

# Legal frameworks enabling sustainable land-use investment in Mozambique

Current strengths and opportunities for improvement

Eduardo Chiziane

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**Eduardo Chiziane**  
IDLO

**Renée Gift**  
IDLO

**Robert Kibugi**  
IDLO

**D Andrew Wardell**  
CIFOR

**Marie-Claire Cordonier Segger**  
IDLO

**Caroline Haywood**  
IDLO

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Landscape at Mocaba, Mozambique.

CIFOR  
Jl. CIFOR, Situ Gede  
Bogor Barat 16115  
Indonesia

T +62 (251) 8622-622  
F +62 (251) 8622-100  
E [cifor@cgiar.org](mailto:cifor@cgiar.org)

**[cifor.org](http://cifor.org)**

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# Contents

<b>Acknowledgements</b>	<b>v</b>
<b>Abbreviations</b>	<b>vi</b>
<b>Executive summary</b>	<b>vii</b>
<b>1 Introduction</b>	<b>1</b>
1.1 The project and methodology	3
1.2 Definition of sustainable investment	4
<b>2 Sustainable investment in Mozambique’s legal framework</b>	<b>7</b>
<b>3 Key challenges to sustainable land-use investment in Mozambique</b>	<b>9</b>
3.1 Weak enforcement of environmental and social safeguards	9
3.2 Lack of incentives in the legal framework	18
3.3 Insecure land tenure	30
3.4 Low public awareness and limited access to information	46
<b>4 Conclusion</b>	<b>48</b>
<b>Annexes</b>	
1. International standards for sustainable land use and sustainable investment	49
2. Legal frameworks governing the energy, forestry, mining and agriculture sectors	51

# List of figures, tables and boxes

## Figures

- |  |    |
|--|----|
| 1. Elements of sustainable investment. | 5  |
| A1. Mozambique's energy sources.       | 58 |

## Tables

- |   |    |
|---|----|
| 1. Legal frameworks governing land use.                               | 7  |
| 2. Forest concessions with management plans in 2008.                  | 14 |
| 3. Responsibility for approval of investment projects.                | 20 |
| 4. Incentives for investment in high-priority development categories. | 23 |

## Boxes

- |   |    |
|---|----|
| 1. Principles of resettlement recognized under Mozambican law.      | 44 |
| A1. Projected climate change impacts in Mozambique.                 | 52 |
| A2. Principles of the Law and Regulations on Forestry and Wildlife. | 56 |

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# Abbreviations

BIT	Bilateral Investment Treaty
CGC	<i>Comité de Gestão Comunitária</i> (Community Management Committee)
CIFOR	Centre for International Forestry Research
COGEP	<i>Comité de Gestão Participativa</i> (Participatory Natural Resource Management Committee)
CONDES	<i>Conselho Nacional de Desenvolvimento Sustentável</i> (National Council for Sustainable Development)
CPI	<i>Centro de Promoção de Investimentos</i> (Investment Promotion Center)
DUAT	<i>Direito de Uso e Aproveitamento da Terra</i> (Right to Use and Benefit of Land)
EAS	Simplified Environmental Impact Assessment
EIA	Environmental Impact Assessment
EITI	Extractive Industry Transparency Initiative
EMP	Environmental Management Plan
ENMC	<i>Estratégia Nacional para as Mudanças Climáticas</i> (National Strategy on Climate Change)
FUNAE	Fundo de Energia (National Energy Fund)
GDP	Gross Domestic Product
GOM	Government of Mozambique
IDLO	International Development Law Organization
IFZ	Industrial Free Zone
MICOA	<i>Ministério para a Coordenação da Acção Ambiental</i> (Ministry for Environmental Coordination)
MZN	Mozambican metical
PARP	<i>Plano de Acção para Redução da Pobreza</i> (Poverty Reduction Action Plan)
PEDSA	<i>Plano Estratégico de Desenvolvimento do Sector Agrário</i> (Strategic Plan for Agricultural Development)
SMEs	Small and Medium Enterprises
VAT	Value-Added Tax



# Executive summary

Mozambique is experiencing increased private-sector investment, to assist in meeting the country's development objectives. The government has intensified efforts to attract foreign direct investment, to improve Mozambique's socioeconomic status and alleviate poverty. However, adequate legal frameworks are necessary to align investments with national priorities and to ensure compliance with environmental and social safeguards. Mozambique's existing laws governing the agricultural, forestry, energy and minerals and mining sectors, are not sufficient to ensure the sustainability of future investments. In addition, the lack of technical and financial resources has compromised the government's ability to implement existing laws.

This report examines four key challenges to more sustainable land-use investments in Mozambique, viz. Weak enforcement of environmental and social safeguards, lack of incentives, insecure land tenure and low public awareness and limited access to information.

## 1. Weak enforcement of environmental and social safeguards

Recent policy and legal reforms have established mechanisms for public participation in and environmental impact assessments of investment projects. Limited financial and human resource capacity has been identified as the greatest obstacle to ensuring compliance with environmental and social safeguards. Lack of qualified government staff jeopardizes the integrity of the environmental impact assessment process and limits its ability to monitor developers' operations. Effective public participation in environmental decision-making, though required by law, is still lacking. Conflicts of interest and inadequate government oversight of information dissemination and public participation requirements hamper the integrity of the process.

## 2. Lack of incentives in the legal framework

The Investment Law and Regulations, as well as sector-specific laws, establish a number of incentives for development. However, these concentrate on large-scale investments, seen to bring large amounts of capital into the country, irrespective of the

sustainability of their activities or the technologies used. For example, although the Investment Law requires investors to contribute to the sustainable economic and social development of the country, previous requirements for investors to demonstrate inclusion of these objectives in investment proposals have since been removed to facilitate greater investment. Existing incentives that do promote sustainability include tax benefits for the use of new sustainable technologies and the training of Mozambican staff.

## 3. Insecure land tenure

Although some important safeguards exist in Mozambican law, customary land tenure remains insecure, undermined by the limited capacities of government staff. For example, while customary use rights are recognized under the Land Law even without formal registration, conflicts arise when cadastral maps do not document these rights. Serious gaps also remain in the process of calculating compensation and resettling people whose land or livelihoods are impacted by new investments. However, recent positive developments in the law have seen improvements to the process for acquiring large areas of land by investors.

Public participation challenges arise particularly in the granting of forestry concessions. For example, although the development and implementation of forestry management plans require stakeholder collaboration, this is commonly overlooked. Nevertheless, mechanisms such as the local forestry and wildlife management councils do allow stakeholders limited participation on a broad range of issues, including forest management policy.

## 4. Low public awareness and limited access to information

Although the right to information is guaranteed by the constitution of Mozambique, the country lacks any stand-alone law to guide and elaborate this right. Limited transparency in investment decision-making has led to low levels of public accountability for both private investors and public agencies. Recent efforts to improve transparency include the development of a new Mining Law that enables publication of the terms and conditions of mining contracts.



# 1 Introduction

Mozambique's land area of 7.8 million km<sup>2</sup> supports a population of 23.7 million.<sup>1</sup> After the economic and social turmoil of its civil war, which ended in 1992, Mozambique is today experiencing continued economic growth. In 2012, the gross domestic product (GDP) was 7.4%, increasing to 7.6% by 2014.<sup>2</sup>

Much of this growth has been attributed to heavy exploitation of natural resources, particularly in the mining, agriculture, forestry and energy sectors. Mozambique's thriving mining industry experienced an average annual growth of 23.3% from 2010 to 2012 and over 40% in 2012. This enormous expansion has been driven by increased coal exports following from the commencement of significant coal mining operations in Moatize and Benga and increased heavy sands mining in Moma. Large aluminum and natural gas projects have also made significant contributions to the sector, which altogether represents 25% of Mozambique's exports and brings in significant foreign direct investment.<sup>3</sup>

Despite the significance of the mining industry, agriculture remains the backbone of Mozambique's economy and the main source of income for 80% of its population, representing almost a quarter (24.9%) of the country's GDP in 2012.<sup>4</sup> Global trends – including surging population growth, increasing energy prices and rising interest in agricultural megaprojects – have increased demands for food

and biofuels, all of which increase demand for land.<sup>5</sup> This, combined with the growing perception that vast areas of “free” arable land are available in Africa, underpin the intensification of public- and private-sector participation in Mozambique's agricultural development. Given the high involvement in agriculture of rural people, many of whom live in poverty, the sector has been regarded as a gateway to rapid rural development and poverty alleviation. As a result, government support has been strong, and agriculture has been firmly integrated into Mozambique's development strategy.

Forests in Mozambique represent an important economic and social resource. Forest coverage stands at 49%, representing 38.81 ha of its total land territory.<sup>6</sup> Forests are a resource not only for biodiversity but also for traditional uses including medicines, handicrafts and food.<sup>7</sup> An estimated 70% of Mozambicans in rural areas rely on forest resources for these activities.<sup>8</sup> Forests also provide a range of ecosystem services with cross-sectoral benefits, including the creation of water catchment areas and the maintenance of habitat for pollinators. Forest degradation and destruction therefore have a direct impact on the agricultural and energy sectors, as well as on individual livelihoods.

As the number of foreign investments in the burgeoning natural resource extraction industries

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1 National Institute of Statistics, *Mozambique in Figures – 2012* (Maputo, 2012), p. 6; Organisation for Economic Co-operation and Development (OECD) Development Centre, African Development Bank (ADB) and United Nations Development Programme (UNDP), *African Economic Outlook – Mozambique – 2014* (Tunis: OECD, ADB and UNDP, 2014).

2 OECD Development Centre, ADB and UNDP, *African Economic Outlook 2013 – Mozambique* (Tunis: OECD, ADB and UNDP, 2013), pp. 1–2.

3 Banco de Moçambique, *Annual Report 2012* (Maputo, 2012), p. 73; National Institute of Statistics, *Anuário Estatístico 2011* (Maputo, 2011), p. 93.

4 OECD Development Centre, ADB and UNDP, *African Economic Outlook 2013 – Mozambique* (Tunis: OECD, ADB and UNDP, 2014), p. 10.

5 Deininger K and Byerlee D, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* (Washington, DC: World Bank, 2010).

6 FAOSTAT, “Evolution of Total Land Use,” in *FAOSTATE Mozambique* (Rome: FAO, 2014), [http://faostat.fao.org/CountryProfiles/Country\\_Profile/Direct.aspx?lang=en&area=144](http://faostat.fao.org/CountryProfiles/Country_Profile/Direct.aspx?lang=en&area=144), for updated FAOSTAT see

7 Republic of Mozambique, Ministry for the Coordination of Environmental Affairs, *4th National Report on Implementation of the Convention on Biological Diversity in Mozambique* (Maputo: Mozambique, 2009); Food and Agricultural Organization of the United Nations, *Global Forest Resources Assessment 2010, Country Report* (Rome: FAO, 2010), p. 43.

8 Nhancale BA, Mananze SE, Dista NF, Nhantumbo I and Macqueen DJ, *Small and Medium Forest Enterprises in Mozambique*, Small and Medium Forest Enterprise Series No. 25 (London: Centro Terra Viva and International Institute for Environment and Development, 2009), p. 17.

continues to rise and Mozambique's economic growth expands,<sup>9</sup> the country may be expected to gain from this trend. Foreign direct investment has enormous potential to transform the economies of developing countries, many of which continue to experience high levels of poverty and unemployment, by funding infrastructure development and facilitating technology transfer. Enhancing private-sector participation is therefore crucial to bridging the financing gaps that currently hinder development. It is also essential to achieving improved climate resilience. As Mozambique's economy depends on natural resources, and is thus vulnerable to climate change and responsible for considerable greenhouse gas emissions, enhancing preparedness for climate change should cross-cut all other national development goals.

However, the benefits of such investments are not automatic; Mozambique's robust growth in GDP has not led to livelihood improvements. The United Nations Human Development Index, which takes into account life expectancy, health, access to knowledge and standard of living, placed Mozambique at 185 out of 187 countries in 2012; with at least 59% of its population living below the poverty line, Mozambique remains one of the poorest countries in the world.<sup>10</sup> Thus, Mozambique has failed to equitably distribute the benefits of its land-use investments.

The mining sector presents a prime example of this missed opportunity. Despite its enormous exports, mining contributed to only 1.5% of Mozambique's GDP in 2012, and created few in-country jobs.<sup>11</sup> The sector is dominated by megaprojects that have produced few local benefits or sustained results for individual Mozambicans. At the same time, many activities are highly destructive to the environment and have resulted in serious displacement and landlessness.<sup>12</sup>

9 OECD and ADB, *African Economic Outlook 2013 (Mozambique)*.

10 United Nations Development Programme, *Explanatory Note on 2013 HDR Composite Indices, Mozambique – HDI Values and Rank Changes in the 2013 Human Development Report* (UNDP, 2013).

11 OECD and ADB, *African Economic Outlook 2013 (Mozambique)*, pp. 3, 12.

12 Kabemba C and Nhancale C, *Open Policy – Coal Versus Communities: Exposing Poor Practices by Vale and Rio Tinto in Mozambique* (South African Resource Watch, 2012).

Mozambique's heavy reliance on natural resource extraction also creates social and environmental problems relating to land-use conflicts and environmental degradation. Growing demands for biomass energy and food, as well as unsustainable and inefficient farming practices, have led to the conversion of forest to commercial and subsistence agriculture and are therefore some of the greatest drivers of deforestation and forest degradation.<sup>13</sup>

As a result of the inequitable distribution of investment revenue, development in Mozambique remains constrained. Lack of infrastructure remains a critical constraint on development in key sectors such as agriculture and energy.<sup>14</sup> The funding required to fill Mozambique's infrastructure needs has been estimated at \$822 million per year or about 12.5% of GDP;<sup>15</sup> the energy sector represents about 60% of this funding gap.<sup>16</sup>

Limited grid networks have also restricted access to modern energy in Mozambique, a major obstacle to economic growth. Though abundant renewable energy resources are available, evidenced by the already significant contribution of hydropower, Mozambique's level of nationwide energy access currently stands at a mere 20%.<sup>17</sup> The lack of energy infrastructure to service Mozambique's dispersed, low-density population means that most people rely on traditional sources of energy, such as wood, charcoal and agricultural waste,<sup>18</sup> resulting in unsafe levels of indoor air quality and unsustainable levels of forest biomass extraction.<sup>19</sup> Poor transportation and energy networks have also contributed to stagnation

13 Siteo A, Salomão A and Wertz-Kanounnikoff S. *The Context of REDD+ in Mozambique: Drivers, Agents and Institutions*, Occasional Paper 79 (Bogor, Indonesia: CIFOR, 2012), pp. 8–15.

14 Dominguez-Torres C and Briceño-Garmendia C, *Mozambique's Infrastructure: A Continental Perspective* (Washington, DC: International Bank for Reconstruction and Development, 2011).

15 *Ibid.*, p. 47.

16 *Ibid.*

17 Electricidade de Moçambique, *Annual Statistical Report 2011* (Maputo: Electricidade de Moçambique, 2011).

18 IRENA (International Renewable Energy Agency), *Mozambique Renewables Readiness Assessment 2012* (Abu Dhabi: IRENA, 2012), p. 33.

19 World Health Organization, "Household Energy Sector in Developing Countries," *Health in the Green Economy: Co-benefits to Health of Climate Change Mitigation* 2011, [http://www.who.int/hia/hgebrief\\_henergy.pdf?ua=1](http://www.who.int/hia/hgebrief_henergy.pdf?ua=1).

in the agricultural sector, limiting access to markets and extension services as well as use of efficiency-enhancing mechanisms such as energy-powered irrigation systems.

Mozambique's development has been further limited by the lack of financial and technical capacity to support reforms linking investments to environmental sustainability and improved livelihoods. In many sectors, effective enforcement of laws protecting social and environmental rights are undermined by weak technical capacity and lack of equipment and staffing. With no requirements for megaprojects to create local linkages or provide sustained benefits to individual Mozambicans, such as labor skills or technology transfer, this capacity deficit is likely to persist.

Mozambique's development trends indicate the need to channel macroeconomic expansion and investment into activities that produce sustained benefits for the country as a whole – such as a better responses to the abovementioned challenges as well as increased productivity, employment and social development.<sup>20</sup>

Good governance is a crucial part of this approach. It is the foundation for the development of a legal system that supports inclusive economic progress and safeguards environmental and social rights. Reforming the legal system to balance economic, social and environmental considerations and align investments with national priorities is a significant component of the development process. Many of the hindrances to sustainable investment are produced or exacerbated by legal systems that do not adequately respond to modern realities. A clear legal system is necessary to guide fiscal reforms that attract sustainable investment and capture the resulting profits and transform them into economic and social gains, all while eliminating perverse incentives for investments that could reverse development progress. Greater focus on the role of the legal system in empowering local citizens and smallholders to engage in wealth-generating activities is equally important, particularly in countries where smallholder activity forms the backbone of the economy, such as Mozambique. The law plays an essential role in protecting citizens' social and environmental rights while promoting and authorizing investment.

Mozambique's current legal system has proven unable to ensure that investments support the country's national priorities, including development, that benefits from investments are properly captured and equitably distributed, and that individuals' social and environmental rights are safeguarded. An effective legal framework can provide a strong foundation for transparent decision-making, well-organized priorities, fair mechanisms for conflict resolution and clearly defined rights and responsibilities. It can create an advocacy platform for the protection of rights and present a clear signal to investors of a country's resolution to support only activities that are in the interest of its citizens.

Even the best legal system requires political will and support to be implemented effectively. Laws and policies will not produce positive development outcomes unless key principles of good governance, equity, accountability and respect for human rights are fully incorporated into the development process.

## 1.1 The project and methodology

The International Development Law Organization (IDLO) and the Centre for International Forestry Research (CIFOR) have identified the growing number of investments in land-use activities, and concerns about their long-term sustainability, as a timely legal problem for sub-Saharan Africa. This research project thus aims to improve knowledge on how national legal and institutional frameworks – broadly defined to include laws, regulations, institutions and policies – affect land-use change and investment in Mozambique, Tanzania and Zambia, with a particular focus on the energy, agriculture, forestry and mining sectors.

This project began with inception workshops in each country to guide its methodological approach, which the assessments then employed consistently, in collaboration with in-country legal experts and researchers. The research teams analyzed policies, laws, reports and case studies on land-use investments across the four sectors in each country. They met with representatives of community organizations, civil society, government agencies, academic institutions and the private sector. Due to the broad scope of work and time constraints, the research teams had limited opportunities for direct consultations with communities. Opportunities for further research and testing of a number of key findings would thus be valuable.

<sup>20</sup> Republic of Mozambique, *Poverty Reduction Action Plan 2011–2014* (Maputo: Mozambique, 2011).

The research culminated with validation workshops in Maputo, Dar es Salaam and Lusaka and the completion of a legal assessment report for each country, discussing challenges to, and opportunities for, sustainable investment that are common to the four resource sectors. A synthesis paper summarizing these key findings was also published by CIFOR and the IDLO in 2015.

Mozambique, Tanzania and Zambia were chosen for this project because of their common experience with rising investments over the past decade. They also have a comparable state of socioeconomic development, legal systems that allow a comparative assessment, and economic systems that rely significantly on land use and natural capital.

Key research questions were as follows:

- What is the nature and status of legal frameworks governing land-based investments in the energy, mining, forestry and agriculture sectors in Mozambique, Tanzania and Zambia?
- How can these three countries' legal frameworks be strengthened to effectively regulate sustainable investments that adhere to social and environmental safeguards?

Subsidiary research questions were as follows:

- How have voluntary international agreements and standards on sustainability been incorporated into national laws or processes?
- Is the implementation of the three countries' legal frameworks sufficient to positively influence practices on the ground, or do investors continue to circumvent or operate in the margins of the law?

The scope of the research was limited to the laws relating to the social and environmental repercussions of investments. It did not investigate in detail the economic aspects of the law that may impact sustainable investments, such as banking laws, business licensing or investment treaties.<sup>21</sup> Gender considerations and the availability of dispute-resolution mechanisms were only briefly reviewed.

<sup>21</sup> For a full discussion of these aspects, see Cotula L, *Foreign Investment, Law and Sustainable Development: A Handbook on Agriculture and Extractive Industries* (London: International Institute for Environment and Development, 2013).

## 1.2 Definition of sustainable investment

“Sustainable investment” does not have an internationally agreed-upon definition. However, a number of international regulatory and voluntary sustainability standards exist. For the purposes of this project, the definition of “sustainable investment” was based on an analysis of 10 global sustainability and sustainable investment standards (see Annex 1). While this definition is not comprehensive and may not be applicable to all countries in sub-Saharan Africa, it is internationally grounded and forms the foundation for the challenges and opportunities identified in the legal frameworks of Mozambique, Tanzania and Zambia.

Thus, we defined sustainable investment as investment that contributes to the achievement of a country's sustainable development: development that is fair, within the carrying capacity of the planet, and leaves no one behind. In addition to accounting for investors' environmental, economic and social triple bottom line, a sustainable investment thus takes into account the equitable distribution of financial and natural capital and the project's impacts not only on directly affected citizens but also across the society, including its socioeconomic development and environmental stewardship.<sup>22</sup>

Nine elements that were especially prominent in the sustainability standards reviewed for this report are summarized in Figure 1 and discussed in more detail below.

A sustainable investment avoids harm to the human rights of local communities, including by protecting their livelihoods and upholding their rights over land. Through alignment with existing government development policies, it also spurs co-benefits, such as increased employment or infrastructure development, that ensure that citizens enjoy improved well-being from the investment. It avoids further marginalization of the poorest, with the wealth generated from natural resources spread equitably across society. It promotes public

<sup>22</sup> For further discussion of investors' engagement, see Organisation for Economic Co-operation and Development, *Guidelines for Multinational Enterprises – General Policies* (OECD, 2011), p. 19. For further discussion of carrying capacity, see Pengra B, *One Planet, How Many People? A Review of Earth's Carrying Capacity*, discussion paper for the Year of Rio+20 (United Nations Environment Programme, Global Environmental Alert Service, 2012).

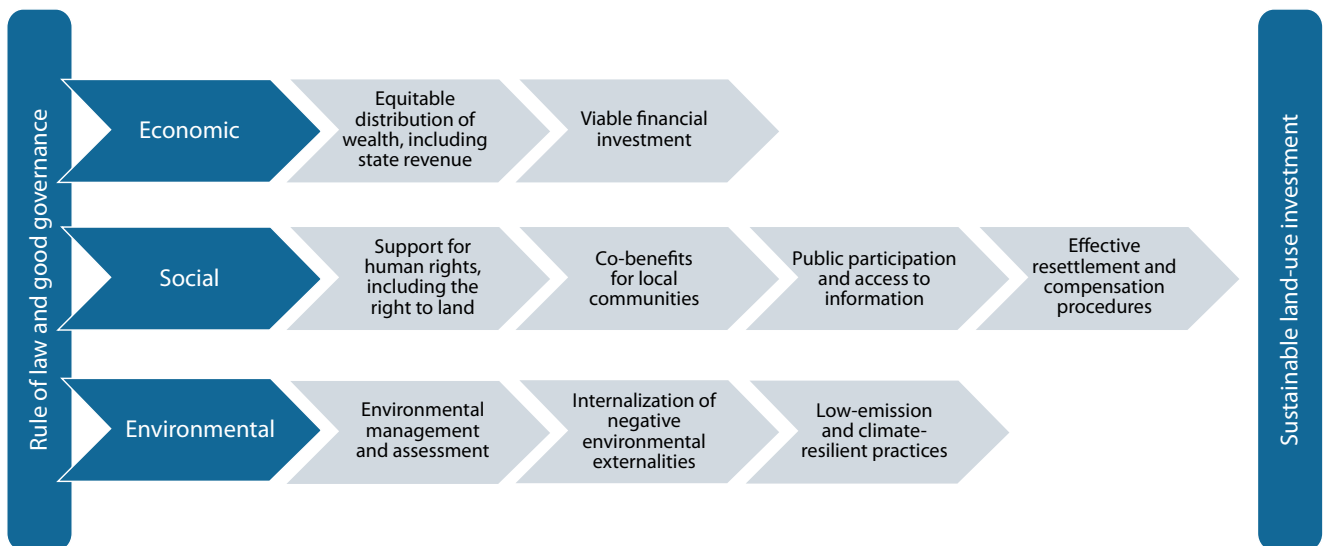


Figure 1. Elements of sustainable investment.

participation and local decision-making for the duration of the investment, engaging closely with local communities to ensure acceptance by all stakeholders. It is also transparent: Information on its activities, structure, finances, performance, ownership and governance is made readily available in a clear and comprehensible form.

A sustainable investment proactively monitors, evaluates and manages its impact on the environment, and incorporates all environmental costs – such as damage to waterways, the climate system and the soil – into the final price of its products. This internalization of environmental externalities creates greater efficiency in natural resource use as it limits excess consumption by raising its cost. Finally, a sustainable investment reduces greenhouse gas emissions and builds resilience to climate change.<sup>23</sup>

“Climate resilience” is the capacity of people, economies and the environment to cope with and recover from the negative impacts of climate change. Specific reference to greenhouse gas emissions is found in the United Nations Framework Convention on Climate Change sustainability standard and in the SDGs, and IDLO and CIFOR consider mitigation of and adaptation to climate change integral to the

sustainable development of sub-Saharan Africa. First, sustainable investments provide a critical development pathway for developing countries that wish to uncouple economic and social development from activities that produce greenhouse gases. Second, local communities in sub-Saharan Africa are among the world’s most vulnerable to climate change, particularly due to reliance on rain-fed agriculture.<sup>24</sup> To be sustainable, investments should therefore contribute to the climate resilience of the region.

The three elements of sustainable investment (social, environmental and economic) are governed by a common principle: adherence to the rule of law and good governance, which is informed and established by a strong legal framework that is effectively implemented and equitably applied by independent and impartial courts. Rule of law embodies universal principles of equality, good governance, citizen empowerment and participation. It can enable sustainable development, equitable growth and

23 United Nations Development Programme, *Green LECRDS Guidance Manuals and Toolkits* (2014), <[http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus\\_areas/climate\\_strategies/green-lecrds\\_guidancemanualsandtoolkits/](http://www.undp.org/content/undp/en/home/ourwork/environmentandenergy/focus_areas/climate_strategies/green-lecrds_guidancemanualsandtoolkits/)> at 12 December 2013.

24 Adams S, Aich V, Albrecht T, Baarsch F, Boit A, Canales Trujillo N, Carlsburg M, Coumou D, Eden A, Fader M, Hare B, Hoff H, Jobbins G, Jones L, Kit O, Krummenauer L, Langerwisch F, Le Masson V, Ludi E, Marcus R, Mengel M, Mosello B, Möhring J, Norton A, Otto IM, Perette M, Pereznieta P, Rammig A, Reckien D, Reinhardt J, Reyer C, Robinson A, Rocha M, Sakschewski B, Schaeffer M, Schaphoff S, Schewe J, Schleussner CF, Serdeczny O, Stagl J, Thonicke K and Waha K, *Turn Down the Heat: Climate Extremes, Regional Impacts, and the Case for Resilience – Full Report*. Washington DC: World Bank, 2013), p. 1.

poverty reduction.<sup>25</sup> Strengthening the rule of law by bringing regulatory frameworks into compliance with international norms and standards, and by supporting their effective implementation, can be critical to sustainable development.<sup>26</sup>

Other important ingredients of sustainable investment include political will, in-country capacity and resources to implement laws, and knowledge and understanding of the importance of sustainable development among both governments and citizens.

While this report touches on these issues, its focus is on laws and institutions.

This definition of sustainable investment is demanding, and many investments will not meet all of its criteria. Indeed, the aim of the definition is to establish an international standard and frame the discussion of the laws and institutions of Mozambique in a way that identifies key challenges and innovations. A primary focus of this analysis is on how environmental and social safeguards are addressed in Mozambique's legal system.

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25 United Nations General Assembly, *Draft Global Dialogue on Rule of Law and the Post-2015 Development Agenda*, briefing paper prepared for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda, New York, 26–27 September 2013, p. 2; United Nations Development Programme, *Rule of Law and Development*, issue brief (2013), <http://www.worldwewant2015.org/file/341332/download/371036>.

26 Anyanwu JC, "Why Does Foreign Direct Investment Go Where It Goes?: New Evidence From African Countries," *Annals of Economics and Finance* 13, no. 2 (2012), p. 425.



## 2 Sustainable investment in Mozambique's legal framework

This section looks at how the key elements of sustainable investment are supported by Mozambique's constitution, national development strategy and climate change law, which form the foundation of its position on the rule of law and its strategy for national development. It also briefly reviews sectoral legal frameworks as they relate to sustainable land-use investments; further information on these frameworks is available in Annex 2.

The 2004 constitution of Mozambique is the supreme law of the country,<sup>27</sup> and all government bodies are bound by its letter and spirit. Constitutional recognition of social and environmental safeguards, including the right to

live in a balanced environment and the promotion of rational use of natural resources, therefore sets a strong foundation for their protection in national legislation.

Agenda 2025,<sup>28</sup> Mozambique's development plan, highlights the need to prioritize agriculture, industry, mining, tourism and infrastructure. The agricultural sector in particular is recognized as a key driver of economic growth and crucial to rural development. Agenda 2025 also places heavy emphasis on the need to reverse laws and policies that create unfair economic conditions for small and medium enterprises (SMEs).

<sup>27</sup> Article 2, Constitution of Mozambique, 2004.

<sup>28</sup> Republic of Mozambique, *Agenda 2025: The Nation's Vision and Strategies* (Maputo: Mozambique, 2003).

**Table 1. Legal frameworks governing land use.**

Sector	Responsible institution	Key legislation	Key regulations	Key policies
Forestry	National Directorate of Land and Forest	Law of Forestry and Wildlife, Law 10/99	Regulations on the Law on Forest and Wildlife, Decree 12/2002	
Energy	Ministry of Energy National Fund for Rural Electrification	Electricity Law, Law 21/97	Energy Sector Strategy (Resolution 10/2009)	Energy Policy 1998 Policy for Development of New and Renewable Energy 2009 Development Strategy for New and Renewable Energy National Programme for New and Renewable Energy
Agriculture	Ministry of Agriculture	Land Law 19/1997	Land Law Regulations, Decree 66/1998	Concept, Principles and Strategy of the Green Revolution in Mozambique 2007 Strategic Plan for Agricultural Development 2010–2019
Mining and minerals	Ministry of Natural Resources National Directorate of Mines Provincial Directorate of Mineral Resources	Mining Law 14/2002	Mining Law Regulations Decree 28/2003	

Mozambique has also developed a number of research and policy instruments targeted at improving its capacity to respond to and prepare for climate change. It recently prepared its first National Strategy on Climate Change (ENMC),<sup>29</sup> establishing guidelines for building resilience and promoting the development of a low-carbon and green economy. Energy, forestry and agriculture are dealt with by the ENMC with complementary strategies for adaptation and mitigation.

Efforts to enable legal and institutional reform to integrate climate change considerations, facilitate institutional mainstreaming, and enable the government to monitor progress and respond to climate change efficiently are particularly important to sustainable investment. Institutions and laws that incorporate climate change considerations may positively impact the oversight and regulation of investments.

Each sector covered by this study – agriculture, forestry, energy and mining – is governed by different institutions, stakeholders, laws and policies. These

legal frameworks, as they relate to sustainable land-use investment, are summarized in Table 1 and discussed in more detail in Annex 2.

Mozambique is on a critical path to economic and social development, enabled by the rapid expansion of key sectors. This has been furthered by a combination of international demand and government incentives to attract foreign investment. The extent to which the legal frameworks governing different sectors promote sustainable investment varies, but in the sectors covered by this study, there are few express incentives for sustainable land-use investment. In many cases, the drive for economic development has superseded the need for social and environmental safeguards. Some investments, after creating severe social and environmental impacts, have not even realized economic benefits.

Section 3 analyzes four common challenges to sustainable land use and makes recommendations for a legal and institutional framework that better enables sustainable land-use investment in Mozambique.

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29 Republic of Mozambique, *Estratégia Nacional de Mudanças Climáticas, 2013–2025* (Maputo: Mozambique, 2013).

# 3 Key challenges to sustainable land-use investment in Mozambique

Weak enforcement of environmental and social safeguards, lack of incentives in the legal framework, insecure land tenure and low public awareness are four common challenges to sustainable land-use investment, and equitable distribution of benefits from investment, in the forestry, energy, agriculture and mining sectors. This section examines these challenges in the context of Mozambique's legal framework, analyzing how the law has worked and where challenges remain.

## 3.1 Weak enforcement of environmental and social safeguards

The constitution establishes a broad basis for natural resource management, drawing from internationally recognized principles of intergenerational equity as well as the need to ensure balanced development. The Law on Environment 20/97 and supporting legislation establish the legal and institutional framework for environmental management. The Law on Environment is administered by the Ministry for Environmental Coordination (*Ministério para a Coordenação da Acção Ambiental* or MICOA). Key doctrines of environmental law – such as the polluter-pays principle, the precautionary principle, the incorporation of broad public participation in decision-making, equitable access to natural resources and consideration of traditional knowledge – form the foundation of this framework.<sup>30</sup>

The Law on Environment also establishes a number of safeguards to ensure effective natural resource management and mitigation of harmful environmental consequences. It requires investors to acquire an environmental license, which sets the terms and conditions for the investment activity.<sup>31</sup> Depending on the seriousness of the potential environmental impact, some projects may be required to conduct an environmental impact assessment (EIA).

While the framework for environmental management is fairly comprehensive, challenges to implementation and enforcement remain, weakening the effectiveness of the safeguards established by law. These challenges are discussed below.

### 3.1.1 Environmental impact assessments

An EIA is required to provide detailed information on the site of the proposed activity – including its location, existing ecosystem, current land uses and socioeconomic conditions – the nature of the activity, its potential environmental consequences, and actions that can be taken to minimize or eliminate those consequences.<sup>32</sup> This information is intended to enable decision-makers and stakeholders to determine whether the environmental impacts of the activity are likely to outweigh its proposed benefits. By requiring socioeconomic and land tenure information, the law broadens the scope of the EIA to encompass social impacts; however, it still fails to address critical issues such as gender.

EIA results are used to determine whether or not an environmental license should be granted for the proposed activity. Environmental licenses are valid for five years and include an environmental management plan (EMP), often containing conditions of approval, such as mitigation actions.<sup>33</sup> To ensure that the terms of such licenses are up to date and relevant, the regulations require that activities for which they have been granted must commence within two years of issuance or be automatically forfeited.<sup>34</sup> An environmental license is also prerequisite to the granting of any other license that may be legally required, including the investment-related licenses detailed in Annex 2. The EIA is therefore intended to be a strong safeguard against harmful activities.<sup>35</sup>

30 Article 4, Law on Environment 20/97.

31 Article 15, *ibid.*

32 Articles 6 and 17, *ibid.*

33 Article 20, *ibid.*

34 Article 20, *ibid.*

35 Article 20, *ibid.*

Whether a potential project requires an EIA depends on which of three categories it falls into:<sup>36</sup>

- Category A activities have a significant impact on the environment and require an EIA.
- Category B activities have an impact on the environment that is less significant (of lesser duration, intensity, extent, magnitude or significance), and are subject to a simplified environmental impact assessment (EAS).
- Category C activities require neither an EIA nor an EAS because their negative impacts are minimal or nonexistent.

### 3.1.2 Scoping of the environmental impact assessment

A pre-assessment analysis is conducted for all Category A activities to identify any fatal flaws in the project and, if none, to determine the scope of the EIA.<sup>37</sup> The applicant includes the nature and location of the proposed activity; the number of people and communities encompassed; the ecosystems, plants and animals affected; the location and extent of the affected area; the probability, nature, duration, intensity and significance of the impacts; their direct, indirect, potential, global and cumulative effects; and their reversibility or irreversibility. The EIA terms of reference further establish the methodology and public participation process that the applicant should follow along with specific information requirements.<sup>38</sup> The EIAs are scoped broadly, to avoid overlooking valid issues. Terms of reference must be approved by the National Directorate for Environmental Impact Assessment.

Category B projects similarly undergo a pre-assessment analysis to determine whether the applicant should be required to develop an EIA or an EAS. The applicant provides nature and location of the proposed activity, the number of people and communities encompassed; the ecosystems, plants and animals affected; the location and extent of the affected area; the probability, nature, duration, intensity and significance of the impacts; their direct, indirect, potential, global and cumulative effects; and their reversibility or irreversibility.<sup>39</sup> This pre-assessment analysis is equally important to the

scoping stage of an EIA, as it assures the appropriate level of scrutiny for an investment.

EIA and EAS reports often contain differing degrees of detail on further issues such as identification and assessment of the environmental and social impacts of the activity being assessed; a description and detailed comparison of alternatives and forecast of future environmental conditions with and without mitigation measures; an environmental management plan that includes monitoring, environmental education, and accident and contingency plans; and a report on public participation in the EIA/EAS process.<sup>40</sup>

Once an EAS or EIA is concluded, a technical assessment commission is responsible for reviewing the findings and recommending whether to grant an environmental license. The commission comprises representatives from a number of government agencies, including the National Directorate for Environmental Impact Assessment and MICOA, and from educational institutions or other centers for environmental investigation.<sup>41</sup> In revising the EIA or EAS, the commission must consider all written and verbal declarations made during public consultations.

### 3.1.3 Institutional coordination of the environmental impact assessment process

A number of institutions and authorities play a role in coordinating the EIA process. The National Directorate for Environmental Impact Assessment, under MICOA, manages and coordinates it, including the public consultation process, and works through the Environmental Impact Assessment Authority to coordinate with other government agencies involved in the licensing of investment projects.<sup>42</sup> Informal agreements of understanding govern the relationship of the National Directorate for Environmental Impact Assessment with national directorates for tourism, industry, forestry and wildlife, which work cooperatively to analyze monitoring reports, environmental audits, site inspections, and surveillance of licensed activities.<sup>43</sup>

36 Article 3, *ibid.*

37 Article 10, *ibid.*

38 Article 12, *ibid.*

39 Articles 7–8, *ibid.*

40 Article 12, *ibid.*

41 Articles 15 and 17, *ibid.*

42 Walmsley B and Patel S, “Mozambique,” chapter 10 in *SADC Environmental Legislation Handbook 2012* (Pretoria: Development Bank of Southern Africa and Southern African Institute for Environmental Assessment, 2011), p. 252.

43 *Ibid.*

MICOA has also made efforts to decentralize environmental management in Mozambique through the creation of provincial Directorates for the Coordination of Environmental Action.<sup>44</sup> Mirroring the National Directorate for Environmental Impact Assessment's role, the provincial directorates manage and coordinate the EIA process, approve EAS reports and undertake public consultations.

Effective management of the EIA process requires the coordination of a number of government institutions. However, overlapping jurisdictions and ineffective communication have in practice led to poorly run EIA processes and, in some circumstances, the overlooking of environmental and social safeguards altogether.

**Example: Lack of coordination.**

In 2007, ProCana Limitada entered an investment agreement with the government of Mozambique to develop 30,000 ha in the Massingir District of Gaza Province for sugarcane cultivation, production of ethanol, and construction of an electricity plant, as well as an additional 11,000 ha to develop an outgrowers scheme. The director of district service for economic activities in Massingir suggested that the area granted to ProCana was virtually uninhabited and not being used for agriculture. However, at the time, several villages existed there, as did health centers and schools, and several communities living along the Elephant River grazed cattle on the land.<sup>45</sup> The land had also already been reserved by the Limpopo National Park to facilitate a resettlement program for communities displaced from the park. There was no record of any EIA approval being granted to ProCana.

The ProCana project was eventually canceled, but had the proper EIA process been executed and adequate coordination taken place, existing land tenure claims and the project's social and environmental impacts would have been considered before approval of the project.

<sup>44</sup> Ibid., p. 253.

<sup>45</sup> Norfolk S and Cosijn M., "Development and the Balancing of Interests in Mozambique," in Faure M and du Plessis W, eds., *The Balancing of Interests in Environmental Law in Africa* (Pretoria University Law Press, 2011), p. 311.; FIAN International, *Land Grabbing in Kenya and Mozambique: A Report on Two Research Missions – and a Human Rights Analysis of Land Grabbing* (Heidelberg: FIAN International Secretariat, 2010), p. 32.

### 3.1.4 Lack of consideration of cumulative impacts

Activities' cumulative effects on the environment and communities are also not adequately addressed under the EIA Regulations, with only one express mention in the context of the pre-assessment required for Category B activities. As a result, EIAs have generally assessed the potential impacts of proposed activities in isolation, resulting in an unrealistic understanding of the downstream consequences of investments and limiting the effectiveness of mitigating measures and management terms.

**Example: Lack of consideration of cumulative impacts.**

Strip development takes place within 500 m of the high tide mark from Maputo to northern Inhambane, a length of 7,000 km, almost a third of the Mozambican coast. Assessments to determine the indirect and downstream effects of the activities on the environment and the unique sensitivity and biodiversity considerations of the areas to be developed do not inform development decisions. Cumulative effects of the activity are not considered, and therefore the density of development is not regulated. One result is that the cost to local authorities of providing services (water, roads, energy, sewage and waste) in these areas is very high and each investor/developer must deal with these independently, usually on site.<sup>46</sup>

### 3.1.5 Environmental management of mining

The Mining Law, Mining Law Regulations and Environmental Regulation for Mining Activities<sup>47</sup> provide a framework for environmental management of mining. In some cases, their requirements are tougher than those outlined in the Law on Environment and supporting regulations.

The Mining Law requires all applications for mining titles to be accompanied by a technical and economic assessment that includes a mining plan and an EMP.<sup>48</sup> In the case of a mining concession, the requirements for obtaining environmental clearance are more stringent. Applicants for concession

<sup>46</sup> Norfolk and Cosijn, "Development and the Balancing of Interests in Mozambique," p. 323.

<sup>47</sup> Decree 26/2004.

<sup>48</sup> Article 60, Mining Law Regulations, Decree 28/2003.

contracts must submit a mining production plan<sup>49</sup> that provides details of the proposed mining activity, including a description of the project and the proposed mining methods. The plan must include proposals for preventing pollution, protecting the environment, restoring and rehabilitating the land and vegetation, and minimizing the effects of mining exploration on the land and surface water. It must also identify any safety and health risks to the people involved in mining exploration and the general public, and propose a way to control and eliminate these risks.

Once a mining concession is granted, concession holders are required to obtain an environmental license from MICOA before commencing operations, within three years of the grant of the mining concession.<sup>50</sup> To obtain this license, they may first be required to also undertake an EIA, based on the project's categorization under the Mining Act into one of three levels:<sup>51</sup>

- Level 1 projects (small-scale operations and nonmechanized exploration efforts) must adhere to basic environmental management rules.
- Level 2 projects (operations in quarries, extraction of mineral resources for construction, exploration and mining involving mechanized equipment, and pilot projects) require an EMP.
- Level 3 projects (mechanized operations not included in levels 1 and 2) require an EIA.

MICOA is required to consult with the Ministry of Mineral Resources in making its final decision as to whether to accept an EMP; in practice MICOA usually follows the lead of the Ministry of Mineral Resources.<sup>52</sup> Similarly, while approval of mining EIAs is the responsibility of MICOA, the Ministry of Mineral Resources maintains a strong influence. This arrangement undermines the safeguard of MICOA providing independent and expert review of the EMP and EIA.

Separate environmental management guidelines for mining can help ensure that regulations are adequately tailored to the industry, particularly

49 Article 43, *ibid.*

50 Article 15, Mining Law, Law 14/2002; Article 52, Mining Law Regulations Decree 28/2003.

51 Articles 37 and 38, Mining Law, Law 14/2002.

52 SAL & Caldeira Advogados, *Introduction to the Legal Framework for Mining in Mozambique*, 2nd ed. (Maputo: SAL & Caldeira, 2010), p. 28.

given its potentially severe environmental impacts. However, they also risk conflict between different legal requirements. For example, the Mining Law states that a mining concession holder must apply for an environmental license after having obtained the concession, while the Law on Environment indicates that an environmental license is required before any other license is granted. It is unclear how these provisions are reconciled. Sector-specific provisions also create separate environmental monitoring responsibilities for the Ministry of Mineral Resources and MICOA, another potential source of conflict. Given the strained human and technical resources available to MICOA, streamlining coordination is likely to be a challenge.

### 3.1.6 Inadequate implementation of the environmental impact assessment process

While the Law on Environment and its supporting regulations create a robust and detailed framework for the screening of investments to determine their potential environmental impact, it appears that this framework is rarely followed. One recent study found that “few agricultural land applications had a comprehensive EIA, even if environmental issues were clearly at stake.”<sup>53</sup>

#### Example: Noncompliance with EIA requirements.

In December 2006, during the debate on the government's budget for 2007, Tourism Minister Fernando Sumbana reported that a multi-sector government team had inspected 160 tourism establishments in six provinces over the past year. The findings of this audit included that some projects had gone ahead without the legally required environmental impact study, that unauthorised institutions had issued licences for tourist companies in areas defined as total or partial protection zones and that many buildings had been erected within 100 metres of the marine shoreline, or within 50 metres from a lake shoreline [in violation of legal standards].<sup>54</sup>

This demonstrates serious inadequacy in the EIA process and shows that, in many cases, activities are initiated without regard to their environmental impact. This problem is particularly acute at the provincial level, where the Provincial Directorate for the Coordination of Environmental Action is

53 Deininger et al., *Rising Global Interest in Farmland*, p. 121.

54 Norfolk and Cosijn, “Development and the Balancing of Interests in Mozambique,” p. 324.

required to assess Category B projects with limited technical knowledge, financial resources or political clout. In some cases, this has resulted in activities with potentially severe negative environmental impacts being approved with scant scrutiny, especially if they are perceived as having substantial economic benefits. Alternatives to the planned activities that could have a mitigating effect – an important component of the EIA – are rarely considered.<sup>55</sup> Even if an EIA has been undertaken and an environmental license granted, the lack of human and technical resources at both provincial and national levels has hampered MICOA's ability to monitor compliance with EMPs and enforce mitigation actions.<sup>56</sup>

Low levels of competency among EIA consultants has remained a hindrance to the implementation of EIA provisions.<sup>57</sup> The Law on Environment and EIA Regulations establish procedures for registration and eligibility of EIA consultants.<sup>58</sup> Only technicians with a degree and five years of experience may carry out EIAs as environmental consultants.<sup>59</sup> Registry certificates are granted upon proof of qualifications and experience and must be updated every three years. A positive development is that foreign consultants wishing to undertake EIAs in Mozambique may do so in conjunction with registered local consultants, which ought to act as a method of skills transfer.

Despite the eligibility requirements, the available pool of EIA service providers in Mozambique does not satisfy current demand.<sup>60</sup> Expertise is often lacking in key specialty areas such as air and water pollution modeling, natural resource economics, specialist environmental risk analysis, and noise pollution abatement.

55 Ibid., pp. 323–324.

56 Ibid., pp. 330–331.

57 Andrew M and Van Vlaenderen H, *Commercial Biofuel Land Deals & Environment and Social Impact Assessments in Africa: Three Case Studies in Mozambique and Sierra Leone*, Working Paper 1 (Land Deal Politics Initiative, 2013), p. 3.

58 Article 6, Law on Environment, 20/97; Article 21, Environmental Impact Assessment Regulations, Decree 45/2004.

59 Article 21, Environmental Impact Assessment Regulations, Decree 45/2004.

60 Hatton J, Telford S and Krugmann H, *Mozambique: Summary and Future Focus* (Windhoek, Namibia: Southern African Institute for Environmental Assessment, 2003), pp. 11–12.

#### **Example: Lack of trained EIA consultants.**

There is limited professional capacity even within the consulting companies that have been accredited by the MICOA to conduct EIAs. Field assessments are undertaken by recent graduates with insufficient experience to understand and correctly identify impacts and mitigating measures and with little supervision from more experienced colleagues. For the so-called mega-projects, companies with international experience of conducting EIAs are required to partner with companies registered with the MICOA. In many instances, but not all, the level of work is of international standard, and there have been cases where the international proponents themselves have rejected the quality of the work undertaken by their national partners. ...

At provincial and district level there are numerous small to medium projects, especially in agriculture and forestry, in which the EIAs are being undertaken (if at all) by small consulting firms with limited capacity. The majority of these studies tend to be desk-based, with limited field evaluation, and this approach is accepted by the authorities despite the fact that it is these projects that potentially will have a far greater cumulative impact than large projects in terms of the alteration of ecosystems and losses of biodiversity.<sup>61</sup>

The lack of qualified personnel to undertake EIAs reduces the quality of the EIAs produced and ultimately undermines the efficacy of this environmental safeguard.

### **3.1.7 Limited institutional capacity**

Similar to the weak EIA implementation, lack of human, financial and technical resources has led to institutional inefficiencies across environmental agencies. This problem has been well documented in MICOA.

#### **Example: Lack of institutional capacity.**

Many of the technicians trained in the period immediately after the establishment of the Ministry (a process strongly supported by the donors) have since left and are now working in the private sector or other public departments. The institution therefore currently has almost no capacity to evaluate the EIA reports submitted to it, especially those concerning the more complex projects. One manifestation of this weakness is that flashily-produced and glossy documents receive

61 Norfolk and Cosijn, "Development and the Balancing of Interests in Mozambique," p. 323.

better evaluations than more dowdy documents, irrespective of their content.<sup>62</sup>

To demonstrate the impact of weak institutional capacity, this section focuses on an example from the forestry sector. The Forest Act establishes environmental safeguards in the form of requirements for forest management plans and inventories for all forest concessions, but these safeguards have been undermined by compliance deficiencies and insufficient financial and human resources to enable effective implementation.

For example, forest inventories have been found to be of such poor quality that they do not provide an adequate basis on which to develop effective management terms. Simplified management plans for simple license holders (under which the majority of formal timber extraction occurs),<sup>63</sup> instead of being used as a guide to enhance sustainability of forest management, merely outline marketable species and the quantity to be exploited.<sup>64</sup> In violation of the Forest Act, forest concessions are often granted even in the absence of a management plan (Table 2), limiting the ability to facilitate sustainable investment in forest exploitation.

The generally lax attitude toward compliance with forest sector environmental safeguards has been described as follows:

In Zambézia, very few concessions prepared a management plan or established the required industries, but all were still given licenses to harvest. Interviews with a civil society member from Maputo and a forestry consultant from Pemba revealed that the management plan is often only viewed as [a] bureaucratic requirement rather than a support in the concession operations, and thus frequently of poor quality with incorrect or even falsified data.<sup>65</sup>

62 Ibid., pp. 323–324.

63 Siteo et al., *The Context of REDD+ in Mozambique*, p. 15.

64 Norfolk S and Cosijn M, “Towards the Legal Recognition and Governance of Forest Ecosystem Services in Mozambique,” *Potchefstroom Electronic Law Journal* 16, no. 2 (2013), 122–212, at 140.

65 Wertz-Kanounnikoff S, Falcão MP and Putzel L, “Facing China's Demand for Timber: An Analysis of Mozambique's Forest Concession System with Insights from Cabo Delgado Province,” *International Forestry Review* 15, no. 3 (2013), pp. 387–397, at p. 392.

**Table 2. Forest concessions with management plans in 2008.**

Province	Approved concessions	Area (ha)	Concessions with management plan
Niassa	10	199,385	0
Cabo Delgado	30	1,410,095	17
Nampula	17	1,337,145	4
Zambesia	35	1,826,500	27
Sofala	24	431,894	19
Tete	24	184,500	4
Manica	12	435,848	3
Inhambane	9	419,625	6
Gaza	4	21,525	1
Maputo	0	0	0
Total	165	6,266,517	81

Source: Ministry for Foreign Affairs of Finland, Unit for Southern Africa, *Forest Sector Support Program in Mozambique Program Document*, March 2009.

#### **Example: Inadequate forest management plans and unsustainable forest resource use.**

Timberworld in Pebane, Zambesia province, is a Singapore-based company that began working in Zambézia in the mid-1990s as a trading company, buying timber from local companies and simple license operators ... and since 2002, has applied for eight forest concessions, totaling over 220,000 ha. Since the total area of high and medium density forest in 1994 was only 750,000 ha, this holding actually represents the vast majority of the best forests in Zambézia. ... Timberworld's plan for their 41,600 ha concession in Pebane gives an indication of their approach to managing this resource. ... The plan recognises the importance of working with local leaders, and commits to giving locals first priority for jobs, paying salaries above the regional average, providing training, supporting kindergartens, and doing other good things.<sup>66</sup>

However, the plan further sets out an intensive cutting cycle at seven times the sustainable rate, which would result in the removal of all valuable

66 Mackenzie C, *Forest Governance in Zambézia, Mozambique: Chinese Takeaway!* (Quelimane, Mozambique: Forum of NGOs in Zambesia, 2006), p. 44.



timber within five years. This plan was approved by the National Directorate of Forests and Wildlife, which also gave Timberworld approval to start operations in 2003, before it had installed its industrial capacity or developed annual harvesting plans.

Although the report does not state to what extent the local communities were consulted in the development of the management plan, it does confirm that local management councils for forestry and wildlife were not, as required by law, involved in concession decision-making.

Further evidence suggests that monitoring or enforcement of forest management plans rarely takes place, due to a lack of trained officers, transportation and equipment as well as budgetary constraints within the National Directorate of Land and Forest.<sup>67</sup> In 2006, there were reportedly only 364 forest enforcement agents, one per 111,000 ha of forest.<sup>68</sup> Systematic control in logging areas is therefore virtually impossible. One study found that “during a country-wide inspection of the implementation of management plans in 13 forest concessions in 2011, it was discovered that virtually all concessions were at some level violating their legal obligations.”<sup>69</sup> Clearly, serious deficiencies exist in monitoring and enforcement capacity, which leave forest users vulnerable to the threat of investment activities that disregard systems designed to protect their social and environmental rights.

### 3.1.8 Public participation in environmental decision-making

The Law on Environment requires the government of Mozambique (GOM) to create mechanisms to ensure that civil society, local communities and all other stakeholders are involved in natural resource management decisions and activities.<sup>70</sup> The public participation process is governed by the EIA Regulations and more broadly in the Directive for the Public Participation Process, Ministerial Diploma 130/2006 of 19 July.<sup>71</sup>

The EIA Regulations recognize public participation as consisting of public consultations such as interviews and meetings, public hearing events, and the provision of information. It also provides for the broad involvement of a wide range of stakeholders, including those directly or indirectly affected by an investment activity.<sup>72</sup> The Directive for the Public Participation Process outlines the basic principles on which public participation should be grounded, including full and equal participation by different people and views; independence, such that no outside interests are allowed to dominate the result; negotiation, establishing confidence between the interested parties and managing and reducing conflicts of interest between different social and functional groups.<sup>73</sup> These principles provide a solid foundation for the public consultation process and establish considerations of equality, inclusivity, accountability and integrity.

Procedures for public participation during the EIA process are established by law. Public participation is split into two phases, with investors responsible from the conception and scoping of the EIA to the submission of the EIA or EAS.<sup>74</sup> MICOA is responsible for reviewing the EIA or EAS; the decision whether to consult with the public at this stage is at MICOA's discretion.<sup>75</sup>

Procedures for public participation during the EIA process are as follows:

- It is mandatory for all Category A activities and for those, regardless of category, that involve relocation of communities or restrictions on their use of natural resources; for all other Category B activities, it is optional.<sup>76</sup>
- Prior to a public hearing, an exhaustive investigation must take place to identify all stakeholders. A public hearing should be advertised at least 15 days in advance using the most effective media for the context. It must

67 Nhancale et al., *Small and Medium Forest Enterprises in Mozambique*, p. 23.

68 Wertz-Kanounnikoff et al., “Facing China's Demand for Timber,” p. 393.

69 Ibid., p. 394.

70 Article 8, Law on Environment, 20/97.

71 Article 14, Environmental Impact Assessment Regulations, Decree 45/2004.

72 Ibid.

73 Norfolk and Cosijn, “Development and the Balancing of Interests in Mozambique,” p. 314.

74 ACIS (Associação de Comércio e Indústria), *The Legal Framework for Environmental Licensing in Mozambique*, 2nd ed. (2009), p. 28.

75 Ibid.

76 Ibid.

be held in the local language and at public locations.<sup>77</sup>

- Technical reports produced in relation to the EIA must be made available to the public. EIA and EAS reports must be in Portuguese and provided in both hard- and soft-copy versions.<sup>78</sup> Given that most studies are conducted by foreign, English-speaking consultants, this is an important requirement.
- Meeting minutes must be taken and, along with a list of meeting participants, must be signed by those present. Minutes should record details of the consultation process including issues raised and solutions agreed to.<sup>79</sup>

These requirements establish a comprehensive and inclusive process for public participation. Public participation during the scoping stage gives stakeholders the opportunity to influence the methodology and breadth of the study.

Nevertheless, challenges remain in the implementation of this system that severely undermine its efficacy. There has been a lack of effective information dissemination to stakeholders, leaving them unable to fully understand the proposed activity and its potential effects, reducing their ability to develop informed opinions on proposed investments and resulting in decisions being made without their input.<sup>80</sup>

#### Examples: Lack of public consultation.

- In 2010, Mozal requested authorization from MICOA to bypass smelter filters in their aluminum plant, which is located just outside the cities of Maputo and Matola. MICOA approved this request after considering the potential impacts as reported by Mozal itself. Civil society organizations requested an independent assessment, but MICOA refused, stating that its decision was correctly taken and that it had conducted independent studies and monitoring. During a public hearing on the approval, the potential hazards were not adequately explained, as Mozal's presentation was in English and used technical terms. At times, MICOA represented Mozal, demonstrating a clear conflict of interest.<sup>81</sup>

77 Ibid., pp. 27–28.

78 Articles 12 and 13, Environmental Impact Assessment Regulations 45/2004.

79 Articles 12–14, *ibid.*

80 Hatton et al., *Mozambique: Summary and Future Focus*, p. 13.

81 Norfolk and Cosijn, “Development and the Balancing of Interests in Mozambique,” pp. 318–319.

- Some public consultation took place before a land acquisition by ProCana, though communities reported that only local elites and elders were consulted, “some of whom had personally endorsed the mega-project in their communities in spite of apparent widespread objection amongst them.”<sup>82</sup> No consultation on the environmental impacts of the activity in accordance with the Environmental Law was undertaken, and no EIA was performed.<sup>83</sup> This is despite the fact that part of the agreement between the government and ProCana was a guaranteed minimum quantity of water for sugarcane irrigation. Ultimately, the project was canceled by the government citing noncompliance with financial procedures; the government later announced that the 30,000 ha of land was available once again for investment.<sup>84</sup>

Overall, public consultation has little effect on EIA outcomes, and instead, approval of the activity is driven by political interests.<sup>85</sup> Investors have been found to minimize environmental and social concerns regarding potential projects and encourage communities to instead focus on the benefits.<sup>86</sup> Although MICOA determines whether public consultations should take place on a draft EIA or EAS, it is the responsibility of the investor to guide and manage such consultations. Consultations were not undertaken at all unless paid for by the investor.<sup>87</sup> This practice severely undermines the integrity and independence of the public participation process.

Once an investor has received an environmental license, public involvement in the project virtually ceases;<sup>88</sup> there is no legal mechanism to facilitate ongoing community awareness.

### 3.1.9 Limited political influence of environmental agencies

Environmental agencies in Mozambique can be ineffective in their role of upholding environmental

82 Ibid., p. 32.

83 Ibid., p. 311.

84 FIAN International, *Land Grabbing in Kenya and Mozambique*.

85 Hatton et al., *Mozambique: Summary and Future Focus*, pp. 13, 15.

86 Nhamumbo I and Salomão A, *Biofuels, Land Access and Rural Livelihoods in Mozambique* (London: International Institute for Environment and Development, 2010), pp. 32–33.

87 Norfolk and Cosijn, “Development and the Balancing of Interests in Mozambique,” p. 313.

88 Ibid., p. 318.

and social safeguards, due to limited technical capacity and political influence.<sup>89</sup> As mentioned earlier, MICOA can be sidelined in the EIA process by sector-specific agencies such as the Ministry of Mineral Resources. Another example is the National Council for Sustainable Development (Conselho Nacional de Desenvolvimento Sustentável or CONDES), an advisory body responsible for helping to develop laws and policies relating to the management of natural resources at both the domestic and international level.<sup>90</sup>

CONDES advises the cabinet on environmental issues and is comprised of ministers and vice ministers and chaired by the minister for environmental coordination.<sup>91</sup> One of its responsibilities is to develop proposals for financial or other incentives to “stimulate economic agents to adopt environmentally sound procedures in the daily use of the Nation’s resources,”<sup>92</sup> placing the integration of economic mechanisms into environmental regulations in the hands of one body. Another of its responsibilities is to formulate recommendations to ministers responsible for natural resource management in different sectors, recognizing the importance of cross-sectoral collaboration.

Its hierarchical advantage makes CONDES well situated, in theory, to influence the higher echelons of government and effect positive change. However, a recent study reported that circumstances have prohibited CONDES from fulfilling its responsibility to drive or even participate in the development of environmental policy.

**Example: Institutional ineffectiveness.**

At the government level, CONDES and MICOA are, institutionally, the agents for the promotion of policy dialogue and inter-sectoral coordination. However ... they have not been able to play that role effectively. Environmental management is still widely perceived by other sectoral ministries as an obstacle to economic development and investment decisions are often made with very little consideration given to environment

regulation and sustainable development objectives (e.g. construction of dams, land and mineral resource concessions). Neither CONDES nor MICOA have managed to influence high level government policy decisions and push convincingly for a sustainable development agenda.<sup>93</sup>

### 3.1.10 Conclusion

Mozambique’s legal framework for environmental management is robust, and recent legal reforms have strengthened key public-interest safeguards that integrate social and environmental considerations into investment decision-making. Its detailed EIA process places public consultation at the heart of effective environmental management. It extends participation to a broad spectrum of stakeholders at an early stage, allowing, in theory, substantial influence over the design and implementation of the EIA process.

The main weakness of Mozambique’s environmental safeguard system is the inability of environmental agencies to monitor and enforce existing laws and regulations. Lack of financing has undermined MICOA’s ability to oversee the critical public consultation phase and monitor compliance with EMPs. Ineffective information dissemination, and threats to the independence of the public consultation process, risk weakening this safeguard. Poorly qualified EIA consultants and limited availability of competent government staff weaken institutional capacity and thereby the GOM’s ability to maintain high environmental standards.

Given the cross-cutting nature of environmental issues, intersectoral coordination is key to environmental decision-making, and CONDES holds an extremely important responsibility in this regard. However, inadequate political will to allow CONDES to broaden institutional coverage of environmental considerations, and develop environmental policy in line with the nation’s changing needs, renders its efforts futile. The ProCana example underscores how inadequate mechanisms for cross-sectoral collaboration can foster corruption and the circumvention of important safeguards. In the mining sector, although it is encouraging that sector-specific legislation prominently features the EIA, lack of

89 Ibid.

90 Article 6, Law on Environment, 20/97.

91 Cabral L and Francisco D, *Environmental Institutions, Public Expenditure and the Role for Development Partners: Mozambique Case Study Final Report* (London: Overseas Development Institute, 2008), p. 9.

92 Ibid.

93 Ibid., p. 14.

intersectoral coordination can lead to an imbalance of competing interests.

Gaps also remain in the legal framework, including the lack of consideration of cumulative impacts. With the increasing number of competing land uses, especially those with substantial environmental consequences, little is done to ensure that the downstream and combined effects of these activities are considered, or that measures are established to minimize or eliminate these impacts. Given Mozambique's high dependence on natural resources, limitations to the efficiency of the EIA process jeopardize its sustainable development.

### 3.2 Lack of incentives in the legal framework

Mozambique has established a broad framework for facilitating investment in the energy, mining, forestry and agriculture sectors, founded on the Law on Investment and its supporting Regulation of the Investment Law. This law and regulations are not applicable to investments in the petroleum, gas and extractive industries, which are strictly under the purview of the Ministry of Mineral Resources.<sup>94</sup> Specialized institutions such as the Centre for Agricultural Promotion, under the purview of the Ministry of Agriculture, and the Institute for the Promotion of Small and Medium Enterprises, under the Ministry of Industry and Trade, complement the provisions of the Law on Investment. The Code of Fiscal Benefits also establishes a range of tax incentives for which investors may be eligible once they fulfill certain legal requirements. How effective these laws and institutions are in promoting sustainable investment and in complementing each other's roles is examined further in this section.

#### 3.2.1 Incentives in national law

The Law on Investment lists 10 objectives, some of which are relevant to promoting sustainable economic and social development:

- development, rehabilitation, modernization or expansion of infrastructure for the operation of productive activities
- contribution to training and developing national entrepreneurs

- creation of jobs and increase in professional skills for national workers
- promotion of technological development.<sup>95</sup>

Under the previous Regulations on Investment, investors were required to demonstrate that their projects supported at least seven of the 10 investment objectives set out in the law.<sup>96</sup> In 2009 this requirement was removed to facilitate easier access to investments.

The law subjects activities that “emit levels of pollution likely to negatively affect the environment or public health” to restrictions including the requirement to comply with international agreements to which Mozambique is a signatory. This could in theory subject investors to more stringent provisions than those established in the domestic framework. It is unclear whether this provision has been invoked in practice to impose stricter standards of environmental management.

Despite these incentives for sustainable development, the GOM's promotion of investment is not primarily targeted at sustainable investment. These incentives are reviewed below after a review of the investment registration process.

#### 3.2.2 Application for and approval of investment authorization

Fiscal benefits are only accorded to an investor in compliance with the Law on Investment, determined by the application for an investment authorization, which is a prerequisite for eligibility for benefits under the Code of Fiscal Benefits, Law 4/2009.<sup>97</sup> Thus, this process is the legal gateway to investment and has the potential to act as a checkpoint to ensure the sustainability of new investments. However, a number of shortcomings, including short time frames and lack of capacity within the responsible government agencies, reduces the potential of this mechanism to improve the sustainability of investments.

The process for the registration of investments under the Law and Regulations on Investment begins with the Investments Promotion Center (Centro de

<sup>95</sup> Article 7, *ibid.*

<sup>96</sup> Article 12, Regulations of the Investment Law, Decree 43/2009.

<sup>97</sup> Article 2, Law on Investment, Law 3/93 of 24 June.

<sup>94</sup> Article 3(2), Law on Investment, Law 3/93 of 24 June.

Promoção de Investimentos or CPI). The Regulations on the Investment Law establish the CPI as an institution under the authority of the Ministry of Planning and Development, with a mandate to facilitate more efficient processing of investment applications.<sup>98</sup>

The Regulations of the Investment Law establish strict time lines within which proposals must be reviewed and approved by all relevant authorities. The CPI undertakes an initial review of the proposal to ensure that it conforms to the requirements of the legislation. In so doing, the CPI is responsible for coordination and consultation with other government ministries and state institutions that have regulatory oversight of sectors relevant to the project.<sup>99</sup> The Regulations of the Investment Law give the CPI a maximum of seven days to complete this review.<sup>100</sup> Key ministries, such as MICOA and the Ministry of Agriculture, would be required to review the proposed investment within this time, on complex issues relating to environmental impact and land tenure, respectively. If there is no government response within the time limit, the law states that implicit approval of the project is deemed to be given.

The seven-day time line stipulated by the law is inadequate, considering that it applies to all investment projects regardless of size or complexity. Given the well-documented concerns regarding the lack of human and technical resources in many government agencies, it is unlikely that the authorities can comprehensively review a complex investment project within this time. The provision for tacit approval overrides established legal safeguards and prioritizes the expediency of investment approvals over the quality and sustainability of investments.

98 Article 4, Regulations of the Investment Law, Decree 43/2009; Centre for Agricultural Promotion Organic Statute, <http://www.masa.gov.mz>; OECD, *OECD Investment Policy Reviews: Mozambique 2013* (Paris: OECD Publishing, 2013), p. 91, doi:10.1787/9789264203310-en. The government of Mozambique created the Centre for Agricultural Promotion to develop agribusiness strategy, promote agribusiness opportunities and attract and monitor investments in the agricultural sector. However, the Organisation for Economic Co-operation and Development has indicated that, in practice, the focus of this agency has been on data collection and project registration, rather than on providing investor support.

99 Article 10, Regulations of the Investment Law, Decree 43/2009.

100 Article 10, *ibid.*

Final consideration and approval of an investment proposal is the responsibility of the government authority specified in the Regulations of the Investment Law (Table 3). As this table illustrates, the issue of unreasonably narrow time frames arises again in the decision-making phase. The approval process is governed by a different set of government actors within specified time frames. For all projects up to 13.5 billion Mozambican metical (MZN, approximately USD 425 million), the relevant government authority is accorded a maximum of three days to review and approve the investment proposal. As investment proposals are required to contain complex information, including on all environmental and social considerations, three days for consideration is very likely to be inadequate.

Positive reforms in the 2009 Regulations include the extension of the time line for consideration of proposals by the Council of Ministers from 10 to 30 days and the elimination of the stipulation for implicit approval from relevant government authorities. However, the three-day maximum for the three other tiers of authority is still grossly inadequate to enable these actors to properly consider the environmental, social and economic implications of proposals. A recent study found that these time limits are not adhered to in practice, as ongoing negotiations between the investor, the CPI and relevant government bodies on issues such as land tenure rights acquisition and tax incentives typically require additional time.<sup>101</sup> This informal practice confirms the inadequacy of the time lines and the unrealistic nature of the law.

The criteria that trigger review by the Council of Ministers were also changed. The area of land subject to an investment that would require approval by the Council has doubled for many projects, to 10,000 ha, and increased more than tenfold for forest projects, to 100,000 ha. Agricultural projects requiring land concessions of 10,000 ha or more previously required approval, but this limit was removed from the Regulations. These changes reduce the number of investment proposals that require approval by the Council of Ministers. As requirements for approval suggest greater levels of scrutiny and weightier expectations of the investor, the amendments to the legislation give some cause for concern.

101 UNCTAD (United Nations Conference on Trade and Development), *Investment Policy Review Mozambique* (Geneva: UNCTAD, 2012), p. 37.

**Table 3. Responsibility for approval of investment projects.**

Government actor	Investment project value and type	Time frame
Provincial governor	National projects not exceeding MZN 1.5 billion	3 days
General director of Investment Promotion Center	Foreign and national projects not exceeding MZN 2.5 billion	3 days
Minister of planning and development	Foreign and national projects not exceeding MZN 13.5 billion	3 days
Council of Ministers	Foreign and national projects exceeding MZN 13.5 billion Projects requiring land area greater than 10,000 ha Forestry projects requiring land concessions of 100,000 ha or more Any project with serious political, social, economic or financial implications, in which case consultation with the minister of planning and development is required	30 days

Source: Article 12, Regulations of the Investment Law, Decree 43/2009.

The terms of any investment authorization must contain at least the following:<sup>102</sup>

- the investment incentives and guarantees
- the number of national and foreign people to be employed
- the time limit and terms for the start of implementation.

These terms are intended to give investors clear and measurable criteria to demonstrate compliance as a condition of eligibility for tax benefits. Previously, the Regulations required additional information to be included in the terms of authorization which lent support to environmental and social safeguards established in other sectoral legislation. These included the incorporation of the terms of any concession or license to exploit natural resources, as well as details concerning the training schemes envisaged for Mozambican workers. Unfortunately, these are no longer a requirement.

The CPI has the responsibility to monitor the implementation of investment projects and may audit the investor's premises and issue sanctions when the terms of authorization are not fulfilled.<sup>103</sup>

This is important to ensure that the investor is performing its economic activity as proposed and that social and environmental safeguards are adhered to. However, the CPI has been found to lack the

capacity to properly undertake this responsibility.<sup>104</sup> This has resulted in a lack of accountability and makes it possible for investors to avoid compliance with safeguards or to fail to implement a project altogether.

### 3.2.3 Financial incentives for investment

According to the Code of Fiscal Benefits 4/2009, incentives available to authorized investors include the following:

- exemption from payment of certain customs duties and value-added tax (VAT) for the first five years
- a 5% deduction from corporate income tax in the city of Maputo, and 10% in other provinces
- accelerated depreciation of new immovable assets used in the investment
- 110% corporate income tax allowance for the value of expenditures in the construction or rehabilitation of certain types of infrastructure, including electrical energy, and other works considered to be of public utility, increasing to 120% in provinces outside Maputo.<sup>105</sup>

The Code also creates special tax regimes to encourage specific types of development, through the establishment of rapid development zones, industrial free zones (IFZs) and special economic zones. Areas targeted for rapid development zones

102 Article 11, Regulations of the Investment Law, Decree 43/2009.

103 Article 21, *ibid.*

104 UNCTAD, *Investment Policy Review Mozambique*, pp. 37–38.

105 Articles 2, 14–16, 19, Code of Fiscal Benefits, Law 4/2009.

are rich in natural resources but lack infrastructure and have low levels of economic activity.<sup>106</sup> They are generally located in rural areas and focus on activities such as agriculture and the construction of related infrastructure; forestry operations, including tree plantations; electricity generation, transport and distribution; and industry.<sup>107</sup> Activities taking place in rapid development zones are exempt from import and export duties on equipment (class K goods) and receive corporate income tax credits of up to 20%.<sup>108</sup>

IFZs and special economic zones are intended to promote export-oriented activities and create linkages between megaprojects and local investment initiatives. The Mozal aluminium smelter was the first IFZ. The Office for Accelerated Economic Development Zones is responsible for the promotion and licensing of special economic zones and industrial free zones. Investments in both categories benefit from exemption from customs duties on imports and corporate income tax exemptions of up to 50% for up to 15 years.<sup>109</sup> Mineral exploration and exploitation do not qualify for benefits under the IFZ regime.<sup>110</sup> Although the GOM intends to step up the creation of IFZs in Mozambique, their benefits to the economy are not yet clear. One report noted:

As of early 2012, the only IFZ was the Beluluane industrial park, which has been developed next to the Mozal aluminium smelter. Beluluane was developed as a partnership between the Government and a private developer over an area of about 700 has. Although the developer built part of the infrastructure and provides some turnkey buildings, Beluluane remains under-developed, and almost entirely focused on servicing Mozal. As of early 2012, only 15 companies operated from the IFZ and the infrastructure provided in the zone remains rudimentary.<sup>111</sup>

This suggests the need for the government to carefully assess the costs and benefits of these incentive schemes to ensure that they are coordinated with development priorities, provide social and

economic benefits and are effective at implementing GOM policies on human resources development, trade barriers and other issues.<sup>112</sup> Despite the underdevelopment of Beluluane, the GOM aims to create seven IFZs and one special economic zone in Nacala in northeastern Mozambique. The area is already being promoted as an agricultural growth corridor under the government's Strategic Plan for Agricultural Development (Plano Estratégico de Desenvolvimento do Sector Agrário or PEDSA), without obvious assessment of the benefits that will accrue.<sup>113</sup>

In addition to the provisions under the Code of Fiscal Benefits for incentives for the training of Mozambicans, the Labor Law (Law 23/2007) establishes important social requirements with which all investors, regardless of investment authorization, are required to comply. Investors must place qualified Mozambicans in the more highly skilled jobs and in management and administrative positions.<sup>114</sup> An investor is also required to adhere to quotas on foreign workers: no more than 5% of the total number of employees in large enterprises, 8% in medium-sized enterprises and 10% in small enterprises.

One progressive development under the 2009 Code is the elimination of provisions that allowed investment projects exceeding USD 500 million to receive special incentives upon approval by the Council of Ministers. This gave significant discretion to the Council of Ministers and reduced transparency in the award of incentives, raising concerns about competing incentives and potential conflicts with social and environmental safeguards established in other laws. Its removal enhances predictability and transparency in investment approvals and strengthens support for sustainable investment.

### 3.2.4 Incentives for sustainable investment

While the majority of the abovementioned incentives are available regardless of the sustainability of an investment, some benefits provided under the Code do have positive implications for sustainability. The Code provides incentives for the use of new technologies and specialized equipment, in the form

106 Article 39, *ibid.*

107 Article 41, *ibid.*

108 Articles 42–43, *ibid.*

109 Articles 45–48, *ibid.*

110 UNCTAD, *Investment Policy Review Mozambique*, p. 51.

111 *Ibid.*

112 OECD, *OECD Investment Policy Reviews: Mozambique 2013*, p. 102.

113 *Ibid.*

114 Article 31, Labor Law, Law 23/2007.

of corporate and personal income tax deductions of as much as 10% during the first five years of operation.<sup>115</sup> This could encourage sustainability by incentivizing the retrofitting of industrial operations with more efficient technologies, decreasing waste and greenhouse gas emissions. The Code also encourages professional training of Mozambican employees by allowing deductions on corporate and personal income tax of 5% during the first five years of operation, 10% if new technology is used in the professional training.<sup>116</sup>

Additional incentives are provided for investors in activities considered high development priorities. Five such activities that are particularly relevant to sustainable land use are highlighted Table 4.

In addition to incentives under the Code, there are sector-specific incentives.

## Forestry

Forestry sector laws provide a number of incentives for sustainable forest exploitation and the involvement of local communities in investment opportunities. Simple licenses, as detailed in Annex 2, have limited procedural requirements and are reserved for Mozambican nationals, making them a popular option for private investors in forestry exploitation.<sup>117</sup> Investors may apply for simple licenses either individually or as a group, creating a number of investment options tailored to the needs and capacities of smaller-scale local initiatives.<sup>118</sup> A recent report highlighted many innovative options under the existing legislative framework, including community-owned simple licenses and forest concessions for timber, biomass energy and agroforestry.<sup>119</sup> The report revealed that opportunities for local community involvement in the forest sector could produce significant benefits, including employment and wealth generation, and create a sense of ownership of forestry management.

115 Article 17, Code of Fiscal Benefits, Law 4/2009.

116 Article 18, *ibid.*

117 Nhancale et al., *Small and Medium Forest Enterprises in Mozambique*, p. 23.

118 Article 16, Decree Law 30/2012.

119 Nhantumbo I, Macqueen D, Cruz R and Serra A, *Investing in Locally Controlled Forestry in Mozambique: Potential for Promoting Sustainable Rural Development in the Province of Niassa* (London: International Institute for Environment and Development, 2013).

Challenges remain to effectively using these sustainable investment incentives, however, including strengthening government support for the creation of markets for sustainably harvested forest products, establishing incentives such as preferential taxes and royalties, and eliminating bureaucratic barriers to forestry concession applications.<sup>120</sup> Linkages between communities and concession companies could also lead to more sustainable, longer-term employment opportunities.

In practice, applications for simple licenses and forestry concessions involve long and tedious technical processes and a number of informational requirements.<sup>121</sup> Completed applications must be submitted at the national or provincial capital, which creates difficulty for applicants in rural areas. These factors discourage local entrepreneurship. However, it is crucial to maintain a balance between facilitating local investment and rigorously verifying and monitoring natural resource exploitation projects.

### Example: Lack of regulation of simple licenses.

Simple Licenses (SLs) are the dominant forest harvesting regime in Mozambique, despite policy assertions to the contrary. Even [forest concession] holders complain that SL holders are increasing year after year, backed by Asian intermediaries that finance their activities, and there is little control over where they harvest (including within existing concessions). Even the most basic requirements of national identity and technical capacity are not rigorously observed during the licensing process by the [Provincial Services for Forest and Wildlife]. The SL system encourages loggers to have little or no concern for the quality of the remaining forest. The licence is just seen as a fee for short-term gain. Numerous reports point out the near impossibility of sustainable management using the SL regime. ...

Notwithstanding the preference for SLs, the vast majority of entrepreneurial activities are conducted without any compliance with regulations and in an unlicensed manner. This has a negative impact in two main areas. First, there is the issue of tax evasion and the loss of potential state revenue. Second, there is the issue of uncontrolled resource degradation.<sup>122</sup>

120 *Ibid.*

121 Nhancale et al., *Small and Medium Forest Enterprises in Mozambique*, p. 23.

122 *Ibid.*, pp. 23–24.



**Table 4. Incentives for investment in high-priority development categories.**

Category	Eligibility requirements	Benefits	Sector
Basic infrastructure	<ul style="list-style-type: none"> <li>Investment in the private sector or by public–private partnerships</li> <li>Exclusive objective to establish basic public infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>Exemption from payment of customs duties and VAT on import of K-class goods, including spare and accessory parts</li> <li>80% reduction in rate of corporate income tax in first five years</li> <li>60% reduction in rate of corporate income tax from 6th to 10th year</li> <li>25% reduction in rate of corporate income tax from 11th to 15th year</li> </ul>	Energy
Rural commerce and industry	Investments in the construction or rehabilitation of infrastructure used exclusively to conduct commercial and industrial activity in rural areas	Exemption from payment of customs duties and VAT on import of K-class goods, including spare and accessory parts as well as freezers, scales, weights, cash registers, oil and fuel meters and counters	Agriculture Energy Forestry
Manufacturing and assembly	<ul style="list-style-type: none"> <li>Investments must maintain annual invoicing of not less than MZN 3 million</li> <li>Investments must have final product value of at least 20%</li> </ul>	<p>Exemption from payment of duties on items used in industrial manufacturing for:</p> <ul style="list-style-type: none"> <li>the import of raw materials</li> <li>the assembly of motor vehicles, electronic equipment, computer and communications technology and others</li> </ul>	Agriculture Forestry
Agriculture and fisheries	Investments must be related to agriculture and fisheries	<ul style="list-style-type: none"> <li>Exemption from payment of customs duties and VAT on import of K-class goods, including spare and accessory parts</li> <li>80% reduction in corporate income tax through 2015</li> <li>50% reduction in corporate income tax from 2016 to 2025</li> </ul>	Agriculture Agroforestry
Large projects	<ul style="list-style-type: none"> <li>Investment exceeds MZN 12.5 million</li> <li>Under public authority, carried out with permission or concession</li> </ul>	Exemption from payment of customs duties and VAT on import of construction materials, machinery, equipment accompanying spare and accessory parts and other goods used in implementing the activity	Agriculture Energy Forestry

Source: Chapter II, Code of Fiscal Benefits, Law 4/2009.

This example clearly demonstrates that sustainable investments are not merely established by the creation of opportunities under the law, but require careful regulation to ensure that the incentives do not contribute to negative social and environmental outcomes.

## Energy

Mozambique's Energy Strategy (Resolution 10/2009) and Policy on the Development of New and Renewable Energy (Resolution 62/2009) outline government plans to improve the current market climate for renewable energies, and both call for the development of special frameworks for taxation that support rural electrification and the introduction of new technologies to facilitate it.

The incentives proposed by the Energy Strategy focus on improving rural energy access, and require Electricidade de Moçambique – the country's state-owned electricity provider, responsible for the national transmission system – to develop a tax regime to provide exemptions from customs duties and VAT on the importation of electrical equipment to be used in expanding grid access, as well as exemptions on corporate income tax for payments to nonresidents contracted to implement rural energy projects. The Policy on the Development of New and Renewable Energy (Resolution 62/2009) calls for the creation of a package of incentives such as special financing mechanisms for renewable energy projects; tax incentives (such as customs and VAT exemptions) that reduce the cost of renewable energy equipment; and subsidies on renewable energy equipment for new users, targeted at promoting domestic use. The GOM is also finalizing its policy on renewable energy feed-in tariffs, which aim to encourage on- and off-grid independent power producers to generate and supply energy from new and renewable sources. The GOM's recent move to reduce subsidies on fossil fuels could also benefit the renewable energy industry by eliminating incentives for fossil fuel consumption.<sup>123</sup>

The Electricity Law (Law 21/97) established the National Fund for Energy (Fundo de Energia or FUNAE) under the purview of the Ministry of Energy. Its focus is on providing electricity to off-grid users. By providing financial assistance and technical capacity-building, FUNAE has the potential to

<sup>123</sup> OECD, *OECD Investment Policy Reviews: Mozambique 2013*, p. 135.

support and encourage entrepreneurship in the development and management of off-grid renewable energy. FUNAE has provided electricity for rural villages, schools and health centers using sources such as solar and small hydroelectric plants, and has conducted research on potential areas for renewable energy deployment.<sup>124</sup>

### Example: Advancements in rural electrification.

To date, the electrification of 115 villages, 298 schools and 300 clinics has been successfully completed. ... The successful deployment and demonstration of solar energy technologies has led to an upsurge in awareness and interest in their potential for rural electrification. In particular, the deployment of pico-scale solar energy systems has led to requests for kits to be sold on a commercial basis, providing income generation opportunities in the private sector.

To support Mozambique's growing solar market, FUNAE has been instrumental in developing plans to construct a solar module manufacturing plant to assemble modules for sale in Mozambique and neighboring countries. This will create employment and could be the first step towards establishing a domestic solar manufacturing sector.

FUNAE continues to ... provide a range of examples of solar installations. Plans for 2012 include the electrification of a further 350 schools, 350 health clinics and 30 villages. In addition, three large solar projects, in the range of 400 to 500 kW – a size never before installed in Mozambique – are planned in Niassa province.<sup>125</sup>

FUNAE has considerable potential to influence the overall investment climate by enabling local communities to access entrepreneurial opportunities. FUNAE's planned future activities include deepening collaboration with microfinance institutions to provide financing for small-scale energy projects.<sup>126</sup> In 2008, FUNAE started training installers of photovoltaic systems to improve the skills of institutions and individuals in the education, health

<sup>124</sup> FUNAE (Fundo de Energia), *Relatório Anual de Actividades 2012* (Maputo: FUNAE, 2013).

<sup>125</sup> IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 57.

<sup>126</sup> See FUNAE, *Relatório Anual de Actividades 2012*, Section 16, Objective 10; OECD, *OECD Investment Policy Reviews: Mozambique 2013*.

and private sectors.<sup>127</sup> This initiative promotes rural electrification while generating wealth at the local level.

FUNAE is also working to develop a solar energy equipment market by building a manufacturing plant to enable the assembly and sale of solar modules locally as well as regionally.<sup>128</sup> It is also finalizing an atlas that outlines potential areas for renewable energy exploitation and will serve as a useful guide to promoting investor interest in renewable energy.<sup>129</sup>

While these developments are timely and necessary to promote the untapped market for renewable energy, the lack of concrete laws to implement these strategies severely undermines their utility. There is no specific reference to the renewable energy industry, and no special exemptions are provided for the import of renewable-energy technology in the Code of Fiscal Benefits. As a result, while strong policy support for the development of the industry exists, the current legislative framework has not yet established adequate incentives for it.

Despite some incentives for sustainable investment, the majority of incentives remain available for any investment, thereby reducing their potential positive impact on sustainability.

### 3.2.5 Incentives for small and medium enterprises

The 2009 reforms to the Regulations removed the minimum project value required before investment authorization could be sought by national investors, which had previously precluded SMEs from accessing incentives under the Code of Fiscal Benefits. At the same time they increased the minimum value required for foreign investments to USD 80,000. However, in practice, local investors, and particularly smaller-scale enterprises, rarely register for fiscal benefits registration as they lack the capacity and resources.<sup>130</sup>

127 Cuamba B, Cipriano A and Turatsinze R, *Investment Incentives for Renewable Energy in Southern Africa: The Case of Mozambique* (Maputo: International Institute for Sustainable Development, 2013).

128 Ibid., p. 57.

129 Interview with the Directorate for New and Renewable Energy, Ministry of Energy in Maputo, Mozambique, on 5 February 2014.

130 UNCTAD, *Investment Policy Review Mozambique*, p. 36.

SMEs are also limited by a lack of support services, particularly with respect to credit. In the agricultural sector, for example, only 6.5% of commercial banks in Mozambique lend to agricultural operators.<sup>131</sup> The statistics on rural household credit access paint an even bleaker picture: 2.26% of small farms and 7% of medium-size farms received credit for agriculture in 2010, compared to 14% of large farms.<sup>132</sup> Thus, farmers face a significant hurdle in obtaining financing that could improve their efficiency and generate greater income. Insufficient government incentives to facilitate extension services and reduce costs of agricultural inputs also constrain the agricultural industry. Only a fourth of Mozambique's rural population live within 2 km of all-season roads, roughly 40% of which are in poor condition.<sup>133</sup> Insufficient infrastructure to link agricultural areas to major transport networks has constrained the ability of farmers to market their produce.

In support of increasing credit access, the Ministry of State Administration launched a Rural Finance Strategy in 2011, aimed at expanding access to financial services in rural areas. The Strategy sets a target of 80% coverage of rural areas by commercial banks and other financial institutions.<sup>134</sup>

### 3.2.6 Stabilization clauses

The Investment Law guarantees the right of investors to enjoy the incentives established by their investment authorizations, regardless of later changes to the national investment policy.<sup>135</sup> The Mining Law also provides investors with a stability guarantee by ensuring that once an exploration license, mining concession or mining certificate has been issued to a foreign or national investor, the fiscal regime applicable to it will never be altered, unless to the benefit of the investor.<sup>136</sup>

131 World Bank, *Economic and Sector Work, Agribusiness Indicators: Mozambique* (Washington, DC: World Bank, 2012), p. 46.

132 Ibid.

133 Dominguez-Torres and Briceño-Garmendia, *Mozambique's Infrastructure*, p. 10.

134 Club of Mozambique, *Rural Finance Strategy Launched* (Maputo: Club of Mozambique, 2011), <http://www.clubofmozambique.com/solutions1/sectionnews.php?secao=abusines&cid=23488&tipo=one>.

135 Article 16, Law on Investment, Law 3/93.

136 Article 33, Mining Law, Law 14/2002.

Such stabilization clauses generate investor confidence; at the same time, they constrain the government's ability to alter the incentives in a reform of the fiscal benefit system. Further, terms of authorization are confidential, reducing transparency regarding how investors are treated under the law.

In its recent review of Mozambique's legislative framework for investment, the United Nations Conference on Trade and Development recommended the elimination of the provision in the Investment Law:

[Stabilization clause] assurances are no longer necessary now that the country's credentials have been strongly established. Mozambique's policy space would be enhanced as a result. It would be essential, however, to maintain a strong degree of tax stability to reassure investors and allow them to operate under a predictable environment.<sup>137</sup>

Contract stabilization may also be guaranteed through other mechanisms. Mozambique is a party to 24 bilateral investment treaties (BITs), which govern investment between it and another contracting state party.<sup>138</sup> Many of these contain provisions for "fair and equitable" treatment and "full protection and security" for investments.<sup>139</sup> Broad interpretations of these provisions in international arbitration proceedings have in the past placed onerous obligations on the host country to ensure that the circumstances prevailing at the time the investment is made remain unchanged.<sup>140</sup> Arbitral decisions have also produced restrictive interpretations indicating that, although such provisions do not per se restrict policy space, bilateral treaty obligations place

137 Ibid.

138 Mozambique has established BITs with Algeria, Belgium, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Mauritius, Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom, United States of America, Vietnam and Zimbabwe.

139 These are Mozambique's BITs with India (2009, signed but not yet entered into force), the Netherlands (2004), Indonesia (2000) and the United States (2005), as well as Switzerland, the United Kingdom, and Portugal, as indicated in King & Spalding International, *Client Alert, Recent Developments: Mozambique—What Legal Options are Available to Investors in Oil, Gas and Mineral Resources?* (London: King and Spalding International, 2013), <http://www.kslaw.com/imageserver/kspublic/library/publication/ca103113.pdf>.

140 Cotula L, *Foreign Investment, Law and Sustainable Development*, p. 24.

significant onus on the host government to defend any changes in the fiscal regime.

Under a BIT, defense of actions within the investment environment may require host countries to settle disputes under international arbitration. Dispute resolution provisions in BITs vary; however, for example, the US–Mozambique BIT requires automatic submission to international arbitration.<sup>141</sup> This is costly and may place developing countries that lack technical capacity and experience arguing before an international tribunal at a considerable disadvantage. The terms of BITs should be carefully considered, given their potentially significant implications for national development.

Many investors enter confidential mining contracts with the GOM, a practice enabled by the law.<sup>142</sup> Similar to investment authorizations granted by the CIP, mining contracts offer investors increased stability in the face of changing fiscal regimes, as well as opportunities to negotiate special provisions. Efforts to ensure that the economic benefits of mining accrue to the country are diluted when the government and the investor negotiate generous terms. Almost half of contracts are confidential.

#### **Example: Special benefits under mining contracts.**

##### **Kenmare (heavy sands)**

Corporation tax (IPRC) cut to 15 per cent for the mine during the first 10 years, plus exemption for most other taxes during that period, including industrial tax, VAT, customs duty, stamp duties and real estate transfer tax (SISA). Expatriates paid no income tax (IPRS) during construction and the first 5 years of operation.

##### **Sasol (gas)**

Most taxes reduced by half during the first 6 years of operations.

##### **Vale (coal)**

Corporation tax (IPRC) cut to 15 per cent for the mine and the industrial transformation tax to 5 per cent during the first 10 years. Most other taxes halved during

141 *Treaty between the Government of the United States of America and the Government of Mozambique Concerning the Encouragement and Reciprocal Protection of Investment*, 23 May 2000, [http://www.sice.oas.org/Investment/BITSbyCountry/BITS/US\\_Mozambique\\_e.asp](http://www.sice.oas.org/Investment/BITSbyCountry/BITS/US_Mozambique_e.asp).

142 UNCTAD, *Investment Policy Review Mozambique*, p. 55.

that period. Expatriates paid no income tax (IPRS) during construction and the first 5 years of operation.<sup>143</sup>

Clearly, a number of investors have secured favorable tax conditions while creating substantial losses of revenue to the country.

**Example: Assessing development outcomes.**

An assessment of the value to the nation of Kenmare's heavy sands operations in Moma found the following positive outcomes:

- well-paid jobs for around 815 Mozambicans
- MZN 35 million (USD 7.8 million) of personal income tax paid by staff members in 2009–2011
- business opportunities for local suppliers
- development of water systems benefitting 145 families and establishment of an electricity grid that Kenmare estimates serves 70,000 people
- USD 3.5 million in corporate tax and royalty payments to Mozambique in 2008–2011, representing one cent per dollar of revenue.

And it found the following negative outcomes:

- 145 families resettled
- security gate at entrance to the community, leading to strong perception of reduced privacy and limited freedom of movement
- degradation of arable land.<sup>144</sup>

Central to the issue of inequitable distribution of wealth from the mining sector is a weak taxation regime, which enables mine operators to avoid paying taxes on the majority of their profits. All mine operators are subject to corporate income tax of 32% as well as production taxes, also known as royalties, which are calculated based on the value of mining products sold or used for a commercial or industrial purpose other than construction.<sup>145</sup> Production taxes are 3% to 10% for diamonds, precious metals and stones, semiprecious stones, basic minerals, and coal and other mineral products; 8% for gas; and 10% for oil.<sup>146</sup>

143 Hanlon J (ed.), *Mozambique Political Process Bulletin 53* (Maputo: Centro de Integridade Pública, 15 February 2013) p. 2.

144 Brynildsen Ø and Nombora D, *Mining without Development: The Case of Kenmare Moma Mine in Mozambique* (Brussels: CIP and Eurodad, 2013), p. 25.

145 Article 28, Mining Law, Law 14/2002.

146 Law 11/2007 and Law 12/2007, as outlined in Meneses C, Da Barca D, Santos E, *Mozambique: Guide to Fiscal Information* (London: Deloitte, 2013), pp. 9, 11.

The valuation of mineral resources in the calculation of production tax has been the focus of substantial scrutiny. Production tax is levied on the value of the mining product extracted from the soil, independent of its actual sale, exportation or other disposition.<sup>147</sup> The value is often the purchase price, as declared by the mine operator. This gives companies the discretion to independently define sale prices, enabling them to influence the amount of royalties they pay. The regime incentivizes companies to sell to their associates or subsidiaries at potentially lower than market prices to minimize the amount owed in tax.

### 3.2.7 Incentives to behave responsibly

The law establishes a number of mechanisms, particularly inspections and fines, to discourage developers from violating the law's social and environmental safeguards. This section examines some of these mechanisms.

#### Environmental performance bonds and fines

Environmental performance bonds are required from investors and forfeited if they fail to comply with the law; the funds are then used to remediate the harm to the environment. This is a practical form of implementing the polluter-pays principle by requiring investors whose activities pose a risk to the environment to internalize the potential cost upon commencement of a project. Although Mozambique's environmental laws do not require environmental bonds, the Mining Law does, in the form of rehabilitation bonds, which require a developer to make a financial commitment to the cost of the eventual removal of its installation and rehabilitation of the affected area. These are required for Level 2 and Level 3 activities (those resulting in moderate or serious environmental impacts).<sup>148</sup> The amount of the bond is based on the estimated cost of removing the installation and rehabilitating the area. For Level 3 mining activities, this cost estimate must be included in the EMP.

The EIA Regulations establish a number of penalties for violation of administrative requirements. Fines

147 Ibid.

148 Environmental Regulation for Mining Activities, Article 24, paragraphs 1, and 2, as summarized in SAL & Caldeira Advogados, Lda., *Introduction to the Legal Framework for Mining in Mozambique* Second Edition, 2010, p. 37

range from MZN 20 to MZN 240 million for the following infractions:<sup>149</sup>

- failure to update an environmental license
- implementing a listed activity without an environmental license
- undertaking of an EIA by a consultant not registered under Article 21 of the Regulations
- applying for an environmental license after commencing implementation
- alteration of a licensed activity without prior authorization
- submission of fraudulent, altered or outdated information or omission of relevant information during an EIA process
- failure to implement measures outlined in an EIS or environmental license
- recurrence of any infraction.

The new Regulations on Environmental Quality and Effluent Discharge (Decree 18/2004) also establish a process to monitor standards for environmental quality and effluent emissions, undertaken by MICOA. The standards control the amounts of pollutants that an operation is allowed to emit.<sup>150</sup> Fines for noncompliance with these standards range from MZN 20 million to MZN 200 million.

The Regulations on Environmental Quality and Effluent Discharge do not address noise or water pollution or ozone-depleting chemicals, which are covered in other legislation:

- Water pollution is governed by the Water Law (Law 16/91) and various supporting policies, which require the registration of polluters in the National Waters Register.<sup>151</sup> Regional water administrations are responsible for maintaining the Register and are governed by the Ministry of Public Works and Housing through the National Directorate for Water.
- Noise pollution is partially addressed by the General Regulations on Hygiene and Safety of Industrial Plants, Legislative Diploma No. 48/73,

implemented by the Department of Labor, which establishes measures to protect workers from the harmful effects of noise. They do not, however, establish general standards on noise pollution – a serious gap in the law.

- Ozone-depleting chemicals and their import and use are restricted by the Regulations on the Management of Substances that Deplete the Ozone Layer, Decree 24/2008, which is implemented by MICOA.

The multiplicity of laws and implementing authorities places monitoring and enforcement authority in the hands of various institutions. The integration of standards for water and noise pollution under the general legislation for environmental quality and effluent discharge could streamline monitoring and compliance and establish one institutional focal point responsible for issuing permits and fines, avoiding the coordination issues inherent in the current approach. This could create greater bureaucratic efficiency and more organized monitoring and enforcement.

### Environmental audits

Under the EIA Regulations and the Regulation on the Process of Environmental Audit, Decree 32/2003, audits are carried out on activities that have already received an environmental license, to ensure that they comply with the terms of the license and to determine whether the standards and mitigation measures established therein are sufficient. Environmental audits may be public or private. Public audits are carried out by MICOA in collaboration with other government actors, at MICOA's discretion. Private audits are undertaken by investors in conformity with the terms of the EMP and any other applicable terms under environmental law.<sup>152</sup>

Key challenges to the efficiency of the environmental audit process include the responsibility for payment of audit costs, the competency of consultants undertaking audits and the public availability of audit results.

No clear guidance exists on who bears the cost of a public audit, such as the travel expenses of the auditing team, though in practice the investor is

149 Article 26, Environmental Impact Assessment Regulations 45/2004.

150 Walmsley B and Patel S, *SADC Environmental Legislation Handbook 2012* (Pretoria: Development Bank of Southern Africa and Southern African Institute for Environmental Assessment, 2011), p. 261.

151 These policies include the National Water Policy 1995, amended in October 2007, 1990 Constitution Act and Water Law (Law 16/91), Southern African Development Community Protocol on Shared Watercourses, and National Water Resource Management Strategy 2007 (ibid., p. 274).

152 Articles 3, 6 and 7, Regulation on the Process of Environmental Audit, Decree 32/2003, cited in ACIS, *The Legal Framework for Environmental Licensing in Mozambique*, p. 29.

unofficially responsible for these costs.<sup>153</sup> Placing the responsibility on the investor to finance the costs of a public audit has clear implications for the integrity and independence of the results. It creates a potential conflict of interest and raises questions as to the competency of the public agency to enforce the law. The current practice suggests that the overall quality of an environmental audit hinges on the ability of the investor to pay for it.

The cost of a private audit is the responsibility of the investor.<sup>154</sup> Private audits are generally undertaken by foreign individuals or companies who are subcontracted by locally registered entities, due to a lack of qualified local auditors in Mozambique.<sup>155</sup>

Public audits are carried out using government staff; although some training has been provided for MICOA staff, there is concern about the lack of capacity to undertake environmental audits and the low quality of the work produced.<sup>156</sup> Government departments also experience high staff turnover, leading to a loss of institutional memory and a persistent shortage of trained staff. With private audits undertaken solely by foreign individuals, there is also no chance for skills transfer.

MICOA has the discretion to publish the results of public and private audits. The findings of private audits are required to be submitted to MICOA by the investor. Though this is intended to create greater transparency, in practice there is no way for MICOA to know whether a private audit has actually been undertaken. One report indicates that, as of 2011, audit findings had not yet been published by MICOA.<sup>157</sup> Companies often simply fail to submit audit findings, with little to no pressure from MICOA to do so.

### 3.2.8 Conclusion

Mozambique has established a comprehensive framework for investment promotion. The Law

153 Brynildsen and Nombora, *Mining without Development*, p. 14.

154 Article 9, Regulation on the Process of Environmental Audit, Decree 32/2003, cited in ACIS, *The Legal Framework for Environmental Licensing in Mozambique*, p. 29.

155 Norfolk and Cosijn, "Development and the Balancing of Interests in Mozambique."

156 *Ibid.*, especially p. 326.

157 *Ibid.*

on Investment represents the country's effort to combine all procedures and mechanisms related to investment and fiscal benefits under one umbrella and streamline the management of investments. It establishes the acquisition of an investment authorization as the gateway to fiscal benefits under the law, in theory using this mechanism to ensure the sustainability of new investments. Despite this potential, there remains a lack of capacity to manage and monitor investment projects, which has limited the effectiveness of the CPI, and a focus on economic outcomes only, rather than contributions to the country's sustainable development.

In its desire to spur rapid economic progress, Mozambique's investment framework has in many ways devalued social and environmental considerations. The law imposes narrow time lines for review of investment proposals by the CPI and sector-specific authorities. Although provisions giving implied approval of investment projects after the short review deadline expires have been reformed, similar provisions remain in the inter-institutional coordination process, threatening to destabilize established safeguards when reviews are not completed in time.

Recent reforms have also removed some barriers to SME participation, enabling SMEs of any size to apply for investment authorization and secure its fiscal benefits. However, in practice, the investment authorization process remains an obstacle to participation by most SMEs, where the balance between safeguards and efficiency has yet to be found.

The Investment Law gives special attention to the needs of high-priority sectors, including agriculture, energy and forestry, establishing generous incentives to boost economic development. Special fiscal regimes established for rapid development zones, special economic zones and IFZs provide incentives for development in high-priority sectors and locations. Sector-specific legislation provides further incentives, such as the new policies promoting renewable energy.

The mining sector is the only sector completely removed from the general investment framework. Though this sector can significantly influence socioeconomic progress, weak tax laws minimize its contribution to the economy, and strict confidentiality limits the extent to which

the public can critically assess the sector and demand improvement.

Legal incentives to behave well have also supported strengthened environmental management. However, they are underutilized due to strained resources and some persisting gaps in the law.

If properly regulated, the existing framework for investment has enormous potential to raise domestic revenues and help alleviate poverty. Implementation of the framework requires collaboration between all sectors to ensure that conflicting incentives and efforts do not undermine progress. It also requires full consideration of the usefulness of existing incentives and their economic costs and benefits to the country. There is evidence to suggest that this has not been the case.<sup>158</sup> On the other hand, reforms are already taking place. They signal that the GOM recognizes existing challenges, and they hold promise for an improved environment for sustainable investment.

### 3.3 Insecure land tenure

In sub-Saharan Africa, land is integral to food security, cultural survival and livelihoods.<sup>159</sup> The vast majority of Mozambicans rely directly on land for subsistence agriculture, biomass energy, and forest products for food, supplemental income, construction material for homes, and a number of traditional and cultural uses. Secure land tenure guarantees the rights of communities or individuals over land and resources, ensuring its protection and recognition by others. Sound legal protection for ownership and user rights to land and resources is therefore essential to livelihoods and the sustainable use and management of natural resources. This must include clear mechanisms and conditions under which these rights may be transferred, which are critical to encouraging sustainable investment.

Increased private-sector involvement in land investments, and greater support for smallholder farmers are major GOM priorities. However, the realization of these goals requires proper governance systems to ensure that whatever benefits are

obtained are by investors, are not simply at the expense of smallholder farmers' livelihoods or the environment. In Mozambique, land alienation has been the main challenge to the sustainability of agricultural investments. Given the recent surges in land acquisition by foreign investors, security of land tenure is one of the most important social safeguards the law can provide to ensure the sustainability of these investments. This section examines the effectiveness of existing legal mechanisms to support tenure security and uphold social safeguards, and considers the challenges that remain.

#### 3.3.1 Land tenure in Mozambique

Mozambique's constitution establishes that all land and natural resources in Mozambique are owned by the state, and that this ownership cannot be transferred or alienated.<sup>160</sup> The Land Law establishes a right to the use and benefit of land (*direito de uso e aproveitamento da terra* or DUAT), which may be acquired through occupancy or by grant from the state in response to an application.<sup>161</sup> While the land itself can only belong to the state, structures and investments on the land can be privately owned, and the DUAT passes to the owner of the structures on it.

DUATs are not issued inside protection zones, of which two types exist in Mozambique: total and partial. Total protection zones include areas intended for the conservation of nature; partial protection zones include areas for sustainable management of key natural resources.<sup>162</sup> While the law indicates that licenses may be granted for special activities within these zones, it does not specify how they may be obtained. This lack of guidance places substantial discretion in the hands of government authorities, creating opportunities for arbitrary use of power and weakening other legal protections.

The National Directorate of Land and Forest, under the Ministry of Agriculture, is responsible for land administration. The government entity responsible for issuing DUATs depends on the size of the land parcel.<sup>163</sup>

158 OECD, *OECD Investment Policy Reviews: Mozambique 2013*, p. 101.

159 Pritchard J, Lesniewska F, Lomax T, Ozinga S and Morel C, *Securing Community Land and Resource Rights in Africa: A Guide to Legal Reform and Best Practices* (Seattle: Landesa, 2013).

160 Articles 98 and 109, Constitution of Mozambique 2004.

161 Article 12, Land Law, Law 19/97; Land Law Regulations, Decree 66/98.

162 Articles 7–8, Land Law Regulations, Decree 66/98; Article 9, Land Law, Law 19/97.

163 Article 22, *ibid.*



- Provincial governors issue DUATs for areas of 1,000 ha or less. They may also issue opinions on DUAT applications that fall within the competency of the minister of agriculture, and may authorize special licenses in partial protection zones.
- The minister of agriculture issues DUATs for areas between 1,000 and 10,000 ha. The minister may also issue opinions on applications for larger land areas, and may authorize special licenses in total protection zones.
- The Council of Ministers issues DUATs for areas exceeding 10,000 ha. It has the sole authority to decide on creation, modification or extinguishment of protection zones, and on the use of the land under territorial waters and on the continental shelf.

Mozambique recognizes customary title to land within the framework of the Land Law. DUATs obtained by occupancy may be based either on customary and traditional norms and practices, or on good-faith occupancy over a specified period of time.

DUATs obtained under the first category may be acquired collectively by local communities, or by individuals.<sup>164</sup> The Land Law defines a local community as

a grouping of families and individuals, living in a territorial area that is at the level of a locality or smaller, which seeks to safeguard their common interests through the protection of areas for habitation or agriculture, whether cultivated or lying fallow, forests, places of cultural importance, pastures, water sources and areas for expansion.<sup>165</sup>

Though broadly worded, the definition allows sufficient scope for local communities to characterize themselves, including by their unique cultural context. The law recognizes the participation of both men and women of all age groups as members of local communities.<sup>166</sup> Although DUATs granted on the basis of customary and traditional norms may be formally registered, the law recognizes their legitimacy even when they are not.<sup>167</sup> The Land Law recognizes customary proof of land

164 Article 15(1), Land Law Regulations, Decree 66/98.

165 Article 1, Land Law, Law 19/97.

166 Article 5, Technical Annex, Land Law Regulations 2000.

167 Article 13(2), Land Law, Law 19/97.

demarcation, such as testimony by members of local communities.<sup>168</sup>

DUATs acquired by good-faith occupancy may be granted to communities or individual nationals who have occupied the land for at least 10 years.<sup>169</sup> Holders of such a DUAT may grant it to a third party; thus, it is possible for foreigners to acquire customary land from individuals who have been granted a DUAT by occupancy.<sup>170</sup> DUATs obtained by such occupancy grants may also be applied for by national and foreign individuals and corporate entities.

All foreign individuals and entities acquiring an interest in land broadly must be registered under Mozambican law and have an approved investment project.<sup>171</sup> The law stipulates that foreign individuals must have been resident in Mozambique for at least five years, and corporations must be established or registered in Mozambique.<sup>172</sup> Applicants who intend to undertake economic activities on the land must also include an exploitation plan in their application, which they are required to adhere to should the application be successful.<sup>173</sup> DUAT holders of all categories are required to obtain the legally required licenses and to comply with all requirements, including EIAs.<sup>174</sup>

### 3.3.2 Provisional authorization for land use

After the submission of a DUAT application, a provisional authorization is issued, with specific conditions (such as exploitation for economic gain) and a time frame within which they must be fulfilled. Provisional authorizations are valid for up to five years for nationals and two years for foreigners, after which an inspection must be carried out to verify that the applicant has fulfilled the conditions of the authorization; if not, it can be revoked. For

168 Article 15, Land Law, Law 19/97 and Article 21, Land Law Regulations, Decree 66/98.

169 Article 10, Land Law Regulations, Decree 66/98.

170 Article 20, Land Law, Law 19/97.

171 Article 10(1), *ibid.*

172 Article 11, *ibid.*

173 Articles 13, 14 and 24(2), *ibid.*

174 ACIS (Associação de Comércio e Indústria), *Legal Framework for Recognising and Acquiring Rights to Rural Land in Mozambique: A Guide to Legalising Land-Holding*, 2nd ed. (Maputo: ACIS, 2009).

provisional DUAT holders intending to carry out economic activities, this would involve checking that the economic exploitation plan is being carried out on schedule. Upon satisfaction of these conditions, a DUAT is granted, valid for up to 50 years and then renewable.<sup>175</sup>

Provisional authorizations are intended to safeguard against land falling idle as a result of an investor obtaining a DUAT and then failing to undertake the promised activity. However, in practice, authorities lack the capacity to verify whether provisional DUAT holders have satisfied their conditions, especially given that criteria for monitoring are not normally established in the exploitation plan.<sup>176</sup> In practice, verification is confined to a simple one-off assessment without further performance monitoring. This undermines safeguards intended to ensure that land is put to productive use. Between January 2004 and June 2009, of 2.7 million ha of land transferred, 50% was found to be unused or not fully used.<sup>177</sup> Land conflicts that occurred as a result of these transfers spurred the GOM in 2011 to cancel several large-scale investments because the investor failed to fulfill its exploitation plan.<sup>178</sup>

### 3.3.3 Access to land title information

The National Land Cadastre is the public repository for information on existing land interests.<sup>179</sup> All new applications for DUATs are checked, both against the cadastre and in consultation with the community, to determine whether other interests in the land in question exist. However, many cadastral records are out of date by several years or scaled in a way that obscures land parcels smaller than 10 ha (although the majority of applications for individual DUATs are for parcels of this size).<sup>180</sup> Modern technology could make mapping and data storage more efficient, but in

175 Articles 18, 26, 28–29 and 31, Land Law Regulations, Decree 66/98.

176 Deininger K et al., *Rising Global Interest in Farmland*, p. 118.

177 Ibid., p. xxxii.

178 Hanlon J, *Understanding Land Investment Deals in Africa Country Report: Mozambique* (Oakland: Oakland Institute, 2011), p. 3.

179 Article 20, Land Law, Law 19/97.

180 Norfolk S, *Policy, Legal and Institutional Assessment Framework Large-Scale Land Acquisition for Agricultural Production Mozambique*, Draft (London: Open University, 2009), p. 28.

many cases the technology is unavailable or staff are not trained to use it.

These challenges result in a picture of land tenure that is skewed in favor of formally registered rights; customary interests in land are often not represented in the cadastre, giving the inaccurate impression that large amounts of unencumbered land are available.<sup>181</sup> In up to 20% of investment projects, the land use rights granted to investors overlapped with local communities' rights.<sup>182</sup> Increasing demands for land by wealthy investors place customary landholders at an unfair and growing risk.

#### Example: Double allocation of rights.

In Zimpeto, located in the Infulene Valley in peri-urban Maputo, 50 smallholder farmers who belonged to an association lost the land they had tilled for over 10 years, and to which they had user rights. The area they worked, 100 × 150 m, was "sold" by an intermediary, who claimed to represent the farmers. The present "owner" turned up with a provisional title for the land and claims that he paid MZN 120 million (about \$5,000) to a committee that represented the peasants, who were farming there. Members of the association were evicted and they did not have the resources to take the case to court.<sup>183</sup>

Although formal registration could give customary rights holders a stronger basis for defending their land rights, high costs and lengthy and difficult bureaucratic procedures preclude poor communities from taking advantage of this option. As a result, ownership of land titles has predominantly been limited to wealthy individuals and private investors, with many low-income groups perceiving that land registration "belonged to the private sector."<sup>184</sup>

In rural areas, community ownership of land is more commonly recognized than individual ownership, as subsistence food production, charcoal gathering and the sale of forest products are typically communal

181 Trusen C, Calengo A and Rafael B, *A Study of the Development and Implementation of Strategies for Sustainable Local Land Management Based on Practical Experiences* (GIZ, 2010), p. 18.

182 Deininger et al., *Rising Global Interest in Farmland*, p. 61.

183 Kanji N, Cotula L, Hilhorst T, Toulmin C and Witten W, *Research Report 1: Can Land Registration Serve Poor and Marginalised Groups? Summary Report* (London: IIED, 2005), p. 18.

184 Ibid.

exercises.<sup>185</sup> However, land registration to formally recognize ownership rights in these areas has also proved difficult due to the lack of human and financial resources on the part of both government and community actors.

**Example: Registration of rural lands.**

A recent study of rural land registration in Zambezia Province – one of the poorest provinces in Mozambique, though an ideal location for commercial crops and the focus of great interest from private investors – found that the perception of land tenure insecurity in the face of increasing land acquisition by private investors was the motivation for formal land registration. In Nhafuba and Murrua communities, assigning community land or other natural resources without adequate community consultations lay at the root of the problems. In the case of Murrua community, a private operator was about to acquire a large area of land. After negotiations involving the government administration, the land area requested was reduced and the conflict was resolved.

In these communities, however, public awareness of tenure rights and the financial costs of registration, including procedures for consultation, are low and largely dependent on the assistance of NGOs:

The members of the communities studied do not know how much the registration of their land cost, though they do recognise their inability to pay from their own resources. According to [a recent] report, the average cost of a demarcation in Zambezia was \$8,700. However, the same authors say that the average cost during the pilot phase ranged from \$2,200–5,500, though this figure excluded salaries. ... Nobody in the communities studied had registered their own family land individually. Some showed interest in doing so, but lacked money to pay for it and did not know the bureaucratic requirements involved. They argued that registering the ownership of family land could guarantee security of tenure for their children.

The protracted nature of many community demarcation exercises also discourages formal community registration. The study, which also covered some communities in Nampula Province, noted that

while individuals have the option to register their own rights separate from the community, this option, too, has proved to be inaccessible:

Though the law establishes the possibility for people who are not satisfied with the certificates of collective rights to withdraw from the collective through individual land registration, implementing this legal provision is not easy for low-income people, because the law requires all individual registrations to be preceded by a community consultation. Community consultation is expensive for most people: first, it involves paying per diems to the technicians and representatives of State authorities who are present; secondly the applicant must pay their travel expenses; and thirdly 300,000 MZN (\$12,500) must be paid to the community as an incentive. ... The State itself does not possess sufficient human and financial resources to be able to fund land registration for all disadvantaged communities.<sup>186</sup>

Low-income communities often are unable to access mechanisms that could increase their tenure security. This places greater importance on processes such as mapping of land tenure rights and public consultation (discussed in further detail below) to ensure that unregistered customary rights are given equal respect and recognition as contemplated by the law.

A recent development in land legislation, prompted by the increase in the number of applications for DUATs for investments on large areas of land, requires investors to provide additional information on their investments and the proposed use of the land during the application process. Under Resolution 70/2008 on Procedures for Presenting and Evaluating Investment Proposals that Involve Areas of Land above 10,000 Hectares, investors must show:<sup>187</sup>

- the ways in which the project conforms to national policy and strategy
- the opinions of the district administrator, provincial governor, minister of agriculture and other relevant departments on the proposed activity
- any partnership agreements that exist among other DUAT holders

185 Chilundo A, Cau B, Mubai M, Malauene D and Muchanga D, *Research Report 6: Land Registration in Nampula and Zambezia Provinces* (Maputo: International Institute for Environment and Development, University Eduardo Mondlane, 2005).

186 Ibid., pp. 19, 20, 23.

187 Resolution 70/2008 of 30 December, cited in ACIS, *Legal Framework for Recognising and Acquiring Rights to Rural Land in Mozambique*, p. 17.

- an opinion from the Ministry for Environment on the environmental feasibility of the project
- socioeconomic information including on proposed resettlement programs
- social infrastructure to be provided by the project
- the impact of the project on food production
- the involvement of local producers in the project.

The requirements help ensure that new investment proposals align with national priorities and respect established social and environmental safeguards, a sound basis for encouraging and promoting sustainable investment. However, as with all laws, their effectiveness hinges on proper implementation, which itself is highly dependent on the efficient functioning of and coordination between all sectors involved.

### 3.3.4 Consultation with local communities

The Land Law safeguards the right of local communities to participate in the management of natural resources and the process of land titling.<sup>188</sup> In support of this right, the law requires that all DUAT applications must be preceded by consultations with the respective communities, and must include a statement by the local administrative authorities that “the area is free and has no occupants.”<sup>189</sup> Previously, the Land Law Regulations offered the only guidance on the public participation process. Recently established Ministerial Decision No. 158/2011 on Procedures for Consultation with the Local Communities on the Use and Property Rights of Land and related legal provisions have clarified many gaps and established a strengthened framework for public consultations. Previously, public consultations were merely regarded as a means of confirming that the area was available.<sup>190</sup> The current process refocuses the priority on the existing landowners by establishing mechanisms to increase their awareness and understanding of the implications of titling decisions and integrate their participation in the titling process.

The Procedures for Consultation require public consultation to be carried out in two phases.<sup>191</sup> In the

188 Article 24, Land Law, Law 19/97.

189 Article 13(3), *ibid.*

190 Article 13, *ibid.*

191 Article 1, Procedures for Consultation with the Local Communities on the Use and Property Rights of Land, Ministerial Decision No. 158/2011.

first phase, a public meeting must be held to provide information to the local community regarding the DUAT application and the boundaries of the land parcel to which it applies. The second phase, which takes place within 30 days of the first meeting, aims to involve the public in a discussion about the purpose and proposed business plan of the project. In addition to these two required meetings, further meetings may be held whenever there is additional information to be provided to the public.

The Procedures for Consultation also stipulate who should participate in the public consultations. In addition to government authorities such as the Provincial Geography and Cadastre Services and the district administrator (or his/her representative), participation by members of the village and town advisory boards is required, as well as local communities and owners or occupants of adjoining land.<sup>192</sup> Village and town advisory boards integrate local councils, community authorities and representatives of local economic, social and cultural interest groups.<sup>193</sup> The representation of at least 30% women on village and town advisory boards is a strict requirement.<sup>194</sup> The boards are responsible for signing the minutes of community consultations;<sup>195</sup> local communities are entitled to receive a copy of these minutes. The greater inclusion of women and vulnerable minorities, and increased transparency and public accountability throughout the consultation process provide a stronger safeguard for broad community participation.

The new Procedures for Consultation assign responsibility for financing public consultations to the DUAT applicant.<sup>196</sup> This reduces the burden on Mozambique’s already financially strained public authorities. At the same time, when the applicant is a community that does not have the resources to fund the process to formalize its customary rights, this requirement can be prohibitive. Given the lack of

192 Article 2, *ibid.*

193 Decree 11/2005 (approves the Regulation of the Law on Local State Institutions).

194 Article 118, Decree 11/2005.

195 Article 2, Procedures for Consultation with the Local Communities on the Use and Property Rights of Land, Ministerial Decision No. 158/2011 and Decree 43/2010.

196 Article 4, Procedures for Consultation with the Local Communities.

government resources to support this process,<sup>197</sup> the GOM relies heavily on established legal safeguards to protect customary rights where they are not registered. The importance of holding proper public consultations to determine existing land rights is therefore even further underscored.

Though the Procedures for Consultation increase the safeguards for community involvement in land acquisition decisions, in practice, previously inadequate legislative provisions and minimal enforcement resulted in procedural and substantive irregularities that often rendered the process ineffective. It is likely that these inefficiencies will continue under the new procedures.

Limited community participation has been a major flaw in the consultation process.<sup>198</sup> In Mozambique, local communities comprise a vast array of interests which vary by age, gender, social class, religion, livelihood, location and other factors, and may have thousands of members.<sup>199</sup> Previously, the Land Law Regulations required minutes from consultations to be signed by three to nine members of the community. Given the broad definition of local communities in the Land Law, this requirement failed to ensure adequate community representation throughout the process.

The participation of women and young men in such consultations was also found to be rare,<sup>200</sup> and women were generally unaware of their rights to consultation.<sup>201</sup> Prior to the establishment of the Procedures for Consultation, the framework

did not ensure that marginalized groups such as women or youth, or differing priorities and needs in communities, were considered in these consultations. Communities indirectly affected by projects, including those affected by migration out of project areas, were also excluded from the process. As a result of the absence of critical safeguards, large imbalances in the composition of the consulted stakeholder groups were found.<sup>202</sup> Older men, community leaders including traditional chiefs, and local elites who were well connected and had established ties with investors, typically dominated meetings, promoting views and opinions that were biased and motivated by self-interest.<sup>203</sup>

#### Example: Forest land authorizations

The company Chikweti Forests of Niassa was obtained rights to 30,000 ha of land in Chikweti, Niassa, 14,000 ha of which was to be planted with pine and eucalyptus. However, the National Directorate of Land and Forest discovered that an additional 32,000 ha was illegally being occupied. Permission to develop the illegal land was “authorized” by the local chiefs, without consultation of any of the affected communities and without following the process outlined in the Land Law. Local chiefs were also found to have been hired by Chikweti, and there were several claims that they were given money in exchange for their support, and their families given preference for jobs. Investigations by the National Directorate of Land and Forest showed that Chikweti plantation trees were grown too close to houses and farms, leaving no room for community expansion and blocking sunlight from their crops. Although Chikweti was supposed to have used degraded land to plant their trees, they were also found to be invading prime agricultural land and clearing naturally forested areas, leaving community members with no access to firewood or forest-derived medicinal products. Several land conflicts between the community and Chikweti occurred, with community members setting fire to plantations and allowing cattle to destroy the saplings. Confrontations in which

197 Chilundo et al., *Research Report 6: Land Registration in Nampula and Zambezia Provinces*, p. 13, states: “Between 2001 and 2003, however, the government only made funds available for 4 delimitations per year.”

198 Deininger et al., *Rising Global Interest in Farmland*, pp. 106–107.

199 Vermeulen S and Cotula L, “Over the Heads of Local People: Consultation, Consent, and Recompense in Large-Scale Land Deals for Biofuels Projects in Africa,” *Journal of Peasant Studies* 37, no. 4 (2010), 899–916, at 908; and Kanji et al., *Research Report 1: Can Land Registration Serve Poor and Marginalised Groups?*, pp. 7, 14.

200 Andrew and Van Vlaenderen, *Commercial Biofuel Land Deals & Environment and Social Impact Assessments in Africa*, p. 16.

201 Tanner C and Baleira S, *Mozambique’s Legal Framework for Access to Natural Resources: The Impact of New Legal Rights and Community Consultations on Local Livelihoods*, Livelihood Support Program Working Paper 28 (Food and Agriculture Organization, 2006), pp. 2, 6.

202 Trusen et al., *A Study of the Development and Implementation of Strategies for Sustainable Local Land Management*, p. 19.

203 Kanji N, Braga C and Mitullah W, *Promoting Land Rights in Africa: How Do NGOs Make a Difference?* (London: International Institute for Environment and Development, 2002), p. 31.

community members threatened Chikweti workers with knives were also reported.<sup>204</sup>

Community members often do not receive sufficient information about the nature of the investment or its potential impacts, positive and negative, on the community and livelihoods.<sup>205</sup> Meetings are usually rushed, and communities have a limited understanding of their rights.<sup>206</sup> Often investors are accompanied by the district administrator or other high-level government officials, who are often perceived as being in favor of the interests of investors and place pressure on communities to agree to certain outcomes.<sup>207</sup> Government officials have also been found to lack understanding of the laws and processes governing public consultation, to the detriment of local communities.<sup>208</sup> One study noted: “The public agencies responsible for implementing the new laws are also failing to apply the community or local rights provisions correctly, and often appear to be firmly on the side of the new land right applicant.”<sup>209</sup>

The timing of consultations is also an important factor in the ability of a community to affect the decision-making process. Early inclusion means that communities have a chance to shape decisions at the conceptual stage. Local consultations in Mozambique have generally taken place late in the decision-making process, when implementation plans have already been concluded, precluding communities from influencing the final outcome.<sup>210</sup> In other cases, investors have approached communities regarding

204 Hanlon J, “Land Moves Up the Political Agenda,” *Mozambique Political Process Bulletin* 48 (Maputo: Centro de Integridade Publica, 2011), pp. 8–10. See also Richards M, *Social and Environmental Impacts of Agricultural Large-Scale Land Acquisitions in Africa—With a Focus on West and Central Africa* (Washington, DC: Rights and Resources Initiative, 2013), pp. 49–50.

205 Deininger et al., *Rising Global Interest in Farmland*, pp. 106–107.

206 Trusen et al., *A Study of the Development and Implementation of Strategies for Sustainable Local Land Management*, p. 19.

207 Ibid.

208 Kanji et al., *Promoting Land Rights in Africa: How Do NGOs Make a Difference?*, p. 17.

209 Tanner and Baleira, *Mozambique’s Legal Framework for Access to Natural Resources*, p. 2.

210 Cotula L, *Legal Empowerment for Local Resource Control: Securing Local Resource Rights within Foreign Investment Projects in Africa* (London: IIED, 2007), p. 78.

the proposed activity at very early stages of the application process, even before obtaining approval from the district administrator. In such cases, no useful or detailed plans concerning the proposed activity yet existed, and investors were therefore unable to provide any substantive information to the community.<sup>211</sup> In general, consultations were a one-time occurrence.<sup>212</sup>

The new Procedures for Consultation aim to improve the timeliness of consultations by stipulating when they should be held and what information should be presented, and increase accountability through the establishment of the village and town advisory boards. However, even these mechanisms are vulnerable to circumvention, the avoidance of conflicts of interest with local advisory councils, of which village and town advisory boards are comprised, is not always assured.<sup>213</sup>

Effective monitoring by government authorities to enforce adherence to the stipulated terms remains necessary to avoid elite capture and irregularities in the consultation process. However, critical concerns as to government authorities’ limited technical capacity and inadequate resources call into question the ability of the actors charged with implementing the law to do so.

#### **Example: Government staff’s lack of technical capacity.**

A recent UN report outlined the response of Provincial Geography and Cadastre Services to a case concerning the application for a DUAT for an agricultural investment project in Maputo Province involving 500 ha of land:

District Administration staff are equally [to Provincial Geography and Cadastre Services staff] unschooled in how to conduct a consultation, and certainly do not know the legislation and its context well enough to explain to people who have never heard of a DUAT what their rights are. Nor do they have any real idea of the consultation process as a negotiation in which the community is also an

211 Deininger et al., *Rising Global Interest in Farmland*, pp. 106–107.

212 Cotula L, Vermeulen S, Leonard R and Keeley J, *Land Grab or Development Opportunity? Agricultural Investment and International Land Deals in Africa* (London and Rome: International Institute for Environment and Development, Food and Agriculture Organization and International Fund for Agricultural Development, 2009), p. 74.

213 Chiziane.

economic actor with legitimate rights to defend or place on the negotiating table in order to get something worthwhile out of the process. ...

The area was defined as “waste ground” (*terra baldio*) by [Provincial Geography and Cadastre Services] technicians in the processo of the land application, implying that no-one was using it and that it was therefore available to allocate to a new applicant. For the community however, it is far from being “wasteland” – it has religious importance (graves are found there), and it is being kept for future use and for their children.<sup>214</sup>

Further concerns exist as to the lack of independence of authorities, including possibilities of corrupt practices that result in the granting of DUATs based on personal or political interests. One study found that authorities have tended to be partial toward the investor, often resulting in pressure on communities to agree to terms favorable to the investor, without regard to the rights of the communities.<sup>215</sup>

Resolution 70/2008, mentioned above, seeks to enhance the strength of the Land Law Regulations by requiring investors to accompany all DUAT applications with further information as to the minutes of the community consultation and the terms of its partnership with the holders of DUATs acquired by occupation of the land in question.<sup>216</sup> Similarly, the Procedures for Consultation provide that noncompliance with the terms regarding public consultations will result in the invalidation of the process.<sup>217</sup>

### 3.3.5 Public consultation in the forestry sector

The Forest Act directs that local communities may be involved in the exploitation of forest resources and the sharing of the benefits generated therefrom, through forest management plans and community

licenses to exploit forest resources.<sup>218</sup> The Forest Regulations also provide that where an application for forest exploitation license is made on land subject to a DUAT, the applicant and DUAT holder may form a partnership to exploit these resources, based on mutually agreed terms.<sup>219</sup>

The development of a forest management plan is a critical safeguard to community rights over forest management and use of forest resources in a manner that is sustainable and inclusive. However, this requirement is rarely complied with;<sup>220</sup> management plans are rarely monitored, updated or enforced.<sup>221</sup> Neglecting the requirement to develop forest management plans undermines provisions for public involvement in the management of forests, both at the time of decision-making and during the lifetime of the activity.

The Forest Regulations outline a relatively strict process of community consultation, which requires agreement of local communities (demonstrated by the signatures of at least 10 members) to the investment activity and a survey of all third-party rights.<sup>222</sup> However, the Regulations do not provide guidance on the required quality and scale of the consultations, leaving a wide scope for discretion.

Once a forest concession is granted, the concession holder has the responsibility to respect the rights of third parties within the concession area, permit access by local communities to natural resources they require for personal consumption and give preference to local communities when recruiting labor for the concession.<sup>223</sup> These responsibilities are intended to help ensure ongoing community benefit and participation during the life of the activity, but their realization is again hampered by the absence of monitoring and enforcement of management plans.

214 Tanner and Baleira, *Mozambique's Legal Framework for Access to Natural Resources*, pp. 16, 31.

215 *Ibid.*, p. 30.

216 Trusen et al., *A Study of the Development and Implementation of Strategies for Sustainable Local Land Management*, p. 21.

217 Article 5, Procedures for Consultation with the Local Communities on the Use and Property Rights of Land, Ministerial Decision 158/2011.

218 Article 31, Law of Forestry and Wildlife, Law 10/99.

219 Article 21, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

220 Wertz-Kanounnikoff et al., “Facing China's Demand for Timber,” p. 392.

221 Nhancale et al., *Small and Medium Forest Enterprises in Mozambique*, p. 23.

222 Article 26(2), Regulations on the Law on Forest and Wildlife, Decree 12/2002.

223 Article 32, *ibid.*

### 3.3.6 Local forestry and wildlife management councils

Participatory management of forest resources is promoted under the Forestry Act through the creation of local forestry and wildlife management councils (COGEPs).<sup>224</sup> COGEPs must comprise an equal number of members from the local community; individuals or corporations undertaking activities linked to forest and wildlife resources; associations, organizations or NGOs linked to forest and wildlife resources or to local community development; and the government.<sup>225</sup> The purpose of these institutions is to support the protection, conservation and promotion of the sustainable use of forest and wildlife resources. The law provides for COGEPs to be involved in the authorization of forestry concession applications, and they have a more limited authority to consider a wide range of activities impacting forest resources, such as the following:<sup>226</sup>

- the procedure for applications to exploit forest resources
- the development of sustainable uses of forest and wildlife resources that help raise the standard of living of members of local communities
- mechanisms for resolution of conflicts between parties involved in the use and exploitation of forest and wildlife resources
- guidelines to govern and shape the management plans for resources situated in their geographical area
- improvement of related policy and legislation
- collaboration with state bodies responsible for the inspection and control of forest and wildlife resources
- firefighting.

COGEPs may propose cancellation or revocation of projects that are “not in keeping with the real purposes of rural development and sustainable use of forest and wildlife resources.”<sup>227</sup>

Provision is made in the Forest Regulations for COGEPs to consult with, and when so requested to represent the interests of their members to the

<sup>224</sup> Article 31, Law on Forest and Wildlife, Law 10/99; Article 95, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

<sup>225</sup> Article 95, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

<sup>226</sup> Article 97, *ibid.*

<sup>227</sup> Article 97(3), *ibid.*

Ministry of Agriculture, the Ministry of Tourism, provincial governments and other state bodies.<sup>228</sup> Although government authorities are not obliged to take their opinions into account, COGEPs do have direct access to decision-making authorities to advocate for their members’ interests.

Although an important development, COGEPs have yet to be successfully implemented. As a 2013 report on forest management in Niassa province indicated, “the extent to which [the uptake of responsibilities by COGEPs] happens effectively is relatively unknown.”<sup>229</sup> Guidance on how COGEPs’ responsibilities should be executed, and how conflicts of interest could be handled, is not provided in the Act or Regulations. Given the range of interests that COGEPs represent, further direction is necessary to coordinate and clarify their role and maximize their effectiveness.<sup>230</sup>

Another mechanism for community participation in forest management, under the Ministry of Agriculture, is the *comité de gestão comunitária* (CGC) or community management committee, which operates at the local level. CGCs are required to represent the communities in negotiation, representation, coordination, planning and management of forest resources. They are also responsible for coordinating and receiving payment of financial benefits from forest exploitation activities.<sup>231</sup>

### 3.3.7 Compensation

Compensation to communities for the loss of the right to use land is an essential safeguard. It complements other processes that recognize pre-existing rights and elicit community participation in land titling by creating safeguards against unlawful and unjust land alienation. Though the success of the law hinges on its implementation, the entrenchment of the requirement for compensation in the legal

<sup>228</sup> Articles 97–98, *ibid.*

<sup>229</sup> Nhandumbo et al., *Investing in Locally Controlled Forestry in Mozambique*, p. 27.

<sup>230</sup> Salomã A., *Legal Framework for Participatory Natural Resources Management: Privileges or Rights In Mozambique?* (Washington: World Resources Institute, 2004), p. 14.

<sup>231</sup> Nhandumbo et al., *Small and Medium Forest Enterprises in Mozambique*, p. 24; Ministerial Order No. 93/2005, regulating the distribution among local communities of the 20 percent of tax funds collected from the use of forest and wildlife resources. This mechanism is described in more detail in the following section.



framework provides the strongest protection for this right and can reduce ambiguity about when and how compensation should be calculated and paid.

In Mozambique, as land belongs to the state and cannot be sold or mortgaged, it is widely perceived to have little monetary value.<sup>232</sup> The issue of compensation for land arises in very limited context under the Land Law and Regulations, which require “fair indemnification and/or compensation” to be paid by the state when land is expropriated for “the public interest.”<sup>233</sup> It also requires DUAT holders to “allow the execution of operations and/or the installation of accessories and equipment conducted under prospecting and reconnaissance mining licenses, mining concessions or mining certificates, against just compensation.”<sup>234</sup> However, it provides no further guidance on how to calculate compensation values, which is left to the discretion of the GOM on a case-by-case basis.<sup>235</sup> The absence of specific criteria means that adequate compensation hinges on how successful communities are in negotiating for their interests, and the GOM has significant discretion to determine the terms of the valuation, leaving room for arbitrary and opaque decision-making.

### 3.3.8 Partnership agreements

The issue of compensation also arises in respect of communities that enter into partnership agreements with investors for the use and benefit of their land.<sup>236</sup> Although this provision could create important opportunities for communities with pre-existing land rights to benefit from land-use activities, the Land Law’s lack of clear guidance limits its utility. The law does not stipulate how these partnerships should be governed or the nature of the compensation that should be paid. It is also silent on the question of benefit sharing.

232 Interview with designated officers from Centro Terra Viva in Maputo, Mozambique, on 6 February 2014.

233 Article 19, Land Law Regulations.

234 Article 14(d), *ibid.*

235 German L, Schoneveld G, Mwangi E, “Contemporary Processes of Large-Scale Land Acquisition in Sub-Saharan Africa: Legal Deficiency or Elite Capture of the Rule of Law?” *World Development* 48 (2013): 7, 1-18.

236 This is provided for under Article 27(3) of the Land Law Regulations.

As most communities lack knowledge of the land titling process and how it could benefit them, the absence of guidelines increases their vulnerability. Consequently, investors have much greater influence over how negotiations are managed, particularly given the negotiations’ lack of oversight. For example, the terms of partnership agreements are contained only in the minutes of the consultation meetings, rather than in a contract or other legally binding document.<sup>237</sup> Agreements have been found lacking in substance, with many containing vague promises of future jobs and amicable relations but no time lines or criteria for measurement or monitoring.<sup>238</sup> Poorly negotiated agreements with unclear provisions are difficult to enforce. They have often resulted in benefits remaining unrealized, despite significant compromises by the communities.

#### Examples: Empty promises of employment benefits.

A survey of land applications involving community consultations in seven provinces – Maputo, Gaza, Inhambane, Zambezia, Nampula, Cabo Delgado and Niassa – remarked about the treatment of job creation in partnership agreements that

very few cases specify how many jobs will be created, how much the wages will be, if they are full time or not, and what any other conditions might be. It is therefore very difficult to say if either condition is met. There is also evidence from these and other studies that many of the jobs created are filled by people brought in from outside, leaving only the most basic and usually part time or seasonal work for locals. ... The second most common item [in a partnership agreement] is “a good relationship with the community” (82 cases). Evidently everyone wants “good relationships”, and this is a very easy condition to agree upon. Yet how are they measured, who enjoys them (are all community members friendly with the investor?), and what happens if they break down? These points are never specified, and in practical terms, “good relationships” do not fill stomachs.<sup>239</sup>

EmVest Limpopo began a project in Matuba to develop virgin land to produce food crops. EmVest was granted a 50-year lease on 2,000 ha of land by the

237 Vermeulen and Cotula, “Over the Heads of Local People.”

238 Tanner and Baleira, *Mozambique’s Legal Framework for Access to Natural Resources*, p. 6.

239 *Ibid.*, p. 8.

Mozambican government. Despite promises by the company that the investment would positively impact local communities, only 17 permanent positions were created in the agricultural field, along with 85 seasonal positions, of which 36 were in security. Villagers said that they were better off farming their own small plots than working for EmVest.

EmVest's terms of authorization negotiated with the GOM did not require EmVest to create extended employment opportunities for local community members. It required only that 18 full-time and 100 seasonal jobs be provided in the first year of the project, while other employment requirements were vague. Though EmVest promised to construct medical facilities and schools and provide borewells, community members denied EmVest's contribution to these initiatives. Borewells were only provided after communities protested the closure of access to their cattle's drinking water.<sup>240</sup>

The lack of legislative guidance on calculating compensation leaves local landowners vulnerable to the demands of private investors, as well as government-led expropriation that may be driven by political interests. The lack of technical capacity of community landowners, due to low education and limited understanding of complex land-valuation issues, is well documented and underscores the need for mechanisms to ensure greater participation and involvement to reverse the current negotiating imbalance.

### 3.3.9 The mining sector

The prioritization of mining within the legal framework has resulted in circumvention of critical safeguards of the social and environmental rights of Mozambican citizens, further undermining the industry's value to the country. With increasing investments in the sector, including USD 15 billion in coal and USD 200–400 billion in gas expected in the coming years, it is imperative for Mozambique to reassess how it can effectively capture the benefits of these investments.

A clear preference for mining over other land uses on the basis of public interest is established in the Mining Law and Regulations. For example, the law states that mining shall have priority over other land uses whenever economic and social benefits related to

it are higher.<sup>241</sup> Although the Mining Law prohibits the grant of reconnaissance licenses in areas excluded by law from mining, such as national parks, it also establishes a “national economic interest” exception to that prohibition.<sup>242</sup> This weakens the safeguards for areas of environmental and social importance by allowing economic considerations to take precedence.

The Mining Law also allows the GOM to declare an area as a mineral reserve when it considers the development and exploitation of mineral resources to be “in the public interest for the national economy or for future development of the region.”<sup>243</sup> It specifies that public interest must be of an economic nature, narrowing the criteria on which the decision can be made.

Limited provision is made for compensation under the Mining Law Regulations, which provide that the holder of a mining title is liable for compensation for damage to crops, construction, impacts and resettlement.<sup>244</sup> Compensation is determined according to “the emerging damages and the ceasing profits, through negotiation” and should be made prior to the planned activity.<sup>245</sup> No further provision is provided under the mining laws and regulations, leaving much of the valuation to be determined through negotiation.

The heavy prioritization of mining over other types of land use makes the need for an efficient and just process to protect titleholders even more crucial. The responsibility to grant mining licenses is particularly important, as this responsibility includes determining the terms and conditions under which the license is granted.

### 3.3.10 The forestry and wildlife sectors

To compensate communities for the negative impacts of forestry and wildlife exploitation projects,

<sup>240</sup> Hanlon, *Understanding Land Investment Deals in Africa*.

<sup>241</sup> Article 43, Mining Law, Law 14/2002.

<sup>242</sup> Article 7, *ibid*.

<sup>243</sup> Article 42, *ibid*.

<sup>244</sup> Article 107, Mining Law Regulations, Decree 28/2003.

<sup>245</sup> *Ibid*.

Mozambican law guarantees them 20% of all profits from these projects through the following process:<sup>246</sup>

- Communities create and register CGCs to represent them.
- The CGCs establish a community fund in which the developer must deposit payment every three months.
- Funds are distributed equally among communities living in areas where the project is active.
- Communities designate three members of the CGC to manage accounts on behalf of all members.
- CGCs are required to prepare annual reports on funds received and activities undertaken with them.

By 2010, 558 communities had received payments amounting to MZN 60 million (then approximately USD 2.4 million). In the Sofala region, 92 communities each received MZN 565,244 (then approximately \$22,600). On the other hand, although 168 communities in higher-density regions such as Nampula also recorded receipt of funds, they received considerably less, at MZN 37,724 (then \$1,508) each.<sup>247</sup> A meaningful test of the effectiveness of this provision is the extent to which it has resulted in real and sustained benefits to the communities.

#### **Example: Community use of forestry revenues.**

Funds have been used to support community infrastructure, wealth-generation and conservation projects.

It is up to each community to decide how it uses the funds it receives from the 20 per cent allocation; the management of the money is also entirely the community's responsibility. The communities that had already received payments by the time of the study, have prioritised the building of social infrastructure, which in most cases involved the construction or rehabilitation of schools, committee rooms, and covered areas. According to law, the communities could, in fact, choose to distribute the money equally among the community members. In most cases however, the government tries to propose uses for the resources.

<sup>246</sup> Article 102, Regulations on the Law on Forest and Wildlife, Decree 12/2002; Ministerial Order No. 93/2005, Regulating the Distribution among Local Communities of the 20 Per Cent of Tax Funds Collected from the Use of Forest and Wildlife Resources.

<sup>247</sup> Trusen et al., *A Study of the Development and Implementation of Strategies for Sustainable Local Land Management*, pp. 37–38.

To improve their lives, the communities also use the 20 per cent funds to support income generating activities, like the marketing of fish and cereals, the installation of flour mills, carpentry workshops, horticulture, raising livestock, micro-credits, small businesses and so on. ...

Good conservation practices are evident in some communities, such as replanting of trees, community resource protection (*fiscalização*) and bee keeping for honey. In some communities outside the project area, which have benefited from these payments (for example, Mahel in Maputo Province, Matondao in Sofala, Ndogue in Manica, and Mpondo in Tete) there are notable conservation activities, the most common of these being conventional bee-keeping, subsidising community guards, and the purchase of bicycles for the guards to do their work more effectively.<sup>248</sup>

In addition to the direct financial benefits described above, advantages of this mechanism have included a greater sense of ownership and community pride in participating in new economic activities developed with the revenues.<sup>249</sup>

The implementation of the provision has not been without challenges. The law requires communities to maintain a bank account in which to receive payments, but finding a bank and opening an account can be difficult and costly.<sup>250</sup> A third of Mozambique's adult rural population lives at least three hours from a banking institution.<sup>251</sup> Most banks in Mozambique also require personal documentation in order to open an account, including identity card and tax number. However, less than half of adult Mozambicans possess an identity card, and only 54% have a birth certificate, 4.9% a tax number and 7.4% a passport.<sup>252</sup> Obtaining such documents also requires travelling long distances. As the majority of forest exploitation activities take place in rural areas, limited access is a real obstacle to accessing benefit-sharing funds.<sup>253</sup>

<sup>248</sup> Ibid., p. 41

<sup>249</sup> Ibid., p. 38.

<sup>250</sup> Ibid., p. 42.

<sup>251</sup> FinScope Mozambique 2009 Survey Report (Lusaka: Finmark, 2009) p. 47.

<sup>252</sup> Ibid.

<sup>253</sup> Trusen et al., *A Study of the Development and Implementation of Strategies for Sustainable Local Land Management*, p. 42.

There is also the view that social infrastructure development should be the responsibility of the government.<sup>254</sup> Therefore, the expenditure of community revenues from forestry in this manner does not give an accurate picture of how beneficial such provisions have been to local communities, as the use of funds for social infrastructure diverts valuable funding which could have been more effectively used elsewhere. Another view is that these payments do little to encourage entrepreneurship and self-reliance and thus foster a sense of dependency.<sup>255</sup>

The law also does not specify the criteria for calculating the total profits from which the communities' 20% is derived. Lack of information on profits also prevents communities from calculating for themselves whether the sum they receive is accurate.<sup>256</sup>

There are significant challenges to the full implementation of this provision's implementation. While they will require a great deal of government effort to address, the gains communities stand to achieve are tremendous.

### 3.3.11 Resettlement

As many large-scale projects are likely to displace local communities, resettlement is another significant social impact of investment. This is not adequately addressed in Mozambique's legal framework and therefore takes place in an ad hoc and haphazard manner. For example, the EIA Regulations, although they classify all activities involving resettlement as "Category A" activities, thereby requiring an EIA, are silent on how resettlement should be undertaken or evaluated. In many cases, this has led to poor implementation and infringement on the rights of affected communities,<sup>257</sup> sometimes with serious and ongoing social effects.

254 Interview with director, Centro Terra Viva; Maputo, Mozambique 6 February 2014.

255 Nhandumbo et al., *Investing in Locally Controlled Forestry in Mozambique*, p. 29 *et seq.*

256 Interview with Director, Centro Terra Viva; Maputo, Mozambique, 6 February, 2014.

257 Human Rights Watch, "What Is a House without Food?" *Mozambique's Coal Mining Boom and Resettlements*, (New York: Human Rights Watch, May 2013), pp. 74, 77–79.

#### Example: Poor resettlement practices.

In 2009 and 2011, coal mining companies Vale and Rio Tinto, respectively (previously Riversdale Moçambique Limitada), began resettling households to facilitate the construction and expansion of facilities in the province of Tete. The number of households affected by this resettlement included 1,365 in Moatize, resettled by Vale, and 678 in Benga, for which Rio Tinto was responsible.

Vale moved 716 families to the rural town of Catembe, 40 km from Moatize. The quality of conditions and infrastructure provided in the new village were poor. For example, although villagers were given new cement houses to replace their wooden huts, many were of low quality and soon began to crack and leak.

The resettled communities also experienced economic and social losses for which they were not adequately compensated, either financially or through the provision of alternative opportunities. Families whose livelihoods depended on subsistence farming and the sale of charcoal, firewood, fruits and vegetables were resettled on rocky and arid land unsuitable for farming and far from forested areas and markets. Deprived of their usual income sources, they became more dependent on wage jobs – which, however, were also scarce:

Vale and Rio Tinto's coal mining operations have generated some employment opportunities, but there is no obligation laid out in their resettlement action plans to provide jobs directly to the resettled communities. To date most of the jobs generated have been short-term construction jobs that end within a few months or a year – and even those opportunities will disappear when there is no construction work left to do around the mine sites or building and repairing the resettlement sites.<sup>258</sup>

Guidelines for resettlement were established in 2012 under the Regulations for the Resettlement Process Resulting from Economic Activities, following the need to standardize the resettlement process due to the "growing demand for natural resources in the country."<sup>259</sup> The new Regulations recognize the resettlement plan as an integral part of the EIA process and a prerequisite for an environmental license.<sup>260</sup>

258 *Ibid.*, p. 55.

259 Preamble, Regulations for the Resettlement Process Resulting from Economic Activities, Decree 31/2012.

260 Article 15, *ibid.*

While these principles validate key resettlement considerations, they do not require efforts to minimize the need for resettlement, which should be a last resort. The Regulations also fail to recognize the needs of disadvantaged, vulnerable and potentially marginalized groups in the resettlement process, a critical gap. Vulnerable people, such as women, can be disproportionately affected during resettlement.

**Example: The impact of resettlement on women.**

Vale designed the urban resettlement village 25 de Setembro for households relying primarily on non-agricultural livelihoods. People who chose to move to 25 de Setembro did not receive any new farmland as part of their compensation packages even if they had farmed previously. Human Rights Watch spoke to resettled residents who struggled with the transition from having both cash income and farming plots to relying solely on earning money to support their families. ...

Human Rights Watch interviewed older women who previously farmed, but chose to be resettled to 25 de Setembro to be closer to their grown children who had jobs in Moatize. These women did not have established livelihoods if they lost family support. Human Rights Watch interviewed six women and heard reports of additional households in 25 de Setembro who resorted to living in their kitchens, sometimes with many children, and renting out the houses given to them as compensation in order to earn enough money to buy food and water.<sup>261</sup>

The example shows that women are likely to be especially affected by resettlement, even though they are often not separately considered during the process. This emphasizes the need to offer greater security to women and other disadvantaged groups by recognizing their needs as a key consideration during resettlement.

The Regulations establish a supervisory body known as the Technical Resettlement Monitoring and Supervision Committee, with representatives from the territorial planning, local administration, and public works, housing and agriculture agencies, as well as members of the provincial and district governments.<sup>262</sup> The Technical Committee has significant control over the resettlement process,

<sup>261</sup> Human Rights Watch, “*What Is a House without Food?*” p. 59.

<sup>262</sup> Article 6, Regulations for the Resettlement Process Resulting from Economic Activities, Decree 31/2012.

including the responsibility to supervise, make recommendations for, monitor and evaluate it.<sup>263</sup> Stakeholders from the affected population, civil society, the community, and the private sector may also participate in the resettlement process, with the aim of raising awareness of the process and informing authorities of any irregularities that occur during it.<sup>264</sup> Ultimately, the district governor has the authority to approve the resettlement plan.

Given the scope and importance of the Technical Committee’s responsibilities, it is notable that government agencies representing health, women, education and labor are not included.<sup>265</sup> Further, stakeholders’ participation is limited to awareness-raising and does not amount to direct involvement in Committee discussions and decision-making.

The Regulations establish that resettled people have the right to an income level and standard of living equal to or greater than that before resettlement, to be transported with their belongings to the resettlement site, to live in a place with infrastructure and social facilities, to have space to carry out subsistence activities, and to give their opinion about the entire resettlement process; the developer is responsible for planning, financing and implement resettlement.<sup>266</sup> While the Regulations thus protect several important rights, they do not protect people’s right to receive technical assistance in understanding their rights and legal options – or a way to appeal resettlement decisions with which they disagree.

Public participation during the preparation and implementation of the resettlement process is guaranteed by the Regulations. There must be at least four public consultations, properly advertised in appropriate media, with the outcomes, reflecting the public’s perception of the draft resettlement plan,

<sup>263</sup> Article 7, *ibid.*

<sup>264</sup> Article 8, *ibid.*

<sup>265</sup> Human Rights Watch, *Human Rights Watch Recommendations for Mozambique’s Resettlement Decree* (New York: Human Rights Watch, 2012), <http://www.hrw.org/news/2012/09/17/human-rights-watch-recommendations-mozambique-s-resettlement-decree>.

<sup>266</sup> Articles 10 and 11, Regulations for the Resettlement Process Resulting from Economic Activities, Decree 31/2012.

### Box 1: Principles of resettlement recognized under Mozambican law.

- *Social cohesion* – The resettlement shall guarantee social integration and reestablish the standard of living of the affected people, to a higher level.
- *Social equality* – All those affected by the resettlement process are entitled to the reestablishment or creation of conditions equal to or above their previous standard of living.
- *Direct benefit* – The affected people shall be given the opportunity to benefit directly from the undertaking and its socioeconomic impacts.
- *Social equity* – The resettlement of populations shall take into account access to means of subsistence, social services and resources.
- *Non-alteration of income level* – The resettled people shall have the opportunity to reestablish their previous basic income level.
- *Public participation* – In the resettlement process, there shall be hearings open to local communities and other parties interested in and affected by the activity.
- *Environmental accountability* – Whoever pollutes or in any other way degrades the environment always has the obligation to repair or compensate for the resulting damage.
- *Social responsibility* – The investor must create social infrastructure that promotes learning, leisure, sports, health, culture and other projects of community interest.

Sources: Regulations for the Resettlement Process Resulting from Economic Activities, Decree 31/2012, Article 4.

recorded in minutes and considered by the Technical Committee.<sup>267</sup>

It is encouraging that the Regulations emphasize public participation in the resettlement process. However, a broad process for involvement and information exchange could include a variety of forums, including focus groups that are accessible to a wide range of stakeholders and culturally sensitive.

The Regulations also establish the right of all interested and affected parties to information about the contents of studies relevant to the resettlement process.<sup>268</sup> This is an important mechanism allowing the public to scrutinize the basis for a resettlement decision and if necessary to challenge it.

Another important provisions under the Regulations is the requirement to regularly assess whether the resettlement process is being accurately and adequately implemented. Like other critical safeguards, its efficacy depends on enforcement.

The Regulations represent a substantive attempt to improve the practice of resettlement, which has had a history of severe negative social impacts in

<sup>267</sup> Articles 13 and 23, *ibid.* The Regulations specify that “public participation” refers to public consultation and hearings, requests for clarification, formulation of suggestions and recommendations, and interventions in public meetings.

<sup>268</sup> Article 14, *ibid.*

Mozambique. However, gaps in protection of the rights of the disadvantaged and in support for public participation could undermine its effectiveness.

### 3.3.12 Compensation and resettlement in the mining sector

Given the broad discretion given to the minister of mineral resources in designating land for mining, compensation in the mining industry remains a critical issue. As is true for land tenure, the legal framework for mining contain limited guidance on how to calculate compensation.

According to the Mining Law Regulations, compensation is established by negotiation between the original DUAT holder and both the license / title holder and the mine operator, and based on damages and loss of profits.<sup>269</sup> The law does not establish fixed rates for payment, and compensation is determined on a case-by-case basis.<sup>270</sup> The need to negotiate fair and equitable compensation has created a power imbalance to the detriment of local communities.

#### Example: Resettlement with negative effects on communities.

Research done by Southern Africa Resource Watch on three communities resettled by Companhia Vale do

<sup>269</sup> Article 107(2), Mining Law Regulations, Decree 28/2003.

<sup>270</sup> ACIS, *Legal Framework for Recognising and Acquiring Rights to Rural Land in Mozambique*, p. 54.

Rio Doce (Vale) and Rio Tinto revealed unfair practices with negative social impacts on the communities. The researchers

visited the original Capanga village, where a queen and some members of her community are refusing to be moved to Mualadzi, where Rio Tinto is building houses. The queen said that there was so much pressure being exerted on them to move and join the 40 families that have already been resettled but she does not want her people to be moved in small groups. She wants the entire community to be moved together – but only after all the construction work has been completed and basic services such as water and electricity are in place. Resettlement should be based on mutual agreement and consultation. But clearly the community's desire for collective relocation has been ignored by the company ...

Rio Tinto moved people to Mualadzi before it had finished building key infrastructure such as school and clinics – and they have still not been built. So children and sick people from Mualadzi have to walk 5 km to the Vale resettlement compound of Cateme, where Vale has built schools (primary and secondary) and a clinic. There is also no water in Mualadzi so the community has to rely on a water truck, which distributes water twice a week. However, sometimes the truck does not come.<sup>271</sup>

Government authorities play a key role in ensuring that mining title-holders establish fair terms of resettlement and compensation and that these terms are enforced. The GOM announced in its 2013 budget its plan to earmark 2.75% of revenues from mining and gas production taxes for local communities.<sup>272</sup> While this could create significant financial benefits to affected communities, at the moment there is no further information or guidance available as to how this money will be allocated.

An additional mechanism to increase the mining industry's contribution to communities is the requirement for companies operating in hydrocarbons to make annual payments into two funds: the Social Projects Fund, established to facilitate social projects for citizens living in areas in which oil operations take place, and the Capacity Building Fund, established to facilitate institutional support and training in the government. The

payments for these funds are made directly to the National Petroleum Institute.<sup>273</sup>

The amounts that companies are required to pay to these funds are outlined in the mining contracts and therefore confidential. Mozambique's most recent Extractive Industry Transparency Initiative (EITI) report indicated that millions of dollars have been paid into the two funds. These contributions have constituted 1.5 and 2.5% respectively of total payments received from companies, as confirmed by the GOM in 2011.<sup>274</sup> Though these funds could represent an important source of compensation for communities, there is no transparency on how they have been managed or used, and no guidelines on how information regarding them should be published.<sup>275</sup>

### 3.3.13 Conclusion

Following reforms in recent years, Mozambique now possesses a progressive land tenure framework, which recognizes and protects customary rights of tenure. Its broad definition of "local community" allows communities to be shaped by customary mechanisms. Driven by increasing demand for land use, several reforms to the framework have bolstered public participation in land-use titling decisions. These reforms have better integrated public participation in decision-making and increased awareness among both landowners and government actors of the role of public consultation, not as an obstacle to the titling process but as a critical component. Reforms now also impose further checks on the approval process, aiming to create greater transparency about what authorizations have been obtained and the extent of community involvement.

While the development of the law has been progressive, the provision of resources for implementation has been slow. Thus, although the law recognizes customary rights even where not formally registered, poor oversight of the public consultation process and lack of training of government staff have resulted in these rights being allocated to third parties. Unqualified staff also place public consultation processes at risk, since strict government oversight and representation of communities is absent.

271 Kabemba and Nhancale, *Open Policy – Coal Versus Communities*, pp. 5–6.

272 OECD and ADB, *African Economic Outlook 2013 (Mozambique)*, p. 5.

273 Intellica, *Extractive Industry Transparency Initiative Fourth Reconciliation Report 2011* (Maputo: EITI, 2014), <http://eiti.org/files/Mozambique-2011-EITI-Report.pdf>.

274 Ibid., p. 63.

275 Hanlon J, *Mozambique Political Process Bulletin* 53, p. 10.

Measures within the legal framework also enhance community participation in land-use investment opportunities. The Land Law enables communities to engage in partnership agreements with prospective investors, while the Forestry Act extends stakeholder influence in forestry management as far as policy development. However, these functions could be considerably enhanced with clearer guidelines within the law as to how they could be employed, and with improved government administration of the law.

Mechanisms for compensation for appropriated land are not adequately elaborated under the law. As a result, compensation is decided on an ad-hoc basis, leaving disadvantaged communities in an unfair position. Developments under the laws governing forestry and wildlife aim to reverse this situation and enable communities to receive a percentage of revenues earned from development activities. Communities stand to gain much from such payments. With assistance to disadvantaged communities in overcoming logistical challenges, existing mechanisms could be greatly enhanced.

The introduction of new regulations for resettlement is a major step toward reversing previous trends that resulted in serious human rights violations. The Regulations bridge the gap in the legal framework by introducing safeguards to guarantee public participation, compensation and access to information, and stipulate guidelines for the development of resettlement plans. However, the Regulations overlook other critical safeguards, such as the inclusion of disadvantaged groups, and fail to sufficiently integrate accessible public participation mechanisms into the process. There is a risk that if these remaining gaps are not filled, infringements on the social rights of communities will continue to occur.

### 3.4 Low public awareness and limited access to information

Public awareness is an integral aspect of natural resources management, as informed people are better able to make decisions on matters that affect them. Access to information is critical, as without it, neither public consultations nor awareness will mean much or impact the procedures and thresholds for the decision-making.

For example, the Mining Law gives government authorities substantial discretion to appropriate land,

without providing clear and detailed guidelines on how to exercise this discretion. The lack of public access to information on mining activities makes these provisions an open door through which safeguards for land tenure and natural resource management may be undermined. Clearly, the extent to which outside parties are involved in the application process will influence which interests are considered.

Mozambique's constitution establishes that all citizens have the right to information.<sup>276</sup> While this is of fundamental importance, specific legal guidelines are necessary on how individuals can enforce and protect this right. Agenda 2025 calls access to information "one of the fundamental conditions for guaranteeing transparency and good governance" and recommends that information availability should be promoted in an "independent, responsible, clear and direct manner."<sup>277</sup> A Freedom of Information Bill, developed by the Media Institute of Southern Africa, was tabled before the Assembly in 2005 but has not become law.<sup>278</sup> The lack of a clear legislative mandate governing information access significantly limits public awareness and reduces government transparency.

The Law on Environment gives all people "the right to access to information concerning the Nation's environmental management, subject to the legally protected rights of third parties,"<sup>279</sup> but it does not elucidate what this right and its exemptions entail. Some civil society representatives have maintained that environmental information, including EIA reports, is difficult to obtain because information requests are either refused or granted under such restrictive conditions (such as prohibitions against removal or photocopying of lengthy and complex reports) that they make it impossible to fully access and understand a proposed activity.<sup>280</sup> This lack of transparency reduces the public's ability to hold government institutions and developers accountable

276 Article 48, Constitution of Mozambique.

277 Republic of Mozambique, *Agenda 2025*, p. 160.

278 AllAfrica, *Mozambique: Calls for Parliament to Debate Freedom of Information* (AllAfrica, 1 October 2012), <http://allafrica.com/stories/201210020206.html>.

279 Article 19, Law on Environment, 20/97.

280 Interviews with officials from the Center for Public Integrity and with the director of Centro Terra Viva; Maputo, Mozambique, on 6 February 2014.



for adherence to the terms and conditions of environmental licenses.

**Example: Difficulty accessing environmental information.**

Although environmental assessments are supposed to be publicly available, in practice they are not easily accessible. When Human Rights Watch conducted its research in 2012, most of the civil society activists and donors to whom we spoke said they had not been able to obtain copies of the EIAs or Resettlement Action Plans. Furthermore, EIAs, as well as subsequent six month environmental monitoring reports are lengthy, technical documents that are not easily digestible for the public, including affected communities, the media, and civil society. Aside from initial community consultations while preparing the EIAs, Human Rights Watch did not learn of any information dissemination strategies by either the government or by mining companies regarding ongoing and future environmental impacts.<sup>281</sup>

Legal guarantees of access to information would also clarify exactly what information should be available to the public and give clear and legitimate reasons for any exceptions. Of particular interest is the Mining Act, which facilitates secrecy regarding information that could be vital to understanding the nature of mining operations and their level of compliance with licensing terms. For example, holders of mining licenses and concessions are required under the Mining Act to regularly report on their activities, including the minerals produced, the area mined, and details of any accidents.<sup>282</sup> However, under the Mining Regulations, the information in reports is considered confidential and exempt from public scrutiny.<sup>283</sup> The Mining Regulations do not offer any rationale for confidentiality; though nondisclosure of trade secrets is a common such rationale, it is not mentioned.

Mozambique is revising its Mining Law, and new provisions could lead to greater transparency in the industry. The draft Mining Law establishes that “without prejudice to the confidentiality of strategic commercial and competition information about the mining activity, the main terms of the

mining contract may be published in the *Boletim da República* [the official gazette].”<sup>284</sup> This suggests that more detail is required to resolve its ambiguities and define its scope; however, it represents a welcome step toward lifting the heavy shroud of secrecy that has historically overshadowed the industry.

Mozambique completed its fourth report under the EITI in 2011, detailing the payments made to the GOM by extractive industry companies during that year.<sup>285</sup> The report shed some light on previously withheld information on government revenues from the mining sector. The information has also allowed discrepancies between the revenues declared by the government and the data contained in the EITI reports to be revealed. An examination of earlier (2008 and 2009) EITI reports indicates a lack of government accountability for about 0.25% of total payments declared by companies mentioned in the EITI report.<sup>286</sup>

The EITI process does not indicate investors’ obligations under their respective mining contracts.<sup>287</sup> Detailed outline of production or export values were not clearly provided to enable the public to determine how much companies have received for the resources they have obtained. The Ministry of Mineral Resources made 11 mining contracts publically available for the first time on its official website in 2014.<sup>288</sup> This was another positive step toward increased transparency, but the ad-hoc nature of the action means that it does not guarantee greater transparency in the future.

A stand-alone freedom of information law could enhance the public’s right to demand information on investments such as mining, which have a profound socioeconomic and environmental effect on Mozambique.

284 Cited in Nombora D, *Advances and Stagnation of Transparency in the Extractive Industry in Mozambique* (Maputo: Center for Public Integrity, 2012), p. 20.

285 Intellica, *Extractive Industry Transparency Initiative, Fourth Reconciliation Report*.

286 Ossemame R, *Is the Extractive Industries Transparency Initiative Relevant for Reducing Diversions of Public Revenue?* Policy Briefing 61 (Johannesburg: South African Institute of International Affairs, 2013), p. 3.

287 Brynildsen Ø and Nombora D, *Mining without Development*, p. 15.

288 The contracts were made available for download in Portuguese at <http://www.mirem.gov.mz>.

281 Human Rights Watch, “*What Is a House without Food?*” pp. 37–38.

282 Articles 26, 39, 49, 54 and 68, Mining Law Regulations, Decree 28/2003.

283 Article 109, Mining Law Regulations, Decree 28/2003.

## 4 Conclusion

An analysis of Mozambique's legal framework for investment indicates that the country has made substantial progress in addressing many of the challenges to its ability to achieve greater sustainability. This has come at a critical phase of Mozambique's rapid economic expansion. The resource-rich country has seen flourishing investments in natural resource extraction but with little corresponding advancement toward its national goals. Reforms to key areas that form the foundation of social and environmental safeguards are a significant step toward the reversal of previously negative trends.

Mozambique has taken steps to diversify its investments and place greater focus on their alignment with national development. This is evident in its efforts to broaden its focus to areas such as renewable energy and rural electrification while also intensifying its promotion of sustainable agriculture and cross-sectoral initiatives such as agroforestry. Mozambique has also prioritized the strengthening of social and environmental safeguards within its legal framework, including through greater articulation of public participation requirements and increased recognition of customary land tenure.

Despite the great strides which the nation has made on some issues, other areas have lacked similar government prioritization. The mining industry suffers from serious gaps in its accountability framework, which reduce the value of progress made elsewhere in improving and enhancing protections. There has been no major recent improvement in rights to information. In some areas, progressive

new laws and regulations are not adequately articulated and therefore lack the power to produce positive outcomes.

Chronic lack of technical, financial and human resources has seriously impinged on the government's ability to implement and enforce laws. This has negatively impacted each of the sectors under review in this report. In many cases, safeguards have been underutilized by the government or flouted with impunity by developers. Even strong legal systems are ineffective without adequate resources to administer and manage them.

There is also a critical need for political will to implement existing laws and facilitate further reform. Legal and policy development and efficient resource allocation depend on political resolve to effect change that is in the public's interest. Many of the major decisions on land use are driven by bias and personal interest. Serious deficiencies in administration mean that even great legal and policy achievements will not secure sustained improvements.

Increasing investment has the potential to enhance the country's development and alleviate its high rates of poverty. However, if not managed carefully, investments could reverse economic progress and contravene fundamental environmental and social guarantees. Legal and policy frameworks are a key component of the realization of Mozambique's aspirations. However, they must complement other crucial steps for there to be real improvement in the sustainability of investments.

# Annex 1. International standards for sustainable land use and sustainable investment

Sustainability standards	Viable financial investment	Equitable distribution of wealth	Support for human rights	Co-benefits for local communities	Public participation	Effective resettlement and compensation	Public access to information	Environmental management and assessment	Internalization of negative environmental externalities	Low-emission and climate-resilient practices
UN Sustainable Development Goals		X		X				X	X	X
OECD Guidelines for Multinational Enterprises	X		X	X	X		X	X		X
UN Guiding Principles on Business and Human Rights			X		X					
Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters					X		X	X		X
UN Global Compact			X						X	X
UN Framework Convention on Climate Change			X	X	X	X		X		X
Winnipeg Trade and Sustainable Development Principles		X			X		X	X	X	

Sustainability standards	Viable financial investment	Equitable distribution of wealth	Support for human rights	Co-benefits for local communities	Public participation	Effective resettlement and compensation	Public access to information	Environmental management and assessment	Internalization of negative environmental externalities	Low-emission and climate-resilient practices
International Finance Corporation (IFC) Sustainability Standards	X		X	X	X	X	X	X		X
Forest Stewardship Council standards		X	X	X				X		
Extractive Industries Transparency Initiative standards					x		x			

# Annex 2. Legal frameworks governing the energy, forestry, mining and agriculture sectors

## The constitution

The Mozambican constitution states that all citizens have the right to live in a balanced environment and have a duty to defend it.<sup>289</sup> In support of this right, the constitution gives state and local authorities, in collaboration with associations for environmental protection, the responsibility to adopt policies to protect the environment and promote the rational use of natural resources. It also requires the state to promote efforts to protect the ecological balance and conserve the environment, with a view to improving the quality of life of Mozambican citizens.<sup>290</sup> The constitution also mandates the state to adopt policies “to guarantee the right to the environment within the framework of sustainable development,” which should be aimed at:

- preventing and controlling pollution and erosion
- integrating environmental objectives with sectoral policies, including in the education sector
- committing to the rational use of natural resources and the safeguarding of their capacity to regenerate, ecological stability and the rights of future generations
- securing territorial ordinance with a view to ensuring the correct location of activities and balanced socioeconomic development.<sup>291</sup>

The constitution contains provisions that could support a payment-for-ecosystem-services mechanism and therefore play an important role in economic diversification. It requires the state to promote knowledge, survey and valorize natural resources, and determine the conditions under which they may be used and developed subject to national interests.<sup>292</sup> The same provision creates a clear opportunity for economic exploitation of natural resources.

The constitution establishes that land and natural resources, including mineral and energy resources, are owned by the state and cannot be sold, disposed

of or mortgaged,<sup>293</sup> and the state is responsible for establishing a legal regime to govern their management and conservation.

## Long-term development plan – Agenda 2025

Agenda 2025 is Mozambique’s national strategy to drive development.<sup>294</sup> It guides medium- and long-term action in the public and private sectors and in civil society, based on an analysis of existing human and social capital, economic conditions, development and governance.

Agenda 2025 anchors the nation’s economic transformation on rapid agricultural development. It emphasizes the need to stimulate economic development by harmonizing policies and legislation, including with an eye to removing unfair obstacles for SMEs and creating linkages between large-scale industry and SMEs in the supply of goods and services. It envisions the promotion of megaprojects not only to attract direct foreign investment but also to create these linkage opportunities for SMEs, which are seen as a key component of industrial development. It also promotes public–private partnerships to implement development plans, especially in the agricultural sector, and to support SME development.

Agenda 2025 emphasizes good governance, building on principles of broad participation, transparency, accountability, efficiency and equity, and outlining the GOM’s decentralization plan, which calls for delegating power to lower government levels, strengthening municipal-level governments, increasing capacity to use local resources, and strengthening accountability to citizens.

As land is the cornerstone of most government efforts to promote economic development, particularly in the agricultural sector, Agenda 2025 recognizes

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289 Article 90, Constitution of Mozambique, 2004.

290 Article 117, *ibid.*

291 Article 117, *ibid.*

292 Article 102, *ibid.*

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293 Articles 98, and 109, *ibid.*

294 Government of Mozambique, Committee of Counsellors, *Agenda 2025*.

### Box A1. Projected climate change impacts in Mozambique.

Climate change has been projected to have the following impacts in Mozambique:

- temperature increases in some areas of as much as 2°C–2.5°C by 2050 and 5°C–6°C by 2090
- increase in rainfall variability, likely resulting in shifting seasons, wetter rainy seasons and drier dry seasons
- increased flood risk, especially in the south
- increased intensity of extreme weather events and drought, particularly affecting the center, including the Cahora Bassa area
- possible upstream reductions in rainfall in neighboring countries, resulting in decreased river flows in Mozambique, seriously affecting the Cahora Bassa hydroelectric facility
- increasingly severe cyclones, accelerating sea level rise, combined with high tides and storm surges, threatening the coast
- loss of areas suitable for agriculture in some parts of the country
- overall increase, over the next two decades, in vulnerability to loss of livelihood assets and constraints on food production.

Source: van Logchem B and Brito R (eds.), *Synthesis Report. INGC Climate Change Report: Study on the Impact of Climate Change on Disaster Risk in Mozambique* (Maputo: Instituto Nacional de Gestão das Calamidades, 2009).

the need to improve frameworks to secure local communities' rights to use and occupy land. These include simplifying processes to acquire land, reducing conflicts between communities and commercial users, and educating communities about their rights and responsibilities.

In addition to providing an outline of the GOM's goals and strategy options, Agenda 2025 signals the government's awareness of and resolve to address the challenges to Mozambique's development. It also serves as an anchor for civil society to advocate for positive change.

The Poverty Reduction Action Plan (*Plano de Acção para Redução da Pobreza* or PARP) 2011–2014 was Mozambique's foundation for economic policy development. PARP implemented the GOM's Five-Year Government Program (2010–2014), and it focused on combating poverty (reducing extreme poverty from 54.7% in 2009 to 42% in 2014) and achieving inclusive economic growth, through building on Agenda 2025's broad objectives. The PARP focused on increased wealth generation for local communities and small-scale producers, committing to improve the management of natural resources in order to enhance their contribution to the national economy and local communities. To do so, it also committed to develop and enforce legislation that taxes megaprojects and ensures that communities receive a portion of their profits. To further ensure community empowerment, the 2010–2014 PARP echoed Agenda 2025's call for government decentralization. The PARP also required

the GOM to improve the business environment for SMEs by promoting industrial development with a focus on SMEs and supporting measures to increase their access to microfinance. The establishment of PARP as an implementing mechanism sought to bolster the GOM's positions on poverty alleviation and economic development. It worked to promote socioeconomic stability and establish clear guidance on government targets, but provided the GOM with an opportunity to revise and strengthen its provisions to ensure that they align with the situational needs of the country. The further PARPs, tied to the new UN Sustainable Development Goals, are likely to continue along this vein.

### Climate change governance

Mozambique's 2,700 km coastline, high coastal population density, heavy dependence on natural resources for livelihoods and economic growth, and limited financial and technical resources make it highly vulnerable to the adverse effects of climate change. Estimates of the impacts of climate change on Mozambique are summarized in Box A1.

Mozambique has developed a number of research and policy instruments targeted at improving its capacity to respond to and prepare for climate change. In 2003, it produced its first national communication to the United Nations Framework Convention on Climate Change, which elaborated Mozambique's greenhouse gas emission levels, existing vulnerabilities, and adaptation needs,

identifying the country's coastal resources, water resources, and agricultural and forestry sectors as at greatest risk from climate change.<sup>295</sup> It signaled its intention to promote mitigation efforts in its industrial sector by encouraging energy efficiency, the use of renewable energy and the introduction of new industrial technologies. It recognized the need for enabling legal frameworks and cited several existing laws and policies on land, poverty, environment, forestry, and disaster, as supportive of Mozambique's climate change goals. However, it also acknowledged that legal reform was required to address the remaining gaps.

The National Adaptation Programme of Action of 2007 highlighted four priority adaptation initiatives: strengthening the early warning system, strengthening the capacity of agricultural producers to cope with climate change, reducing climate change impacts in coastal zones and managing water resources.<sup>296</sup>

Mozambique recently prepared its first National Strategy on Climate Change (ENMC),<sup>297</sup> establishing guidelines for building resilience and promoting a low-carbon and green economy and recognizing that dealing with climate change is crucial to economic progress. The strategy identified eight areas for intervention to improve adaptive capacity: reduction of climate risk; water; agriculture, fisheries, food security and nutrition; social protection; health; biodiversity; forests; and infrastructure.

Despite Mozambique's relatively low contribution to global greenhouse gas emissions, the ENMC also addresses mitigation and low-carbon development, from the perspective of capitalizing on opportunities to access additional funding and to improve the efficiency of current processes. Mitigation steps are organized in four areas: energy; industrial processes; agriculture, forestry and other land uses; and waste. For energy, forestry and agriculture, the ENMC establishes complementary strategies for both adaptation and mitigation.

295 Republic of Mozambique, National Communication on Climate Change (Bonn: UNFCCC, 2003).

296 National Adaptation Programme of Action, Approved by the Council of Ministers at its 32nd Session, 4 December 2007, Maputo.

297 Republic of Mozambique, *Estratégia Nacional de Mudanças Climáticas* (Maputo: Mozambique, 2013) 2013-2025.

The ENMC also contains an action plan – outlining specific activities and their responsible entity, beneficiaries, time lines, and costs – that includes a strong focus on the reform of the legal and institutional framework.<sup>298</sup> A limitation of the ENMC is its lack of a financing strategy, despite the recognition that mobilization of resources is a key challenge to its implementation. This further underscores the importance of facilitating greater private sector involvement in adaptation and mitigation.

## Agriculture

Agriculture is one of the greatest contributors to the Mozambican economy, representing almost a quarter of GDP (24.9%) in 2012 and employing 80% of the country's population, of whom 70% are located in rural areas.<sup>299</sup> The opportunity created by the agricultural sector to enhance smallholders' livelihoods firmly positions it as a significant platform for rural development.

However, agriculture has grown slowly in recent times. In 2012, a study by the Organization for Economic Co-operation and Development tracked a 3%–4% rate of growth.<sup>300</sup> Large-scale private-sector participation in agriculture represents only 10% of investments; the sector is dominated by small-scale and subsistence farmers, who make up 99% of all farms in rural areas.<sup>301</sup> Their lack of access to technical inputs to improve efficiency – such as mechanical equipment, fertilizer, improved seeds, and irrigation – constrains farmers' ability to improve and expand production. For example, the use of irrigation was as low as 2.7% in 2007; 11% of farmers still depend on oxen for traction, and only 1.4% use tractors. These challenges, combined with limited rural transportation networks and poor electrical-grid connections have been identified as major

298 The other focus areas are adaptation and climate risk management, mitigation and low-carbon development, research and systematic observation, and training and technology transfer.

299 OECD, ADB and UNDP, *African Economic Outlook 2012 - Mozambique*, pp. 3, 10.

300 *Ibid.*, p. 3.

301 OECD, *OECD Investment Policy Reviews: Mozambique 2013*, p. 30; Cunguara B and Hanlon J, "Whose Wealth Is It Anyway? Mozambique's Outstanding Economic Growth with Worsening Rural Poverty," *Development and Change* 43, no. 3 (2012): 623–647, at 627.

challenges to agricultural growth and productivity in Mozambique.<sup>302</sup>

In 2007, the GOM developed *Concept, Principles and Strategy of the Green Revolution in Mozambique*, a strategy paper with the objective of inducing greater agricultural productivity, particularly for smallholders, and to ensure a greater supply of food in a competitive and sustainable way. It highlighted the following needs as key to the achievement of its objective: sustainable natural resource use, improved technologies for agricultural production, improved markets and technologies to disseminate information, favorable environments for financial services, and creation and enhancement of social capital.

To integrate the agricultural priorities established in this paper and in Agenda 2025, the GOM agreed policy priorities within the Strategic Plan for Agricultural Development (PEDSA) 2010–2019. PEDSA aims to increase agricultural growth by an average of at least 7% per year, with a focus on facilitating a more active private sector in both production and service provision. It re-emphasizes the importance of agriculture to the Mozambican economy and its role in reducing poverty, and highlights the following challenges:

- low production and productivity
- limited infrastructure and services for accessing markets
- inadequate use of natural resources
- limited institutional capacity and the need for more coherent policies.

PEDSA's objectives recognize the need for an intersectoral approach to agricultural development, linking activities to improve productivity in the sector to improved land and forestry management strategies.

Implementation of PEDSA has involved the development of agricultural growth corridors designed to attract public and private investment. Three main corridors Beira, Zambezi Valley and Nacala have special proximity to major transportation networks and large-scale infrastructure,<sup>303</sup> and can be used to improve small-scale farmers' access to

302 World Bank, *Economic and Sector Work, Agribusiness Indicators: Mozambique*, especially p. 43; Dominguez-Torres and Briceño-Garmendia, *Mozambique's Infrastructure*, pp. 23–24.

303 Grow Africa, *Mozambique: Significant Opportunities for Agribusiness Investment* (Geneva: Grow Africa, 2013) 3.

extension services and markets. The plan also involves the creation of linkages between smallholders and large projects. With the objectives of PEDSA and Agenda 2025 as a foundation, the investment opportunities created offer several avenues for sustainable agricultural initiatives in Mozambique.

Agricultural development is assessed from the perspective of climate resilience in Mozambique's ENMC. Given agriculture's dependence on climate conditions and limited use of modern technology, it remains particularly vulnerable to the effects of climate change. The ENMC outlines activities to increase the resilience of the sector through crop diversification, use of improved technology and soil conservation. It also highlights opportunities to mitigate the greenhouse gas emissions generated by agriculture through the adoption of more sustainable practices such as agroforestry.

Governance of the agricultural sector is framed by the Land Law and Land Law Regulations, which are implemented by the Ministry of Agriculture.

## Forestry

Forests in Mozambique are home to several thousand species of flora and fauna, many of which are endemic to Mozambique, and supply the raw materials for a number of traditional uses. Ten percent of plant species are used for medicinal purposes; other uses include handicrafts, food, animal fodder and raw material for construction.<sup>304</sup> An estimated 70% of Mozambicans in rural areas rely on forest resources for these activities.<sup>305</sup> In 2006, forestry's contribution was valued at \$224.4 million, representing approximately 3.1% of the GDP.<sup>306</sup> Though no conclusive data exist on the economic value of the informal forestry sector, which includes the economic benefits from nontimber forest products and ecosystem services such as groundwater catchment and maintenance of pollinator habitat, economic benefits resulting from these valuable

304 Republic of Mozambique, *4th National Report on Implementation of the Convention on Biological Diversity in Mozambique*; Food and Agricultural Organization, *Global Forest Resources Assessment 2010*, p. 43.

305 Nhancale et al., *Small and Medium Forest Enterprises in Mozambique*, p. 17.

306 Global Forest Watch, *Mozambique*, <http://www.globalforestwatch.org/country/MOZ>.



services are likely to increase the sector's overall contribution to GDP.

Mozambique's forests are threatened by increasing deforestation and forest degradation, with serious implications for human populations as well as flora and fauna that depend on these habitats for survival. Unsustainable logging for firewood and charcoal is one of the greatest drivers of deforestation and forest degradation in Mozambique, estimated at 9.3 and 5.5 million tons per year in rural and urban areas, respectively.<sup>307</sup> Wood is used as fuel primarily for cooking, with particularly high demand in urban areas. The overwhelming majority of charcoal operators are not registered or licensed, demonstrating the unmonitored and unregulated nature of the industry. Uncontrolled clearing of the forest and wood extraction, a continued serious concern, is aided by lack of monitoring.<sup>308</sup>

Another major driver of deforestation is the conversion of forest to agricultural land. This has been fueled by the increasing global demand for agricultural products such as sesame, tobacco and cotton, resulting in the expansion of unsustainable agricultural practices in previously forested areas.<sup>309</sup>

The GOM has taken legal and policy measures to address the threats to forests while harnessing their potential to contribute to national development. In national policies, forest management is strongly linked to enhanced agricultural productivity. Sustainable use of forest resources is one of PEDSA's main objectives. PEDSA also facilitates increased private-sector activity through the development of forestry entrepreneurship in local communities. Its strategy to promote sustainable use of forest resources envisions the creation of partnerships between investors and communities, and support for the production and marketing of nontimber forest products.

The ENMC gives special focus to the ecosystem value of forests and contains strategies to improve their adaptive capacity and mitigate Mozambique's greenhouse gas emissions. It outlines the GOM's intention to explore agroforestry, allowing diversification of livelihoods and reducing conflicts between agricultural and forestry land uses. It also

envisions the development of multiple-use economic activities, focusing on community initiatives. This could enable greater community ownership of forest management and the creation of markets for nontimber forest products and ecosystem services. Land-use change and forestry currently account for the highest greenhouse gas emissions in Mozambique; the promotion of forest conservation not only counteracts this problem but also provides useful opportunities to generate financing through international climate finance mechanisms such as REDD+.<sup>310</sup>

The 1999 Forestry and Wildlife Act (Law No. 10/99) lays the foundation for sustainable management of forest and wildlife resources with participation by civil society and the private sector (Box A2), firmly integrating participatory management and respect for customary use rights. Although it does not establish specific or measurable requirements, its recognition of these rights gives them greater prominence and requires implementation of the law in furtherance of these objectives. The Act requires the Council of Ministers to stimulate national private-sector participation in the exploitation, management and conservation of forest and wildlife resources,<sup>311</sup> signaling the requirement for greater involvement of Mozambicans in the commercialization of forestry resources.

The National Directorate of Land and Forest is responsible for implementing policies related to forest resources and falls under the authority of the Ministry of Agriculture.<sup>312</sup>

To enhance forest management and conservation, the Forestry and Wildlife Act establishes protection zones – areas “deemed representative of national natural heritage and for the conservation of biodiversity and fragile ecosystems or species.”<sup>313</sup> They include the following:

- *National parks* are total protection zones in which certain activities are strictly forbidden except for

307 Siteo et al., *The Context of REDD+ in Mozambique*, p. 8.

308 Ibid., p. 7.

309 Ibid., p. 12.

310 Ministry for Coordination of Environmental Affairs, *Mozambique Initial National Communication to the UNFCCC* (Maputo: MICOA, 2003), pp. 43, 47.

311 Article 7, Law of Forestry and Wildlife, Law No. 10/99.

312 Article 86, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

313 Article 10, Law on Forest and Wildlife, Law 10/99; Article 6, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

**Box A2. Principles of the Law and Regulations on Forestry and Wildlife.**

- Forest and wildlife resources are the property of the state.
- Policies governing economic and social development and biodiversity conservation should involve local communities, the private sector and civil society, with the objective of achieving sustainable development.
- Promotion of conservation and management and use of forest and wildlife resources should be done in a manner that is sustainable, not detrimental to customary practices, and within the framework of decentralization.
- The private sector should be involved in the management, conservation and exploitation of forest and wildlife resources, with a view to increasing added value and stimulating development for local communities.

Source: Section 3, Forestry and Wildlife Act, Law No. 10/99.

“scientific reasons or on grounds of management needs.”<sup>314</sup> Prohibited activities include forestry and agricultural exploitation, mining, livestock farming, exploration and prospecting, drilling, construction of landfills and all works likely to modify the landscape.

- *National reserves* are also considered total protection zones and subject to the same restrictions as national parks, but resource exploitation in these areas is allowed under license and subject to regulations if it is determined to be “not detrimental to the specific purpose for which [they] were created.” Permission for such activities is subject to the acquisition of an environmental license.<sup>315</sup>
- *Zones of historical and cultural use and value* cover forests with religious significance and other sites of historical importance and cultural use, and may be used in accordance with the customary practices of the local communities.<sup>316</sup>

314 Article 11, Law of Forestry and Wildlife, Law 10/99.

315 Article 12, *ibid*; Article 3, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

316 Article 13, Law of Forestry and Wildlife, Law 10/99; Article 6, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

Commercial exploitation of forest resources requires one of two types of license:<sup>317</sup>

- *Simple licenses*, available only to Mozambican citizens, allow exploitation of up to 500 cubic meters and 4,047 ha. They are granted by the provincial governor for areas of up to 405 ha and by the minister of agriculture for larger areas.<sup>318</sup>
- *Forestry concession contracts* are available to corporate entities. They are granted by the provincial governor for areas of up to 20,000 ha, by the minister of agriculture for areas of 20,000–100,000 ha and by the Council of Ministers for larger areas.<sup>319</sup>

Within the framework for forest management, a number of mechanisms exist to ensure that social and environmental safeguards are adhered to during the investment approval process. One is the requirement for all protection zones to be managed in accordance with a plan that lists the actions to be carried out in the conservation, management and use of forest and wildlife resources. Such plans should be prepared with input from the local community and approved by the relevant authorities.<sup>320</sup> Applicants for forest concessions are also required to provide a forest management plan, as well as a preliminary inventory listing the principal species in the area and the baseline status of forest resources.<sup>321</sup> This is intended to enable the government to establish sustainable quotas for harvest of forest products.<sup>322</sup> In the case of simple licenses, a simpler and less onerous management plan and inventory are required.<sup>323</sup>

The Forest Act also recognizes local communities’ subsistence rights to all forest resources. DUAT holders are exempted from licensing requirements for exploitation of forest resources for their own

317 Articles 16 and 25, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

318 Article 18, *ibid*; Article 16, Decree Law 30/2012.

319 Article 26, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

320 Articles 1(29) and 10(5), Law of Forestry and Wildlife, Law 10/99.

321 Articles 18, 25 and 27, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

322 Norfolk and Cosijn, “Towards the Legal Recognition and Governance of Forest Ecosystem Services in Mozambique,” p. 139.

323 Article 18, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

consumption and based on customary practices.<sup>324</sup> The Act also makes it clear that the requirement to obtain a license for commercial exploitation does not negate a community's subsistence rights.<sup>325</sup> Further, it preserves subsistence rights even in areas where forestry concessions have been granted, by establishing a safeguard for "all third party rights in the exploitation area" and free access to local communities within the concession area,<sup>326</sup> and exempts local communities from any fees for the use of the forest and wildlife resources for private consumption.<sup>327</sup> As many Mozambicans rely on the forest for their livelihoods, the preservation of their subsistence rights is an important safeguard.

The Forest Regulations attempt to maintain sustainability even in subsistence use by stipulating that it may be subject to restrictions in the form of quotas or protected species.<sup>328</sup> For example, they prohibit the use for firewood or charcoal of certain forest species that are of economic importance in the timber industry, as well as rare or protected species or species of historical or sociocultural value.<sup>329</sup> This provision could be strengthened by providing further guidance on whether communities may participate in the setting of these restrictions. While the establishment of mechanisms to preserve and protect subsistence and customary rights to forestry resources is imperative, this creates risks of increased conflicts between local land users and license holders. It is therefore equally important that measures to enhance public involvement in forest exploitation are properly implemented and enforced.

324 Articles 9 and 1(9), Law of Forestry and Wildlife, Law 10/99.

325 Article 15, *ibid.*

326 Article 18, *ibid.*

327 Article 35, *ibid.*; Article 15, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

328 Article 8, Regulations on the Law on Forest and Wildlife, Decree 12/2002.

329 Article 24, *ibid.*

## Energy

Energy is a significant contributor to economic and social development.<sup>330</sup> It enables people to perform basic functions, such as lighting homes, cooking, and studying, as well as critical productive activities, including irrigation and cold storage. Given its vast natural resource reserves, Mozambique's capacity for energy generation is high. Coal and natural gas potential stand at 20 billion tons and 127 billion cubic meters, respectively, while renewable sources, such as biomass, hydropower, solar, wind and geothermal, offer great opportunities to diversify the energy mix.<sup>331</sup> As Figure A1 indicates, biomass and hydropower dominate Mozambique's current energy profile. While hydropower represents only 13% of the country's energy mix, it is the main source of electrical energy for Mozambicans connected to the grid. Oil, which supplies 7% of Mozambique's energy needs, makes up 15% of the country's imports, leaving it vulnerable to fluctuations in supply and cost and posing a considerable risk to economic stability.<sup>332</sup> The residential sector accounts for 73% of energy consumption, with industry (18.6%) and agriculture (6.4%) as other significant areas.<sup>333</sup>

The Cahora Bassa Dam generates most of the electricity in Mozambique and has an installed capacity of 2,075 megawatts. It produces sufficient energy to export to Botswana, South Africa and Zimbabwe. It is managed by Hidroeléctrica de Cahora Bassa, an independent power producer, which sells the generated electricity to Electricidade de Moçambique. This is the source of 88% of the electricity supplied by Electricidade de Moçambique; another 10% is produced by Electricidade de Moçambique itself from a combination of hydro and thermal energy sources,<sup>334</sup> and the remaining 2% is imported. Currently, electricity produced by

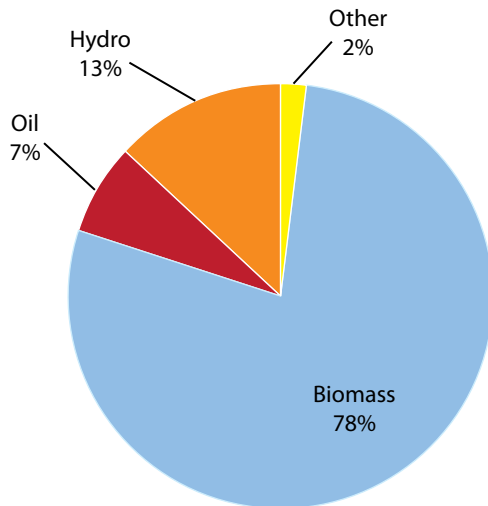
330 Mozambique's 2014 ranking for this criteria was 171 out of 189 as a result of the high costs and number of bureaucratic procedures involved – World Bank, *Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises* (Washington, DC: World Bank, 2014), p. 35.

331 IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 29.

332 *Ibid.*, p. 29

333 Bioenergy and Food Security Projects, Mozambique Bio Energy and Food Security Country Brief (Rome: FAO, 2013) p. 6.

334 Electricidade de Moçambique, *Annual Statistical Report 2011*, pp. 20, 40. Of the energy produced by EdM, 95% is from hydropower sources and 5% from thermal energy.



**Figure A1: Mozambique's energy sources.**

Source: IRENA, *Mozambique Renewables Readiness Assessment 2012*.

Hidroeléctrica de Cahora Bassa in the north of the country is not directly transmitted to Maputo due to the lack of infrastructure; it is exported first to South Africa and then reimported.<sup>335</sup> This results in high transmission losses and other costs:

Operational inefficiencies of power and water utilities are costing Mozambique \$128 million each year, which amounts to 1.68 per cent of GDP overall. Mozambique's power utility faces distribution losses of 26 per cent (more than double best-practice levels). As a result, Mozambique's power utility generates major hidden costs for the economy.<sup>336</sup>

Although Mozambique has an enormous capacity to produce cheap and reliable hydroelectric energy, only 20% of the population has access to electricity.<sup>337</sup> Rural inhabitants, particularly prominent in the northern and central regions of Mozambique, have even lower access. Only 12.5% of inhabitants in northern areas of Cabo Delgado, Niassa and Nampula had access to energy in 2011, while the central areas of Zambézia, Tete, Manica and Sofala

<sup>335</sup> IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 41.

<sup>336</sup> Dominguez-Torres and Briceño-Garmendia, *Mozambique's Infrastructure*, p. 46.

<sup>337</sup> Electricidade de Moçambique, *Annual Statistical Report 2011*, p. 48; IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 31.

had 12%.<sup>338</sup> The corresponding figure in the south, covering Maputo City, Maputo Province, Gaza and Inhambane, stood at 47% during the same period.<sup>339</sup> The lack of electrical service to rural areas has placed Mozambique in the unusual position of producing about 40% more electricity than it consumes domestically.<sup>340</sup> Though electrification has expanded steadily since 2003, much of this growth has again been concentrated in the country's southern, urban regions. As 68% of Mozambique's population, and consequently its economic activity, are in rural areas, lack of energy access seriously constrains the country's economic and social development.<sup>341</sup>

The Energy Policy 1998<sup>342</sup> aims to increase access to modern energy, increase electricity exports to neighboring countries, construct and rehabilitate existing energy generation and transmission infrastructures, increase energy efficiency and increase private-sector participation through legislative reforms.<sup>343</sup> A National Energy Sector Strategy<sup>344</sup> was created in 2000 to implement this policy and was revised in 2009 to incorporate new priorities.<sup>345</sup> Energy access is one of the main focal areas addressed in Mozambique's national development plan, Agenda 2025.<sup>346</sup>

Demand for electricity continues to rise, but existing transmission and distribution networks have been unable to satisfy this growth.<sup>347</sup> An estimated \$685 million, more than any other sector in Mozambique, is required for electricity infrastructure.<sup>348</sup> The Organization for Economic Co-operation and

<sup>338</sup> Electricidade de Moçambique, *Annual Report 2011*, p. 48.

<sup>339</sup> Ibid.

<sup>340</sup> IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 41.

<sup>341</sup> FAOSTAT, "Population," in *Mozambique*, [http://faostat.fao.org/CountryProfiles/Country\\_Profile/Direct.aspx?lang=en&area=144](http://faostat.fao.org/CountryProfiles/Country_Profile/Direct.aspx?lang=en&area=144).

<sup>342</sup> Resolution 5/98 of 03 March.

<sup>343</sup> Manda A, *Country Report*, Ministry of Energy of Mozambique, 4 June 2013, p. 3.

<sup>344</sup> Decree 24/2000.

<sup>345</sup> IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 36.

<sup>346</sup> Republic of Mozambique, *Agenda 2025*, p. 146.

<sup>347</sup> See OECD, *OECD Investment Policy Reviews: Mozambique 2013*, p. 5.

<sup>348</sup> Dominguez-Torres and Briceño-Garmendia, *Mozambique's Infrastructure*, p. 41.

Development estimated that 92% of financing needs are for capital development, while 8% is needed for operations, maintenance and rehabilitation.<sup>349</sup> Private-sector investment is one way to bridge this considerable financing gap. Effective policy, legal and institutional frameworks are necessary to coordinate efforts to develop energy markets and enhance private-sector participation.

The Electricity Law, Law 21/97, governs the production, transmission, distribution and commercialization of electricity.<sup>350</sup> It paved the way for the state to take measures to increase private-sector participation, and private developers can apply for energy generation concessions through public tender.<sup>351</sup> In addition to improving grid access, the law also lists the development of alternative electricity supplies as a primary objective.<sup>352</sup>

Off-grid, renewable energy generation has great potential to expand access to energy in areas not yet connected to the grid, but adequate frameworks are needed to spur expansion in this area. Off-grid energy access currently stands at 11% of total energy access.<sup>353</sup>

Agenda 2025 grounds socioeconomic and environmental development in the greater use of renewable energy. It acknowledges the cost of nonrenewable energy resources, such as oil, as a critical uncertainty, and highlights the important co-benefits of renewable energy, such as minimal air pollution. A number of other policy documents provide equally strong impetus for the development of renewable energy. Mozambique's Energy Sector Strategy (Resolution 10/2009) aims to increase access to energy in a diversified and sustainable manner. It identifies initiatives to encourage the use of renewable energy in rural, urban and peri-urban areas, as well as in key sectors such as transportation, agriculture, industry and tourism. It calls for legislation to define the desired types of energy and methods of

production and develop guidelines for managing the renewable energy market. It also suggests fiscal incentives for private-sector participation in renewable energy development. In addition, the ENMC recognizes a broad range of renewable energy sources, namely biogas, biomass, solar, wind, wave, thermal and geothermal energy, and requires the GOM to promote replacement of high-carbon fuels and to retrofit coal-fired power plants with cleaner technologies that reduce greenhouse gas emissions.<sup>354</sup>

Government efforts to prioritize renewable energy intensified with the development in 2009 of the Policy on the Development of New and Renewable Energy,<sup>355</sup> which resolves to concentrate efforts to promote the exploration of new and renewable energy sources and technologies through market development, capacity building, funding mechanisms, coordinated planning and service delivery.<sup>356</sup> Like Agenda 2025, the Policy positions renewable energy prominently in national efforts to improve economic and social development in the energy sector.<sup>357</sup>

The Policy is grounded on the principles of economic efficiency, equity and sustainability. Under the principle of economic efficiency, it commits to reducing perverse or conflicting incentives that could create distortions in the energy market and to taking into account negative environmental and social externalities when determining the true cost of energy,<sup>358</sup> which could discourage use of fossil fuels. Under the principle of sustainability, it promises to promote good environmental practices in the provision and use of energy; ensure the incorporation of environmental costs in prices and energy tariffs; and implement legal, political and sustainable institutional frameworks to encourage the development of new and renewable energy technologies.<sup>359</sup> It prioritizes the identification and measurement of new renewable energy sources,<sup>360</sup> and calls for broad public participation and institutional strengthening to enable intersectoral coordination,

349 OECD, *OECD Investment Policy Reviews: Mozambique 2013*, p. 128.

350 Article 2, Electricity Law, Law 21/97, [http://www.edm.co.mz/index.php?option=com\\_content&view=article&id=54&Itemid=53&lang=en&showall=1](http://www.edm.co.mz/index.php?option=com_content&view=article&id=54&Itemid=53&lang=en&showall=1).

351 Article 4, Electricity Law, Law 21/97; IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 42.

352 Article 5, Electricity Law, Law 21/97.

353 IRENA, *Mozambique Renewables Readiness Assessment 2012*, p. 31.

354 Government of Mozambique, *Estratégia Nacional de Mudanças Climáticas 2013–2025*, p. 11.

355 Resolution 62/2009, 14 October.

356 Section 1.6, Resolution 62/2009, 14 October.

357 Section 2, *ibid.*

358 Section 3.2.1, *ibid.*

359 Sections 3.2.3 and 7.10.1, *ibid.*

360 Section 7.1, *ibid.*

as well as the involvement of the private sector to mobilize funding and technology transfer.

To implement the Energy Strategy and the Policy for Development of New and Renewable Energies, the Ministry of Energy recently produced a Development Strategy for New and Renewable Energy, with the following objectives:

- Improve access to higher-quality energy services from renewable sources.
- Develop useful technology and conversion of renewable energy sources.
- Promote public and private investment in renewable resources.

To promote renewable energy, Mozambique has adopted a National Program for New and Renewable Energies, which examines each main potential renewable energy source – solar, wind, hydro, biomass, geothermal and ocean – and outlines the necessary actions to promote its development and use. For ocean and geothermal energies, which are still in the exploration phase, the Development Strategy for New and Renewable Energy suggests research and mapping to identify potential sources. For solar, wind, biomass and hydro, it calls for tax incentives to reduce their cost and encourage private-sector production and marketing of technology and equipment, and the creation of credit schemes to encourage uptake. The Strategy recognizes gender equity, energy efficiency, environmental management and food security as cross-cutting issues, demonstrating how the development of this sector is crucial to other national priorities, and further bolstering support for its objectives.

## Mining and Minerals Development

Mozambique has recently experienced a rapid expansion of its mineral industry, spearheaded by the exploitation of its vast coal deposits. In 2012, Mozambique produced 5 million tons of coal, generating \$196.4 million in exports, which represented one of Mozambique's largest exports, second only to aluminum, and the coal industry continues to expand.<sup>361</sup> This massive growth has been primarily the result of the operations of two coal companies, Vale Mozambique Ltd. and Rio Tinto, located in Tete province. Indeed, the sector

<sup>361</sup> OECD, ADB and UNDP, *Mozambique – African Economic Outlook 2013* (Paris: OECD, ADB and UNDP, 2013) pp. 3–4.

as a whole has been dominated by megaprojects. Foreign direct investment in the extractive industries represented \$2.7 billion in 2007 and a total of \$7 billion since 2005; hundreds more applications for coal mining have since been granted by the government, indicating that many new investments can be expected.<sup>362</sup> Mozambique also has significant potential to expand extraction of other mineral resources, such as natural gas, heavy sands, oil and gold. Its estimated gas reserves stand at more than 100 trillion cubic feet, with a value of approximately \$350 billion.<sup>363</sup>

Despite its enormous presence and overwhelming profits, the extractive industry contributed only 1.5% of Mozambique's GDP and created only 3,800 direct jobs in 2012,<sup>364</sup> a significant failure to generate socioeconomic benefits and positive development outcomes. The industry's potential to facilitate large-scale infrastructural development, especially in remote rural areas where road networks and access to public utilities are poor, is seen as a reason to continue granting preferential access. For example, both Vale and Rio Tinto have established contracts with the GOM to develop or improve land and sea transportation networks as well as power plants in order to support their operations.<sup>365</sup> Such initiatives may provide indirect economic benefits by spurring development in other sectors. For example, the area through which Vale intends to build a railway link from its mine in Moatize to the port of Nacala is also the site of a major agricultural corridor planned for development under the GOM's agricultural strategy.<sup>366</sup>

The Mining Law and Mining Law Regulations establish the main legislative framework for the mineral industry. Echoing the provisions of Mozambique's constitution, the Mining Law places all ownership of mineral resources in the state;<sup>367</sup> investors that apply for mining licenses or

<sup>362</sup> Ibid.

<sup>363</sup> Hanlon, *Mozambique Political Process Bulletin* 53, p. 2.

<sup>364</sup> OECD and ADB, *African Economic Outlook 2013 (Mozambique)*, pp. 3, 12.

<sup>365</sup> OECD, *OECD Investment Policy Reviews: Mozambique 2013*, p. 124.

<sup>366</sup> Grow Africa, *Mozambique: Significant Opportunities for Agribusiness Investment*.

<sup>367</sup> Article 4, the Mining Law, Law 14 / 2002.

concessions may be granted a DUAT for the purpose of resource extraction under specific conditions.

The Mining Law establishes sustainable development as the foundation of its objectives, stating that “the right to the use of mineral resources shall be exercised in accordance with the best and safest mining practices, observing legally established patterns of environmental quality, with the view of sustainable development in the long-term.”<sup>368</sup> It requires investors to obtain one of five types of permits, depending on their activities: either a reconnaissance license for scoping, and exploration license for explorations, or else a mining concession, a mining certificate or a mining pass that can be used for different intensities of mining activities.<sup>369</sup> All permits are open to national or foreign investors,

with the exception of mining passes, which may only be granted to Mozambican citizens.

The minister of mineral resources has the ultimate say on any grant of a reconnaissance license, exploration license or mining concession,<sup>370</sup> and the National Directorate of Mines or Provincial Directorate of Mineral Resources has the responsibility to consider the application for a mining pass.<sup>371</sup> The decentralization of the application review process broadens the opportunity for decisions to consider the local context, and widens the scope of accountability. However, the Regulations do not require the minister to consider the opinion of the National Directorate of Mines or Provincial Directorate of Mineral Resources, thereby giving the minister sole discretion.

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368 Article 2, *ibid*; Article 17, Mining Law Regulations, Decree 28/2003.

369 Article 5, Mining Law, Law 14/2002.

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370 Article 31, Mining Law Regulations, Decree 28/2003.

371 Articles 21, 22, 30 and 46, *ibid*.

**CIFOR Working Papers** contain preliminary or advance research results on tropical forest issues that need to be published in a timely manner to inform and promote discussion. This content has been internally reviewed but has not undergone external peer review.

The International Development Law Organization (IDLO) and the Center for International Forestry Research (CIFOR) assessed the legal frameworks that govern land-use activities and investments in Mozambique. Mozambique's legal framework for environmental management is well developed, and recent legal reforms have strengthened key public-interest safeguards. Similarly, the country has established a comprehensive framework for investment through the Investment Law and Investment Promotion Centre (CPI), and enshrined in the Land Law the right to the use and benefit of land (DUAT). The Environmental Impact Assessment (EIA) process places public consultation at the heart of effective environmental management. It extends participation to a broad spectrum of stakeholders at an early stage, allowing, in theory, substantial influence over the design and implementation of the EIA process. The National Council for Sustainable Development (CONDES) and the Ministry for Environmental Coordination (MICOA) have not managed, however, to influence high level government policy decisions and push convincingly for a sustainable development agenda.

The key weaknesses of Mozambique's environmental safeguard system, Investment Law and Land Law include the short timelines to review investment proposals by CPI and sector-specific authorities; a focus on economic outcomes; the inability to monitor and enforce existing laws and regulations; inadequate compensation mechanisms; limited funding to enable MICOA and CPI to oversee the critical public consultation phase and monitor compliance with Environmental Management Plans; ineffective information dissemination, and threats to the independence of the public consultation process; and poorly qualified EIA consultants. The mining industry is distinguished by serious gaps in its accountability framework.

This Legal Assessment report for Mozambique examines policy, institutional and legal frameworks in the agricultural, energy, forestry and mining sectors and identifies four key challenges to the attainment of sustainable land-use investments, viz.

- Weak enforcement of environmental and social safeguards;
- Lack of incentives in the legal framework;
- Insecure land tenure;
- Low public awareness and limited access to information.



RESEARCH  
PROGRAM ON  
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