

# Mining without development:

## The case of Kenmare Moma mine in Mozambique

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## Acronyms

ACP	African, Caribbean and Pacific
AfDB	African Development Bank
BTI	Bertelsmann Stiftung
CIP	Centro de integridade pública / Center for public integrity
CMI	Christian Michelsen Institute
CPI	Investment Promotion Centre (Centro de Promoção de Investimentos)
CSO	Civil society organisation
CSR	Corporate social responsibility
DFI	Development finance institutions
EAIF	Emerging Africa Infrastructure Fund
EIB	European Investment Bank
EITI	Extractive Industries Transparency Initiative
FDI	Foreign direct investment
FMO	The Dutch Development Bank
GDP	Gross Domestic Product
IESE	Instituto de Estudos Sociais e Económicos
IMF	International Monetary Fund
INE	National Institute of Statistics
KfW	The German Export Bank
KMAD	Kenmare Moma Development Association
KMML	Kenmare Moma Mining Limited
KMPL	Kenmare Moma Processing Limited
LIC	Low income country
MDG	Millennium Development Goals
MIGA	Multilateral Investment Guarantee Agency
MZN	Mozambican Meticaís
NGO	Non-governmental organisation
ODA	Official development assistance
PARPA	Poverty reduction strategy paper, Portuguese acronym used in Mozambique
TJN	Tax Justice Network
UNDP	United Nations Development Programme
VAT	value added tax

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Expectations are high in Mozambique that its wealth of minerals, oil, gas and precious stones will fund health care, education and infrastructure, helping to end the extreme poverty that blights the lives of most of its citizens.

This case study examines one of the longest standing foreign investments in Mozambique by the Irish company, Kenmare, whose Moma mine is extracting mineral sands worth tens of billions of dollars. Sadly, the case of Kenmare's Moma mine suggests that foreign multinationals will devour the lion's share of the country's precious, non-renewable resources, while Mozambicans will just be left with the crumbs.

## Kenmare's cushy deal

Kenmare Resources plc is an Irish company group whose productive activity is the mining and processing of mineral sands in Moma, on the northern coast of Mozambique. Its mine, which started production in 2007, was one of the first large foreign investments in Mozambique at a time when the country was viewed as a risky place to do business. The country was still heavily marked by civil war, politically unstable and lacking key institutions to facilitate both foreign and domestic investment. All of this helped Kenmare negotiate extremely favourable terms when setting up the mining company – including contract secrecy, no corporate taxes for one part of the company group and a halving of corporate tax rates for ten years for the other part, no payment of value added tax (VAT) for several goods, and no export or import taxes.

Things have changed dramatically since the signing of Kenmare's contract. Mozambique has strengthened its institutions and business infrastructure, and the value of its natural resources has increased dramatically on the back of surging global commodity prices. Yet Kenmare's sweetheart tax deal remains in place.

## The facts: Kenmare wins, Mozambique loses

- Kenmare has yet to pay any corporate income tax in Mozambique. Although the mine started to become profitable in 2011, the company was able to offset losses made in the start-up period to wipe out its tax bill.
- The mine will soon start to make a taxable profit, but even then its payments to the Mozambique government will be much lower than the 35% statutory rate, because of generous tax incentives.
- Since 2010, shareholders have seen the value of Kenmare shares treble.

The fact that Mozambique takes only a sliver of the value of its own resources is extremely important, as local employment and economic impacts are relatively low. This is not uncommon for extractive mega-projects. Fewer than 1,000 people are employed at the mine, and although 85 per cent are Mozambicans, very few are local to the area. Other impacts of Kenmare's activity are on a much smaller scale. Kenmare has provided electricity and water to local communities, and runs a well-liked corporate social responsibility programme, but this is worth only a few hundred thousand dollars. Local environmental and social impacts have been minimised, though some issues remain, including a mountain of sand where one neighbouring community once grew their cassava.



Despite the low development outcomes, five of Kenmare's seven creditors are publically backed development finance institutions, contributing over 80 per cent of Kenmare's loans.

The future looks bright for Kenmare: its mineral reserves may be worth US\$125 billion, and prices for the mineral sands found in Moma look strong. Yet Mozambique should not expect to benefit from this good fortune. In 2011, while ilmenite prices quadrupled, taxes paid by Kenmare increased by only 7.4 per cent.

### **Complex company structure rooted in tax havens**

Although only running one mine, the Kenmare Group is composed of eight subsidiaries, most of which are registered in the tax havens of Jersey and Mauritius – well known for their low tax rates and financial secrecy. None of the subsidiaries are actually registered in Mozambique. According to Kenmare, two of the subsidiaries have an active role in the mine. These operate as branches under two different fiscal regimes in Mozambique. While set ups such as these can often be used to minimise tax payments, we have uncovered no evidence that Kenmare is using its complex structure for illegal tax evasion.

### **International development institutions shamed**

Despite the low development outcomes, five of Kenmare's seven creditors are publically backed development finance institutions, contributing over 80 per cent of Kenmare's loans. These include the African Development Bank, the European Investment Bank, and the Multilateral Investment Guarantee Agency (part of the World Bank).

These institutions claim that their objective is to fund private companies where development impacts are high. Supporting a European company to extract non-renewable resources from a low-income country while creating a handful of jobs and paying very low taxes does not do this. This behaviour continues a trend: Western countries and international financial institutions have shaped Mozambique's tax regime and foreign investment policy, which offers foreign multinationals extensive benefits, including contract secrecy and generous tax breaks.

### **Change is needed**

The people of Mozambique are getting a raw deal from the Kenmare mine. Mozambique is reducing foreign aid dependency and generating greater revenue through taxation. However, very little of this comes from the extractive sector, which is growing rapidly and already accounts for 10 per cent of exports.

The country's ability to raise enough money to fund its own development is dependent upon whether it can change this picture. The country's future depends on whether it can prevent the leakage of precious resources through tax minimising practises and the one-sided tax breaks and investment policies negotiated while the country was recovering from a debilitating civil war. It is also dependent upon whether the government will heed growing demands to renegotiate mining contracts and end the secrecy that shrouds the tax affairs of the powerful multinationals ripping the country's wealth from the ground and giving little back in return.

**Kenmare Resources plc is an Irish mining company extracting mineral sands on the northern coast of Mozambique in Moma.** This report analyses the costs and benefits to Mozambique from this specific foreign investor, with a particular focus on the Kenmare group's tax payments. The authors of this report – the Centre for Public Integrity (CIP) and Eurodad – found that Kenmare was an interesting case for studying the benefits to Mozambique and its people from natural resource extraction because it was one of the first mining companies to invest in Mozambique. It started production six years ago. It should therefore start to yield benefits for Mozambique through fiscal contributions, employment and by stimulating the local economy. Lessons from this relatively small project are therefore a relevant illustration for the much larger investments yet to come in Mozambique.

**Kenmare also makes an interesting case because more than 80 per cent of the mine's loans are from development finance institutions.** They defend their loans based on the company's contribution to employment and infrastructure development. However, this report suggests that, while Kenmare has been praised for its social responsibility programme and takes active part in the Extractive Industries Transparency Initiative (EITI) in Mozambique, development benefits to Mozambique from its mine are minor. This report shows how tax subsidies, contract secrecy and vague laws prevent the country from taking full advantage of its natural resources.

The first part of the report, Chapters One and Two, sets out the context in which Kenmare operates. The second part, Chapters Three and Four, focuses on the Kenmare group and its creditors.

**Chapter One gives an introduction to Mozambique,** a highly aid-dependent country that is among the world's poorest, although it has considerable wealth stored in the ground in the form of coal, gas, minerals, semi precious stones and possibly oil. This chapter shows how international donors still influence Mozambican policies, often to the benefit of business in donor countries.

**Chapter Two provides background on Mozambican tax policies.** It shows how generous tax subsidies are granted to large-scale investors, often at the cost of small and medium-sized domestic enterprises. It shows how developing countries have lost trillions of dollars to illicit capital flight, and details challenges posed by the Mozambican tax collectors. The chapter also shows that companies' contracts with the government are secretly negotiated deals that should be opened up for public scrutiny and oversight, with bad deals renegotiated. New laws in the making only partly address the problem.



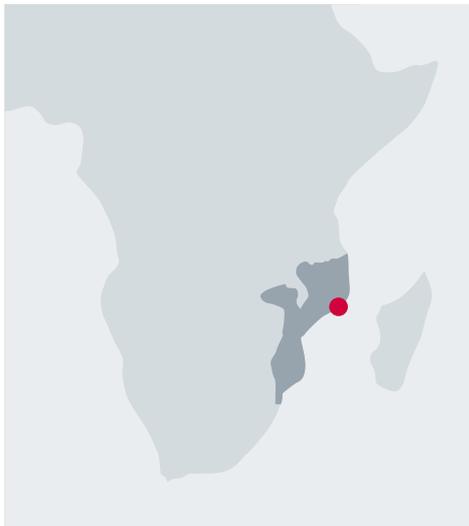
Increased revenues and profits, largely based on surging commodity prices, are not reflected in the company's tax payments.

**Chapter Three introduces Kenmare Resources plc and analyses costs and benefits to Mozambique and the local communities from the mine.** We examine Kenmare's tax payments and show how increased revenues and profits, largely based on surging commodity prices, are not reflected in the company's tax payments. We show how the tax subsidies granted by the Mozambican government allow a generous reduction in Kenmare's tax payments. We also set out the Kenmare group's company structure across five countries and show how this could potentially be used for legal, though morally unacceptable, tax avoidance.

Employment, procurement and infrastructure are also part of the cost-benefit analysis. So is Kenmare's corporate social responsibility (CSR) programme. The chapter also analyses negative impacts of the mine in the forms of resettlement, a gated road and environmental damage. Although negative risks are minimised and there are some positive developments on a very local level, Kenmare's financial contributions to the government and local communities are extraordinarily low when compared to the value of the non-renewable resources that are shipped out.

**Chapter Four shows that more than 80 per cent of the mine's investors are development finance institutions such as the European Investment Bank and the African Development Bank.** It sets out the reasons why they invest in Kenmare and argues for putting an end to the trend of supporting European companies that invest in developing countries on the basis of creating a few jobs and basic infrastructure while extracting non-renewable resources with only very low tax payments.

# Mozambique



## Growing economy, growing inequality

**Mozambique is a growing economy.** After gaining independence from Portuguese rule, Mozambique was swept by civil war for 16 years, until 1992. Since then Mozambique has managed to sustain one of the highest economic growth rates on the continent. In the face of global economic downturn and severe natural disasters, the country's economy continued to perform well, with an average growth rate of above seven per cent the last decade, though from a very low starting point.<sup>1</sup> This is well above the growth rate of Mozambique's peers in the region. According to the International Monetary Fund (IMF), "*Growth was broad-based, with agriculture, mining, transportation and communication and financial services registering the fastest expansion. Activity was also supported by strong exports and robust investment demand from megaprojects in the natural resource sector and the public sector.*"<sup>2</sup> In 2013, GDP growth is expected to rise to eight per cent.<sup>3</sup>

**Despite record high growth rates, inequality is increasing.** Government spending on basic public services is low. For example, public spending on education accounts for only five per cent of GDP. Expenditures on health

are even lower, accounting for 3.5 per cent of gross domestic product (GDP), which is demonstrated by low life expectancy and high prevalence of HIV/AIDS.<sup>4</sup> Mozambique is one of the world's poorest countries and ranks as number 185 of 187 on the UN Human Development Index,<sup>5</sup> while also being far behind meeting the Millennium Development Goals (MDGs). The UNDP measurement of human development in Mozambique falls with 33 percent when discounted for inequalities.<sup>6</sup> Unemployment and underemployment are serious problems, and, as shown by recent household surveys in the country, altogether Mozambique see the rich getting richer while the majority of citizens live in poverty.<sup>7</sup>

**The main target for the government of Mozambique is to reduce poverty, but results have been unsatisfactory.** The economy continues to be based on inefficient agricultural production, and services such as finance, transport and commerce rather than industrial activities. Although the vast majority of the population try to earn a living from agriculture, yields are among the lowest in the world.<sup>8</sup> Yet, according to the National Institute of Statistics (INE), "*in 2010 the contribution of agriculture for the GDP was 19.4 per cent against the 1.1 per cent of the extractive industry*".<sup>9</sup> Mega-projects in the extractive sector so far have had little effect in terms of job creation, and their links with other economic activities have so far been very limited.

**Public debate in Mozambique is increasingly recognising that economic growth has no automatic impact on poverty alleviation, but has a potential to benefit the many if taking place within a framework that ensures the poorest benefit through targeted spending and redistribution of resources.** At a 2012 conference, the Mozambican government identified employment creation and economic transformation, transparency and accountability of the extractive industries, taxation and state-building to be the key ingredients of a framework that can deliver

equitable growth for poverty reduction.<sup>10</sup> The questions of growth and inequality relate strongly to economic development from natural resource extraction, and this report shows that the fiscal regime in particular far from ensures maximum outcome for Mozambicans.

## Natural resources: a game changer?

**Mozambique is endowed with large natural resources, and has become an increasingly popular destination for foreign investments in the extractives sector.** The country has one of the world's largest unexploited coal reserves, as well as mineral sands and semi-precious stones. Recent discoveries of new natural gas reserves suggest that Mozambique has the fourth largest reserves in the world and could become a leading player in international energy markets.<sup>11</sup> Oil exploration efforts are also ongoing in the northern part of the country. In 2012 alone the Mozambican government approved 384 new investment projects worth a total of US\$5 billion. The figure is expected to double in 2013.<sup>12</sup> Yet, the majority of natural resources are still not exploited.

**Mozambique also has considerable ilmenite deposits, in addition to rutile and zircon, potentially worth between US\$37.6 billion and US\$124.6 billion.** On Kenmare's website we can learn that "*The total resource (excluding reserves) held by Kenmare at the mine at 31 December 2011 is approximately 180 million tonnes of ilmenite, 12 million tonnes of zircon and 4 million tonnes of rutile.*"<sup>13</sup> On top of this come reserves of approximately 26 million tonnes of ilmenite, 1.8 million tonnes of zircon and 0.55 million tonnes of rutile.<sup>14</sup> Fluctuating market prices and the unknown quality of some resources make it impossible to estimate their real value. However an extrapolation from 2010-2011 prices can give a reasonable estimate. If applying an average of 2010-2011 prices to the estimated total amount of mineral resources and reserves at Moma, we reach a total of US\$81 billion in export revenue from the Moma mine.<sup>15</sup>



Despite record high growth rates, inequality is increasing.

**Expectations are high that the wealth of minerals, oil, gas and precious stones will be turned into health care, education, infrastructure and employment and in a rapid fashion contribute to increasing the living standards of the people of Mozambique.** The potential is surely there. With solid management, Mozambique can be a story of success and a country to look to. Nevertheless, it will not come automatically, and sadly there are too many examples of countries in which natural resource extraction does not benefit the many and may have caused more harm than good. Mozambique is still at an early stage in extraction and management building and still has time to get it right.

### Aid dependency and the role of foreign donors

**Mozambique relies heavily on donor support despite government efforts to reduce aid dependency.** More than 60 bilateral and multilateral donors are present in the country, and around 150 international non-governmental organisations (NGOs) are implementing development projects.<sup>22</sup> Aid as part of the state budget is however decreasing. While in 2008 aid accounted for 56 per cent of Mozambique's state budget, in

2012 the figure was estimated to decrease to 40 per cent.<sup>23</sup>

**While foreign aid has been and still is a crucial source of revenue, the heavy dependency on donors' assistance and priorities has also affected the country's ability to exercise sovereign decision making.** In the context of a strong state heavily dependent on foreign aid, donors, particularly the Bretton Woods Institutions, have had a strong say when government policies have been formed. Several sources within and outside the government highlighted the role of foreign donors in pushing Mozambique onto a policy path where attracting foreign investments is the core strategy for economic growth, without enough attention paid to how investments are made and who benefits from the growth.

**Mozambique's experience with two decades of one-sided policies to attract foreign investors, seemingly without a sufficient view to what growth those investors bring and to what price, raises serious concerns.** While private investments are key for job creation and economic and social development, their impact depends on what kind of private investments and under what laws and regulations. In the area of

natural resource extraction it is particularly important to bear in mind that these are non-renewable resources. In the case of Kenmare, once the minerals are extracted from the sand and shipped out of the port at Moma, the resources are gone. Foreign investments in the extractives sector can be translated into important and lasting benefits for the people of the host country, but long lasting positive results require enforcement of high standards to prevent negative impacts on the environment and the people; positive linkages through good jobs, markets for local small and medium size enterprises; and, most importantly, tax revenues for the government to invest for the future. As this report shows, in the case of Mozambique and in the particular case of Kenmare that potential is not unleashed.

**Mozambique's tax system is also a result of heavy donor influence, as is the case in many developing countries.** Sources within and outside the Mozambican government went 20 years back in time when asked about factors that have influenced the tax system in Mozambique. One non-governmental source said. *"You have to remember that 20 years ago, Mozambique was just exiting a devastating civil war, the country was a one-party communist regime*



Public debate in Mozambique is increasingly recognising that economic growth has no automatic impact on poverty alleviation, but has a potential to benefit the many.

### The risk of wealth

**The ongoing and forthcoming boom of foreign investments is creating high expectations of short- and long-term prosperity among the people of Mozambique.** Although extracting natural resources can provide an unprecedented opportunity for poverty alleviation and social development for Mozambique, there are serious threats to be dealt with. While a few African countries such as Botswana have positive experiences in converting natural resources into a sustainable and relatively equitable growth path, there are more examples of countries that have fallen into the so-called resource curse. Nigeria is a telling example. From 1970 to 2000 GDP per capita fell in real terms, and poverty levels doubled, from 36 to 70 per cent, despite around US\$350 billion in oil revenue raised over the same period.<sup>16</sup> Numerous countries in Africa and around the world have had similar experiences of

increased poverty and inequality despite their natural resources.

**The risk of entering the path of resource curse can be broken down to three main components: price volatility, Dutch disease and the quality of institutions.** A 2012 paper by the Mozambican Confederation of Business Associations shows that all of these factors are present in the country.<sup>17</sup> The increased dependency on coal and gas export as opposed to aluminium increase the risk of price volatility. The study argues that *"one of Mozambique's key vulnerabilities in the coming resource boom will be sensitivity of the real exchange rate to commodity price shocks,"* and highlight that while this has been partly the case until now, the risk is likely to increase significantly when the biggest component of exports moves from aluminium – for which the market price is relatively stable – towards the much more volatile coal and gas.

Regarding institutions, the study says *"The fact that government effectiveness, corruption and rule of law continue to be the weakest areas is worrying because (...) resource exports like coal and gas are problems for countries lacking strong institutional capability."* It concludes, *"The ability to absorb a large resource windfall is extremely limited in the short- to medium-run."*<sup>18</sup>

**Exports and fiscal revenues from the extractive industries are expected to rise significantly over the next decade.** Since many projects are in an exploration and investment phase they have not yet started production and exports, which means fiscal contributions are low. Moreover several investors benefit from tax exemptions granted for the first years of production. As projects mature, tax exemptions will be phased out and these companies' tax obligations will increase.

with no infrastructure for development. When Mozambique became a member of the World Bank one of the conditions was that it created a so-called favourable business environment. This was the beginning of a tax system favouring private investments, and the beginning of the Centre for Private Investments.”

**Although external donors still have a role to play in Mozambican policies, they are becoming less powerful.** Donors in Mozambique are now openly discussing that they have a policy window for the next five years to still influence the government, expecting that in some years from now the income from extractive industries will mean the government is almost independent from donor power.

**At the same time there has been a clear shift in the IMF’s influence on tax policy matters across Africa, and the institution is recognising the importance of raising revenues domestically through taxation.**<sup>24</sup> It is however worth mentioning that despite this positive change towards less policy conditionality and tax policy influence, the IMF continues to play a strong role in the development of developing countries’ tax policies. Raising VAT continues to be the

default advice, and in the area of natural resource management the IMF takes active part in the development and drafting of new laws. In 2012, the IMF organised three missions to Mozambique in less than six months. The missions included assisting in the drafting of and donor and private sector consultations for the new mining and petroleum laws. This is an unusually high frequency of IMF missions.

**The seeming decrease in donor influence should be seen in relation to changing aid policies and architecture.** Large changes are emerging following the economic, financial and fiscal crisis in many donor countries. The crisis has further accelerated traditional donors’ use of the private sector in development. Foreign direct investment plays an increasingly dominating role in development policies, especially in resource rich countries such as Mozambique.<sup>25</sup> This report highlights one example of how an Irish investor in Mozambique’s mining sector is supported by several publically backed development finance institutions. Moreover new partners such as China, India and Brazil considerably change the development aid picture. Mozambique feels the effects of all these changes.

While in 2009-2011 official development assistance (ODA) to the country has been stagnant, net private flows to Mozambique increased from US\$43 to US\$865 million.<sup>26</sup> The increase in Foreign Direct Investment (FDI) in natural resources and extractive economy investment is dramatic. Chinese investments are also increasing, paying much less attention to social and environmental standards in their investments. In parallel the extractives economy is growing, showing signs of increasing emphasis on state actors, including public enterprises.

**The private turn of aid comes with a continued push to create a so-called favourable business environment that opens up for foreign investors.** The combined effect of emerging countries’ interests in the region and the large deposits of unexploited non-renewable natural resources underscores the urgency of getting in place strong policies for regulating private investments and ensuring that profits are not shipped out of the country, but that revenues from the resources benefit their right owners; the people of Mozambique.



While private investments are key for job creation and economic and social development, their impact depends on what kind of private investments and under what laws and regulations.

### **A one-party democracy; blurred lines between politics and business**

**Mozambique’s recent history has been dominated by strong colonial rule and a strong state, a system that also affects politics and business to date.** After the country gained independence from Portugal in 1975, it was ruled for many years by the socialist Frelimo party. The country suffered a 16-year civil war which ended in 1992, when Frelimo and the opposition party Renamo signed a peace agreement leading to the first multiparty elections in 1994.

**Although there have been regular multiparty elections for almost two decades, elections have been characterised by irregularities and fraud and Mozambique is dominated by one party, Frelimo.** The party has formally won all presidential elections since the first multiparty election in 1994, although

particularly in the elections of 1999 its victory was highly questioned.<sup>19</sup> The dominance of the ruling party blurs the de facto separation of powers between the three branches of government, and the president is the key actor of the political system. The strong power of the president and his party also affects business relations, where the political elite has strong interests as well as power.

**Institutional weaknesses and an excessive party discipline pose challenges to the parliament and administrative court in their roles of monitoring a strong government.** In this context it is positive that some civil society organisations such as the Centro de Integridade Pública (CIP) and Instituto de Estudos Sociais e Económicos (IESE), have developed powerful work from research to advocacy, including at the Extractive Industry Transparency Initiative Multi-Stakeholder Group.<sup>20</sup>

**Lack of concrete responses from the government to people’s needs and expectations has led to social tension.** According to Bertelsmann Stiftung (BTI) “...the omnipresence of the ruling Frelimo party, which claims to be the entire people and the legitimate representative of the people’s aspirations, has caused a concomitant rise in popular expectations with regard to the central government. The government, however, has not matched its social programs with its lofty rhetoric.”<sup>21</sup> The public disappointment about the high cost of living was highly manifested in a social eruption in February 2008 and September 2010, showing distrust in the police, judiciary and the state administration, which invited the state machinery to rethink its strategies to address the basic needs of the Mozambicans.

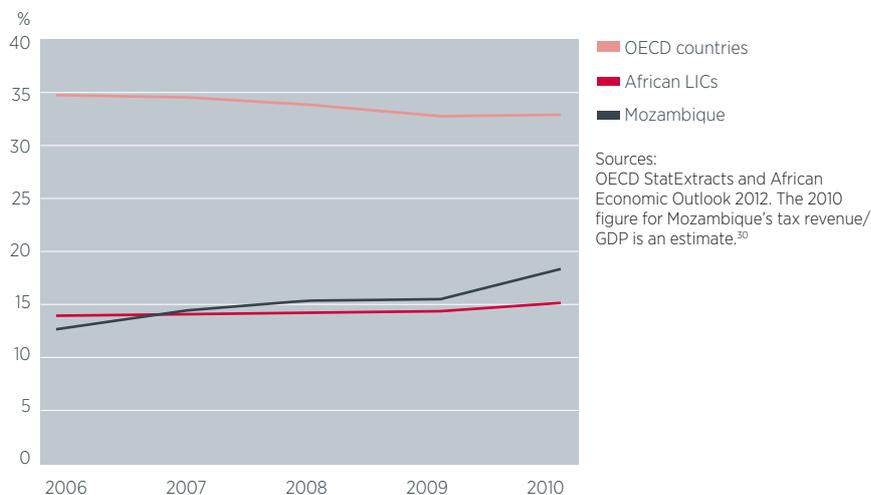
# Paying taxes in Mozambique

**Tax revenues represent an enormous potential for development.** While OECD countries had an average tax to GDP ratio of 33.7 per cent in 2010,<sup>27</sup> the average for African low-income countries (LIC) was 15.1 per cent.<sup>28</sup> Mozambique's share of taxes to GDP was estimated to rise from 15.6 per cent in 2009 to 19.1 per cent in 2010, rising above the African LIC average. The sharp increase in Mozambique's tax to GDP ratio follows reforms in the tax administration, including strengthening of the Large Tax Payers' division under which Kenmare falls.<sup>29</sup> Increased tax revenues represent increased finances available to invest in social services and other pro-poor measures.

**Tax revenue is not only crucial for raising sorely needed domestic revenues to finance basic needs for people worldwide, it also helps hold politicians accountable to their taxpayers, rather than towards donors and international organisations.** When paying taxes, people expect to get something back from the government in terms of social services and transparency on how the money is spent. This is however also true for corporations, and in the context of natural resource taxes, taxpayers are the large-scale investors as well as any business created by the large investments. Hence the ties between government and large-scale taxpayers may be further strengthened, a situation which in the worst case can undermine democracy by strengthening the influence of corporations rather than citizens. In this context an educated population and an active and independent media become crucial. In Mozambique, NGOs, media and academics have started an important public debate about the use of income from natural resource extraction, openly criticising the government for not being transparent and accountable to the people.

**Tax revenue and tax systems can be efficient tools for making growth and development inclusive.** While growth measures tend to focus on GDP growth, too little attention is paid to who benefits from it.

## Tax revenues / GDP



Mozambique is a telling example. While GDP growth has been booming over the last few years, inequality is also increasing. Increased tax revenues can alter this if they support pro-poor policies. Moreover, who pays the tax also impacts on inequality. Ensuring that large companies pay tax can help reduce the burden on citizens. In this context it is remarkable that in the case of Kenmare, in 2009-2011 aggregate personal income tax paid by employees is 2.5 times higher than the aggregate tax payments by the company group.<sup>31</sup>

**With foreign investors lining up to invest in the country's natural resources, Mozambique has a great potential to significantly increase its domestic resources through taxation.** In 2010, extractive industries contributed only 1.1 per cent to Mozambique's GDP;<sup>32</sup> however larger fiscal revenues are expected from some 5-10 years from now. The potential is big, but significant fiscal revenue from natural resource extraction requires a tax system that forces companies to pay their fair share, and policies that efficiently distributes revenues to ensure they benefit the many by contributing to poverty alleviation.

## Who pays taxes?<sup>39</sup>

**The largest part of tax payments to the Mozambican state comes from Value Added Taxes (VAT).** In 2009 VAT contributed 6.2 per cent of GDP, more than personal and corporate income taxes combined.<sup>40</sup> While VAT is a regressive tax, there are exemptions for certain basic goods. However, it is not only basic consumption goods that are exempt from VAT. In Mozambique, mega-projects are also exempt from paying VAT on certain goods. This is one of the many tax benefits the government grants to foreign investors to attract investments. Kenmare is one of the companies with VAT exemptions.

**The second largest tax base in Mozambique is direct taxes on individuals' income and companies' profits.**<sup>41</sup> Contributions from individuals used to be the higher of these two, but revenues from individuals' income and companies' profit have equalled out over the last few years. 2009 was the first year when companies in sum contributed more to fiscal revenues than individual tax payers. Contributions from corporations have increased from 0.9 per cent of GDP in 2005, to 2.6 per cent in 2009. This is partly due to efforts by the Mozambican Tax Authority



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## Billions lost to tax dodging in extractive industries

**Illicit capital flight has been estimated to cost developing countries US\$5.86 trillion from 2001-2010, according to Global Financial Integrity.** They estimate corporate trade mispricing to account for 80 percent of these flows. The Global South is estimated to have lost US\$859 billion in illicit outflows in 2010 alone, an increase of 11 per cent over 2009.<sup>33</sup> It is illustrative that the amount of illicit financial flows leaving developing countries every year is estimated to be many times greater than the amount of money the same countries receive in development aid.

**If countries could start to recover their untaxed wealth, it could have an enormous development impact.** According to the Tax Justice Network (TJN), the world's rich have channelled US\$21-32 trillion of untaxed wealth through secrecy jurisdictions. Out of this about 25-30 per cent is from developing

countries, some US\$5.3 – 9.6 trillion. TJN estimates that developing countries probably lose as much every year from the lost tax on the interest this produces as they lose to capital flight.<sup>34</sup> Christian Aid research shows that, “*since the United Nations Millennium Development Goals were set in 2000, the developing world has lost an estimated US\$160 billion a year in tax revenues as a result of transfer mispricing within transnational corporations and false invoicing between business accomplices.*” Christian Aid estimates that these revenues lost to tax evasion would be enough to save 1000 children a day if it was supplemented to developing countries’ budgets without any change in spending priority.<sup>35</sup>

**Extractive industries are the source of significant amounts of lost revenues for development.** Looking at Mozambique, while the extractives sector represented 10 percent of the country’s exports in 2010,<sup>36</sup> it contributed 3.3 percent of total tax revenues<sup>37</sup> and only 1.1 percent of GDP.<sup>38</sup> There are several reasons for this.

Mozambique is at a kick-off phase where huge projects in coal and gas will start production in the coming years. Under the current fiscal regime mega-projects are not expected to contribute significant taxes until they start producing. However tax payments must be expected to rise significantly over the next few years as the projects start production.

**The potential for future fiscal revenues from the extractive industries would be significantly higher if fiscal incentives were to be abandoned and if tax dodging loopholes were closed.** One challenge mobilising more tax revenues from the sector is found in mining and petroleum companies’ tax planning for legally or illegally dodging taxes. Other reasons for low revenues are found in Mozambique’s tax system. The fiscal system effectively allows large companies to extract and export the country’s natural resources paying hardly any taxes; a system largely created by international donors over the past two decades.

(ATM), which was established in 2006. In the case of Kenmare, after six years of production, taxes paid by employees working at Kenmare still greatly exceed total taxes paid by the company itself.

**The corporate tax rate in Mozambique is 32 per cent. This is higher than several OECD countries and in line with other low-income countries. There are however several exceptions to these rates.** Kenmare is one company benefitting from exemptions to the rule. The subsidiary Kenmare Moma Mining has a 50 per cent reduction in the corporate tax in the first ten years of production.<sup>42</sup> However, when it starts paying full corporate taxes it will have to pay 35 per cent as this was the rate at the time their fiscal regime was established. Companies in specific sectors and geographical areas benefit from extra incentives. In a report analysing the tax systems of Mozambique, Tanzania and Zambia, CMI finds a recurring challenge for mobilising domestic resources: “*The corporate income tax regime is challenged in all three countries due to substantial tax-base narrowing, mainly through tax exemptions and the provision of tax holidays*

*in Investment Codes and Free Zones.*”<sup>43</sup> The authors particularly highlight the Rapid Development Zones and Industrial Free Zones in Mozambique, from which Kenmare also benefits. Kenmare Moma Processing will only pay 1 per cent revenue tax after six years of production. We take a closer look at Kenmare’s tax payments in the chapter “*What Kenmare pays back*” of this report. Moreover, laws and investment contracts allow companies to do their accounts in ways that minimise the tax base, including carrying forward losses and favourable deduction regulations. Both these methods makes it easy for companies to reduce their profit and hence their taxable income.

**The third group of taxes are trading taxes; customs duties levied at the border.** While having a considerable potential for income generation, these are currently less significant for revenue mobilisation. Trading taxes are of relevance when discussing foreign investors’ contribution to the host country, particularly in sectors where large input factors are imported such as in the case of Kenmare. Following liberalisation policies across the African continent, trade

taxes have declined as share of GDP over the last decade, particularly in middle-income countries. In Mozambique the share of trade taxes to GDP has remained relatively stable at around 1.8 per cent. As is the case in several African countries, export taxes have been abolished in Mozambique. While import duties are still in place, they are not levied on goods imported for the purposes of exploration, development and mining for goods that are unavailable in Mozambique.

## Disfavouring domestic small and medium size enterprises

**Worryingly for the development of a sound private sector in Mozambique, the tax system favours large companies at the cost of domestic small and medium sized businesses.** According to an AFRODAD report, the Mozambican private sector is worried about high taxes and high transaction costs of complying with tax requirements, including corruption among tax officials, double taxation on dividends and delays of VAT refunds.<sup>44</sup> The report also shows how benefits granted to big investors is of dis-benefit to domestic small



It is not only basic consumption goods that are exempt from VAT. In Mozambique, mega-projects are also exempt from paying VAT on certain goods.



These should not be called tax incentives. These should be called tax subsidies. When the corporate income tax is halved, this means that the state pays subsidies to the company.

and medium sized enterprises: *"The private sector also claims that small and medium enterprises as well as long time established companies are penalised because they cannot benefit from tax benefits provided to mega-projects and newly established companies. Mega-projects, they say, do not create positive externalities within the country as they have free access to imports, are capital intensive and do not contribute to domestic income in the first years of their existence due to tax benefits."*<sup>45</sup>

### Tax subsidies in non-renewable resource extraction

**The mining and petroleum sectors are expected to be so central to Mozambique's economic future that they have a separate fiscal regime.**<sup>46</sup> While the list of specific taxes on mining activities is relatively long, the list of exemptions is even longer. Special taxes include mineral royalty, surface tax, license on concessions, taxes on profits (corporate income tax) and dividends from government shareholdings.<sup>47</sup> Mozambique complies with EITI and hence publishes payments made by companies in the extractive industries sector under each of these taxes.

**The fiscal regime for large investors in Mozambique is currently so generous that one can even question if aggressive tax planning is necessary to minimise taxes.**<sup>48</sup>

A non-governmental interviewee said, *"these should not be called tax incentives. These should be called tax subsidies. When the corporate income tax is halved, this means that the state pays subsidies to the company."*

**The reasoning behind the tax incentives was to attract foreign investors.** As one of the poorest countries in the world with low levels of education, low production capacity and enormous gaps in physical and financial infrastructure, Mozambique gave generous tax benefits as carrots for foreign investors. International donors also largely pushed this development.

**While there are ongoing discussions of the utility of tax incentives, there is seemingly an agreement that tax exemptions are currently too generous.** International organisations behind the African Economic Outlook urge a revision of taxation of natural resource extraction and mega-projects in Mozambique. They estimate that *"currently, revenues from these activities represent roughly 5% of company profits due to fiscal exemptions and benefits. If the fiscal regime were fully applied the figure would rise to 30%."*<sup>49</sup> This would evidently provide much needed resources that can be fuelled into pro-poor spending, such as on health and education. Sources within the tax administration also agreed with the notion that fiscal benefits, particularly for early investors such as Kenmare, are too generous.

The BPI Bank is another actor speaking up in favour of less tax benefits: *"It should be recognised that the initial circumstances that were behind the favourable conditions obtained by international investors in the so-called mega-projects – on account of high economic and political risk – are no longer in place, as Mozambique has already a tracking record of economic stability and success in policy implementation."*<sup>50</sup> BPI suggests

that mega-projects should be taxed at a higher rate as to *"contribute to meet social, economic and human development needs of the country"*.<sup>51</sup>

### The devil is in the detail – which is in a secret contract

**According to sources within the tax authorities, one of the main challenges with the laws governing the fiscal regime of foreign investors is the lack of clarity regarding interpretation of the laws.**

Existing laws provide a broad scope for interpretation and hence complicate tax authorities' enforcement abilities. Several government officials interviewed for this report underlined that contract negotiations seem more important for determining the tax base than the actual law. *"The main challenge is that the law is not detailed enough, and the details of the fiscal regime are stated in the contract,"* one government official said. Contracts between the government and foreign investors are not open to the public; hence details of the prevailing fiscal regimes are secret, posing a range of challenges for tax collection and accountability.

### Secret contracts and individual negotiations

**Individually negotiated mining contracts, which set out the detailed fiscal regime of each company, are shrouded in secrecy.**

Although the laws applicable at the time of signing the contract provide the legal framework, the details of companies' fiscal regimes are spelled out in each individual contract. This has been confirmed by sources



The corporate income tax regime is challenged in all three countries due to substantial tax-base narrowing, mainly through tax exemptions and the provision of tax holidays in Investment Codes and Free Zones.



The main challenge is that the law is not detailed enough, and the details of the fiscal regime are stated in the contract.

both within and outside the government. Not even local and regional authorities always have access to contracts, although these documents set out the basis for tax collection from investors in their areas. This poses obvious challenges for tax collection and accountability. Moreover, unknown fiscal regimes in secret contracts prevent media, civil society organisations (CSO), academics and other members of the public from scrutinising the deals made. This also poses accountability challenges. Secretly negotiated individual contracts moreover provide an opportunity for corruption.

**It is encouraging that some of the companies in question would be amenable to disclosing the tax regime as set out in their contracts or other documents currently kept secret.**

On request from civil society representatives at the EITI committee, companies in the mining and petroleum sectors were asked the following question: *“If the company has signed a contract with the Mozambican State in which a special tax regime has been granted or if it has any document that attributes a special tax regime, namely, terms of authorization of the investment project, would you be available to disclose such tax regime in the next reconciliation report?”*<sup>52</sup> Six companies said yes, seven companies said no, while eight companies said they had no special regime. Ten companies did not reply to the question. Although a minority of the companies answered affirmative, changing attitudes may lead to a change in contract transparency if public demand continues.

### **Calling for the government to renegotiate contracts**

**Despite contracts being secret, it is known that they often give investors a good deal at the cost of Mozambican citizens and small taxpayers.**

The contracts have been subject to increasing debate in the Mozambican public arena over the last years, and there is a strong call for contracts to be renegotiated. It is not just civil society organisations and academics that have raised their voices demanding that contracts are opened for public scrutiny and need to be renegotiated if it turns out they are bad deals for the people of Mozambique. Stakeholders outside the usual suspects have also publicly supported the demand of renegotiating contracts between the Mozambican government and mining companies that benefit from generous fiscal subsidies.

The Governor of the Central Bank, as well as sources within the World Bank, have come out in support of demands for renegotiation. In a 2010 report, the World Bank claimed that Mozambique’s continued tax breaks to large projects were “unjustifiable” as *“the investment climate for large projects has improved significantly since the 1990s”*. The report says about large investment projects that *“in general, they have created few jobs and pay low taxes thanks to generous tax breaks,”* and that the tax breaks are to the disadvantage of small investors.<sup>53</sup> The former Prime Minister of Mozambique Luisa Diogo said that large companies, *“know what is happening in the world and we also have to show that we know what is going on. They do the maths, and so do we. This means*

*there is space to negotiate and make the necessary changes.”*<sup>54</sup> In December 2012, Mozambican media reported that Mozambique’s Finance Minister Manuel Chang said that *“the government has set up a technical team that is checking all the contracts that were signed in the past to see which will be renegotiated”*.<sup>55</sup>

### **Discovering tax dodging: a challenge for the tax authorities**

**Officials within the tax authorities interviewed for this research confirmed that transfer mispricing in particular is a major challenge and pointed to two main obstacles: vague laws and challenges of data verification.**

First, although Mozambican mining law has a separate paragraph on transfer pricing, the text is vague and provides companies with large scope for interpretation. Second, the inability of the tax authorities to verify data on which tax calculations are based is a main obstacle for detecting and hindering transfer mispricing. This is particularly challenging when it comes to the sales of products for which there is no standard price, as is the case with the minerals that Kenmare extracts in Moma. Interviewees outside and within the government also highlighted that the government relies on data provided by the company.

**How to value exported goods is one area with excessive room for interpretation, according to governmental and non-governmental interviewees.** The law goes far in empowering investors to provide the government with the value of their



International organisations behind the African Economic Outlook urge a revision of taxation of natural resource extraction and mega-projects in Mozambique.

exported goods, largely leaving it to investors to calculate their own tax base. The Mozambican NGO and co-producer of this report, CIP, concludes that, *“the government does not have instruments of its own to know the quality and quantity of minerals extracted, the sales price (particularly on futures markets), operational costs, etc.”*<sup>56</sup>

In its report calling for contract transparency and renegotiation CIP argues the following:

*“According to article 7 of Law no. 11/2007 of 27 June, ‘the value of the quantity of mineral product extracted is determined by taking as the base the value of the sale made, when the mineral product extracted has been sold in the month that corresponds to the tax to be paid. As for the mineral product extracted in this month, but not sold, it is assessed in accordance with the price of the last sale made by the taxpayer’. On the other hand, the same article states that ‘if there are no sales, the market price should be taken as the base for determining the value of the quantity of mineral product extracted’, which leads one to conclude that the market price is only used in the last resort.*

*By acting in this way the government, through incapacity or incompetence, is granting important powers over non-renewable strategic resources to the extractive companies. As Castel-Branco (2011) notes, the Mozambican state loses twice: with the (unnecessary) fiscal incentives that it gives to multinationals, and with the under-valuation of wealth. Since the value of the mineral resources is based on the sales value declared by the extracting companies, the latter has full freedom to define the value, that is, the price of the mineral resources, and consequently to influence the profit tax and the royalties.”*<sup>57</sup>

**Another area of concern is the lack of resources within the government at national, regional and local level, which makes it highly dependent on goodwill from the company in order to carry out its work.** While the will to cooperate seems to be high, lack of economic and human resources, including technical knowledge about a highly complex area of work, makes it challenging for tax authorities and other parts of the government to carry out essential checks.

**In the case of Kenmare, one example is the presence of Mozambican customs at the mine.** The Moma Mine operates its own harbour to export extracted minerals. Two officials working shifts operate the customs, and they both live on the Kenmare site together with Kenmare workers. Moreover, customs do not have their own vehicles, but use Kenmare’s cars and boats in their duty. This illustrates the high level of dependency to carry out work that is crucial for controls and for the state’s revenue collection. Another example not directly related to tax collection was put forward by a Kenmare representative: while it is the government’s duty to carry out environmental audits of the company, Kenmare needs to organise and pay the travel expenses of the auditing team in order for them to carry out their work.

### **New laws in the making only partly respond to the problem**

**Mozambique is about to finalise the renewal of the mining and petroleum laws, including fiscal regimes for these sectors.** The country’s poverty reduction strategy paper (PARPA in Portuguese) sets out a policy vision for the tax system. The vision aims at increasing domestic resource

mobilisation as a percentage of GDP and at the same time reduce aid dependency. The revisions of the fiscal laws are part of this strategy, which includes the following measure: *“Simplified taxation regimes will be reviewed, the effectiveness of tax and investment incentives will be evaluated.”*<sup>58</sup> It is crucial and urgent that Mozambique reviews its fiscal code to plug the loopholes that allow companies to export Mozambique’s natural resources, leaving only minimal tax payments. A solid legal framework that is fully and transparently implemented can secure revenues sorely needed by millions of Mozambican citizens.

**One major weakness with the revision is that the new laws will not apply to existing projects.** While a certain legal predictability is necessary for investors, this also means that companies like Kenmare that signed their contracts prior to the revised laws still operate within the framework of the generous benefits granted in secrecy at the time of the contract negotiation. Early investors such as Kenmare negotiated their contracts with the Mozambican government at a time that was particularly favourable to companies. Mozambique was recovering from a civil war and strongly dependent on goodwill from international donors who in turn wanted favourable conditions for foreign investors. As set out above, there is increasing support for renegotiation of the early contracts signed between investors and the Mozambican government.



It is crucial and urgent that Mozambique reviews its fiscal code to plug the loopholes that allow companies to export Mozambique’s natural resources, leaving only minimal tax payments.

## Transparency of the extractive industries management

The Extractive Industries Transparency Initiative (EITI) aims at promoting revenue transparency in the extractive industries and gathers governments, companies, civil society groups, investors and international organisations. EITI represents a recognition of the importance of transparency and accountability in the extractives sector, and the information published under the initiative is an important step towards more public scrutiny of companies' payments to governments.

Mozambique was admitted as a candidate for EITI in 2009, and in February 2011 it published its first report setting out and comparing the extractive industry's payments to the Mozambican government and the government's revenues from the extractives sector for the year 2008. Two new reports were produced in 2012, and after addressing the shortcomings identified Mozambique was declared EITI compliant in October 2012. While this is a positive step, the way EITI is currently designed and implemented does not respond to

main concerns raised by Mozambican civil society, which fears that the EITI acceptance stamp carries with it higher marks for business transparency than the country deserves.

Although EITI implementation has improved transparency around companies' payments to government, the initiative and its requirements have severe limitations as regards transparency around tax payments:

- EITI only requires information regarding payments to the government. In Mozambique there is no information available on the companies' payment obligations. Public scrutiny of whether companies actually pay and the government actually collects what they are supposed to collect is therefore not possible.
- EITI reports do not publish information regarding production and export volumes and corresponding valuation of extracted and exported resources. This information is important to assess whether companies' payments made to the government are reasonable

compared to the value extracted.

- EITI does not require that contracts between the government and companies searching for or extracting natural resources are made public. This is a severe limitation since details regarding fiscal regimes and other company obligations and government benefits are set out in the contracts.

The EITI approach to tax payments so far shows little evidence of trying to promote real change in the management of the extractives sector and may thwart the expectations held by Mozambican people as to the initiative itself. CSOs in Mozambique particularly question to what extent the government, which has now achieved the "approval stamp", will have sufficient incentives to move forward from a process involving the mere publication of payments and revenues to a situation of transparency that would allow the public to scrutinise public contracts, and whether the government collects and receives what it should and could receive for the extraction of the country's non-renewable natural resources.<sup>59</sup>

Moma: A mountain of sand is left where local communities used to grow cassava. See chapter on the negative impacts of the mine.



## Section 2

# Case: Kenmare

**Kenmare Resources plc is an Irish company group whose productive activity is mining and processing of mineral sands in Moma, on the northern coast of Mozambique.**

Kenmare presents an interesting case for a cost-benefit analysis because it is one of the few mining companies in the country that has already carried out production for a number of years, and should therefore be starting to yield benefits for Mozambique. Lessons from this project are therefore important for the much larger investments yet to come in Mozambique.

**The Kenmare Moma Mine is situated a 4-5 hour drive from the province capital Nampula, in one of Mozambique's most underdeveloped provinces.** The area is sparsely inhabited and people mostly live from substance agriculture and fishing. The mine licence area is spread over the homeland of 12 communities.

**Kenmare entered Mozambique in 1987 to explore mining opportunities.** In 2002 the company signed two documents with the government of Mozambique: a modified mineral licensing agreement and an implementation agreement covering the processing and export aspects of the project.<sup>60</sup> In October 2007 the president of Mozambique, Armando Guebuza, officially opened the mine, and in December the same year Kenmare exported the first minerals extracted from the sand in Moma.<sup>61</sup> The main export product is ilmenite, which is used for plastic and painting. The second product is zircon, which is a mineral used for construction. The third mineral that Kenmare extracts is rutile, which is used in the construction of airplanes.

**When Kenmare first started operating in Mozambique, they were among the first foreign investors in the country.** Facilities for private sector investments such as infrastructure, public administration and banking sector were low or absent. Kenmare takes pride in having played a key role in attracting further foreign investments to the country by showing that investing in Mozambique was indeed possible and even profitable.

**While it is right that Kenmare was one of the key investors paving the way for other foreign investors in Mozambique, the benefits to Mozambique and its people from the rush of foreign investments are questionable.** The lack of facilities and infrastructure for private sector investments also included weak regulatory measures and laws full of loopholes. Largely driven by conditions and policy advice from multilateral donors and the government's ambition to attract large investments, Mozambique established investment policies and a legal system that favoured foreign investors, at a cost to local businesses and the people of Mozambique. Kenmare is one of the companies that benefit from this system.

**Company group: eight subsidiaries, one mine**

**Kenmare's activities beyond extracting and processing minerals from Moma are minimal.** Yet, Kenmare Resources plc consists of eight different companies forming the Kenmare group. The subsidiaries are fully owned by Kenmare. Only two of these companies have an active production role; Kenmare Moma Mining and Kenmare Moma Processing. Both companies are based in Mauritius and operate as branches in Mozambique. Four other Kenmare subsidiaries are based in Jersey. Mauritius and Jersey are well known tax havens: safe places for anyone who wants to hide their profits or simply benefit from the low tax rates or taxation agreements with other governments. The two secrecy jurisdictions never hosted any employees for Kenmare; they serve only managerial purposes.<sup>64</sup> The company group is registered at the London Stock Exchange and the Irish Stock Exchange.

**According to Kenmare there are good reasons for registering the subsidiaries in two tax havens.** The Jersey based companies were there before Kenmare invested in Moma. When the Moma project was about to end its exploration phase, Kenmare intensified its search for investors. The African Development Bank (AfDB) was one of the potential investors, though only on the condition that the company registered

in an African jurisdiction. Rather than using Congolone Heavy Minerals Ltd, which was set up in Jersey to run the Moma mine, Kenmare established Kenmare Moma Processing Ltd and Kenmare Moma Mining Ltd in Mauritius. According to Kenmare, the Mozambican government consented to the registration in Mauritius.<sup>65</sup>

Out of the four Jersey registered subsidiaries, only one currently has an active role: Congolone Heavy Minerals Ltd, which helps to raise funds for Moma. Kenmare has yet to pay a dividend to its shareholders, but when it does so, it will be from profits earned in Mozambique that have flowed through Mauritius and Jersey before arriving at the Irish parent.<sup>66</sup>

**It is fair to say that any investor who wanted to base its company in Mozambique at the time of Kenmare's initial investment would have had to take a high risk.** The country was still heavily marked by the civil war, was politically unstable and lacked key institutions to facilitate foreign as well as domestic investment. The area where the Moma mine is situated is extremely remote; there was no water or electricity infrastructure and only scarce road facilities. Investors took a risk, and although less risky to be registered in Mauritius with highly developed registration facilities including favourable tax regulations, investors have yet to be paid any dividends for their investments, though some have benefitted through increases in share prices, and the mine has started to yield considerable profits over the last two years

**Having several tax haven subsidiaries for one single operation is, unfortunately, common practice.** There are both tax and non-tax reasons for such a structure. Kenmare's statements to Eurodad indicate a combination of the two. Whatever the motivation behind it, the different treatment of branches and subsidiaries in international tax means that there are likely to be tax implications for Mozambique. Without local accounts from Mozambique or Mauritius, it is impossible for us to tell how significant these are. We analyse this further in the next chapter.

## Increased profitability

Since Kenmare first started production in 2007, 2012 was the second year of any significant reported profits.<sup>62</sup> High initial investment costs, the continued expansion of the mine, and below full potential production volumes, resulted in reported losses the first years. In 2011 however, Kenmare reported pre-tax profits of US\$18.22 million. In 2012, pre-tax profits reached US\$52.79 million, almost tripling 2011 profits.

The 2011 profits followed an 83 per cent increase in revenues, from US\$ 91.6 to 167.5 million. The revenue increase was largely due to increased prices of the minerals exported: the price of ilmenite, which is the main export good from the mine, quadrupled. The price of zircon and rutile also increased significantly from 2010 to 2011, as shown in figure below.<sup>63</sup>

The people of Mozambique did however not notice the quadrupling of the price of the main mineral exported. On page 19 we show how the increased revenue and profits were not reflected in Kenmare's tax payments.

## What Kenmare pays back

Foreign investments in the extractive industries sector, if handled well, can present important opportunities not only for increased government revenues in the form of tax payments, but also through links to the local and national

economies. On top of tax revenues, direct and indirect employment and development of local and national industry as a result of increased demand are considered the most important links for economic development. Another important link can be infrastructure development, though it is normally the case that investors benefit from existing infrastructure more than they ever invest themselves.

## Tax payments

Fiscal revenues are potentially the most important income source for the Mozambican state and its citizens from the minerals in the ground. Both government officials and the company management claimed that fiscal contributions by far outweigh other benefits, including employment and local procurement. Kenmare's accounts suggest that the mine will have a productive lifespan of 140 years. It may be too early to judge its fiscal contribution, but after just five years of operation, fiscal contributions are scant and unless the contract is renegotiated, Mozambique will miss out on significant tax take during this 140 year lifespan.

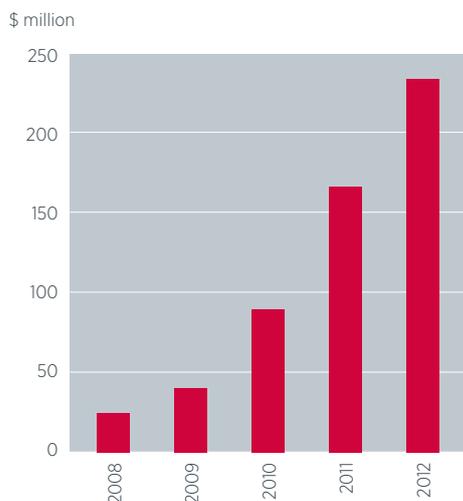
Kenmare contributed a total of 104 million MZN (US\$3.5 million) in aggregate tax payments in 2008-2011, the period for which figures are available.<sup>67</sup> Royalties make up 90 per cent of these tax payments. This is a tax that is levied on the value of the mining

product extracted from the soil, independent of the respective sale, exportation or other purpose.<sup>68</sup> The remaining tax payments are surface tax levied on the licensing area, and concession fee.<sup>69</sup>

For each dollar that Kenmare earned by exporting minerals from Mozambique between 2008 and 2011 (inclusive), Mozambique received only one cent in tax payments.<sup>70</sup> Revenues, totalling US\$326.7 million in 2008-2011, have increased steadily and substantially with increased production and higher commodity prices, from US\$25.3 million in 2008, to US\$167.5 million in 2011. In 2012 revenues reached US\$234.6 million. Tax payments, as shown above, have increased significantly less, and totals US\$3.5 million over the same period.

From 2010 to 2011, Kenmare's pre-tax profit jumped from a loss of US\$16.3 million to a profit of US\$18.22. Profit after tax was US\$23.7 million. As with revenues, the jump in profitability is not reflected in Kenmare's tax payments. Total tax payments increased by only 7.4 per cent from 2010 to 2011; from 133 to 143 million MZN (US\$0.98 to US\$1.4 million).<sup>71</sup> Calculations show that while Kenmare's revenue increased from US\$93 to US\$229 per tonne of minerals exported from 2008 to 2011, tax payments increased from US\$1.2 to US\$2.0 per exported tonne of minerals over the same period.

## Revenues



## Pre tax profit



## Mineral prices

US\$ per tonne

	2010	2011
Ilmenite	100	400
Zircon	1000	2400
Rutile	700	2000

Sources:  
Kenmare Annual Reports 2008-2012.



Lessons from this project are important for the much larger investments yet to come in Mozambique.

### The Kenmare Group

#### Two subsidiaries in Mauritius:

Kenmare Moma Mining Limited and Kenmare Moma Processing Limited. These are the two companies actually running the mine in Moma. As the name suggests, one does the mining (Moma Mining) and one does the processing and exports (Moma Processing). The two companies operate as branches in Mozambique, and Moma Processing exports minerals to third parties across the world. In Mozambique, the local branch of Moma Processing is registered in an industrial free zone. (see box "Kenmare's fiscal benefits" for more details on the tax regime of these subsidiaries)

Why operations from Mauritius? Kenmare was originally registered in Ireland and Jersey. However, it received finances from the African Development Bank on the condition that it registered in Africa. Rather than registering directly in Mozambique, it chose the tax haven of Mauritius. The use of a foreign-owned branch rather than a local subsidiary can also have tax benefits, although the company says the move was to reduce registration costs

#### One subsidiary in Northern Ireland:

Kenmare UK Company Limited  
This is a completely dormant company with no function.

#### One subsidiary in Ireland:

Kenmare Minerals Company Limited  
The company carries out small-scale exploration in Ireland, investments of around US\$40-50,000 annually. Exploration has never led to any findings. However, since the company group is registered in Ireland, this subsidiary undertakes minor operations "for regulatory reasons".

#### Four subsidiaries in Jersey:

Kenmare C.I. Limited, Congolone Heavy

### The Kenmare Group

#### Mauritius

Kenmare Moma Mining Limited  
Kenmare Moma Processing Limited

#### Northern Ireland

Kenmare UK Company Limited

#### Ireland

Kenmare Minerals Company Limited

#### Jersey

Kenmare C.I. Limited  
Congolone Heavy Minerals Limited  
Kenmare Graphite Company Limited  
Mozambique Minerals Limited

Minerals Limited, Kenmare Graphite Company Limited and Mozambique Minerals Limited

Two of the companies are 'dormant', meaning that they currently have no activity. According to Kenmare management they might however give some tax benefits to the company group if revived in the future.

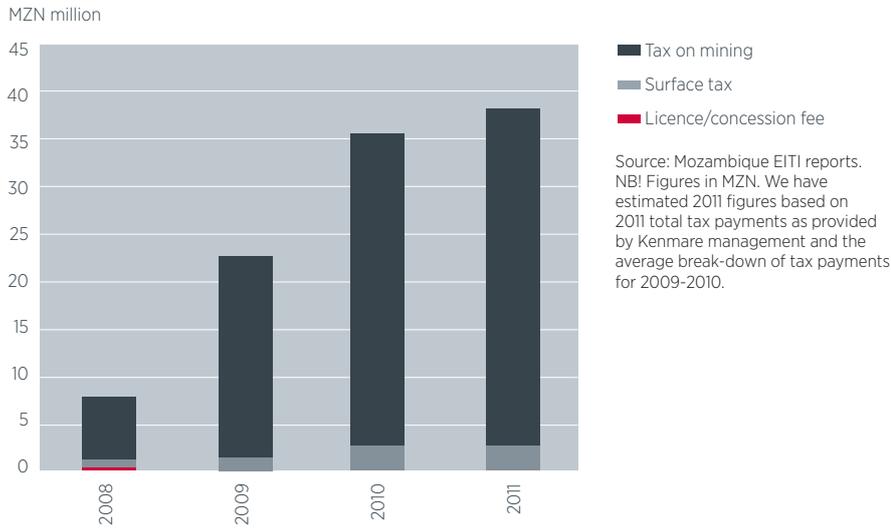
- Mozambique Minerals Ltd was previously involved in a gold project in Mozambique, but activities are currently on hold. The Kenmare Maputo office is registered under the name Mozambique Minerals Ltd.
- Kenmare Graphite Company Ltd developed and operated the Ancuabe Graphite Mine in Mozambique, but operations were stopped due to high costs. In 2012 a public tender resulted in the German multinational Graphit Kropfmuhl being selected to operate the mine.
- Congolone Heavy Minerals Ltd was set up to run the Moma mine. AfDB was

willing to invest in the Moma mine on the condition that the company was registered in Africa. Hence Kenmare set up the two Mauritius based subsidiaries and transferred all rights from Conglone Heavy Minerals.

- One of the Jersey registered subsidiaries, Kenmare C.I. Ltd, is there for management purposes. The Kenmare Group transfers profits from the two companies operating in Mozambique (Moma Mining and Moma Processing) to the Jersey based subsidiary. According to Kenmare, sending the profits to the subsidiary in Jersey allows the Kenmare Group to pay dividends or reinvest in the expansion of the mine without paying taxes. Until now, profits have been reinvested in the expansion of the mine.

Source: Kenmare Annual Report and Accounts 2011 and 2012, and interview with Kenmare management.

### Kenmare's tax payments



Although the company has not yet paid dividends to shareholders, these figures show that Kenmare is the main beneficiary of the rising prices of Mozambican minerals.

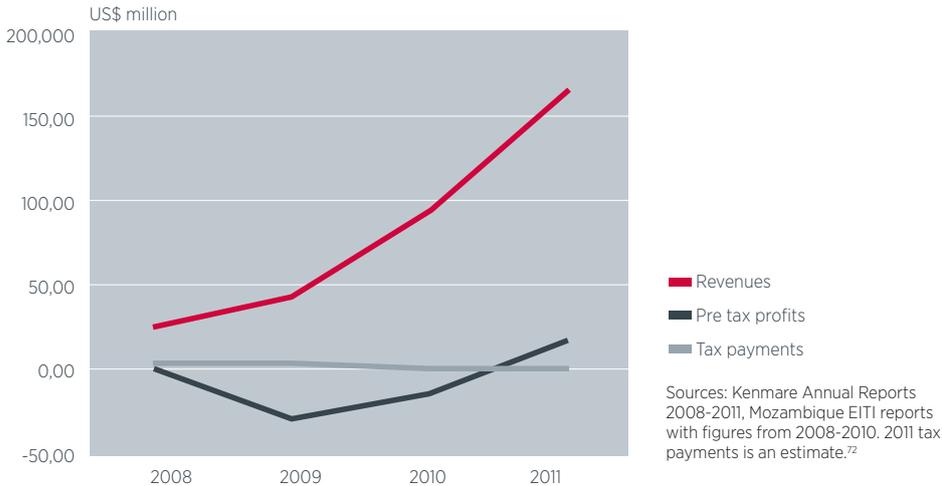
#### • The ghost of past losses

Although the mine seems to have been profitable since 2011, it has not yet paid any corporation tax – levied on profits – in Mozambique or indeed in Ireland. Looking at Kenmare Moma Mining Ltd that is mainly because it is allowed to carry forward the losses it made in its start-up phase, using them to cancel out its taxable profits. Overall, the group made a pre-tax loss of \$46m during 2009-10, which partly explains why it did not pay any tax on the profits it made in 2011 and 2012.



For each dollar of revenue made in 2008-2011, Kenmare has paid one cent in taxes to the Mozambican government.

### Profits, revenues and tax payments



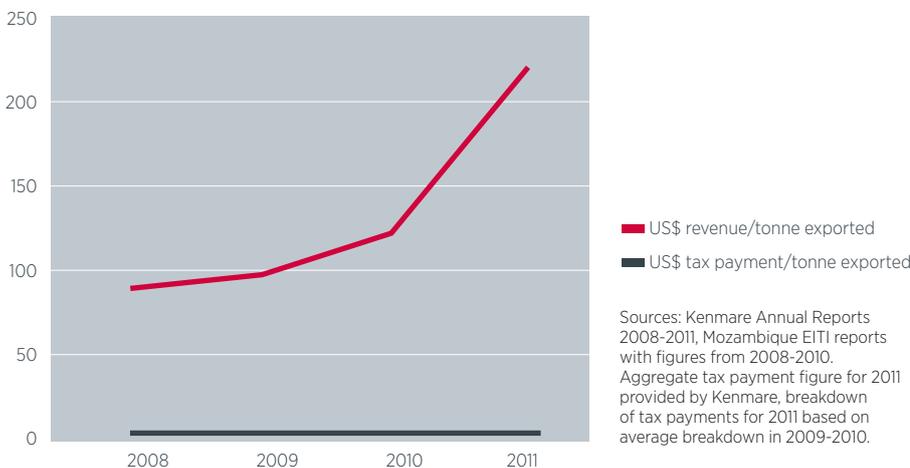
In practice, the profits and losses in Mozambique are split between two companies, each treated differently for tax purposes. Kenmare group accounts suggest that Kenmare Moma Mining Ltd, which would have occurred bigger start-up costs, did not break even until 2012. Its taxable profit that year was entirely offset by the losses it had accumulated during 2009-11, wiping out its tax payment altogether. Kenmare Moma Mining's losses can only be carried forward for three years, which is less generous than many preferential tax regimes, which can extend to five or ten years. But it is also permitted "accelerated depreciation" which allows it to quickly write off the cost of its capital investments against its profits, further reducing its taxable profits.

Kenmare Moma Processing Ltd broke even earlier than this, but there is another reason why this didn't lead to any tax payments.

#### • Fiscal subsidies

**Kenmare Moma Processing Ltd is based in an industrial free zone and is exempt from virtually all corporate taxes.** The subsidiary has to pay a revenue tax of 1 per cent after six years of production. Kenmare says it is also permanently exempt from other corporate taxes as well as VAT and import and export duties. Exploration and extraction activities are not accepted as industrial free zone activities, so although there can be other reasons for operating with two entities, the Kenmare group needs two separate companies to take advantage of the free zone; one for mining activities and one for processing.

### Revenue & tax/tonne exported





Even new regulations in the US and at the EU, which will require companies in extractive industries to report their payments to governments on a country by country level, are of little use for tax purposes.

### Kenmare's fiscal benefits

Kenmare's annual report lists the following fiscal benefits:

#### Kenmare Moma Mining

"The fiscal regime applicable to mining activities of Kenmare Moma Mining (Mauritius) Limited allows for

- a 50% reduction in the corporate tax in the initial ten year period of production following start up (2008) and
- charges a royalty of 3% based on heavy mineral concentrate sold to Kenmare Moma Processing (Mauritius) Limited
- import and export taxes and VAT are exempted, and
- accelerated depreciation is permitted
- whilst withholding tax is levied on certain payments to non-residents, mining companies are exempt from withholding tax on dividends for the first ten years or until their investment is recovered whichever is earlier."

#### Kenmare Moma Processing

"Kenmare Moma Processing (Mauritius) Limited has Industrial Free Zone (IFZ) status. As an IFZ company, it is exempted from

- import and export taxes,
- VAT and
- other corporation taxes.

A revenue tax of 1% is charged after six years of operation.

There is no dividend withholding tax under the IFZ regime."

Kenmare is also protected against future changes in the fiscal regime.

Source: Kenmare Annual Report 2011, p 69. Bullet point format added.

**Industrial free zones are an extreme way of granting tax subsidies to large investors and a common way of attracting big investors to boost industrial export-oriented activities.** This strategy raises several concerns. While industrial free zones are often established with a view to promoting industrial activities, a 2012 report from ActionAid looking into tax competition in East Africa shows that such zones "*have become a micro-economy, with poor linkages and transfer of technology to other parts of the economy, and also encouraged practices such as transfer pricing and declaration of losses*".<sup>73</sup> Moreover, it is normal to grant heavy tax subsidies for the first few years of production. However, there are several examples of investors pulling out when the grant period is over, and then continuing the business by re-investing under a different name, hence benefitting from the host country's tax subsidies once again.

**We do not know the split of revenues, profits, costs and tax payments between Kenmare Moma Processing and the rest of the company group** and therefore we do not have the means of calculating the amount of tax subsidies to Kenmare through the industrial free zone.

**Kenmare Moma Mine Ltd also benefits from a range of tax subsidies.** While it will have to pay corporate tax of 35 per cent in the future, this is halved the first ten years of production. Moreover, the fiscal regime includes provisions for decreasing the pre tax profits, hence lowering the tax base and tax payments. Kenmare is allowed to do this through accelerated depreciation, as explained above. The mine is also relieved from export and import taxes and VAT.

**The details of the fiscal regime are set out in the contract between Kenmare and the Mozambican government.**

When asked about the details, Kenmare management refers to the laws that govern their contract with the government and claims that no company would get any differential treatment. Since we cannot

see the contents of this agreement or any agreements between the government and other extractive companies we cannot provide supporting or denying evidence. However, sources within and outside the Mozambican government have strongly contested the notion that no company gets beneficial treatment, including when it comes to fiscal regime. This is no Mozambican particularity. Providing beneficial treatment in individual contracts with foreign investors is normal practice in several other African countries, and should be discouraged and discontinued.<sup>75</sup> Kenmare publishes a list of tax benefits for its two operating branches in Mozambique in its annual report. See the box "Kenmare's fiscal benefits".

**In the Moma mine's first few years, Kenmare has been allowed to ship valuable resources out of Mozambique with strongly reduced fiscal payments.** As profits increase and when some of the tax subsidies end in a few years, fiscal contributions are likely to increase. As a result of tax incentives, however, its corporation tax payments are unlikely to reach anything like the 35% headline tax rate for mines. Under the current contract this under-taxation will likely continue throughout its 140 year lifespan.

#### Harmful tax practices?

**Tax planning practices by multinational companies result in billions of dollars being illicitly shipped out of developing countries every year,** as shown in chapter two.

Although Kenmare has a company structure that theoretically permits legally minimising tax payments, the lack of detailed accounts for each subsidiary makes it impossible to assess whether it makes use of this possibility, or whether it will do once some of its generous tax incentives run out. The current set-up does however raise a couple of red flags

## Trade between the two operating companies

**All the raw minerals extracted by Kenmare Moma Mining are sold on to Kenmare Moma Processing, both Mozambican branches of Mauritian companies.** We can estimate, based on the EITI information for 2010, that this sale price was about a third of the final price at which the processed minerals were sold on to third parties. Is this a fair price? We do not have the information to be sure, but it is worth noting two reasons why the Mozambique tax authority needs to check the price closely to make sure it's high enough:

- Kenmare pays royalties at three per cent on the sale of the raw materials. This royalty constituted ninety per cent of Kenmare's tax payments in 2008-11. So the lower the price, the lower the royalty.
- The two companies operate under different tax regimes. To minimise corporation tax payments, Kenmare could sell the heavy mineral concentrate from Kenmare Moma Mining, which pays tax on its profits at 17.5%, to Kenmare Moma Processing, which is tax exempt, at a low cost to maximise profits in the latter company.

The price of heavy mineral concentrate that Kenmare Moma Mining (KMML) sells to Kenmare Moma Processing (KMPL) changes annually. Kenmare puts it this way in their provisional results for 2012: *"Revenues (and hence taxable profits) in KMML are determined by reference to cost incurred in producing heavy mineral concentrate plus a margin which is related to prices earned by KMPL."*<sup>76</sup>

## Inter-group trade in services

Abusive inter-group trade often involves trade in services and intangible assets such as management, consultancy or marketing services, trademarks etc.<sup>77</sup>

**From 2007 to 2012, the two Mozambique companies paid management fees, which Kenmare says cover "head office costs and marketing", of US\$28m to the Irish parent.** Checking fees like this is a very difficult area for tax authorities, which often struggle

to find out whether they are justified, and whether the value is fair. If the fees are deducted from taxable profits, they reduce tax payments in Mozambique and return to Ireland without being taxed further in Mozambique.

**Under current reporting requirements it is not possible to assess whether the taxes incurred by the two branches are fair.** The lifecycle of a mining project like this, combined with the generous tax regimes provided to Kenmare Moma Mining and Kenmare Moma Processing by the Mozambican government, are key when analysing the reasons behind Kenmare's low tax payments. Furthermore, the company structure theoretically can be used to minimise tax payments. We also know that Kenmare negotiated a very favourable deal with the government of Mozambique at a time when the country was in a vulnerable situation and economically dependent on following donors' conditions.

**Even new regulations in the US and at the EU, which will require companies in extractive industries to report their payments to governments on a country by country level, are of little use for tax purposes.**<sup>78</sup> In the EU, companies in the extractive and logging industries will be required to report their payments to governments on a project level. Knowing how much tax a company pays to the government in each country is good, but it does not reveal where real activity takes place and hence where value is made, or how the profits or losses are made.

**In the case of Kenmare, the new regulations will not give sufficient information to assess the sales and costs between Kenmare Moma Mining and Kenmare Moma Processing, nor will it shed light on the financial relations to other subsidiaries in the Kenmare group.** More information is needed to determine whether a company is paying its fair share of taxes. Lawmakers should therefore require a company to report: 1) the name of each country where it operates, 2) the names of all its companies in each country, and 3) its financial performance for each subsidiary in each jurisdiction (sales, purchases, labour costs, employee numbers, financing costs, pre-tax profits, tax charges, costs and value of assets). Such information

would make it possible to discover mismatches between real activity and tax payments in a country.<sup>79</sup>

## Employment

**When Kenmare first started explorations in Moma and later started construction and production, expectations were high among people living in the area where the mine is situated.** They expected electricity, a better water supply, infrastructure and a demand for market goods. The highest expectation however was and still is related to employment. Unemployment in the area is high, with fishing and agriculture being main sources of income.

**A recent report finds that mega-project contribution to total employment in Mozambique is tiny:** *"mega- project contribution to employment, which was around 3,800 in 2010, compared to a total employment of 10.2 million, is projected to increase to 7,000 once the coal mines reach capacity by 2016, bringing the share of mega-projects in total employment to just 0.01 per cent."*<sup>80</sup>

**Kenmare employs 960 people at the mine, of which 85 per cent are Mozambicans.**<sup>81</sup> This means there are around 815 Mozambican members of staff. Mozambican labour law allows large companies (100 workers or more) to employ up to 5 per cent of foreigners. However, a special quota of 15 per cent applies to companies operating in industrial free zones, as is the case with Kenmare's company Moma Processing.<sup>82</sup> Kenmare is balancing on the edge of these rules. According to Kenmare, the company always launches vacancies in national media and aims to recruit locally and nationally. However the skills and experiences required, particularly for senior staff and management, are specialised to a high degree and difficult if not impossible to find in Mozambique. A large part of senior management is therefore recruited from abroad, particularly from South Africa, Canada and Australia, given the relevant experiences from these countries.

**Views differ when it comes to Kenmare's efforts to recruit staff from the surrounding villages and the province.** While the company claims to make efforts to employ locally, community leaders and

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Mega-projects' contribution to employment in Mozambique is just 0.01 per cent



Kenmare employs 960 people at the mine, of which 85 per cent are Mozambicans.

women interviewed for this research said employment levels were low, and that Kenmare mostly recruits from the province capital Nampula and the country's capital Maputo. The different views largely seem to stem from insufficient expectation management and miscommunication. While representatives from the local communities interviewed recognised the need for skilled workforce and the challenges posed by the very low levels of education in the area, women interviewed rightly pointed to their lack of opportunities for requiring the necessary skills. In particular, local communities have been asking for a technical school. When Kenmare started explorations, there was one primary school teaching grade 1-5. Now there is also a secondary school teaching up to grade 7. While it is notable that, despite the mine being a long-term project, no training is so far set up to give local citizens an opportunity to obtain the skills required, Kenmare has earmarked the building of a technical training centre in its next three-year CSR plan. Kenmare has also provided scholarships to a technical college, however only three of 20 places were filled since these were the only ones who passed the entry exam.

**Although it is challenging to put a figure to Kenmare's contributions through direct and particularly indirect employment, salary figures for Mozambican employees and Kenmare staff's income tax give some indications.** Kenmare has not made available a breakdown of salaries paid to Mozambican and foreign members of staff. Its annual report states that the total payment of wages and salaries in 2011 was US\$25.44 million, but

this includes payments to management and executive directors. Although 85 per cent of employees are Mozambican nationals, their share of the total wage bill is likely to be significantly below 85 per cent, since there is a higher share of foreign staff holding higher level positions. Kenmare pays the same base salary to Mozambican and foreign employees in the same position, though according to staff members, foreign employees have more benefits.

**Importantly, employees at Kenmare pay personal income tax to the Mozambican government.** In 2009-11, Kenmare employees contributed 235 million MZN (US\$7.8 million) in personal income tax.<sup>83</sup> This is almost 2.5 times more than the total tax contributions from the company itself over the same period, which was only 96 million MZN (US\$3.2 million).

#### Procurement

**Foreign investments in the mining industry can lead to benefits for local businesses** through demand for input factors for production, and employee demand for goods and services. According to Kenmare the company has a policy of announcing all tenders in Mozambican papers if there is a chance there can be one or more national bidders. Kenmare is obliged to buy locally if the bid is competitive on quality, quantity, price and delivery.

**According to Kenmare management, Kenmare spent US\$37.6 million on procurement from Mozambican companies in 2011.** This is 22 per cent of 2011

revenues for the company group (US\$167.5 million). Looking at the province, Kenmare contracted construction companies from the province capital Nampula for the construction of the health clinic it has built close to the site. There is also a Maputo-registered construction company on the site. The private sector in the local area is severely under-developed. Looking to very local business opportunities, perhaps most important is the demand for food, which to a large extent is bought locally.

**The majority of goods are still imported from abroad.** There are several reasons why the share of local buying is not higher. Equipment for the mine is highly specialised and Mozambique lacks the knowledge-specific industry to develop such highly technological equipment. Hence, as with senior management of the mine, equipment is to a large extent imported from Australia, Canada and South Africa. Another factor is the low level of supply in the district and the region. When interviewed for this report, Kenmare posed the example of cement for construction. While wanting to procure cement from industry in the district, there was no supplier that could deliver the amounts needed. Another example brought up by Kenmare is the fact that local business is sometimes not VAT registered, which impedes Kenmare from buying their goods. Yet another factor that limits the company from buying local is the infrastructure. The mine is located in a remote area that is accessed by a dirt road potted with holes from rain and heavy traffic. During the rainy season it can be impossible for loaded trucks to reach the mine. According to Kenmare the very low road standard sometimes forces the company to procure goods that can be brought in by air or sea.

**Despite the valuable procurement of Mozambican goods and services and recognising the challenges posed by lack of large-scale supply and specialised industry, sources within the government also question the efforts made by foreign companies, including Kenmare, to use local resources.** *"The companies are generally concerned about profits and their efforts to contribute positively to local business is minimal"*, one interviewee said. The difficulties of bringing on board

- 960 employees, out of which circa 815 (85 per cent) are Mozambican citizens;
- Kenmare does not reveal how much in salaries is paid in total to Mozambican staff. The base salary for Mozambican and foreign staff in the same position is the same, though foreign staff members receive more benefits;
- Employees at Kenmare contributed 235 million MZN (US\$7.8 million) in personal income tax in 2009-2011. This is 2.5 times more than Kenmare's direct tax contributions to Mozambique.

companies are partly derived from the lack of a proper strategy for increasing links to the Mozambican economy from mining. The latter was highlighted by the Investment Promotion Centre (CPI), a government entity charged with promoting Mozambique as a destination for foreign investments. CPI works to increase the links, including from companies' procurement. The government and the investor should develop a strategy to increase local procurement for each investment project.

**In addition to the purchase of goods and services comes tax charged on services from non-Mozambican entities.** As noted in above, Kenmare has yet to pay any corporate income tax. Its foreign suppliers have however contributed 31.9 million MZN (US\$1.1 million) from 2009-2011 in withholding taxes.<sup>84</sup> In the same way as the company withholds tax payments from its employees' gross salary, it withholds tax on payments to some sources that are not Mozambican residents. This is "a deduction made by the tax substitutes (the debtors of the income), at the time of placement of the income at the disposal of the beneficiaries. For example, at the time payment of services to non-resident entities occurs, the local entity must withhold the tax at the applicable rate and pay this over to the tax authorities."<sup>85</sup> For instance, if Kenmare buys services from a non-Mozambican entity, it holds back an agreed percentage of the payment and transfers this to the Mozambican government. So far EITI has reported this tax as well as employees' personal income tax under the company's tax contributions. The two latest EITI reports recommend that withholding taxes are removed from the EITI reporting template of taxpayers' payments to the government since they are not levied on the companies.

## Infrastructure

**Infrastructure development such as water systems, electricity grids and transportation are key for social and economic development and should be added to the list of positive benefits to Mozambique from foreign investments in the mining industry.** In the case of Kenmare the company has arranged water and electricity

- According to Kenmare management, the company spent US\$37.6 million on procurement from Mozambican companies in 2011; 22 per cent of revenues made the same year.
- Foreign deliveries to the mine contribute 31.9 million MZN (US\$1.1 million) in corporate tax, a withholding tax paid by delivering companies and channelled through Kenmare.

grids for the mine, to which the surrounding communities have access. Kenmare management interviewed for this research has particularly highlighted the company's efforts and success in bringing electricity to an area where there was formerly no electricity grid. This has certainly benefited the local population. Kenmare estimates that around 12,500 people in the three villages immediately surrounding the mine now have the opportunity of connecting their homes to the electricity grid. Villages further afield have also been electrified along the route, including the town of Moma. Kenmare estimates that the electricity grid is available to a total of around 70,000 persons. This is of course of importance to the area.

**Again, the challenge seems to lay with management and communication.** In the villages surrounding the mine there are different expectations as to what the company will provide, and some discontent among residents regarding difficulties paying for electricity consumption due to general low levels of income.

**Kenmare has also brought running water to the area, and a resettled community of 145 families now has access to safe water.** Because of the water depth, the water system now consists of pipes on the ground rather than proper water pumps, as was the initial commitment from the company, creating a certain discontent.

**As mentioned above, the road leading to the Moma mine is a 220 kilometre long dirt road that was never intended for loaded trucks to use to go back and forth between the mine and the regional capital.** Most of

the cargo acquired for the expansion of the mine has come in by boat, and it's mainly operational supplies that are carried to the mine by road. Yet, according to interviewees in the district, the road has deteriorated significantly since the start-up of the mine. Road maintenance is a government responsibility, and the poor dirt road from Nampula to the Moma mine underlines the importance of tax payments for public goods.

**We have not added up additional services that the Mozambican government provide for free** such as administration including tax administration, an educated work force and security.

## Corporate social responsibility

**When asked about Kenmare's added value for development, several interviewees pointed to the company's social responsibility activities.** The Kenmare Moma Development Association (KMAD), which is Kenmare's social responsibility fund, has won awards in Ireland and South Africa and is highly featured on Kenmare's website and annual reports. According to its reporting to EITI, Kenmare spent US\$264 000 on social responsibility in 2009. This is 0.6 per cent of the company group's revenues that year (US\$42.3 million), and 13.6 per cent of what Kenmare staff paid in personal income tax (US\$1.94 million).<sup>87</sup>

**KMAD's contributions seem to be highly valued by the communities surrounding the mine.** Although there have been some conflicts between local communities and Kenmare regarding implementation of



In 2009-11, Kenmare employees contributed 235 million MZN (US\$7.8 million) in personal income tax. This is almost 2.5 times more than the total tax contributions from the company itself over the same period.

projects including the building of a local health clinic, community representatives interviewed expressed a strong demand for more project support. Companies operating in the petroleum sector in Mozambique are obliged by law to make social responsibility contributions. This is not the case in the mining sector, but discussions are ongoing as to whether CSR contributions should be mandatory in the mining sector too.

**One pressing question is the longer term effect of companies' social responsibility programmes, not only regarding yields from the projects carried out, but in a larger governance perspective.** One CSO representative interviewed expressed severe concern regarding companies' CSR programmes in general, claiming that while they may do good on a micro level, they are also efficient tools for white-washing dirty companies, or drawing attention towards one small part of a company only. Too much focus on CSR may result in attention being drawn away from the real issue of how much companies contribute to the state compared to what they take away – *“a good CSR programme is a cheap PR tool if it makes an exploiting company look like a responsible investor”*.

**Another concern regarding the social responsibility programme is the effect on local governance.** Kenmare's entrance as a development actor appears to have blurred the lines of responsibilities between government and company responsibilities. In a context where the local population has little or no education in general, and only a low level of knowledge and experience in active democracy and community organisation, expectations seem to have moved from what the government should implement to what Kenmare as an investor and KMAD as its social fund should implement. While Kenmare cannot be said to bear the full responsibility for the

- Kenmare runs an awarded CSR programme, Kenmare Moma Development Association
- Kenmare spent US\$264 000 on social responsibility in 2009. This is 0.6 per cent of the company group's revenues that year (US\$42.3 million), and 13.6 per cent of what Kenmare staff paid in personal income tax (US\$1.94 million).<sup>86</sup>

seeming misconception of roles, there is clearly a communication and expectation management problem that will have to be solved. This problem would likely have been smaller had the company contributed to the district and province governments through its tax bill, increasing government resources to carry out their responsibilities in delivering social services and infrastructure in the region. Moreover, CSR and company driven projects pose a potential risk of undermining the ability of local governments to implement development plans targeting those most needed.

### Negative impacts of the mine

#### Resettlement of 145 families

Meeting with community leaders from the 12 communities that reside where the Moma mine is situated, they told us that once the corner stone of the mine was set, the dialogue on resettlement of one of the communities started. The dialogue took place between the company and the community in question, the broader communities and local government. A new place to live was identified for the 145 families. Kenmare built new houses, a school within the new community, provided access to electricity and water, and the families were compensated for loss of farmland according to official compensation rules.

Yet, moving a whole community away from its homeland to a new field is dramatic for the people concerned. Interviewees also explained that the benefits and compensation given to the resettled families sparked conflicts between communities in the underdeveloped area. Another key challenge regarding the resettlement is the bargaining power between the company, which is rich in terms of financial and human resources, the local community where education levels are low and most people have no training in or experience from any similar negotiations, and the local government, where resources are low. An imbalance of information and bargaining power, as well as language barriers in an area where not everyone speaks Portuguese, has resulted in challenges regarding communication and management of expectations. Talking with different stakeholders it is evident that agreements for compensation have not been equally understood by all parties; a miscommunication which easily gives rise to discontent by the affected communities who claim they have further rights in particular regarding education and employment opportunities.

#### State within a state: local communities find gate intimidating

There is a gate at the entrance to Kenmare's area. Everyone passing the gate by car needs to identify themselves and answer a set of routine questions. The gate not only guards the Moma mine, it is placed so that anyone visiting the neighbouring villages, including the resettled community, need to go through the same procedure. Many see this as intimidating and an unnecessary control of theirs and others' freedom of

- Kenmare's water system is accessible to around 145 families
- Kenmare estimates that the electricity grid it has provided for the mine is available to around 70.000 persons.



Too much focus on CSR may result in attention being drawn away from the real issue of how much companies contribute to the state compared to what they take away.

## Adding up the development outcomes

Assessing the overall development outcomes from the Moma mine, there are certainly some, although they are minor compared to the value of the non-renewable resources extracted and sold on. Fiscal contributions, employment and procurement are potentially the most important ways of linking to the national economy from foreign investments in the extractive sector.

Looking at the figures available there are **positive links**:

- **Well paid jobs** for around 815 Mozambicans and income tax from 960 staff members who contributed in total 35 million MZN (US\$7.8 million) in personal income tax in 2009-2011. This is 2.5 times more than Kenmare's tax contributions to Mozambique.
- **Business opportunities** for Mozambican industry delivering cement and other inputs to the mine, and job opportunities provided by these businesses. According to Kenmare management, the company spent US\$37.6 million on procurement from Mozambican companies in 2011; 22 per cent of revenues made the same year. Foreign deliveries to the mine contributed 31.9 million MZN (US\$1.1 million) in corporate tax in 2009-2011, a withholding tax paid by delivering companies and channelled

through Kenmare.

- **Positive infrastructure spill-over** to the local environment: Kenmare's water system is accessible to around 145 families and Kenmare estimates that the electricity grid it has provided for the mine is available to around 70,000 persons.
- **Fiscal contributions** are potentially the single most important source of benefits from Mozambique's extractive industries and it is the main focus of this report. In total, Kenmare has contributed US\$3.5 million in tax payments to Mozambique in 2008-2011, equalling one cent per dollar in revenue made over the same period. This share is decreasing. As revenues and profits have increased with increased production and commodity prices, tax payments have increased significantly less.<sup>88</sup> The generous tax regime that Kenmare negotiated with the Mozambican government, including the fiscal regime of the industrial free zone under which one of Kenmare's subsidiaries operate, allows Kenmare to extract, process and export minerals to highly reduced tax rates. We have no evidence of Kenmare carrying out aggressive tax avoidance practices, but this report shows that the company group is structured in a way that raises red flags; namely subsidiaries in tax havens although the only production takes place in Mozambique, and internal

trade between company branches operating under different tax regimes. More detailed information is necessary in order to establish whether Kenmare engages in aggressive tax planning.

**The negative impacts** are more challenging to quantify though importantly the mine affects the livelihood of the people residing on the land leased by Kenmare. 145 families have been resettled because of the mine, and the company foresees that more families will be forced to leave their land as the mine is expanding. Citizens living in the resettled community and other neighbouring villages now have to pass a gate with security personnel when entering their villages. Some perceives this as a deterioration of their freedom of movement and privacy. There are also negative environmental impacts from the mine. Importantly the sand dug out when first constructing the mine, still creates a mountain of sand where one neighbouring community once grew their cassava. The resettled community and the citizens that have had to find new farmlands have been compensated according to government compensation rates.

**We have not added up additional services that the Mozambican government provide for free** such as administration including tax administration, an educated work force and security.

movement. Local communities have been questioning why there needs to be a gate controlling access their area, taking into account that Mozambique is a free country and thus localities and communities are supposed to be free. As one interviewee pointed out, *"...in Mozambique we are no longer having gates but Kenmare is now starting. They are controlling the community. The gate was supposed to be installed at the entrance of Kenmare industry area and campus. But where the gate is placed now we are questioned by security every time we want to visit the local villages."*

According to Kenmare management, the rationale behind the gate is security. The customs authority requested they set up a gate during the construction period to stop robberies from the site.

### Environmental impacts: the mountain of sand

Close to the mine, where the resettled villagers once used to farm their land, is a sand mountain of hundreds of square meters. This sand was dug out from the first excavations for the mine. This tiny piece of desert is in strong contrast to Kenmare's communications to its shareholders, where it portrays a glorious picture of rehabilitation plans using best and well-researched practices to ensure that fertile soil is handed back to those farming the land. More importantly, it is of grave concern for the inhabitants of nearby villages, whose land is not yet handed back to them, and of concern for villages in future mining areas.

Kenmare admits that the rehabilitation of the land is taking longer than they would have wanted. One of the reasons is that they did

not do any good soil analysis before mining. In order to get a good before/after mining analysis of the soil they are now waiting for a response on the delayed soil analysis.

### Breach of dam flooded a nearby village

In 2010 Kenmare caused a one-off disaster when a settling pond breach caused the flood of the neighbouring village Topuito, affecting almost 400 households. Mining operations were stopped immediately, families were taken care of and around 30 destroyed houses were rebuilt. One four-year-old girl disappeared after the flooding. This serious accident shows the ongoing risks of mining operations for residents in the mining area, and underlines the importance of carrying out non-financial cost-benefit analyses in the case of natural resource extraction.

## Financial overview

In 2004 Kenmare closed a debt funding package with a group of lenders to finance the construction of the mine. Among the lenders are several development finance institutions with clear development mandates: The African Development Bank (AfDB), The Dutch Development Finance Institution FMO, the Emerging Africa Infrastructure Fund (EAIF), the European Investment Bank (EIB) and The World Bank (MIGA, the World Bank's export credit guarantee arm), which gives a guarantee for the German Export Credit Agency's loan. While the export credit agency, KfW IPEX-Bank (Hermes) has no development mandate, the World Bank is a development institution.

Details of the Kenmare Group loan facilities as at 31 December 2011 are set out here:

	Loan Balance US\$ million	Maturity
<b>Senior loans</b>		
<b>AfDB</b>	<b>28.8</b>	2018
ABSA (ECIC)	47.9	2015
<b>EAIF</b>	<b>3.6</b>	2018
<b>EIB</b>	<b>14.2</b>	2018
<b>FMO</b>	<b>14.2</b>	2016
KfW IPEX-Bank (Hermes)	13.6	2015
<b>KfW IPEX-Bank (MIGA)</b>	<b>10.8</b>	2018
<b>Total</b>	<b>133.1</b>	
<b>Subordinated debt</b>		
<b>EAIF</b>	<b>115.2</b>	2019
<b>EIB</b>	<b>43.0</b>	2019
<b>FMO</b>	<b>35.8</b>	2019
<b>Total</b>	<b>194.0</b>	
<b>Total loans</b>	<b>327.1</b>	

Source: Kenmare Resources plc website: <http://www.kenmareresources.com/operations/financing.aspx>  
 Bold added to highlight the development finance institutions.

**Five of Kenmare's institutional creditors are development finance institutions with development mandates.** These five investors contribute 81 per cent of Kenmare's total loans. The low levels of benefits to the host country and its citizens triggers the question of whether the development institutions in question got their priorities right.

**Donor governments and multilateral institutions have provided grants and loans to private companies operating in developing countries for decades.** However, since the 1990s the scale of this support has increased dramatically. By 2015, the amount flowing to the private sector is expected to exceed US\$100 billion – making up almost one third of external public finance to developing countries. As global ODA stagnates, several aid agencies have suggested that a dramatic scaling up of public finance has been devoted to supporting private sector investments.<sup>89</sup>



Fetching water from the water pipes in the resettled community.

## Kenmare's development investors and why they invest

Here follows an overview of the different development finance institutions (DFIs) that invest in Moma mine or KMAD, and their stated reasons for the investment.

### African Development Bank (AfDB): export revenue and false demands

Looking on the website of the African Development Bank, its objective is clearly stated: *"The overarching objective of the African Development Bank (AfDB) Group is to spur sustainable economic development and social progress in its regional member countries (RMCs), thus contributing to poverty reduction."*

In its project document the AfDB highlights that Kenmare will have to develop its own infrastructure and therefore is in need for financiers. The short project document highlights the potential export revenues as a key background information and then goes on to list "other positive contributions": increased employment, expanded skills base, services and infrastructure in the region, expanding the national tax base, increasing soil fertility and contributing to technology transfer.<sup>90</sup>

While it is positive that the AfDB as a minimum requires that supported projects are registered in Africa, unfortunately the requirement seems to be purely artificial. In Kenmare's case, registration in the tax haven of Mauritius is a purely administrative arrangement and its contribution to "spur economic development and social progress" is highly questionable. While it is fair to say that registering in Mozambique would have been challenging a decade ago, at a very minimum there should be a clause requiring evaluation of the arrangement, and of registering in the country in which production takes place as soon as private sector infrastructure allows it. However, if being serious about supporting private sector in Africa, investments should go to African domiciled companies.

### European Investment Bank (EIB) added value: leverage further funding

The EIB is not a development institution as such, but its lending programme for African, Caribbean and Pacific (ACP) countries has a development mandate.

The EIB describes the aim of lending to the ACP countries in this way: *"The EIB's overriding aim in the ACP and OCT regions is to support projects that deliver sustainable economic, social and environmental benefits. The EIB concentrates its efforts on fostering private sector-led initiatives that promote economic growth and have a positive impact on the wider community and region."*

The EIB sees its value added as an investor in the Moma mine to provide a relatively large loan to leverage further lending to the company. The EIB also emphasises that *"Moma will contribute to the EU (and government's) strategy of poverty-relief"* through job creation.

*"The project will yield substantial benefits for the regional economy of the Nampula province and the Mozambican economy in general,"* the EIB project document states when explaining the rationale behind its loan to the Moma mine.<sup>91</sup> EIB emphasises infrastructure improvements and salaries paid to local employees, including indirect multiplier effects, as key rationales for financing the Moma mine. *"Moreover, income from royalties of the mineral license and fees for using the free trade zone will contribute to the positive economic impact of the project,"* the project document states.<sup>92</sup>

### The Multilateral Investment Guarantee Agency (MIGA)

MIGA is part of the World Bank group, whose mission is simply to *"help reduce poverty"*.<sup>93</sup> MIGA's mission is a bit more specific: *"to promote foreign direct investment (FDI) into developing countries to help support economic growth, reduce poverty, and improve people's lives."*<sup>94</sup> As the name suggests MIGA is a guarantor; it provides political risk insurance guarantees to private sector investors and lenders.

In the case of Kenmare, MIGA has issued guarantees to Kenmare Resources and to the German Export Bank KfW for their equity investments (Kenmare) and loan (KfW) to the two operating branches of the Kenmare Group.<sup>95</sup>

As part of its project brief, MIGA says *"The (Nampula) province is one of the poorest*

*in the country and in an area that has not yet benefited from the recent FDI flows into Mozambique. (...) The project will have significant development impacts providing export and tax revenues, know-how and technology transfer, and infrastructure development."* MIGA further highlights the positive benefits from increased local employment and indirect employment through procurement of local goods and services, and adds: *"The project will also contribute more than significant taxes over the life of the mine."*<sup>96</sup>

### Emerging Africa Infrastructure Fund (EAIF): training of local people

EAIF was established in 2002 in order to *"address the lack of available long-term foreign currency debt finance for infrastructure projects in sub-Saharan Africa."* The fund furthermore, *"aims to support projects that promote economic growth and reduce poverty, benefit broad-based population groups, address issues of equity and participation, and promote social, economic and cultural rights."*

EAIF highlights that, in addition to being a low-cost titanium producer in one of Mozambique's most under-developed regions, the project, *"will bring important social benefits to the area through significant training to the local population and is expected to employ 1,000 people during the construction phase, and a further 425 during mining operations."*<sup>97</sup>

### FMO: supporting KMAD

FMO is the Dutch Development Bank with the mission: *"to create flourishing enterprises, which can serve as engines of sustainable growth in their countries"*.

It describes itself in the following way on its website: *"We support sustainable private sector growth in developing and emerging markets by investing in ambitious companies. We believe a strong private sector leads to economic and social development, empowering people to employ their skills and improve their quality of life."* Moreover, FMO says that, *"We strive to boost self-sufficiency in developing countries, by stimulating business there. The key yardstick is what our activity delivers on a local level."*<sup>98</sup>

FMO supports the corporate social responsibility part of Kenmare, KMAD, and in 2012 FMO confirmed continued funding for a mobile health clinic.<sup>99</sup> No project document is available on FMO's website.



The gate that everyone has to pass by to enter the area of the mine and the surrounding communities.



Where the gate is placed now we are questioned by security every time we want to visit the local villages.

**Investing for development?**

Public development finance can play a crucial role in providing funds to credit constrained companies, unleashing the potential of a thriving private sector. This in turn can create decent jobs, pay a fair share of taxation to the government, and provide goods and services to citizens. However, Eurodad research shows that it is fundamental that public finance is channelled to the companies and sectors that have least access to private capital markets, hence ensuring that scarce public resources are genuinely additional to private finance. They must also be channelled to firms and sectors that can deliver the best outcomes for poor people, thus ensuring that public development monies are used for intended purposes.<sup>100</sup>

Development mandated creditors list infrastructure and local employment as the main positive benefits from the Moma mine. Some also mention the potential for significant fiscal revenues, as well as indirect benefits through indirect employment. Others highlight the CSR programme KMAD. Despite infrastructure improvements in the underdeveloped area where the mine operates, local procurement, some local employment and a well performing social programme, the information presented in this overview does not provide evidence of Kenmare contributing significantly to the national economy compared to the value of non-renewable resources shipped out of the country.

It is highly questionable that development finance institutions support a European company extracting non-renewable resources from a low-income country, arguably generating lower financial benefits than if the state had exploited the resources itself. It is also a questionable priority to provide support to a foreign company rather than domestic business, or at least business domiciled within the country. It is difficult to see why development institutions should invest in a European company with subsidiaries in tax havens and a fiscal regime so generous that it allows the extraction of huge amounts of resources while its fiscal contributions are small. Donor governments should make sure they spend aid money where it yields the most results and make development outcomes the overriding criteria for project selection and evaluation, including by developing clear outcome indicators.

## Summary of findings and conclusions

**In Mozambique expectations are high that the huge deposits of natural resources will provide the much-needed resources to end poverty and reduce aid dependency.** While the country has seen high economic growth over the last few years, poverty remains high and inequalities are also increasing. The country ranks as number 185 of 187 countries on the UN Human Development Index.<sup>101</sup>

**Foreign investors also have high expectations of profiting from Mozambique's natural resources.** Along with continuous new discoveries of minerals, coal, oil and gas, increased political stability and favourable investment rules, the country has become a popular destination for foreign investors. While foreign private investors can certainly play a positive development role, there is no automatic relation between investments and development.

**This report has examined one foreign investor in the mining sector in Mozambique – Kenmare Resources plc.** Kenmare Resources is an Irish company group whose productive activity is the mining and processing of mineral sands in Moma on the northern coast of Mozambique. Kenmare presents an interesting case because it is one of the few mining companies in Mozambique that started production a few years ago. It should therefore start to yield benefits for Mozambique through fiscal contributions, employment and procurement and is a relevant illustration, important for the much larger but more recent investments yet to come in Mozambique.

**Fiscal contributions are potentially the single most important source of benefits from Mozambique's extractive industries and it is the main focus of this report.** In total, Kenmare contributed US\$3.5 million in tax payments to Mozambique in 2008-2011, equalling one cent per dollar in revenue made over the same period.<sup>102</sup> As the company group's revenues and profits have increased with increased commodity prices, tax payments that are Mozambique's take from the favourable price developments have increased at a significantly slower rate.<sup>103</sup>

**The generous tax regime that Kenmare**

**agreed with the Mozambican government at a vulnerable time in Mozambique's history allows Kenmare to extract, process and export minerals at highly reduced tax rates.** When Kenmare and the government signed the deal, Mozambique was heavily marked by 16 years of civil war and was highly dependent on good will from foreign donors. Mozambique followed international donors' demands for an open investment profile with favourable tax subsidies for large-scale investors. Kenmare has made huge benefits from this. It pays no VAT, import or export duties, and corporate income taxes on mining activities are halved in the first ten years of production. The processing and exporting part of the company is based in an industrial free zone and will only have to pay 1 per cent revenue tax after six years of production.

**This report shows that the company group structure raises red flags as regards tax minimising practises.** All the mineral concentrate extracted at the mine is sold to a sister company for processing and exports. The two Kenmare branches involved operate under different tax regimes in Mozambique, an arrangement that technically provides incentives for earning profits in the company that is exempt from corporate income taxes. Moreover, despite only operating one mine, the company group has eight subsidiaries, five of which are registered in the two tax havens of Jersey and Mauritius. Although Kenmare has a company structure that theoretically permits legally minimising tax payments, the lack of detailed accounts for each subsidiary makes it impossible to assess whether it makes use of this possibility, or whether it will do once some of its generous tax incentives run out.

**In addition to fiscal revenue, employment, procurement and infrastructure are other potentially important links to the local economy.** Looking at the figures available, there are positive links. The mine provides well paid jobs for around 815 Mozambicans. The 960 staff members contributed in total 35 million MZN (US\$7.8 million) in personal income tax in 2009-2011. The mine also creates business opportunities for Mozambican industry delivering cement and other inputs to the mine, and related job opportunities provided by these businesses. Foreign deliveries to the mine contribute

31.9 million MZN (US\$1.1 million) in corporate tax, a withholding tax paid by delivering companies and channelled through Kenmare. There are also some positive infrastructure spillovers to the local environment: Kenmare's water system is accessible to around 145 families and Kenmare estimates that the electricity grid it has provided for the mine is available to around 70,000 people. Importantly, this can be contrasted to the estimated wealth of the minerals Kenmare has bought. The remaining resources are potentially worth between US\$37.6 billion and US\$124.6 billion.

**The negative impacts are more challenging to quantify, though importantly the mine affects the livelihoods of the people residing on the land leased by Kenmare.** 145 families have been resettled because of the mine, and the company foresees that more families will be forced to leave their land as the mine expands. Citizens living in the resettled community and other neighbouring villages now have to pass a gate with security personnel when entering their villages. Some perceive this as a deterioration of their freedom of movement and privacy. There are also negative environmental impacts from the mine. Importantly, the sand dug out when first constructing the mine still creates a mountain of sand where one neighbouring community once grew their cassava. The resettled community and the citizens that have had to find new farmlands have been compensated according to government compensation rates.

**Development finance institutions, including the African Development Bank and the European Investment Bank, provide more than 80 per cent of Kenmare's loans.** It is difficult to see why development institutions should invest in a European company with subsidiaries in tax havens and a fiscal regime so generous that it allows shipping resources abroad with a strongly reduced tax bill. Donor governments should make sure to spend aid money where it yields the most results and make development outcomes the overriding criteria for project selection and evaluation, including by developing clear outcome indicators.

## Recommendations

### For the government of Mozambique

**Establish a public registry for contracts between the government and investors in the petroleum and mining industries.** The registry should be open and accessible to everyone, including affected communities, media and CSOs.

#### **Renegotiate the contracts with early investors.**

Contracts should be renegotiated on terms that are beneficial to the citizens of Mozambique, and renegotiation should put an end to special tax treatment for individual investors, and to generous tax benefits in general.

**Consider one-off windfall taxes** where surging commodity prices have led to unexpected profits for corporate taxpayers.

**Make sure that future investment contracts are transparent and participatory.** The Parliament, citizens and affected communities must have adequate time and information to debate the investment, including purpose, terms and conditions of the relevant contracts.

**Ensure that, for each investment project, a strategy for linkages to the local economy is developed and implemented.** The strategy should include measures to maximise local procurement and employment for each project.

**When renewing legal frameworks, in particular laws governing the extractive industries, mega-projects or fiscal code:**

- Invite non-state actors and all relevant state actors to a thorough consultation. Make sure that proper information is available and accessible to civil society in a timely manner, including to affected communities, media, research institutions and CSOs. The information should be thorough and timely enough to facilitate an informed public debate and for non-state actors to give their informed point of view in time to influence the reviews.
- Review the cost-benefit analysis of foreign investments with a view to what rules and regulations will best benefit the citizens of the country, and the real owners of Mozambique's natural resources. The analysis should reflect Mozambique's political stability and institutions as of today, and the fact that, as the economy

continues to expand rapidly, Mozambique's attractiveness to investors will also grow.

- Discontinue the use of tax benefits to attract foreign investors at the cost of local small and medium size enterprises and fiscal revenues.
- Set high requirements for linkages to the local economy, particularly through training and hiring local staff including at management levels, and use of local suppliers in the construction and operating phases.
- Make sure that fiscal laws are transparent and precise to facilitate compliance from tax payers and tax collectors, and to minimise opportunities for interpretation in calculating tax obligations.
- Ensure sufficient resources for tax collectors and government entities monitoring contract negotiations, tax collection, audits and environmental, social and economic impact analysis of foreign investments.

### For donor governments and international institutions

**Require all multinational companies to disclose reliable annual information** related to sales, employees, profits made and taxes paid in each country in which they operate, as well as information regarding the beneficial ownership of any legal structure directly or indirectly related to the company.

**Support the Mozambican government and other developing country governments in:**

- Renegotiating existing contracts with investors to leverage far higher positive development outcomes, including fiscal revenues.
- Discontinuing tax benefits to foreign investors.
- Setting tougher terms and conditions for foreign investors in the country, particularly with regards to fiscal contributions, hiring of local staff and use of local suppliers.
- Strengthening tax authorities and other functions of relevance to development, enforcement and monitoring of legal frameworks and regulations for foreign investments.



The 220 kilometer long dirt road leading from the province capital Nampula to the Moma mine was never intended for heavily loaded trucks. According to interviewees in the district, the road has deteriorated significantly after the start-up of the mine.

### For development finance institutions

**Reorient your policies and practices to ensure you invest in domestic enterprises**, including small and medium-sized companies, and target companies where development impacts are strongest and where private investment is weak, as set out in Eurodad's recent report *Private Profit for Public Good?*<sup>104</sup>

**Make sure that positive development requirements are backed by verifiable indicators and evaluation of results.**

#### With the purpose of avoiding unethical tax behaviour:

- Only allow investments in companies and financial institutions that in their annual reports disclose information related to sales, employees, profits made and taxes paid in each country in which they operate.
- Make sure you know who you are dealing with by ensuring that all companies and financial institutions involved in the transaction disclose information regarding beneficial ownership of any legal structure directly or indirectly related to the company, including trusts, foundations and bank accounts.
- Make sure there is contract transparency, and in particular that the fiscal regime is public.
- If the DFI suspects that the corporate structure is set up to facilitate tax avoidance or evasion, the DFI should put the burden of proof on the company to prove otherwise before investing in the company.

### For Kenmare

**Do not oppose the legitimate desire of the Mozambican government to renegotiate the contract;** behave ethically and constructively to help ensure the best outcome for the people of Mozambique – the only country in which you operate.

**Publicly state that fiscal contributions are the core part of your corporate social responsibility.**

#### Financial transparency

- Disclose reliable annual information related to sales, assets, employees, profits made and taxes paid for each subsidiary in each jurisdiction.

#### Linking to the local economy

- Ensure adequate training of local citizens with the aim of increasing staff from neighbouring villages and the district at large.
- Set high targets for local content requirements and knowledge and technology transfer.

#### Social and environmental standards

- Clean up and restore the sand mountain.
- Ensure common understanding with the citizens surrounding the mine regarding the role of the company, what it can provide and not provide, and how any social and environmental issues will be dealt with.

CIP and Eurodad offered Kenmare Resources plc to review the full report prior to publication, and invited Kenmare to give a one page response to be included here. While we did not receive a formal response, Kenmare said the following in their email:

“We have reviewed your amended report. As previously discussed, this report remains highly unbalanced and biased against Kenmare. It greatly diminishes Kenmare’s positive contributions to Mozambique, including considerable infrastructural & social investment and other contributions to the development of Nampula province. It is clear that we have fundamentally differing views on the positive contribution of the Moma Titanium Minerals Mine to Mozambique.”



Although the vast majority of the population try to earn a living from agriculture, yields are among the lowest in the world.<sup>8</sup> Yet, according to the National Institute of Statistics (INE), *“in 2010 the contribution of agriculture for the GDP was 19.4 per cent against the 1.1 per cent of the extractive industry”*.<sup>9</sup>

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- 66 Interview with Kenmare management.
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- 70 Calculations based on data from EITI reports and Kenmare's Annual Reports and Accounts with figures from 2008-2011.
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## CIP

The Center for Public Integrity (CIP) is an independent, non-profit, non-partisan organisation. It is the leading civil society anti-corruption watchdog organisation in Mozambique. CIP is the Transparency International chapter in Mozambique. The CIP work is structured around three global objectives, namely:

**Budget monitoring and expenditure tracking** which aims to scrutinise the implementation of plans and budgets at local level and raise awareness on the interest of local populations for the exercise of permanent oversight to governments of their areas.

**Promoting anti-corruption reform**, through deepening of the anti-corruption legal framework, promotion of public awareness campaigns and mapping of conflicts of interest. These activities are critical to raise awareness of the need for a

better legal and preventive framework regarding corruption control in general, and promiscuity between the political sphere and business sphere in particular.

**Encouraging transparency in the extractive Industries**, by improving understanding of various dynamics in the sector, notably the economic linkages with other sectors of the economy and society, but above all calling for reforms that enable transparency in awarding resource exploration concessions, and advocating for the improvement of the relevant legislation on funds and social income, so that there is a major redistribution of wealth.

## Eurodad

The European Network on Debt and Development is a specialist network analysing and advocating on official development finance policies. It has 48 member groups in 19 countries. Its roles are to:

- research complex development finance policy issues
- synthesise and exchange NGO and official information and intelligence
- facilitate meetings and processes which improve concerted advocacy action by NGOs across Europe and in the South.

Eurodad pushes for policies that support pro-poor and democratically-defined sustainable development strategies. We support the empowerment of Southern people to chart their own path towards development and ending poverty. We seek appropriate development financing, a lasting and sustainable solution to the debt crisis and a stable international financial system conducive to development.

[www.eurodad.org](http://www.eurodad.org)

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