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## Conclusion & Recommendations



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Tanzania's extractive sector has great potential to contribute to the country's development, playing an increasingly significant role in underpinning the Government's vision of reaching middle income country status by 2025.<sup>440</sup> To meet this potential, there is a need to strengthen actions by all actors. The Government of Tanzania, and the many local governments that are now charged with governing the extractives sector are still putting important parts of the governance, legislative and regulatory framework in place. Tanzania has drawn on lessons learned and embedded sustainable development and to a lesser extent responsible business conduct, at the heart of its extractive sector framework. It is building a foundation to hold extractive companies and the Government itself to account. Once that is done, as highlighted in this Report, it faces the titanic task of strengthening governance capacity across national and local agencies responsible for the many different dimensions of the sector.

The country is attracting international companies across the mining and oil & gas sector. Extractive sector companies are expected to live up to a growing number of international norms that seek to define what "responsible business conduct" means in the extractive sector -- respecting human rights, protecting the environment, and promoting the interests of local communities. In response, companies, industry associations, and multi-stakeholder initiatives mentioned through this Report have developed policies and practices that are meant to prevent or at least minimise impacts on human rights. As "above ground risks," which includes scrutiny on human rights, can be at least as significant as "below ground risks" figuring out how to avoid such risks makes good business sense. These companies can bring and spread good practices that can be shared with local business relationships and within their supply chains.

Industry players have made real progress in accepting the relevance of these topics to operations as well as developing policies and refining global management systems. However, implementation still remains a big challenge on the ground in some circumstances, especially in the far corners of the country involving real life consequences for local communities. Communities and the CSOs that work with them must continue to be given a voice and support in holding companies – large and small – to account for their human rights performance.

Smaller extractive sector companies have an even steeper learning curve. The recent move to bring ASM into a more formalised relationship only begins the long road of building the capacity of that sub-sector to deal with the impacts they create and those to which they contribute. To date, an unregulated ASM sub-sector has been allowed to operate with very little, if any, regard for human rights and the environment and as a result, most negative impacts have gone unreported and unresolved.

Many communities have expressed an interest in the Government having a more hands-on approach in dealing with human rights challenges. The CHRAGG has a good opportunity to

answer this demand and to address some of these challenges through the implementation of programs that will supplement the efforts of other stakeholders already promoting human rights in the extractives sector. The ultimate test of CHRAGG's effectiveness will be whether or not it can help prevent human rights abuses and provide a just resolution mechanism for victims when abuses do occur.

Finally, much effort will need to be made over the coming months and years by businesses and the Government to educate the public on realistic expectations for communities from extractive sector activities and to shape sustainable and inclusive community benefits that can have real impact on poverty reduction. The majority of the communities interviewed as part of this Report expressed high expectations for benefits from extractive operations. The communities are right that these natural resources exist in their communities, and most often on their lands; therefore, if they stand to lose the most in extractive activities, they should also stand to benefit. On the other hand, community expectations must be managed to ensure they are not unrealistic. This can be achieved by raising widespread awareness about extractive sector lifecycles, as well as through education and ongoing community engagement and appropriate community investment programmes.

The sections below set out a series of specific recommendations to the various actors in the extractive sector to address gaps and weaknesses based on the analysis presented in the Report above.

## 5.1 Government of Tanzania and Parliamentarians

- The Government has made the right high-level commitments to strengthening the links between the sector and its contributions to poverty reduction as well as the need to address negative impacts on the environment, on society and human rights. It has demonstrated its commitment to transparent and accountable governance of the sector through its participation in EITI and the adoption of a new EITI law. There remain some weaknesses in the policies and laws that should be taken into consideration in future updates, filling in the gaps in the legal framework identified in this Report. The existing policies and laws now need to be followed through by incorporating these commitments into its on-going regulations and into the Model PSC and MDAs. The commitments need to be cascaded through each level so they become increasingly specific and therefore enforceable.
- One way to begin to better reflect widening perspectives on the sector is to include representation from local communities and the NHRI in extractive sector advisory boards, such as the Mining Advisory Board. This would be an important step in bringing practical and informed perspectives on stakeholder concerns to decision-making and considerations. Tanzania already has experience in multi-stakeholder decision making for the sector through the TEITI MSG.
- Understanding that access to land and land compensation are major concerns around extractive projects, the process of surveying and titling land should be accelerated so that local communities have better protection. Given the date of the regulations

governing the process for land valuation (2001) and the importance of the process to rural communities, the Government should consider whether procedures could be updated in light of lessons learned from the region and more globally on land titling and management. In addition, given the absence of a resettlement framework, the Government should develop a clear legal framework on resettlement that incorporates human rights protections based on the right to housing<sup>441</sup> and other relevant human rights and drawing on international standards, such as IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.<sup>442</sup>

- There is a recognised need to strengthen environmental governance and enforcement of sector standards in this area. The Government is planning a SESA for the gas sector that should provide a useful input. It should make sure that local communities and CSOs are a core part of that process. Further strengthening and follow up on ESIA's and their implementation is necessary. Further strengthening of attention to OHS in terms of legislation and enforcement is required.
- The Government has made important commitments to EITI implementation. Taking the next step of ensuring that extractive sector contracts are finally made publicly available will help all parties to build confidence in the commitments and contributions of the sector and will support efforts to hold extractive sector companies accountable.
- A key missing component of the kind of accountable governance Tanzania has set as a goal is the absence of a freedom of information law.
- The Government has made a significant step in recognising and supporting the ASM sub-sector. Given the negative impacts of the sub-sector both on workers, children and the environment, it is important that the Government follows through on its plans to reduce child labour and improve environmental and labour practices.
- There have been incidents of significant human rights violations by public security forces in connection with extractive sector operations in the past, indicating a need for appropriate standards and training for public security forces. Given the expected expansion of the extractive sector, it is important for local communities to be able to trust public security forces as part of the greater trust building that needs to go on in the sector. Joining the Voluntary Principles on Security and Human Rights, like its neighbor Ghana, would provide a relevant framework and lessons learned for Tanzania public security forces and private security forces.
- Inhibiting or intimidating community members around extractive operations is a violation of freedom of expression and assembly but also significantly impedes the long-term relationship building that should go on. Instead, Government actors at all levels should engage effectively with local communities and civil society organisations in advance of companies entering the community to commence extractive sector activities and during operations. Local communities need to see that the Government is committed to hearing their concerns and grievances and to supporting their informed participation in decision-making on land, employment, local contracts, and environmental protection. In addition, given the long-term perspective of the sector in the country, the Government should be actively promoting positive engagement with and by the sector.

- The State-based judicial and non-judicial mechanisms available for communities and workers to bring complaints and have them resolved in a timely and effective manner are very weak. Without access to effective and trusted mechanisms to resolve complaints, community members bear the brunt of negative impacts. There is a need to improve access to and functioning of administrative mechanisms. In addition, in practice, it has been hard for the understaffed judiciary to hear cases involving complaints under the Bill of Rights because of, in particular, the high hurdles of requiring three judges to preside over such cases.
- Establishing the CHRAGG in the Constitution is a testament to the importance the Government attached to an independent institution charged with addressing human rights and good governance. That prominence has not been matched in deeds. The Government should provide further financial resources to the CHRAGG so it can play an important role in helping mediate between companies and communities.<sup>443</sup> This limitation has been observed by treaty supervisory bodies as well as the UN Human Rights Council UPR, which have called upon the Government of Tanzania to sufficiently fund the NHRI with the requisite financial resources,<sup>444</sup> including for Commission staff and commissioners to attend national and international meetings on the emerging trends of human rights and business in the extractive sector.
- The discussions on the new Constitution offer the opportunity to strengthen the Bill of Rights by expanding its coverage to reflect Tanzania's wider human rights commitments and improving enforcement and access to justice.
- The Government should provide clear and accurate information to local governments and local communities about expected revenue flows from extractive operations to help manage expectations.
- Following the lead of its East African neighbor Kenya, Tanzania should prepare a National Action Plan on Human Rights and Business, one of the action points under the more general National Human Rights Action Plan,<sup>445</sup> developed by the Ministry of Constitutional & Legal Affairs (Tanzania). The National Action Plan would provide an opportunity to involve a wide range of stakeholders from civil society, business and trade unions in a discussion on improving implementation of the UNGPs in the country. It would provide an opportunity for the Government to set out clear expectations for companies large and small operating in the extractive sector.<sup>446</sup>

## 5.2 Commission on Human Rights and Good Governance (CHRAGG)

- CHRAGG is uniquely positioned to promote respect for human rights in the extractive sector. To do so, it needs to scale up its expertise and work on issues relating to the extractive sector. The CHRAGG should use reports such as this one, plus other training opportunities offered through other organisations such as the Network of African National Human Rights Institutions<sup>447</sup> to build understanding of the extractive sector. The Tanzanian National Action Plan on Human Rights specifically recommends that “a

*coordination team on trade, business, and human rights and a position desk within CHRAGG to provide leadership for advocacy” should be established.*<sup>448</sup>

- Scaling up could usefully start with collecting reliable and current data on human rights abuses in the extractive sector so as to better understand the scope of interventions and remediation needed. This will entail conducting an independent and broad investigation of the impacts caused by extractive sector activities, particularly related to the dispossession of livelihood assets and productive resources, as well as the complex social impacts caused by the displacement of communities in order to ensure proper redress and compensation for losses.
- Working with CSOs and CBOs would allow the Commission to leverage the geographical coverage that these organisations provide to deliver its objectives. CHRAGG currently has only four offices, in Dar es Salaam, Zanzibar, Lindi, and Manzi which means it is unable to reach a considerable part of Tanzania.
- The CHRAGG might consider setting up a multi-stakeholder Extractive Sector Forum<sup>449</sup> such as exists in Kenya to bring together actors to promote effective collaboration.
- It could also provide technical training through seminars on human rights and business-nexus, with a focus on the extractive industries key stakeholders to inform them of their roles on issues relating to human rights in the extractive sector. Stakeholders include businesses, government officers from key ministries and departments, representatives of communities around extractive operations, academia, the media, and civil society organizations.
- Work with the Ministry of Land and the land survey process in the country to ensure land rights and territorial rights of communities are protected to the greatest extent possible in the extractive concessioning processes, given the limited protections currently in place.
- Engage with extractive sector companies to promote independent human rights, environmental, social, cultural, and economic impact assessments before projects are advanced. Support companies in improving their community engagement and in setting up their own operational level grievance mechanisms. (see below)
- Develop collaboration with the NEMC to address complaints arising from communities concerning environmental contamination caused by extractive companies. This could include supporting communities in bringing claims to the appropriate administrative authorities, working with communities and companies to mediate and potentially develop new ways to collaboratively monitor environmental impacts, or to build their own capacity to monitor and hold companies accountable, working with NEMC to improve accessibility to communities and awareness of the human rights dimension of such complaints.
- Given CHRAGG’s limited resources, it may not have the opportunity or resources to actively participate in the EITI or OGP processes, but it should be aware of those processes, the actions being taken to improve transparency and accountability through those mechanisms and consider how the mechanisms can be mutually reinforcing with CHRAGG’s work. Given the growing significance of the sector to the overall protection

of human rights in the country, CHRAGG should proactively seek a representative seat on the Mining Advisory Council.

- Act as a focal point of information on avenues for access to remedy to handle complaints that emanate from workers at extractive sector sites and from aggrieved community members as a result of extractive sector operations. Provide technical and financial assistance to train local communities to know their rights and their options to demand accountability in the extractive sector.
- Mobilise and advocate for adequate resources to implement work on human rights issues in the extractive sector. Due to limited funding, CHRAGG may need to explore creative ways of fulfilling this mandate such as identifying strategic partner organisations to build and carry out joint programs.

### 5.3 Companies in the Extractive Sector

- The first obligation of companies is to comply with national law. But as Tanzania is still evolving its extractive sector framework, it is appropriate for companies in the sector to look to international norms for appropriate guidance. The UN Guiding Principles on Business and Human Rights apply to all companies, everywhere, of whatever size. Given the extractive sector history in Tanzania and abroad, it is particularly important that extractive sector companies operating in the country implement their responsibilities consistent with the UNGPs in carrying out their operations. This includes developing appropriate policies and guidance, carrying out human rights due diligence, and supporting and enabling access to remedies, including through operational level grievance mechanisms.
- This Report has sought to assist companies in their human rights due diligence processes by identifying key human rights challenges existing in the country – both in terms of the existing policy and legal frameworks and its gaps – and key issues from the perspective of communities and workers. As companies carry out their due diligence processes to understand the human rights challenges in the context of Tanzania, they should draw on this Report and other sources of information to shape their policies and practices to prevent negative human rights impacts to the greatest extent possible.
- One of the key messages coming out of the field research was the apparent lack of engagement between local communities and companies of all sizes. In some cases, this was because communities felt inhibited by the Government, while in others a lack of information and engagement was evident. Given the potential for negative impacts, meaningful community engagement from the very start of operations, including during the exploration stage, is important to avoiding adverse impacts of extractive operations as well as optimising potentially positive contributions.<sup>450</sup> Community engagement, including by juniors in the sector, can play an important role in framing longer-term relationships positively and negatively.<sup>451</sup> Communicating early, often, and clearly with stakeholders helps manage expectations and avoid risks, potential conflict, and project delays and indicates from the very start an openness to taking community concerns seriously.

- Given the lack of effectiveness of judicial and administrative mechanisms in Tanzania, communities and workers may have few reliable means to address their concerns. Rather than relying on this state of affairs, in line with the overall message from the Government about building an accountable sector, companies should put in place robust grievance mechanisms to handle complaints from workers and aggrieved community members as a result of actions or inactions in extraction operations. These grievance mechanisms should meet the “effectiveness criteria” of the UNGPs.<sup>452</sup> At the same time, for serious impacts, such as those of a criminal nature, companies should not impede access to judicial mechanisms that do exist.
- Companies should ensure due diligence in the extractives value chain. Where extractive companies have hired contractors to carry out operations or provide services, they must address the risks associated with these hires because often contractors have a larger and deeper footprint than the extractive company. One way to do this is to ensure that all contractors are aware of and trained on the principles of human rights and business.
- The Government has set clear expectations for companies that they engage in “CSR” programmes. There has been a good deal of learning among large extractive sector companies and institutions (often less by governments around the world) about how investments with and in local communities can contribute to the social, economic, and institutional development of local communities in a manner that goes beyond mitigating any adverse effects involving businesses. Corporate programmes focused only on building an isolated school or health clinic are being replaced by more strategic approaches to community investments, including through specific community development agreements. The Government, communities and companies should be building on the latest learning in designing community support and the distribution of benefits. Government and communities should be careful to ensure that such community development programmes are not used to compensate for negative impacts as these should be addressed separately.<sup>453</sup>

## 5.4 Investors in Tanzania's Extractive Sector

- Investors should conduct enhanced due diligence on companies in their portfolios that are involved in the extractive sector in Tanzania.
- They should engage with companies they invest in that involved in the extractive sector in Kenya to ensure these companies meet or exceed international standards on responsible business conduct relevant to their business in Tanzania.
- Investors should urge companies doing business in the extractive sector in Tanzania to report robustly on how they manage risks and impacts associated with investments and operations in the country.