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# THE UNEXPECTED WAY COAL MINING IN ZIMBABWE'S HWANGE NATIONAL PARK IS A HUMAN RIGHTS VIOLATION

by Lily Baron\*

President of Zimbabwe Emmerson Mnangagwa caused a public outcry amongst both locals and the international environmental activist community when reports emerged in September that he granted coal mining concessions to two Chinese companies for large swaths of land in the country's largest historic game reserve, Hwange National Park.<sup>1</sup> These Chinese-backed coal mining activities in Hwange National Park violate Article 21(5) of the African Charter on Human and Peoples' Rights<sup>2</sup> because they will threaten the park's ecosystem and ultimately its ability to attract tourists. As tourism is a prominent benefit derived from Zimbabwe's pristine natural resources, the damage posed to the tourist industry by mining in a National Park will detrimentally

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<sup>1</sup> David Gilbert, *How China's Addiction to Coal Is Ravaging Zimbabwe's Environment*, VICE WORLD NEWS (Sep. 25, 2020, 9:50 AM), <https://www.vice.com/en/article/z3edby/how-chinas-addiction-to-coal-is-ravaging-zimbabwes-environment>; *Hwange National Park Tours*, VIATOR, <https://www.viator.com/Victoria-Falls-attractions/Hwange-National-Park/d5309-a11749> (last visited Oct. 24, 2020).

<sup>2</sup> Organization of African Unity, African Charter on Human and Peoples' Rights (Banjul Charter) art. 21, June 27, 1981, 1520 U.N.T.S. 217 (hereinafter Banjul Charter).

impact the ability of Zimbabweans to fully benefit from the advantages derived from their natural resources.

China is the largest foreign investor and financier in Zimbabwe, and several Chinese firms are involved in coal mining operations in the country.<sup>3</sup> In May of 2020, China announced its intention to fund a \$4.2 billion USD coal-power complex, which is anticipated to exceed Zimbabwe's energy needs.<sup>4</sup> However, the concurrent mining plan set to take place in Hwange National Park has enraged residents, tourists, and wildlife activists alike, all of whom have vowed to block any mining in Zimbabwe's national parks in order to protect wildlife.<sup>5</sup>

Zimbabwe's economy relies upon three key sectors: agriculture, mining, and tourism, the last of which the government concedes is the only sector that can alleviate foreign currency shortages and high unemployment rates in the formal job market.<sup>6</sup> In 2016, Zimbabwe's tourism sector contributed an estimated 6.1 percent to the country's GDP and employed over 90,000 people.<sup>7</sup> In 2020, travel and tourism generated

<sup>3</sup> Jevans Nyabiage, *China Lectures Zimbabwe on Environmental Duty and Transparency After Permits to Mine Park Cancelled*, SOUTH CHINA MORNING POST (Sep. 20, 2020, 8:00 PM), <https://www.scmp.com/news/china/diplomacy/article/3102208/china-lectures-zimbabwe-environmental-duty-and-transparency>.

<sup>4</sup> Gilbert, *supra* note 1; see Antony Sguazzin et al., *China is Virtually Alone in Backing Africa's Coal Projects*, BLOOMBERG QUINT (May 7, 2020, 2:30 AM), <https://www.bloombergquint.com/global-economics/belt-and-road-china-stands-alone-in-backing-africa-coal-projects>.

<sup>5</sup> *Chinese Invade Hwange National Park to Mine for Coal*, NEW ZIMBABWE (Sep. 3, 2020), <https://www.newzimbabwe.com/chinese-invade-hwange-national-park-to-mine-for-coal/>.

<sup>6</sup> Zhou Zibanai, *The Tourism Sector: A Bright Line in Zimbabwe's Depressed Economic Environment*, 7 AFR. J. OF HOSP., TOURISM AND LEISURE 1, 1-2 (2018).

<sup>7</sup> *Tourism Sector in Zimbabwe*, ZIMTRADE (Sep. 13, 2016), <https://www.tradezimbabwe.com/newsrelease/tourism-sector-zimbabwe/>.

an estimated \$1.3 billion USD in revenue.<sup>8</sup> Tourism not only creates jobs in hotels, lodges, and restaurants, but also creates employment in other sectors like construction, food supplies, and repair services.<sup>9</sup> Tourism also integrates a large number of local entrepreneurs, such as craftsmen and local guides, into the formal sector.<sup>10</sup>

Zimbabwe has undertaken international obligations which recognize the importance of protecting natural resources. Zimbabwe ratified the African Charter on Human and Peoples' Rights in 1986, thereby agreeing to recognize the rights, duties, and freedoms set forth within the Charter,<sup>11</sup> including various civil, political, economic, social, and cultural rights.<sup>12</sup> One of the Charter's distinctive features is that it recognizes the general rights of peoples, including the right of all peoples to self-determination, and the right of peoples to freely dispose of their wealth and natural resources.<sup>13</sup> The latter of these rights is codified in Article 21, which elaborates that "State(s) [P]arties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their people to fully benefit from the advantages derived from their natural resources."<sup>14</sup>

<sup>8</sup> *Zimbabwe – Contribution of Travel and Tourism to GDP in Current Prices*, KNOEMA, <https://knoema.com/atlas/Zimbabwe/topics/Tourism/Travel-and-Tourism-Total-Contribution-to-GDP/Contribution-of-travel-and-tourism-to-GDP> (last visited Feb. 27, 2021).

<sup>9</sup> Llewellyn Leonard, *Mining and/or Tourism Development for Job Creation and Sustainability in Dullstroom, Mpulanga*, 31 *LOC. ECON.* 249, 258 (2015) (citing Gareth Butler, *An Assessment of the Social and Economic Impacts of Tourism Development in Dullstroom, Mpumalanga*, UNIV. OF JOHANNESBURG (2013), <https://www.fosaf.org.za/documents/2013-Woodford-et-al-2013-Immediate-impacts-of-rotenone.pdf>).

<sup>10</sup> *Id.* at 254.

<sup>11</sup> Banjul Charter, *supra* note 2 art. 1.

<sup>12</sup> *A Guide to the African Charter on Human and Peoples' Rights*, AMNESTY INT'L (2006), <https://www.amnesty.org/download/Documents/76000/ior630052006en.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> Banjul Charter, *supra* note 2 art. 21.

Backed by two Chinese companies, the mining activities scheduled for Hwange National Park constitute a form of foreign exploitation. The mining concessions are not "exercised in the exclusive interest of the people," as required by Article 21.<sup>15</sup> Rather, the project is an example of debt-trap diplomacy, in which developing countries like Zimbabwe are forced to hand over key assets to service loans from China that they cannot repay.<sup>16</sup>

This exploitation also happens on a smaller scale between individual Chinese mining companies and Zimbabwean workers. In Zimbabwe's Chinese-backed chrome mining sector, for example, the claim holder takes fifteen to thirty percent of the ore while the rest is sold at artificially low prices to the Chinese miners, who also own the equipment.<sup>17</sup> Additionally, there is a history of forced labor and mistreatment of Zimbabwean mine workers.<sup>18</sup> In one incident in July 2020, Zimbabwean coal miners were shot, allegedly by their Chinese boss, after they complained about not being paid.<sup>19</sup>

While Zimbabwe becomes trapped and its workers exploited, China's economy is stimulated as the country obtains strategic assets and asserts its political dominion.<sup>20</sup> In the present case, Chinese

<sup>15</sup> *Id.*

<sup>16</sup> *Diplomatic Crisis Deepens As African Workers Upset Over Exploitation by Chinese Mining Firms*, *BUS. WORLD* (March 1, 2021), <http://www.businessworld.in/article/Diplomatic-crisis-deepens-as-African-workers-upset-over-exploitation-by-Chinese-mining-firms/09-07-2020-295626/>.

<sup>17</sup> *Vimbai Chinembiri, Tensions Flare Between Zimbabwe Miners and Chinese Investors*, *GLOB. PRESS J.* (Aug. 23, 2020), <https://globalpressjournal.com/africa/zimbabwe/tensions-flare-zimbabwe-chrome-miners-chinese-investors/>.

<sup>18</sup> *See, e.g., Zimbabwe: Workers and Lawyers Association Accuse Chinese Mining Firms of Gross Human Rights Violations and Exploitation*, *BUS. & HUM. RTS. RES. CTR.* (July 10, 2020), <https://www.business-humanrights.org/en/latest-news/zimbabwe-workers-and-lawyers-association-accuse-chinese-mining-firms-of-gross-human-rights-violations-and-exploitation/>.

<sup>19</sup> *Id.*

<sup>20</sup> Mark Green, *China's Debt Diplomacy*, *FOREIGN POL'Y* (April 25, 2019, 5:06 PM), <https://foreignpolicy.com/2019/04/25/china-debt-diplomacy/>.

corporations will be profiting at the expense of local communities' ability to preserve and benefit their natural resources.

Because the mining activities in Hwange National Park constitute a form of foreign exploitation under Article 21, Zimbabwe must undertake to eliminate the activities. Though the government announced it would prohibit all mining activities in national parks in light of the public call for their curtailment, it has yet to put into effect any legislation codifying this ban.<sup>21</sup> Additionally, the High Court in Harare threw out a legal challenge against the two Chinese mining companies, signaling that the companies' mining rights remain valid under Zimbabwean law.<sup>22</sup>

The adverse environmental effects on Hwange National Park's ecosystem and likely economic damage to the tourism industry will impinge upon Zimbabweans' abilities to fully benefit from their natural resources. Though the proposed mining activities would create some jobs, the mining activities will detrimentally impact the tourism industry due to environmental degradation and loss of aesthetic appeal.<sup>23</sup> The mining sites are within one of the most pristine areas of Hwange National Park,<sup>24</sup> which, as Zimbabwe's largest historic game reserve, is key to the health of the country's billion-dollar tourism industry.<sup>25</sup>

The proposed coal mining project in Zimbabwe is not the first Chinese-backed coal scheme in Africa to

<sup>21</sup> Gilbert, *supra* note 1.

<sup>22</sup> *Id.*

<sup>23</sup> Leonard, *supra* note 10, at 250 (citing Héctor M. Conesa, *The Difficulties in the Development of Mining Tourism Projects: The Case of La Unión Mining District (SE Spain)*, 8 REV. DE TURISMO Y PATRIMONIO CULTURAL 653, 654-55 (2010)).

<sup>24</sup> Jonathan Watts, *Chinese Mining Firms in Zimbabwe Pose Threat to Endangered Species, Say Experts*, THE GUARDIAN (Sep. 3, 2020, 9:03 AM), <https://www.theguardian.com/world/2020/sep/03/chinese-mining-zimbabwe-pose-threat-endangered-species-hwange-national-park>.

<sup>25</sup> Linda Mujuru, *Coronavirus Dismantles Tourism, One of Zimbabwe's Biggest Economic Drivers*, GLOB. PRESS J. (Apr. 19, 2020), <https://globalpressjournal.com/africa/zimbabwe/coronavirus-dismantles-tourism-one-zimbabwes-biggest-economic-drivers/>.

raise concerns over its human rights and environmental implications. In 2019, Kenya's National Environmental Tribunal prevented a Chinese-backed scheme to build East Africa's first coal plant from moving forward because the owners failed to conduct a thorough environmental assessment of the plant's impact on Lamu, an idyllic archipelago in Northeast Kenya.<sup>26</sup> Lamu is major tourist attraction, UNESCO World Heritage Site, and the best-preserved Swahili settlement in East Africa.<sup>27</sup> Known especially for its heritage tourism,<sup>28</sup> Lamu attracts tens of thousands of tourists each year, generating over \$20 million USD in income.<sup>29</sup>

The project was set to include both a port and coal plant in Lamu County, which was chosen for its remote location and accessibility for coal shipments.<sup>30</sup> However, the construction of the coal plant would have put Lamu's protected status at risk and could have ruined the livelihoods of the locals, who rely on Lamu's natural resources to sustain the local fishing and tourism industries.<sup>31</sup> In addition to obfuscating some of Lamu's stunning vistas, the coal

<sup>26</sup> *Kenya Halts Lamu Coal Power Project at World Heritage Site*, BBC (June 26, 2019), <https://www.bbc.com/news/world-africa-48771519>; Tawanda Karombo, *Zimbabwe Has Okayed a Chinese Coal-Mining Pact at Its Top Game Reserve, Even as Elephants Die*, QUARTZ AFRICA (Sep. 3, 2020), <https://qz.com/africa/1899381/zimbabwe-okay-chinese-coal-mining-in-hwange-park-as-elephants-die/>.

<sup>27</sup> Abdi Latif Dahir, *China's Plan to Help Build Kenya's First Coal Plant Has Been Stopped — For Now*, QUARTZ AFRICA (June 27, 2019), <https://qz.com/africa/1653947/kenya-court-stops-china-backed-lamu-coal-plant-project/>.

<sup>28</sup> T. Luke Young, *Lamu, Kenya: Conservation of an East African Seaport*, MASS. INST. OF TECH., <http://web.mit.edu/akpia/www/AKPSite/4.239/lamu/lamu.html> (last visited Feb. 28, 2021).

<sup>29</sup> *The Impacts on the Community of the Proposed Coal Plant in Lamu: Who, if Anyone, Benefits from Burning Fossil Fuels*, 31 UN ENV'T PERSPS. 8, [https://wedocs.unep.org/bitstream/handle/20.500.11822/25363/Perspectives31\\_ImpactCoalPlantLamu\\_28032018\\_WEB.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/25363/Perspectives31_ImpactCoalPlantLamu_28032018_WEB.pdf?sequence=1&isAllowed=y) (last visited Feb. 28, 2021) [hereinafter *The Impacts on the Community*].

<sup>30</sup> Dana Ullman, *When Coal Comes to Paradise*, FOREIGN POL'Y (June 9, 2019, 4:48 AM), <https://foreignpolicy.com/2019/06/09/when-coal-came-to-paradise-china-coal-kenya-lamu-pollution-africa-chinese-industry-bri/>.

<sup>31</sup> *Kenya Halts Lamu Coal Power Project at World Heritage Site*, *supra* note 26.

plant would lead to elevated water toxicity levels, thereby deterring tourists from enjoying Lamu's beaches,<sup>32</sup> and ultimately from visiting Lamu.

The National Environmental Tribunal cited Kenya's Impact Assessment & Audit Regulations in its decision to block the project from going forward.<sup>33</sup> This outcome was a win for environmentalists, who argued that the \$2 billion USD coal-fired power plant would devastate the island of Lamu.<sup>34</sup> Notably, the Tribunal recognized that to attract an increasing number of tourists, retain jobs, and remain viable, the tourism industry requires access to a well-maintained environment,<sup>35</sup> something that coal-related activities would destroy.<sup>36</sup>

Similarly, scientists are imploring the Zimbabwean government to prioritize sustainable development environmental programs like tourism<sup>37</sup> and wildlife conservation as opposed to moving forward with the potentially destructive mining activities in Hwange National Park.<sup>38</sup> In Zimbabwe, tourism has a symbiotic relationship with wildlife conservation.<sup>39</sup> For example, in Hwange National Park, ecotourism companies pay for essential conservation services including anti-poaching operations and the

maintenance of boreholes necessary to provide water for the wild animals.<sup>40</sup> These conservation programs attract paying tourists who add to Zimbabwe's economic health and the ability of its citizens to effectively utilize their natural resources to sustain themselves.<sup>41</sup>

The planned mining activities in Hwange National Park pose a significant threat to the future of Zimbabwe's tourism industry and the capacity of Zimbabweans to use and benefit from their natural resources, in alignment with Article 21 of the African Charter on Human and Peoples' Rights. By banning mining activities in national parks and encouraging sustainable development instead, Zimbabwe will be able to ensure its citizens are able to benefit from their natural resources, while simultaneously conserving them, both now and for years to come.

<sup>32</sup> *The Impacts on the Community*, *supra* note 29, at 8.

<sup>33</sup> *Save Lamu & 5 Others v. Nat'l Env't Mgmt. Authority (NEMA)* (2019) 196 K.L.R. 100 (Kenya).

<sup>34</sup> Dahir, *supra* note 27.

<sup>35</sup> Leonard, *supra* note 9, at 253 (citing United Nations Conference on Trade and Development, *Sustainable Tourism: Contribution to Economic Growth and Sustainable Development*, ¶ 26, U.N. Doc. TD/B/C.I.E.M.5/2 (Jan. 28, 2013)).

<sup>36</sup> Gilbert, *supra* note 1.

<sup>37</sup> In Zimbabwe, the tourism sector's capacity to fund wildlife conservation programs makes it sustainable. Tourism in other countries, and in general, is not necessarily a sustainable practice. For more information, see Gerardo Budowski, *Tourism and Environmental Conservation: Conflict, Coexistence, or Symbiosis?* 3 ENV'T CONSERVATION 27 (1976).

<sup>38</sup> Karombo, *supra* note 26.

<sup>39</sup> See Brendan Ryan, *Zimbabwe Govt Permits Chinese Companies to Drill for Coal in Hwange National Park*, MININGMX (Sep. 8, 2020), <https://www.miningmx.com/news/energy/43580-zimbabwe-govt-permits-chinese-companies-to-drill-for-coal-in-hwange-national-park/>.

<sup>40</sup> *Id.*; see, e.g., *Water for Hwange*, ADVENTURE TRAVEL CONSERVATION FUND, <https://adventuretravelconservationfund.org/water-for-wildlife-trust> (last visited Nov. 22, 2020).

<sup>41</sup> Zibanai, *supra* note 6, at 11.