertaking for the Government and people of Mozambique. Over the last five decades, numerous countries across the developing world have failed to benefit from their natural resource wealth. In fact, pervasive evidence suggests that resource-rich developing states tend to have lower economic growth rates and poorer development outcomes compared to states lacking such resources. Due to these paradoxical trends, collectively referred to as the resource curse, there is a renewed international focus on resource-rich, low-income countries like Mozambique.

This report provides a comprehensive review of the critical economic, political, legal, social, and environmental variables that will affect and be affected by the rapid development of Mozambique's extractive resources. Each section proposes methodical and practical recommendations for the country's policymakers, which – if implemented – will enhance the current institutional framework governing the activities of the extractive sector. Ultimately, this report attempts to provide the Government of Mozambique with a policy framework that promotes the sustainable development of the country's economy, society, and environment, and aims to help the country avoid the perils of the resource curse. These issues are described in greater detail in the summaries of each section of the report that follow.

Economic and Commercial

Mozambique stands to gain significant revenue from exploiting the economic and commercial potential of its natural gas and coal reserves. The country's offshore natural gas discoveries are among the largest finds in the world in over a decade, while its coal reserves are beginning to be exported to international markets. If it is able to successfully commercialize its extractive resources, Mozambique will become a highly competitive player on the global energy scene.

In addition to promoting economic growth, the Government's overall economic objective is to reduce persistently high rates of poverty. Currently eight out of ten Mozambicans continue to live on less than \$2 per day. In the years ahead, natural resource revenues will comprise an increasing share of the country's GDP, a trend that exposes Mozambique to several challenges in maintaining financial and social stability. Despite ongoing reforms, the country's overall capacity to absorb windfall revenues from the development of extractive resources remains

limited. Yet, with sound fiscal management, these hurdles can be overcome. There are a number of measures the Government can take to better prepare itself for the windfall. Prior to exploring such measures, however, it is first important to understand key implications of the resource curse and how it threatens Mozambique.

Generally, there are two underlying features of the resource curse that afflict countries: “Dutch Disease” and revenue volatility. Dutch Disease refers to the destabilizing impact of increased foreign exchange that inevitably follows a sharp rise in natural resource exports. A huge increase in natural resource revenues typically causes the real exchange rate to appreciate. The change in real exchange rate results in economic destabilization by reducing the international competitiveness of a country’s non-extractive resource exports (e.g. agricultural and manufacturing) and may also reduce employment in these sectors. These economic outcomes tend to adversely affect the labor force of a developing country, where undereducated workers often struggle to transition from traditionally low-skilled sectors of the economy to more knowledge-based and service-oriented industries.

Revenue volatility is another important facet of the resource curse. The disruptive effects of revenue volatility in a resource-based economy predominantly arise from fluctuations in global commodity prices. This volatility can be detrimental to growing economies and frequently results in imprudent fiscal policies. Often, governments borrow against the value of their newfound resources and spend windfalls on immediate consumption, at the expense of long-term investments that can hinder future growth opportunities for the country.

The resource curse commonly takes hold in developing nations that lack the institutional capacity necessary to manage huge resource revenues. To minimize the impacts of Dutch Disease and revenue volatility, a state must have sound institutions in place. Institutions are also necessary to manage complex public-private revenue-sharing partnerships that are typical of extractive industries. A sovereign wealth fund is one option that states can utilize to manage large inflows of resource revenue, stabilize pressures on the exchange rate, and reduce the influences of price and revenue volatility. The implementation of this fund (explained further below) is one of the central recommendations of this report. Above all, a sovereign wealth fund allows Mozambique to invest in infrastructure and socioeconomic development over the long-term, thus ensuring that the country will still see benefits of its extractive resources long after the reserves have been depleted.

Linkages and Local Content

Mozambique’s national resource wealth is not limited to revenue generation for the state but can and must flow to benefit local Mozambicans. Conventional understanding about how the local population benefits from extractive resources is typically limited to the industry’s provision of employment and a few philanthropic projects. However, extractive industries tend to have a minimal impact on the labor market. The capital intense nature of extractive industries stems from industry demand for fewer, more highly skilled workers compared to the labor-intensive, low-skilled workforce sectors – such as agriculture or manufacturing. Low prevalence of human capital in Mozambique further limits employment opportunities for Mozambicans in the extractive sector – leading to unfulfilled expectations in communities and promotes social unrest. This section provides examples and recommendations of how the Government, extractive companies, and stakeholders can increase employment opportunities for Mozambicans in the extractives sector and economic linkages between the extractive industries and Mozambique’s local businesses, especially in regions of extractive operations.

Prosperity driven by the growing extractive industry can be translated to communities in Mozambique through cultivating local content – including local recruitment, training, and purchasing local goods and services. Though not a “silver bullet” to prosperity, local content can contribute to the fulfillment of expectations that mineral and hydrocarbon production will help improve the lives of Mozambicans. Local content is also critical to the extractive industry’s operational sustainability by generating a social license to operate within a given community. Smooth, sustainable operations also benefit the state by supporting steady revenue flows and general social stability.

Given local human capital and the capacity of Mozambique’s private sector are currently very limited, it is critical that both the government and extractive companies initiate early and consistent engagement with communities and the local private sector in regard to both the type of employment and business opportunities that will be available. Additional management of expectations through transparent communication of the expected timeline of these opportunities is also necessary. To achieve optimal local content goals, the government must also invest deliberately in the provision of poverty-reducing public goods, including quality education, literacy, and healthcare, which in turn serve to improve human capital in the long-run. These efforts require significant strategic social investment by stakeholders to build the capacity of local communities and enable individuals and businesses to compete and access income-generating opportunities in the newly established extractive industry value chain. Without investment in the development of Mozambique’s human capital and building capacity of the local business sector, Mozambique’s ability to fully access and realize the potential benefits of its vast natural resource wealth will remain retarded. Finally, this section also discusses the need to develop and implement a strategic plan that mitigates inward migration, local food price inflation, and constraints on community resources affecting areas impacted by extractive industry operations in Mozambique that could be source of social instability.

Infrastructure

Marked rates of underdevelopment in Mozambique are closely tied to the country’s shortage of infrastructure, which has largely failed to respond to social and economic development needs. Although recent public, private, and donor investment in developing Mozambique’s infrastructure has focused much more on facilitating the trade derived from megaprojects, it might also represent an unparalleled opportunity to build a system that fosters inclusive social development. The Government has the option to take advantage of the international community’s willingness to invest and orient economic resources to address infrastructure-related impediments of development.

Ensuring inclusiveness, through both connection and universal access to roads, railways, and electricity, must be at the heart of this endeavor. Railways, in particular, must guarantee access for general freight and passengers, as well as for mining companies. With respect to Mozambique’s roads, an upgrade and significant extension of the network would decrease transportation costs for all parties. This, in turn, would help mitigate the country’s high rates of poverty and inequality, permitting both the mining provinces and the rest of the country to benefit from extractive industry operations. Special attention must be paid to use of roads as connectors between impoverished yet potentially productive areas and the Beira, Nacala and future Macuse corridors. Finally, despite the current efforts of the Government to bring the grid to every district, only a small percentage of Mozambicans have reliable access to electricity. The potential for clean production must be developed to provide electricity access beyond district centers, and to help reduce Mozambique’s reliance on unsustainable energy sources.

Environment

Protecting the country's ecology is critical to Mozambique's vitality and will require investment and attention to environmental governance that keeps pace with resource extraction. First, to mitigate environmental risks inherent in resource development, research into fisheries and terrestrial ecosystems is necessary to create a baseline for conservation priorities, since much of Mozambique's ecology is not well researched. The existing Environmental Impact Assessment review period is also too short for the increasing volume of assessments and the current limited capacity of the Government and civil society. Such assessments for large extraction projects and their corresponding infrastructure development should be made available to the public with a longer, more adequate review period than the current 45 days. In line with the country's existing environmental law, specific requirements and guidance on biodiversity offsets must be drafted and enforced to ensure that all small and large-scale extractive resource projects account for environmental impacts from the beginning of the project.

Mozambique's current environmental legislation should be reinforced with more detailed guidance. Exemplary laws from other countries, such as Norway, can be utilized for legal reference until a robust new set of laws can be established. With ongoing active exploration of the natural gas, Mozambique should dictate when and where seismic surveys are conducted in order to protect the delicate biodiversity surrounding the nation's corals and fisheries. In addition, the government must create an environmental emergency plan so that, should accidents occur, the various government ministries have an aligned mitigation strategy that facilitates rapid response. Additional funding, training, and resources allocated to environmental ministries are also necessary to expand their capacity to study the nation's ecology, properly implement protective legislation, and adequately monitor mining and natural gas exploration and production. Additionally, the growing artisanal mining sector needs strategic Government support to organize associations, as well as train, guide, and monitor expansion to ensure the safety and prosperity of Mozambicans. In this way, small-scale mining could become a means to reduce poverty as opposed to creating conflict and environmental degradation. All of these governance strategies will need to be implemented quickly and should utilize revenues from the extractive industry to guarantee that Mozambique's dynamic ecology continues to be a source of pride and the pillar of a growing tourism industry.

Resettlement

Resource exploration, mineral concessions, and infrastructure development have all exponentially increased the resettlement of communities in Mozambique, especially in remote areas. Although the country has the extraordinary opportunity to strategically translate its mineral assets into long-term sustainable development, extractive operations can only be fully successful if the investments are embedded in stable and prosperous communities. One of the country's top objectives should be to leverage the recent boom in extracting natural resources to improve the living conditions of Mozambicans and to ensure a prosperous environment in which companies can diligently operate.

If Mozambique follows five basic resettlement principles, the rights of Mozambicans and compliance with the international conventions and agreements that the nation has pledged to support will be ensured. First, projects that require resettlement must conduct early, inclusive and transparent consultations to give communities the opportunity to make decisions on issues directly affecting their lives. Early consultation also helps build critical buy-in from impacted populations. Second, it is key to provide communities with the tools and information to diligently participate in negotiations that reach fair agreements. Third, compensation, that

includes improved livelihoods and standard of living is key to translating resource extraction into prosperity for individuals affected by resettlement. Fourth, resettlement processes entail negative environmental impacts that must be diligently addressed as they highly impact the health conditions and access to other resources (water, soil, etc.) of the surrounding communities. Lastly, an inclusive and legitimate post-resettlement committee must oversee agreement compliance, progress, and accountability. Such a committee also recognizes that communities are dynamic and future agreements will have an established channel for discussion. A well-structured and well-managed resettlement process, jointly agreed upon by communities and companies, can help to ensure that extractive operations and other projects that require resettlement enjoy greater community buy-in and promote sustainable development.

Mozambique must also ensure that women are not left out of opportunities to participate in and benefit from the country's development through the extractive industries. The Government bears a duty to ensure women's equal access to socio-economic opportunities, reduce disruptions to their standards of living and improve livelihoods. In the context of mining operations, Mozambique can meet these challenges by implementing its existing laws and Constitutional provisions which guarantee the equal rights of men and women, along with amending existing mining legislation to address issues on resettlement, consultation and compensation.

Such arrangements also stand to benefit from local resources (including human capital), thereby reducing the likelihood of conflict. The resettlement process in Mozambique is ongoing, and there are a number of ways that the Government can promote mutually beneficial resettlement agreements leaving all parties affected better off and fairly attended.

Legal Framework

From a legal perspective, Mozambique must aim to reform and update the legislative, institutional, and contractual frameworks associated with extractive industries in order to maximize the gains from and minimize the costs of extractive resource development. In this context, Mozambique is currently reviewing its legal and fiscal frameworks for oil and gas exploration and production, to take into account developments in the industry and new gas discoveries. Recent drafts of the petroleum legislation contain several important additions that address infrastructure, revenue sharing, oversight, and environmental protection. However, the law needs further strengthening to ensure that new and existing projects are carried out in a safe, fair, and efficient manner. Vague references to "good industry practice" should be replaced with clear and transparent obligations. Deals should be standardized and their key terms should be set in legislation to improve transparency and competitiveness. Companies must be assured fair and open access to facilities to promote competition and increase efficiency. Penalties must be clear and significant to deter bad behavior. Environmental protections should take into account that companies are often in the best position to monitor, prevent, and mitigate environmental and health risks. The Government must also preserve its ability to reform and improve its legislation over time - especially in relation to the environmental, social, and health impacts of extractives.

The fiscal regime should draw on a range of different tools to generate a fair share of revenue for Mozambique. While opinions may differ on what is "fair", Government revenue should amount to at least one third of the profits for mining and 65% of the profits for oil and gas over the lifetime of a project. As the industry becomes more established, and business conditions improve, this share should increase substantially for future projects. The regime needs to balance up-front income with long-term objectives - taking into account the legitimate interests

of investors, the capacity of public agencies to administer the regime, and the interests of future generations of Mozambicans.

There is also a critical need for existing mining legislation to be examined and amended, in order to better reflect the growth of the sector and to protect the interests of the Mozambican people, particularly with respect to environmental, health, social, fiscal and contract transparency considerations. Accordingly, provisions of the current Mining Law of 2002 should be amended in these distinct areas, giving mining activities a modern and adequate regulatory basis to ensure greater competitiveness, guaranteeing the protection of rights and defining the duties and obligations of holders of mining titles. While the Mining Law of 2002 is undergoing revisions and is expected to be passed by Parliament in the coming months, this section sets forth policy recommendations which illustrate some of the gaps and challenges present in Mozambique's mining legislation. Reforms in the mining laws offer an important opportunity for the country to further develop its economy, and importantly, to promote equity, reduce poverty, and meet its development goals through a forward-looking approach. The recommendations in this section are offered to strengthen, clarify and update existing mining legislation, and provide guidance on how mining activities can be conducted in a manner, which prioritizes and improves the social and economic well being of the Mozambican people.

Governance

The Government must adopt a transparent and uniform policy framework and fiscal regime to effectively administer the process of extractive industry development vis-à-vis government costs and revenues. To this end, Mozambique should create an accountable and transparent framework of governance to manage its extractive assets. There must be checks and balances built into the institutional structures of the Government. This will create accountability, separate responsibilities to minimize conflicts of interest, expand powers for specific agencies to fulfill their roles, and allow for agencies to manage extractive resource development accordingly. Mozambique must also focus on anti-corruption measures to improve its governance. Some useful tools include the anti-corruption law as well as other Information and Communication Technology platforms that can help bolster the country's systems of oversight. Above all, transparency must become a fundamental part of the extractive industry's contractual process, to ensure that all parties are getting their fair share of revenue.

Sovereign Wealth Fund

Sound revenue management is key to the sustainable development of Mozambique's economy. The financial impact of natural gas and coal exportation can have detrimental effects for the country. As mentioned above, problems arise from real exchange rate appreciation, which puts other export industries out of business, and from fluctuation in commodity prices, which is destabilizing for the domestic economy. Establishing a sovereign wealth trust fund in a traditional financial center will help Mozambique absorb the coming windfall and promote growth and development in the country in five key ways. First, it effectively shelters the domestic economy from the commodity sector, so that volatility in oil, gas or coal prices do not have such a disruptive effect on the country's budget planning from one year to the next. Second, by channeling revenues into specific development programs, the fund can help the government to focus and plan for expansion of infrastructure, education, healthcare and public services. Third, the fund can help to ensure that government revenue from extractive resources become an ongoing source of income for decades to come, and provide intergenerational equity. Fourth, and crucially, a sovereign wealth fund can insulate Mozambique's currency, helping to ensure that investment in the extractives industry does not have negative impacts on other

sectors of the economy. Finally, the trust will legally enshrine the purpose of the fund and thus insulate Mozambique's fund from sovereign debt and facilitate the country's access to international financial markets due to improved legal standards.

Mozambique Moving Forward

Mozambique is embarking on potentially one of the most defining opportunities of the nation's history. Despite the impoverished state of much of the country, Mozambique is endowed with significant hydrocarbon and mineral resource wealth in an era that is experiencing innovation, awareness, and collaboration at an unprecedented rate. The nascent development of Mozambique's large-scale hydrocarbon and mineral reserves is a point of strength and opportunity for structured and deliberate leadership to shape the future of Mozambique into a prosperous regional authority with the capacity to be a source of strength and guidance beyond its borders.

There is universal familiarity with the potential outcomes that lie ahead for Mozambique. The nation's limited human capital and restricted absorption capacity of the local public and private sectors to adapt and manage the rapid changes underway exemplifies the necessity for Mozambique to engage actively, early, and transparently to realize the opportunities at hand. However the continuum that flows between a resource blessing of prosperity and a resource curse is process of significant complexity. Multi-directional relationships between the economics, social, environmental, political and legal aspects of natural resource development requires clear frameworks and implementation of transparent objective that will benefit the nation now and for future generations. The areas this report examines identifies the current and potential weakness that could derail Mozambique's intention to pursue a path of sustainable development that is supported by revenues and income generating potential of the growing explorations and production of Mozambique's natural resources. Each section also includes recommendations that address the challenges and opportunities specific to the changing environment of Mozambique's natural resource extraction.



Photo: Gorongosa National Park
Mozambique
Piotr Nasrecki

Introduction

On the south-eastern coast of Africa, Mozambique is a country of extraordinary natural beauty and cultural diversity. While its natural riches have been known to the world for centuries, it is only recently that the discovery of extensive gas reserves and coal deposits have drawn the attention of foreign investors.

As one of the least developed countries in the world, Mozambique faces significant challenges to bring these resources safely and sustainably to market, and to manage the resulting funds. In the aftermath of independence and a devastating civil war, the country has made significant progress to build social stability and begin to lift its people out of poverty. However, much work remains – and while extractive resources offer opportunities for prosperity and growth, the influence of multinational corporations, donors and international organizations (each with different interests) has complicated an already complex environment.

This project has reviewed Mozambique’s unique economic, legal, institutional, environmental, and social context to assess the potential impact of the extractive industry (both positive and negative). Through consultation, research and interviews, the team has drawn on the knowledge within Mozambique, as well as on the experiences of other countries, to formulate a number of specific and implementable recommendations that will help Mozambique to mitigate the risks and maximize the benefits of extractive industry development. Our team’s particular focus has been to harness the existing strengths and potential within Mozambique civil society and government, and to prioritize key areas of reform.

The Capstone team began work in November 2012, and carried out desk research from Columbia University in New York for several months. In March 2013, eleven team members

traveled to Mozambique. While most of our time was spent in Maputo conducting interviews with stakeholders, companies, donors, NGOs and Government agencies, two team members traveled to Pemba to research the new natural gas developments in that region. We were privileged to have the assistance and insight of dozens of committed people during this period. Although our visit was brief, we were able to conduct over 40 meetings addressing the broad scope of issues covered in this report. On our return to New York, further research supplemented our interview material.

The resulting report is divided into nine sections, each with a particular focus. However, many of the issues overlap – and these themes are addressed from several angles. Key themes that emerge throughout the report are the importance of education, the need for engagement and consultation with local communities, and the opportunity for Mozambique to learn from and improve upon international experience.

Section 1 provides an overview of Mozambique’s Economic and Commercial context, and introduces some of the key considerations for the development of extractive industries. In addition to outlining the prospects for Mozambican gas on the world market, this section discusses the important issues of contracting and financing LNG production. The local and global commercial prospects of coal production are also discussed.

Next, we address the importance of creating linkages between foreign enterprises that invest in Mozambique’s extractive industry, and local companies. In particular, the section highlights that small and medium-sized enterprises need support, regulation, infrastructure, and training to improve their efficiency, and to engage in commercial relationships with international investors. By encouraging “linkages”, Mozambique can ensure that foreign companies are more integrated and more efficient, and that the benefits of extractive industry can flow directly to the communities where they operate.

Section 2 expands on this idea, exploring the benefits and practicalities of “local content” requirements. Employment of local residents, procurement from local suppliers, and other forms of local input can increase efficiency for companies and generate “social license to operate.” This section provides an overview of Mozambique’s socio-economic context and a close-up view of two regions that are greatly impacted by coal and natural gas development – Tete and Cabo Delgado, respectively. Finally, the section addresses areas of risk and strategies for mitigation, including inward migration and inflation.

Section 3 provides a snapshot of Mozambique’s infrastructure with a focus on roads, railways, and energy. It assesses the potential impact of expansion by extractives companies and presents an argument for inclusive infrastructure – infrastructure that is accessible and affordable for local people, and for other enterprises.

Section 4 highlights the multiple, complex environmental concerns that extractives development raises. Natural gas exploration and production and coal mining both present threats to the environment, to livelihoods, and to health, including marine life, water quality, air quality, land, and biodiversity. The section presents a number of recommendations for legal and institutional changes that will help to preserve Mozambique’s unique ecology and landscape, and to protect the health of its people.

Section 5 presents an analysis of the impacts of resettling communities to make way for

extractive resource projects. The section highlights the importance of an early, open, and inclusive consultation process, founded on free and informed consent. Recommendations focus on improving resettlement practices, including compensation and protecting livelihoods, and identify the particular safeguards that are needed uphold the rights of women.

Section 6 moves to the legal framework for mining in Mozambique. It outlines the current legislative provisions and licensing process, and provides detailed recommendations on how these laws can be strengthened and improved. Environment, resettlement, fiscal and transparency issues are all considered.

Section 7 assesses the existing gas and petroleum laws, and discusses options for reform in light of the most recent draft amendments. It presents an analysis of the “gaps” in the law and touches on the particular issue of foreign investment and arbitration.

Section 8 presents the case for strong and reliable institutions to govern extractives industry in Mozambique. It outlines the progress that Mozambique has already made towards transparency, and recommends general and entity-specific policy changes. Capacity building and e-governance are also discussed.

Section 9 proposes a sovereign wealth fund for Mozambique, with a structure that will help to ensure that extractive industry revenues are a blessing, and not a curse, for the country. The section outlines how a sovereign wealth fund can help to manage Dutch disease and inflation, presents options for managing and investing the resources, and identifies the various funds which could be created to direct revenues into the Government budget, stabilization, development and savings, development.

The report concludes with a summary of the Recommendations, and a Bibliography of sources.

The Appendices are intended to provide additional detail and context for interested readers. They include resources that have been collated by the authors from a range of different sources, for ease of reference. Appendix 1 sets out a number of tables with additional detail about the legal framework and contracts for mining, gas and petroleum, including some advantages and disadvantages of the different types of fiscal tools used by governments to collect revenue from extractive operations. Appendix 2 includes resources for Sovereign Wealth Fund governance, including international comparisons, details of the *Santiago Principles* and the Linaburg-Maduell Transparency Index. Finally, Appendix 3 includes relevant development indicators for Mozambique, along with comparison countries for reference. The tables incorporate economic, commercial, social and governance indicators, and serve as a “snapshot” of Mozambique’s current development.

A Note on Priorities

This report sets out 105 distinct recommendations for Mozambique, covering economic, infrastructure, social, legal, environmental, governance, and financial issues. The recommendations, which are summarized at the conclusion of the report, should provide guidance and provoke discussion among government, civil society, donors, and the business community. However, it is unrealistic to expect that Mozambique will be able to address all these issues immediately and simultaneously. The people of Mozambique must decide what issues are most pressing and most important for themselves.

This section is intended to give an outline of what the Capstone project team identified as the key priorities for change in the short and medium term.

Get the legal framework right to ensure a balance of rights and responsibilities

Mozambique's legal framework for oil, gas and mining needs drastic changes to address the challenges that lie ahead. It is essential that the new laws set out clear and detailed obligations for companies and for the government about responsible environmental and social practices. Where gaps remain, the laws should refer to the rules of jurisdictions with robust laws, such as Norway and Australia. The fiscal regime must also be clear, transparent, and standardized for all projects – not negotiated on a case-by-case basis. Closely related to the law is the importance of institution-building to enable implementation. Mozambique's ministries and government agencies must have the support, the training, the power, and the resources to effectively negotiate concession contracts, regulate, monitor, and enforce the legal framework.

See: Section 6: The Need for Upgraded Mining Laws, Section 7: Gas and Petroleum Laws, Section 8: The Case for Strong and Reliable Institutions, and Section 4: Protecting Mozambique's Environment.

Carefully manage the revenues from extractive industries for the benefit of all Mozambicans

Oil, gas and mining have immense economic potential – but that potential will only be realized if projects are taxed appropriately, and revenues are managed carefully. Once a fiscal regime is in place, the revenues from all projects should be paid into a resource fund that is designed to suit Mozambique's situation. A Sovereign Wealth Trust Fund would provide a structure that is clear and straightforward, with enough flexibility to allow for different stages of development. First, extractives revenues could contribute to initial budget funding (in lieu of donor funding), and could be used to help stabilize the economy. As the fund grows, investments in infrastructure and special development projects could follow. Ultimately, the fund could also incorporate a savings fund that generates wealth for decades to come.

See: Section 1: The Economic and Commercial Implications of Natural Gas and Coal, and Section 9: Managing Wealth: The Sovereign Wealth Fund.

Provide economic opportunities by making infrastructure inclusive and accessible

Infrastructure development will be an essential component for Mozambique to turn its resources into commodities. However, infrastructure that serves only large commercial enterprises can exacerbate inequality. The government must plan carefully to ensure that the money invested in infrastructure has as many flow-on benefits as possible – this means

engaging with small enterprises and with the public to ensure access to reliable transport and electricity networks.

See: *Section 3: The Need for Inclusive Infrastructure.*

Protect and empower local populations to preserve stability

Mozambique must immediately address the disruptive impact of current and future resettlement projects to ensure that local populations do not lose out when extractive projects take place in their region. Over time, these disruptions can violate fundamental human rights, entrench poverty, cause social unrest, and make it impossible for businesses to operate efficiently and safely. By encouraging local content and local linkages, Mozambique can help to ensure that foreign investment is more efficient and contributes to real, sustainable benefits to the community.

See: *Section 2: Translating Extractive Industry Prosperity to Mozambique’s Communities and Section 5: Ensuring Social Equity in Extractive Industries-Based Development.*

Education is critical to sustainable growth and a better quality of life

Although it is not a dedicated topic in this report, education and capacity-building is a common theme in our analysis. Training and education will help Mozambique’s lawmakers, officials, civil society, business people, and all citizens to make good decisions about managing extractive resources. The revenues from those resources, in turn, should be invested in improving the quality and accessibility all levels of education – from primary through to specialist tertiary education.

See: *Section 2: Translating Extractive Industry Prosperity to Mozambique’s Communities, Section 4: Protecting Mozambique’s Environment, and Section 8: The Case for Strong and Reliable Institutions.*

Foster and protect Mozambique’s other “comparative advantages”

Once the coal has been mined, and the gas extracted, Mozambique will need to depend on its people, its land, and its waters for continued economic growth. Among others, Mozambique has the potential to develop a vibrant agricultural sector, and a world-class tourism industry. But both of these sectors could be seriously threatened if extractive developments are not well planned or well regulated. Loss of arable land to mining, pollution or contamination of water, disruption of habitats, and the physical scars of extractive industries will directly impact this economic potential. It is possible for these industries to coexist – but only if strong and enforced laws protect the environment and the people of Mozambique.

See: *Section 4: Protecting Mozambique’s Environment, and Section 5: Ensuring Social Equity in Extractive Industries-Based Development.*



Mozambique

mobilizing extractive
resources for development

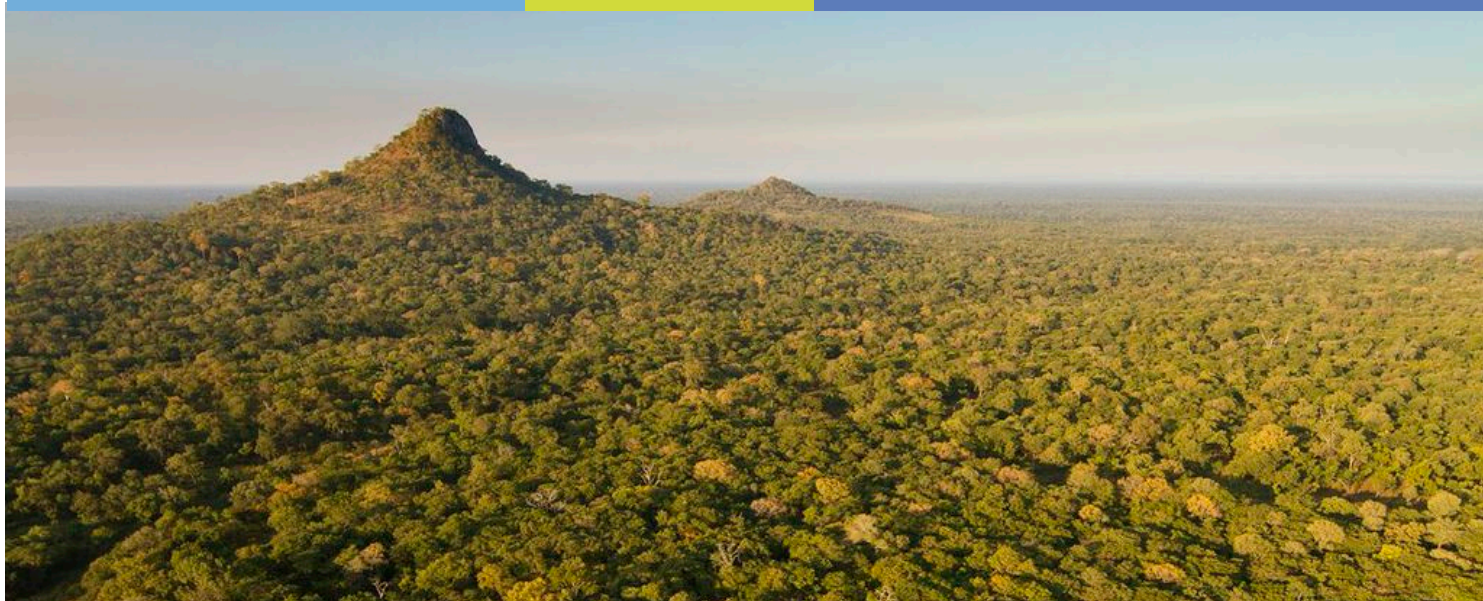


Photo: Gorongosa National Park
Mozambique
Piotr Nasrecki

Section 5

Ensuring Social Equity in

Extractive Industry-Based Development

5 Ensuring Social Equity in Extractive Industries-Based Development

Extractive Industries, Communities, and Resettlement

Around the world, local communities often bear the worst of the environmental, social, and economic impacts of mining operations. Communities may be forced off their lands as a result of concessions granted to mining companies, and have to forego traditional means of earning a living. Their drinking water, rivers, and lakes may be polluted as a result of improperly designed or badly conducted mining operations. Smelters can release toxic air pollutants with serious health and environmental consequences. The introduction of outside practices and lifestyles may interfere with local social and cultural traditions, and introduce devastating diseases and problems, such as HIV/AIDS and alcoholism to remote villages.

Environmental Law Institute²⁹⁸

Mozambique's natural resource project expansion is in the early stages of development. The nation has the extraordinary opportunity to learn from current challenges, apply lessons learned to new concessions, and strategically translate its mineral assets into long-term sustainable development for all Mozambicans. Extractive operations can only be fully successful if they are embedded in prosperous communities, as deprived conditions affect security, hinder local resources, and very importantly, obstruct a social license to operate. Therefore, one of the country's top objectives should be to leverage the recent boom in extractives industries to improve the living conditions of Mozambicans and to ensure a prosperous environment in which companies can diligently operate.

As stated in the Natural Resource Charter's²⁹⁹ Precept 1, "the development of a country's natural resources should be designed to secure the greatest social and economic benefit for its people. This requires a comprehensive approach in which every stage of the decision chain is understood and addressed".³⁰⁰ The Charter highlights that resources should be managed in a way that ensures benefits to current and future citizens. Mozambique's natural resource extraction gives the country the opportunity to become a regional leader not only by increasing its annual GDP growth, but also through improving the health, education, food access, and livelihoods of its citizens.

Mozambique's recent resource boom in natural gas, coal, and increasingly, agro-industrial activities, are deployed from or anchored in remote rural areas predominately characterized by poor socio-economic conditions. In particular, the communities in Tete and Cabo Delgado Provinces, where most of the coal and natural gas reserves have been found, are extremely remote. The International Fund for Agricultural Development ("IFAD") affirms that "poverty is still predominantly a rural phenomenon in Mozambique. More than 80 percent of poor households live in rural areas".³⁰¹ Poor, remote and politically marginalized communities have been the most heavily impacted by extractive industry operations. As a result of Mozambique's significant increase in extractive resource production, resettlement of these poor, remote and politically marginalized communities is becoming increasingly common.

The coexistence of communities and extractive operations does not have to be a risk for investors or a disadvantage for communities. A well-structured and well-managed resettlement process which is jointly agreed upon by communities and companies can help to ensure that extractive industry operations enjoy greater community buy-in and can benefit from local resources (including human capital), thereby reducing the likelihood of conflict. The following sections provide an analysis of the current resettlement process in Mozambique along with recommendations which aspire to promote mutually beneficial resettlement agreements leaving all parties affected better-off and fairly attended. Natural resource extraction is not an end in itself but rather a means to development and Mozambique holds in its hands an unparalleled opportunity.

5.1 Resettlement Resulting from Extractive Activities

There is an increasing amount of resettlement required in Mozambique due to the expansion of mining and hydrocarbon exploration and production. As illustrated below, coal and other mining operations has growing impact on allocation of land and (inherently) livelihoods in Tete Province. “Between 2009 and 2010, Vale resettled 1,365 households to a newly-constructed village, Cateme, and an urban neighborhood, 25 de Setembro.”³⁰² In 2011, Rio Tinto and Riversdale resettled 84 households to Mwaladzi. By May 2013, Rio Tinto plans to resettle an additional 595 households to Mwaladzi and to urban areas near Moatize.³⁰³ Jindal Steel, Power Limited, and other companies will also resettle several hundred households in the coming years upon government approval of its relocation plans. As natural gas exploration scales up and production comes online, households in Cabo Delgado Province in northern Mozambique will also require resettlement and communities will likely experience significant other impacts on livelihoods due to extractive industry operations and inward migration (see *Section 2.3.3: Areas of Concern*).³⁰⁴

Resettlements of communities stemming from mining activities affect a wide range of rights and responsibilities guaranteed under Mozambique’s Constitution, laws and international human rights standards. These include the rights to adequate housing, health, education, work, security of the person and home, and freedom from cruel and degrading treatment.³⁰⁵ Mozambique’s Constitution also guarantees the right to compensation for damages caused to these fundamental rights.³⁰⁶ However, as documented in Tete Province, policy and implementation of resettlement to date is challenged in several ways. Obstacles regarding the productivity of the land without irrigation, access to markets and transportation, livelihood diversity, and maintenance of infrastructure have resulted in friction between the communities and other stakeholders. Tensions came to the fore in January 10, 2012 when an estimated 500 residents of the Vale resettlement village Cateme protested by blocking the railroad linking Vale’s coal mine with the port in Beira.

Accordingly, the consequences of any attempt to resettle communities as a result of extractive operations must be considered in light of the Constitution of Mozambique. Mining and hydrocarbon projects must comply with legislative and Constitutional guarantees by providing protection for social impacts, namely resettlement, livelihoods, and health of communities. As highlighted in the Constitution of Mozambique itself, resettlement must be avoided wherever possible, and should be considered as a last resort for the establishment of mining operations or any economic activity.³⁰⁷

Mozambique is a party to the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”), the Convention of the Rights of the Child (“CRC”), and the African Charter on Human and Peoples’ Rights

("African Charter").³⁰⁸ It is therefore required to uphold its International Human Rights Law obligations to reduce the disruptions to standards of living, livelihoods and access to services. The recommendations for Mozambique's 2012 Resettlement Decree³⁰⁹ provided in the following sections are based upon interpretation of the Mozambican Constitution, these human rights obligations and other international law obligations, and examples of policies and best practices from other countries with respect to the resettlement of communities.

Given the increasing level of resettlements taking place in the country due to coal and gas exploration and production, the following recommendations provide basic principles for ensuring long-term stable agreements with the communities. It is imperative that extractive operations establish and maintain a solid social license to operate (see *Section 2: Translating Extractive Industry Prosperity to Mozambique's Communities*). Given that Mozambican communities are more aware of their rights, compliance with these basic principles will ensure respect for human rights, a stable investment environment, and promote sustainable development.

5.1.1 Establish early, inclusive, free, and transparent consultation processes and ensure community participation in all stages of the resettlement process

Honest and open consultation by companies builds support and critical buy-in from impacted communities, ensuring a social license to operate and long-term success for extractive projects. A consultation that takes place early in the resettlement process, and is inclusive, free, and transparent is more likely to lead to a dialogue where communities are able to express their concerns, are listened to effectively, and can decide on what impacts their lives. Also respectful and transparent dialogue will establish a more constructive relationship with host countries, communities and other stakeholders, leading to greater success in extractive operations.

The current Resettlement Decree puts forth a narrow interpretation of the public consultation and hearing process by relying primarily on public meetings and designating community representatives who will be charged with dissemination of information on resettlement issues: "The dissemination of this process, through the means deemed adequate to guarantee public participation, with a view to collect comments, suggestions or recommendations concerning the draft Resettlement Plan, constitutes a guarantee of citizens' right to information, particularly on the part of the affected or interested people".³¹⁰ With respect to public hearings, the Decree provides that: "in the resettlement process there shall be hearings of local communities and other parties interested in and affected by the activity".³¹¹ Public discussions should include more broad-based consultations on the design, implementation as well as the post-stages of resettlement. Public hearings, just one method of community participation, should be combined with other measures, including the participation of women, people with disabilities and other marginalized groups. A positive element of the current Decree includes public requests for clarification, which must be addressed by Public Administration bodies within 15 working days.³¹²

Mozambique's extractive sector is very promising, particularly to private investors looking for high rates of return. However, a well-obtained social license is key to insuring stable long-term operations. Since resettled communities will be the most affected by new extractive operations, the Government must ensure that they can actively participate in all decisions regarding the new location, its conditions, and the resettlement process, in a way that meets their capacities and capabilities, and addresses technical asymmetries. The Environmental Law Institute states that, "Prior informed consent is intended to

promote a more sustainable form of development, in which the short-term mining interests do not compromise the community's longer-term needs for survival".³¹³

Timeframes for consultation with local communities must go beyond short-term risk avoidance and be long enough as to allow for comprehensive discussions. Usually communities, especially rural communities, are not formally organized, are preoccupied with meeting their livelihoods, and are unfamiliar with sophisticated negotiations about extractive operations and its implications. For this reason, both private investors and the government must allow communities time to organize themselves, deliberate and reach consensus. They must also be prepared to hold lengthy negotiations if necessary.

As disagreement and disputes are legitimate stages in any consultation process, "for conflicts arising in the course of negotiations the World Commission on Dams guidelines recommend the use of an independent dispute resolution body that is created with the participation and agreement of stakeholders".³¹⁴

Recommendation 40: Ensure that the consultation process starts during the exploration phase of the project. The private company that is carrying out exploration activities and causing the resettlement should bear the cost of consultation. The role of the Government is to provide the regulatory framework, oversee activities and ensure that the agreements reached are fair to the community and in accordance with the law.

- Clarify who is to be recognized as both legal and legitimate community representatives and interlocutors. Set up a protocol to identify and validate these legitimate representatives and ensure the full representation of ethnic and minority groups (See below the Case of Chinalco and the Resettlement of Morococha in Peru).
- Define what instances of participation correspond to a legal consultation as opposed to solely informing communities about resettlement. Demand proper inclusive consultation in addition to basic informational activities.
- Ensure fair agreements by addressing technical and information asymmetries, building the capacity of communities to be able to fully participate in consultation processes and negotiations (to be addressed ahead).

CASE STUDY: THE CASE OF CHINALCO AND THE RESETTLEMENT OF MOROCOCHA IN PERU

Based on a case study written by Mariana Costa Checa and Carolina Ocampo-Maya, to be published by the Case Consortium @ Columbia in the Summer 2013.

Chinalco, Aluminum Corporation of China, in 2007 acquired what will be Peru's largest copper mine, [the Proyecto Toromocho]. The mine is expected to produce 865,000 tons of copper concentrate annually, for over 36 years and starting in 2013. The Proyecto Toromocho, however, required the resettlement of an entire town of 5,000 people – Morococha.

The idea of a resettlement was consulted and socialized with the support of a private specialized consultancy firm for over three years. However, once the new town, Carhuacoto, was ready to be inhabited, less than 70 percent of the population were willing to move.

A Dialogue Table for the Resettlement of Morococha was diligently set up in 2011 to reach a Unified Framework Agreement that would govern the relationship between the company and the community. However, when the regional government and the company went on to identify legitimate representatives to join the table, they realized that there were few formal institutions within the community. Fred Goytendía Matos, Executive Secretary of Junin region's Concertation Table to Fight Against Poverty, a public-private institution took on the task of establishing a methodology to identify these representatives.

"Considering the social characteristics of Morococha, and the weakness of its civil society, Goytendía made specific efforts to ensure representatives were adequately selected and trained. 'When we were assigned with this task, we elaborated a methodology considering two main issues: first, legality. Were these organizations legally constituted? We gave them multiple options to legalize their status. They could show proof of public registration, the notary, the justice of the peace....anything where they could show the birth certificate of the organization. The other key issue was legitimacy. Who and how many were they representing? We wanted to see some proof of their meetings, acts, any confirmation of their legitimacy. We were incredibly flexible to allow more organizations to participate. We placed announcements on the streets and extended multiple times the deadline to participate. Among the organizations we finally chose we made sure to include vulnerable populations as well as rural communities. Even children were represented in the table, through leaders they selected in school'"³¹⁵.

After almost a year of formalities and deadline extensions, a Resettlement Table was established with eleven groups legitimately representing the community.

5.1.2 Level the playing field by building the capacity of communities to participate in negotiations

It is unreasonable to expect that rural communities, living in poor conditions and with limited access to education and other basic services, will have all the capabilities necessary to negotiate an agreement that will shape their lives, and the lives of future generations. As explained by the Environmental Law Institute, information and technical asymmetry at negotiation tables will undermine the stability of a company's long-term social license to operate. "The lack of information, resources, and capacity often hinders the ability of citizens to take maximum advantage of sophisticated legal mechanisms."³¹⁶ It is therefore key to ensure that those negotiating on behalf of the community have access to information and the basic tools to hold a fair conversation and reach informed agreements.

Leveling the playing field by building the capacity of communities to participate in negotiations means ensuring that leaders genuinely represent the interest of the communities and have the preparation or support to reach sustainable and beneficial agreements. "For communities to engage meaningfully in consent processes, they may also need education about their rights, training to ensure that they can advocate for themselves, or assistance from civil society organizations."³¹⁷ Human Rights Watch has also recommended that communities should participate in all stages of the resettlement process including prior, during, and post relocation.³¹⁸

Recommendation 41:

- Ensure that community representatives have the necessary skills and information to participate at negotiation tables. Extractive companies should provide the funds to train community

representatives to hold and participate in fair negotiations.

- Include in contracts with extractive companies a clause that ensures that the company covers the cost of experts accompanying negotiations and working on behalf of the communities. External experts should be able to accompany communities in the negotiation process if necessary.
- Ensure Government representation at all stages of the negotiation process, not only from the Ministry of Natural Resources, but also from other relevant incumbents including the Ministry of Health, Ministry of Education, Ministry of Environmental Coordination, and Ministry of Women and Social Affairs.

5.1.3 Ensure fair and holistic compensation, improved livelihoods and standard of living, and poverty reduction strategies

Compensation from resettlement should be based on holistic principles that consider not only economic compensation of physical assets but that also recognizes the loss of intangible assets such as access to services, transportation and cultural sites. Under Mozambican law, affected populations are provided with certain protections for fair compensation prior to their expropriation. Article 82(2) of the Constitution provides that, “expropriation may take place only for reasons of public necessity, utility, or interest, as defined in the terms of the law, and subject to payment of fair compensation”.³¹⁹ The Land Law also requires that compensation be fair, cover losses and lost profits, and that such payments should *precede* revocation of land use.³²⁰

Thus, applying Mozambican Law, populations to be resettled should have the right to compensation *prior* to resettlement in order to minimize disruptions to their quality of life. While the current Resettlement Decree gives some attention to a number of issues that are necessary to ensure a smooth transition for farming and other types of work, it overlooks important elements. For example, the Decree provides for the “consideration” of environmental characteristics such as soil fertility, yet fails to set explicit standards for the type and quality of resettled land, access to water supply and timing of resettlement to minimize farming cycle disruptions,³²¹ and most importantly, identify which entity makes the final decision regarding the sight for resettlement. The Resettlement Decree should clearly state which Governmental entity holds the ultimate responsibility of this decision.

The Decree also falls short in providing any means of technical assistance for individuals experiencing a change in their livelihoods. In addition, the Decree overlooks the importance of secondary economic activities such as private vegetable gardens, access to transportation and markets³²². Thus, principles on livelihoods and improved standards of living should ensure that resettled people have adequate land-based or employment-based productivity, while protecting their rights to adequate housing, food and water resources. Resettled populations must have the ability to actually *improve* their livelihoods and standards of living.

The current Resettlement Decree addresses some requirements for housing and access to schools, health facilities and infrastructure. However, these standards must be bolstered, ensuring they are established *prior* to displacement. These standards should also take into account the availability, affordability, accessibility, and quality of health care, housing, and education in the relocation sites³²³. Additionally, the lives of resettled communities should be **better than the standard and quality of living**,

prior to their resettlement. Social hardships, such as access to roads, longer commutes to markets, medical facilities and schools, along with traveling longer distances in visiting family members, are factors which must be taken into consideration with respect to holistic compensation. To minimize adverse impacts to communities, UN Habitat recommends that relocation should take place to areas located within five kilometers from original settlements, and this standard should be followed.

CASE STUDY: NEPAL

Radon, J., & Shrestha, K. (2012, December 14).

“Hydro Power and Equity – Need to be One!” *Nepalnews.com*.

Nepal’s *Land Acquisition Act of 1977* (“Land Acquisition Act”) takes a holistic approach to compensation and can provide useful guidance for resettlement in Mozambique. Section 16(2) of the Land Acquisition Act provides that the following be taken into consideration in determining the amount of compensation for land acquired by non-governmental bodies or entities:

- a) The price of the land at the time of the publication of the notice of land acquisition;
- b) The value of the crops, houses, walls, sheds, if any, to be acquired along with the land; and
- c) The losses which the concerned person will suffer as a result of the relocation of his/her residence, or the place of his/her business, because of the acquisition of his/her land.

Paragraph (c) is particularly important as it contemplates full social costs of resettlement by setting forth a holistic approach to compensation rather than a narrow buy-sell market approach.

As part of its compensation plans, the Government of Mozambique should consult the IFC’s Performance Standards on Environmental and Social Sustainability and consider the costs of life disruption for resettled communities. The Standards provide that: “Transitional support should be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.”³²⁴ Very importantly, “documentation of ownership or occupancy and compensation arrangements should be issued in the names of both spouses or heads of households, and other resettlement assistance, such as skills training, access to credit, and job opportunities, should be equally available to women and adapted to their needs.”³²⁵

The investor causing the resettlement, whether public or private, should bear the costs related to the resettlement including the establishment of the new location, all moving expenses, and maintaining a long-term dialogue with impacted communities. It is the role of the state to ensure that communities have access to all basic services including drinkable water, sewage systems, electricity, health and education facilities, and roads. These investments should be the responsibility of the company causing the resettlement, but the Government must secure the funds to cover their operational costs.

Recommendation 42:

- Livelihoods of resettled communities must be actually improved. If Mozambique is able to do this, it will become a global best practice and a leader in establishing sustainable resettlements.

- Compensation must be established prior to resettlement and all costs related to the resettlement must be covered by the entity causing the relocation.
- All basic services must be in place and their operational costs fully funded by the Government prior to the resettlement.

5.1.4 Minimize negative environmental impacts in resettlement

As the environmental section of this report discusses, extractive activities have major environmental impacts on the communities in which they take place, often with harmful health consequences for resettled communities. This includes air pollution, water contamination and water depletion. Environmental Impact Assessments (“EIA”) for mining projects are in part designed to mitigate these negative impacts and are mandatory under the Environmental Regulations. An EIA undertaken by a licensed MICOA environmental specialist is carried out during the feasibility stage of the project, and technically and scientifically examines the consequences of a mining project on the environment.³²⁶ The EIA report must include an environmental management program that addresses social, economic and cultural aspects, and is scrutinized by MICOA and MIREM.³²⁷ An EIA and a social survey should also identify potentially adverse social effects, such as relocation of communities, family displacement, issues of compensation, including loss of homes, personal assets, agricultural lands, loss of communal resources and access to public facilities including roads, schools and markets. An EIA, when prepared with the active participation of local communities, can help determine more accurate socio-environmental impacts and develop more equitable resettlement and compensatory schemes to address those impacted.³²⁸ For more information on EIAs, see *Section 4: Protecting Mozambique’s Environment*.

Regarding environmental harm, the current Resettlement Decree states that “whoever pollutes or in any other way degrades the environment has always the obligation to repair or compensate the resulting damages”.³²⁹ While many extractive companies have instituted programs to reduce and mitigate the negative environmental effects for their workforce and for all members of local communities, more must be done to protect and promote the health of communities. The current principle on environmental accountability should be expanded beyond preventing and mitigating environmental harm, to include a strict liability standard for companies responsible for causing environmental and health damages arising from mining and other extractive activities (see *Section 6: The Need for Upgraded Mining Laws*).

Recommendation 43: Include in the EIA an identification of adverse social effects of extractive operations, including the impacts and losses for resettled communities, prior to the exploration phase. Expand regulations on environmental accountability to include a strict liability standard for environmental and health damage caused by extractive operations (see *Section 6: The Need for Upgraded Mining Laws*).

5.1.5 Constitute an inclusive and legitimate post-resettlement committee that overlooks agreement compliance, progress and accountability

Consultation processes should be held during the exploration, development, and operational phases of

the mining operation and until due closure is performed in accordance with national regulations.³³⁰ After an agreement has been reached between the communities and the mining company conducting operations, it is key to ensure that a legally-binding formal agreement honors the results of the prior informed consent negotiations.³³¹ The agreement, however, must recognize that communities are dynamic. It is therefore imperative to have a Post-Resettlement Committee that oversees agreement compliance, progress and accountability. This Committee will allow companies to continue or resume consultations at later stages in the mining process, to ensure that rights and interests are properly respected.³³² The Committee should be made up of representatives from the Government and the community, including representation from all ethnic and minority groups affected by the relocation.

The ability of a community to consult with a mining company at the later stages of the mining process may be critical for ensuring that its rights and interests are properly respected. As mining proceeds, the environmental, social and economic impacts of the operation may change due to unforeseen circumstances. Unless communities have additional opportunities to consult with the company and to amend the terms and conditions for consent, the right to prior informed consent may be ineffective in promoting sustainable development of the resource.

Laplante and Spears, *Out of the Conflict Zone*³³³

Resettlement agreements must include monitoring and evaluation obligations on the company, and the Post-Resettlement Committee will have the responsibility to follow up on the fulfillment of these obligations. It is important to recognize that “effective monitoring and implementation can only occur where there are clear performance indicators”.³³⁴ Therefore, these need to be established at the beginning of the resettlement process. On the other hand, the Committee should have the responsibility of disseminating information and communicating all decisions regarding the project through all necessary channels based on local traditions or other mechanisms. The Committee should also have the responsibility to periodically update all stakeholders on the fulfillment of commitments established in the agreements. The company must bear the cost of assessments, traveling to proposed resettlement sites, traveling to Maputo and other relevant areas.

An inclusive and legitimate Post-Resettlement Committee that overlooks agreement compliance, progress and accountability is a key component of the resettlement process, particularly for promoting long-term stability.

Recommendation 44:

- Resettlement agreements should be legally binding and compensation and other aspects must be respected and enforced.
- A Post-Resettlement Committee must legitimately represent the community, should meet periodically, and its members must have the necessary skills and resources to monitor the terms of the agreement. It must also be granted access to information necessary to make relevant decisions, and counts on the participation of government agents that supervise the fulfillment of agreements.
- Communities and other stakeholders must be kept informed about the project through

established mechanisms for two-way communications.

5.2 Gender considerations in extractive industry operations

There is growing consensus that the Right to Development reaches beyond economic development to include the promotion of gender equality, improvement in women's well-being and women's inclusion in all aspects of planning and delivering of the development process. Applying this principle, implementation and legal reforms of Mozambique's existing laws on Resettlement must take into account the importance of gender considerations in the extractive industries. As Mozambique's existing mining legislation undergoes reform, it must address the special needs of women impacted by mining operations and resettlement. Mozambique can meet this challenge by implementing the existing laws and Constitutional provisions that guarantee gender equality, and by amending its Mining Legislation to address issues on resettlement, consultation and compensation, as discussed in the preceding section.

International Human Rights and Constitutional Standards in Mozambique

Gender equality is deemed essential to human development in the fight against poverty and is clearly articulated in the Millennium Development Goals ("MDGs"). The UN Office of the High Commissioner for Human Rights ("OHCHR") set forth the Declaration on the Right to Development which states that the right to development must be applied without discrimination based on race, sex, language or religion. Article 8(1) of the Declaration makes specific reference to women's role in development, stating that "effective measures should be taken to ensure that women have an active role in the development process."³³⁵ It has been widely accepted that in the absence of gender equality, the rest of the MDGs are unlikely to be accomplished.³³⁶

Mozambique has officially recognized equality between women and men and the principle of non-discrimination since its Constitution of 1975 and its third Constitution of 2004, which states: "Men and women shall be equal before the law in all spheres of political, economic, social and cultural life."³³⁷ The primary international human rights legal instruments calling for equality between the sexes, such as the IICPR and CEDAW, have been ratified by Parliament.³³⁸ Under these international standards, Mozambique has an obligation to ensure that women are not left out of opportunities to participate in and benefit from the country's development through the extractive industries. Accordingly, the Government bears a duty to ensure women's equal access to socio-economic opportunities, reduce disruptions to their standards of living and improve livelihoods.

Applying Mozambique's Legal Framework to Women's Land Rights

According to Mozambique's Constitution of 1990, all land ownership vests in the state. *Mozambique's Land Law of 1997* gives equal rights to both women and men over the land they actually occupy and use. The Land Law specifies the nature and conditions of rights and land access for individuals, communities and corporations. Importantly, Article 12 of the Land Law states that land rights can be acquired by three methods: First, through occupation by individuals and local communities; Second, through occupation by Mozambicans who have been using the land in good faith for at least ten years; and Third, through request to the state by individuals or corporate bodies to authorize 'new' use and benefit rights. Under the third method, foreign companies can gain access to land in Mozambique if they can demonstrate concrete usage and capacity to develop and carry out their plans.³³⁹ This method is also particularly relevant for local communities who are forced to resettle from their lands after the

Government leases land to companies for natural resource extraction.

Mining Activity Impacts on Women

Studies have shown that a strong gender bias exists in the distribution of risks and benefits of extractive projects throughout the world. Mining benefits accrue to men in the form of employment and compensation, while burdens, including socio-economic marginalization, environmental degradation and resettlement fall most heavily on women.³⁴⁰ Women are typically sidelined from decision-making processes within the mining industry, and as a result, constrained from asserting their rights. The following subsections discuss some of the major impacts of mining activities on women, including the process of resettlement, consultation and compensation, along with social and environmental impacts.

Consultation on Matters of Resettlement and Compensation

When mining resource extraction takes place, surrounding communities frequently lose their agricultural lands and homes, quality of life and sources of livelihoods. Mining operations have led to the conversion of land for new uses, causing the displacement and resettlement of communities.³⁴¹ Men are typically consulted on resettlement and compensation issues, whereas women are excluded regarding the consequences of resettlement and the benefits they are entitled to receive.³⁴² Men are also the ones compensated for loss of land, even when women work the land and are equally impacted by the loss. Women may not see any of the compensation, which reduces their ability to cope from changes and care for family members after resettlement.³⁴³

Gendered Social and Environmental Impacts from Mining Activities

Evidence from around the world shows that women are placed at greater risks than men due to environmental damage. When extractive operations change or damage the local environment, women face the greatest challenges in collecting water and food.³⁴⁴ Since women are typically responsible for domestic chores, the destruction of local environments increases their workloads, with women having to walk longer distances in search of water and food.³⁴⁵ Other social hardships for women include longer commutes to markets, medical facilities and schools. Women may also be denied access to both formal and subsistence agriculture by losing traditional livelihoods and being excluded from new opportunities.³⁴⁶

Extractive operations have caused extensive environmental damage, especially in the absence of proper environmental impact assessments and effective oversight. Oil spills, pollution and water contamination have affected many countries around the world, with serious consequences for human and economic activities, including fisheries and agriculture. This has led to a reduction in production, jeopardizing local economic activities, community nutrition and health.³⁴⁷ Communities in Nigeria struggle to support their families following oil and gas extraction that has destroyed most of their natural resources.³⁴⁸ Studies from the Philippines, Papua New Guinea and Indonesia also demonstrate the negative impacts of mining on natural resources, with communities facing water shortages following migration-related population expansion and from increased industrial water usage.³⁴⁹ The seepage of toxic materials into rivers following mining activities has made it particularly dangerous and difficult for local women to find clean water for household usage and consumption.³⁵⁰ See *Section 4: Protecting Mozambique's Environment*.

Recommendations

As Mozambique's Mining Legislation undergoes revisions, gender considerations should be included in

forthcoming amendments. This section contains recommendations that have been designed to help mitigate and prevent the unique types of harm women living in or near mining communities are likely to encounter. These recommendations aim to provide women with equal decision-making power on issues which impact their basic human rights, including access to safe and adequate housing, health, food, water, markets and dignified livelihoods.

Extractive operations should not only minimize negative impacts of the sector, but actively promote gender equality and women's empowerment through inclusive consultation. Inclusive consultation can help women become more engaged and active participants in their communities, leading to better social, health and economic outcomes.³⁵¹ Inclusive consultation may also be transformative, empowering women to overcome the structural disadvantages and inequities that have traditionally excluded and disenfranchised women even before any mining projects have been embarked upon.

Recommendation 45: Amend existing mining legislation to improve safeguards for women in matters of resettlement and compensation, ensuring their full participation in the decision-making process.

As Mozambique makes land available to prospecting investors and grants land concessions to mining companies, local communities are losing access to the resources they have depended on for their livelihoods and food security.³⁵² Under CEDAW Article 2(d), states have a duty to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.” As the ultimate owner of land and granter of land licenses to extractive companies, the Government of Mozambique bears the duty to safeguard the rights of women impacted by extractive operations. With large-scale mining investments on the rise in Northern Mozambique, women's interests and rights in land as a productive resource are now more urgent than ever.

Recommendation 46: Safeguard women's rights to land in concession and leasing arrangements by demanding that documentation of ownership and occupancy is in the name of both heads of households.

From a development perspective, investing in women's economic and social empowerment is a direct investment in the community and economy. Women make up half of the labor-force, hence, discrimination against women in the labor market is a clear barrier to economic growth. The World Bank's Gender Action Plan (“GAP”) draws attention to gender-related risks, concerns and benefits in extractive projects.³⁵³ Applying GAP principles to Mozambique, the Government should require that mining companies implement an equitable, gender inclusion strategy into all levels of the project cycle. This means improving access to direct employment opportunities, providing equal pay for equal work and setting up a safe workplace environment for women. Improving gains from extractive industries for women can help leverage their untapped potential in increasing GDP, reducing poverty and fostering positive conditions for sustainable development.³⁵⁴ To further this objective, the Government of Mozambique can also provide support to associations that strengthen women's decision-making and to projects that target livelihoods, including adult education and microcredit programs.

Recommendation 47: Improve women's economic opportunities and ability to benefit from extractive sector employment by requiring that companies implement a gender inclusion strategy in all stages of projects.

At the present time, there is no institution in Mozambique dedicated to working solely on women's land rights. Accordingly, it is recommended that the Government establish a 'Women's Land Rights Network' initiative, which would take a special focus on women's rights to land use and other property. Such an initiative can help address situations where women have lost their lands or have been resettled due to extractive operations. The Government of Mozambique can consider embarking on a comprehensive campaign to improve implementation of its existing land legislation. To this end, it can widely disseminate information about land laws, placing special emphasis on women's equal rights to land guaranteed under statutory legislation.

Recommendation 48: Establish a "Women's Land Rights Network" with a special focus to educate women on their land rights and to address situations where women have been resettled due to extractive operations.

Conclusion

Approval of any resettlement plan should be conducted through transparent consultation with affected communities, including their full and informed consent regarding the resettlement site, their participation in development of compensation packages and consultation on how best to restore their livelihoods and living standards. Overlooking the importance of inclusive consultation during the initial stages of the resettlement process can fuel community hostility, mistrust and opposition to the project. Human Rights Watch has reaffirmed this principle in their recommendations for Mozambique: "approval of resettlement plans should be agreed in consultation with affected people, including their full and informed consent regarding the relocation site, and their participation in determining other aspects of the compensation package and restoration of their standard of living".³⁵⁵ Moreover, special effort must be made to incorporate gender considerations in extractive operations, beginning by consulting women in matters of resettlement, compensation and livelihoods.

The Government of Mozambique must establish clear protocols regarding how to incorporate new resettled communities as towns or villages, and what State institutions must bear the cost of establishing basic services and the maintenance and operational costs of new communities. On the other hand, it must be emphasized that, although communities should not be able to veto projects, they must be consulted at all stages of the process, starting during the exploration phase, and must have an important say in the decision of the location of the new town. The areas for resettlement are to be defined with affected communities through participatory processes. The Law must specify which entity of the government bears the ultimate responsibility for the location of the resettlement site and how that entity will be held accountable for such decisions.

One of the greatest challenges for successful consultation and resettlement processes is "ensuring that communities possess a 'genuine capacity to influence the economic and political agendas' surrounding an extractive industry project".³⁵⁶ It is the responsibility of the Government of Mozambique to ensure that communities are empowered and well-positioned to make decisions that affect their lives, their future, and that of the generations to come. Finally, given the expansive range of community life being impacted by resource extraction, the Resettlement Decree should clearly outline the responsibilities of other government sectors relevant to the resettlement process, including labor, women's affairs, health and education. If managed well, the extraction of natural resources sector can help Mozambique meet its development challenges and lift all its citizens out of poverty.

For additional detail and recommendations on resettlement in Tete Province, also see Human Rights

Watch report released May 2013.³⁵⁷

Recommendation 49: In order for extractive operations in Mozambique to earn/achieve a legitimate, stable, and sustainable social license, the Government must ensure that all resettlement processes meet the following six conditions:

- Establish early, inclusive, free, and transparent consultation processes. Ensure community participation in all stages of the resettlement process.
- Level the playing field by building the capacity of communities to participate in negotiations.
- Ensure fair and holistic compensation, improved livelihoods and standard of living, and poverty reduction strategies.
- Address the gender impacts in mining operations by taking special measures to include women in consultation matters concerning resettlement, compensation, livelihoods and income generation.
- Minimize negative environmental impacts in resettlement.
- Constitute an inclusive and legitimate post-resettlement committee that oversees agreement compliance, progress, and accountability.

Notes to Section 5

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²⁹⁹ The Natural Resource Charter is a set of economic principles for governments and societies on how to best manage the opportunities created by natural resources for development, *The Natural Resource Charter*, 2010:

<http://naturalresourcecharter.org/precepts>.

³⁰⁰ *Ibid.*

³⁰¹ "Rural poverty in Mozambique" Rural Poverty Portal:

<http://www.ruralpovertyportal.org/country/home/tags/mozambique>.

³⁰² Human Rights Watch. "What is a House Without Food?" Mozambique's Coal Mining Boom and Resettlements. May 2013. http://www.hrw.org/sites/default/files/reports/mozambique0513_brochure_web.pdf.

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³⁰⁵ Republic of Mozambique, "Constitution of the Republic of Mozambique" 1990, Articles 11, 40, 59, 68, 84, 88-91.

³⁰⁶ *Ibid.* Chapter 3, Article 58: "Everyone shall have the right to claim compensation in accordance with the law, for damages caused by a violation of their fundamental rights. The State shall be responsible for damages caused by the unlawful acts of its agents, in the performance of their functions, without prejudice to rights of recourse available under the law."

³⁰⁷ Supported by an interview with UN Habitat.

³⁰⁸ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Mozambique July 21, 1993; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Mozambique April 16, 1997; Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, acceded to by Mozambique April 26, 1994; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc.CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, acceded to by Mozambique February 22, 1989.

³⁰⁹ Republic of Mozambique, "Mozambique Regulations for the Resettlement Process Resulting from Economic Activities. Decree of 31/2012 of 8 August" August 8, 2012.

³¹⁰ *Ibid.*, Public Consultation.

³¹¹ *Ibid.*, Principles.

³¹² Human Rights Watch, *Human Rights Watch Recommendations for Mozambique's Resettlement Decree*, Human Rights Watch, 2012.

³¹³ Environmental Law Institute, *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities*, Washington D.C.: Environmental Law Institute, 2003, 2.

³¹⁴ *Ibid.* 38

³¹⁵ Fred Goytendía Matos, interview by Mariana Costa Checa and Carolina Ocampo-Maya, Mesa de Diálogo para el Reasantamiento de Morococha (February 27, 2012).

³¹⁶ Environmental Law Institute. *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities*. Washington D.C.: Environmental Law Institute, 2003.

³¹⁷ Laplante, Lisa J., and Suzanne A. Spears. "Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector." *Yale Human Rights and Development L.J.* 11 (2008): 69-116.

³¹⁸ Human Rights Watch, 2012.

³¹⁹ Constitution of Mozambique, Article 82(2).

³²⁰ Republic of Mozambique. "Land Law, No. 19/97 of 1 October." October 1, 1997. Mozambique. Article 18(1)(b) on the Termination of the right of land use and benefits states, "1. The right of land use and benefit shall be

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³²² *Ibid*; Jenik Radon and Kabita Shrestha. "Hydro Power and Equity -- Need to be One!" *Nepalnews.com*, December 14, 2012.

³²³ Human Rights Watch, 2012.

³²⁴ IFC, *IFC Performance Standards on Environmental and Social Sustainability*, Washington D.C.: International Finance Corporation - IFC, 2012, 38.

³²⁵ *Ibid.*, 34.

³²⁶ Environmental Regulations for Mining Activities, Article 8, paragraph 2

³²⁷ *Ibid.*, Article 8, paragraph 3 and Articles 9 and 10

³²⁸ Radon and Shrestha, 2012.

³²⁹ Republic of Mozambique, "Mozambique Regulations for the Resettlement Process Resulting from Economic Activities. Decree of 31/2012 of 8 August." August 8, 2012. Principle of Environmental Accountability

³³⁰ Lisa J. Laplante and Suzanne A. Spears, "Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector." *Yale Human Rights and Development L.J.* 11 (2008): 69-116. 38.

³³¹ *Ibid.* p.37.

³³² *Ibid.*

³³³ *Ibid.* 38

³³⁴ *Ibid.* 39.

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