



The Global Initiative
for Economic, Social and Cultural Rights

**SHADOW REPORT TO THE UNITED NATIONS HUMAN
RIGHTS COMMITTEE**

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Submitted by:

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)

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About the Submitting Organization

The Global Initiative for Economic, Social and Cultural Rights seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. We believe this crisis — wherein close to 2 billion people worldwide daily lack access to adequate nutrition, health care, education, housing, water and sanitation — will only be overcome through the concerted efforts of human rights, women's rights, environmental and development organizations and agencies. The Global Initiative seeks to play a catalyzing role in fostering these cross-sector partnerships on key issues. We can change the world as we know it into a world where all economic, social and cultural rights are respected, protected and fulfilled, so that all people everywhere are able to live in dignity.

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I. Equality between men and women in relation to land and property rights (Arts. 3 and 26)

1. Mozambique's legal framework includes several guarantees for gender equality. The 2004 Constitution guarantees the equality of men and women and prohibits discrimination on the basis of sex.¹ The Family Law of 2004 establishes the equality of women and men in the household, including in their rights to own, administer, and inherit marital property.² The Land Law of 1997 gives equal rights to men and women regarding land use and benefit, including the rights of succession and title.³ The Land Law further guarantees that women have the right to participate in all land-related decisions and the right to register DUATs [n.b. *direito de uso e aproveitamento da terra*, State granted land use and benefit rights] individually.⁴

2. According to the FAO (Food and Agricultural Organization of the United Nations) ninety-three percent of women in Mozambique are involved in agriculture. "Household farming, particularly subsistence agriculture, is traditionally a woman's job; men may clear the land and participate in harvesting, but women's tasks include sowing, planting, weeding and irrigating. Nonetheless, only 20 percent of women have more than 2 hectares. In addition, 65 percent of female-headed households occupy less than 1.5 hectares compared with 47 percent of male-headed households. The number of women who are heads of households has increased from 23 percent in 1980 to 30 percent in 1997."⁵

3. On the Land law specifically, FAO similarly reports that "problems associated with implementation, including knowledge of the law by the population, poor interpretation and enforcement by the authorities and judicial and administrative officials, disrespect for the law in parts of powerful business sectors, persistency of customary norms and practices contrary to the fundamental values of the Constitution, among other factors, has made it difficult for the majority of the population to benefit from the protection brought by the new land law. The resulting ambiguity creates uncertainty about the interpretation and proper application of formal law, which, in turn, may result in tenure insecurity on the part of women, in particular."⁶

4. The Social Institutions and Gender Index (SIGI) of the OECD Development Centre confirms that land rights are not enjoyed by women in practice due to a lack of knowledge of their rights and because administrative practices are not yet aligned with the Land law. Also, while the Land law provides women equal rights to land, it also formally recognises customary systems of land

¹ Constitution of the Republic of Mozambique, 2004, arts. 35, 36, and 39..

² Lei da Família [Family Law] No. 10/2004 de 25 de Agosto.

³ Lei de Terra [Land Law] No. 19/1997 de 1 de Outubro and Consideration of reports submitted by States parties under article 40 of the Covenant, Initial reports of States parties: Mozambique, UN Doc. CCPR/C/MOZ/1, 23 May 2012, at para. 49.

⁴ Land Law, 1997, arts. 10 and 13 and The IS Academy on Land Governance, 'Mozambique: Food Security and Land Governance Factsheet,' compiled by the Royal Tropical Institute (KIT – Thea Hilhorst and Nicolas Porchet) at the request of the Ministry of Foreign Affairs – The Netherlands, 2012.

⁵ FAO Gender and Land Rights Database, 'Mozambique Full Country Report,' available online at: <http://www.fao.org/gender/landrights/report/en/> [last accessed 22 August 2013].

⁶ FAO goes on to note that: "Indeed, despite the recent advances made with the new 2004 Constitution, as well as national policies and programmes, namely the Government Five Year Programme (2005-2009) and the Programme Against Absolute Poverty (PARPA), discriminatory practices against women remain: the dichotomy between statutory and customary systems together with the generality and ambiguity with which customary law is integrated in statutory provisions, compounded with an overall insufficient articulation of the question of gender equality in national development strategies, are some of the more relevant obstacles yet to be overcome ." FAO Gender and Land Rights Database, 'Mozambique Full Country Report,' available online at: <http://www.fao.org/gender/landrights/report/en/> [last accessed 22 August 2013].

tenure in which male relatives regulate women's access to land.⁷ As in many parts of the region, women also face discrimination in relation to customary systems and norms. FAO highlights that while specific traditions and customary norms vary, a common feature is "the preponderance of patriarchal gender relations which restrict women's access to land-use rights, benefits, labour and natural resources in community and private life."⁸

5. Similarly, a recent report by Norad (Norwegian Agency for Development Cooperation), which drew upon the experiences, approaches used, and lessons learnt through Norwegian support to four main organizations⁹ found major challenges around the implementation of the Land law. "In Mozambican society, we see that individuals and communities need resources – both economic and political resources – to be able to claim and secure legally established rights to land."¹⁰ Similarly, FAO contends that implementation of the Land law is often haphazard and not gender-sensitive because local administrators, political leaders and public officials responsible for enforcing the new land regulations rarely have sufficient exposure to the law.¹¹

6. Women, too, are often unaware of their rights under the national Land Law. The World Resources Institute and Landesa report that "... more than a decade after the enactment of the land law, most rural communities still lack the knowledge and institutional support needed to understand and enforce rights granted to them under the land law."¹² Independent academic research shows that women are the clear minority amongst title holders. Data provided by the National Land and Forests Directorate (DNTF) shows that women accounted for only 20 percent of all requests for new DUATS between 2006 and 2009.¹³

II. Private land concessions and resettlement (Art. 17)

7. Despite the guarantees provided under national law, there have been several shortcomings their application. For example, as the World Resources Institute and Landesa have reported: "In many areas, land administration authorities lack awareness of the law and the acquired land rights held by communities, leading to confusion over the availability of rural land for private concessions. Despite the requirement for investors to consult with communities regarding planned land uses and development, substantial numbers of investors have received rights to large tracts of land without engaging with the communities in a manner that recognizes their land rights and supports community development."¹⁴

⁷ SIGI, 'Mozambique: Restricted Resources and Entitlements,' <http://genderindex.org/country/mozambique> [last accessed 22 August 2013].

⁸ Indeed, FAO notes that even in largely matriarchal societies like Mozambique, women only have rights through their male relatives, such as their brothers or maternal uncles. FAO Gender and Land Rights Database, 'Mozambique Full Country Report,' available online at: <http://www.fao.org/gender/landrights/report/en/> [last accessed 22 August 2013].

⁹ These were: Norwegian People's Aid, FAO with the Mozambican Centre for Juridical and Judicial Training (CFJJ), CLUSA (Cooperative League of the United States), and the Mozambican feminist civil-society organisation Forum Mulher.

¹⁰ Norwegian Agency for Development Cooperation (Norad), 'How to Support Women's Land Rights in Mozambique?: Approaches and Lessons Learnt in the Work of Four Main Organisations,' Norad Report 3/2012 Discussion, 9 March 2012.

¹¹ . FAO Gender and Land Rights Database, 'Mozambique Full Country Report,' available online at: <http://www.fao.org/gender/landrights/report/en/> [last accessed 22 August 2013].

¹² Robin Nielsen, Christopher Tanner and Anna Knox, 'Focus on Land in Africa Brief: Mozambique,' World Resources Institute and Landesa, January 2011.

¹³ Ruben Villanueva (Sociologist), 'The Big Picture: Land and Gender Issues in the Matrilineal Mozambique,' May 2011.

¹⁴ Robin Nielsen, Christopher Tanner and Anna Knox, 'Focus on Land in Africa Brief: Mozambique,' World Resources Institute and Landesa, January 2011.

8. Human Rights Watch conducted an in-depth investigation of coal mining concessions and linked resettlements of communities in Tete province, Mozambique in 2012. Human Rights Watch's research found that the Mozambican government's speed in approving new mega-projects outstripped its development and implementation of adequate safeguards to protect the rights of affected populations." According to data from Mozambique's mining registry in October 2012, the government had approved mining concessions and exploration licenses covering approximately 3.4 million hectares or 34 percent of the province. When factoring in applications pending approval, the amount of land involved rises to roughly 6 million hectares or 60 percent of Tete province. While not all exploration leads to mining activity, the high concentration of land designated for mining licenses limits the availability of appropriate resettlement sites for displaced communities.

9. In its 2013 report, *What is a House without Food? Mozambique's Coal Mining Boom and Resettlements*, Human Rights Watch documented negative impacts on rights to food, water, work, and housing for more than 10,000 people living in Tete province who were resettled to make way for mining operations owned by multinational companies Vale, Rio Tinto, and Jindal Steel and Power. Serious shortcomings in government policy and oversight, including in the selection of relocation sites, led to resettlements to areas with inadequate water supply, poor agricultural productivity, and limited access to markets.¹⁵ The report also highlights insufficient communication between the government and mining companies with resettled communities, and that there has been a "lack of accessible and responsive mechanisms for participation in decision-making, expression of complaints, and redress of grievances."¹⁶

10. The Human Rights Committee has previously concluded that forced eviction violates Article 17 of the Covenant, and at times may rise to violations of Article 7 as well. For instance, in its Concluding Observations on Kenya in 2005 the Committee found violations of Article 17 (protection from unlawful or arbitrary interference with the home) because of forced evictions. It did so again in its Concluding Observations on Israel in 2010, where it also found that forced eviction could rise to violations of Article 7 (prohibition on cruel, inhuman or degrading treatment or punishment). The Committee also found violations of Article 26 (equal protection of the law). A key element of a what constitutes a forced eviction is removal from one's home with the lack of provision of alternative housing that is agreed upon in consultation with the evicted individual or group.¹⁷

11. The UN Special Rapporteur on the right to adequate housing has noted that a resettlement process that fully respects human rights should ensure public consultation and participation at all stages of the process, including in the design, implementation, and post-move phases of resettlement. Affected groups and individuals should give their full and prior informed consent as regards the relocation site.¹⁸ The State should consider alternate plans proposed by affected persons and communities and establish accessible channels for providing feedback outside the framework of planned consultations.¹⁹

¹⁵ Human Rights Watch, 'What is a House without Food? Mozambique's Coal Mining Boom and Resettlements,' 2013.

¹⁶ Ibid.

¹⁷ See, Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the prohibition on forced eviction.

¹⁸ UN Human Rights Council, "Basic principles and guidelines on development-based evictions and displacement," contained in Annex 1 of the "Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari," UN Doc. A/HRC/4/18, 2007.

¹⁹ Ibid.

II. Recommendations

12. In light of the above information, the Global Initiative for Economic, Social and Cultural Rights respectfully suggests that the Human Rights Committee urge the State party to take the following measures:

- 1) Initiate public awareness campaigns to disseminate knowledge about the existing Land Law, and women's equal rights to land under statutory legislation. In this context, the adaptation of information material to the diverse regional and local situations with regard to traditional systems of access to transferable rights in land for both women and men, should also be prioritised.
- 2) Provide and support trainings for paralegals and support participatory community land delimiting projects.
- 3) Enact temporary special measures specifically targeting women in order to achieve equal land rights for men and women in Mozambique.
- 4) Take immediate steps to address and remedy negative customs and traditional practices, especially in rural areas, which affect full enjoyment of women's land and property rights.
- 5) Ensure that communities are resettled only in exceptional circumstances, and only after exploring all feasible alternatives in consultation with the community. The States should minimize the scope and impact of resettlement whenever it cannot be avoided, and ensure that communities are not detrimentally impacted. When resettlement takes place, it must be in conformity with international human rights principles and standards.
- 6) Ensure regular, broad, and meaningful public consultation and participation at all stages of resettlement and provide accessible mechanisms for grievance redress.
- 7) Elaborate clear guidelines for reestablishing and improving the resettled population's standard of living, with as minimal disruption as possible, including livelihoods and access to services such as health care and education.
- 8) Ensure adequate training in applying international human rights norms for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects. This must include training on women's rights, with an emphasis on women's particular concerns and requirements pertaining to land.