

# Managing Relations Between Investors in the Extractive Sector and Local Communities

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## List of Abbreviations

ACEP	-	Africa Centre for Energy Policy
CDAs	-	Community development agreements
CEO	-	Chief Executive Officer
CSOs	-	Civil society organizations
CSR	-	Corporate social responsibility
D by D	-	Decentralization by devolution
DFID	-	Department for International Development (United Kingdom)
EIA	-	Environmental impact assessment
MP	-	Member of Parliament
NGOs	-	Non-governmental organizations
PPP	-	Public private partnership
SLO	-	Social license to operate
SMEs	-	Small and medium enterprises
TCME	-	Tanzania Chamber of Mines and Energy
URT	-	United Republic of Tanzania
VBPS	-	Voluntary Best Practices Standards

# Executive Summary

## BACKGROUND

In the mining sector, as in other sectors, such as agriculture, that powerfully affect the lives of local communities, there is growing recognition that communities play an essential role in governance. Across the world, people are becoming more aware of their traditional land rights as well as the profound ecological, social and economic implications arising from the extraction of mineral resources. Given the growing awareness of both the impacts and potential returns from resource exploitation, local communities are demanding greater involvement in decisions with respect to mining operations and a greater share of the benefits.

Increasingly, traditional approaches to mineral exploration, extraction and development, based solely on securing legal and/or regulatory compliance from the relevant government authorities, are no longer sufficient to facilitate access to mining sites and assure a supportive local environment for mining companies. Despite at times significant investments in community initiatives, many companies in the extractive sector, especially in developing countries, have failed to secure legitimacy and acceptance within the communities surrounding mining areas. Governments can and have tried to intervene where tensions between investors and communities have arisen, but they are limited in what they can achieve. In response to this ongoing problem, the concept of Social License to Operate (SLO) has grown in prominence over the last two decades. Investors in the mining sector are now acknowledging the need to gain and maintain an SLO from the communities affected by mining activities to avoid delays and interruptions to their operations and potentially damaging and costly conflicts.

## RATIONALE AND OBJECTIVES OF THE REGIONAL ROUNDTABLE

The Government of Tanzania is dedicated to improving governance in the extractive sector and securing the best possible returns for the country so as to realize broad-based national growth and development. In light of its mandate to support leaders in Tanzania and throughout Africa to attain sustainable development, the UONGOZI Institute hosted a regional roundtable titled “Managing Relations Between Investors in the Extractive Sector and Local Communities” which focused on the concept of Social License to Operate. The one-day forum held on 14 June 2016 at the Julius Nyerere International Conference Centre brought together representatives from the public and private sectors, civil society, and research and academic institutions from Tanzania, Kenya, Uganda, South Sudan, Rwanda, Mozambique, Ghana, Comoros, Canada and the United States.<sup>1</sup> Participants were selected for their expertise in issues related to the mining sector, including socially sustainable development, stakeholder/community engagement, business development, legal and regulatory frameworks, strategic conflict prevention and social protection.

The presentations and panel discussions investigated the concept of SLO in the extractive sector including: how an SLO can be obtained and maintained; the associated costs and benefits of attaining an SLO, and the risks of not having an SLO. The experiences of Tanzania—a resource-rich country that has attracted many investors to explore its natural resources—was used as a case study to examine the application of SLOs, with further expert insights from successful and not so successful applications of SLOs in other countries in Africa and beyond.

1 See Appendix A for a full list of participants and Appendix B for the event program

## KEY MESSAGES FROM DISCUSSIONS

The report presents edited highlights from the presentations and panel discussions. The following key messages emerged from the forum.

### *Obtaining a Social License to Operate is essential to averting resource-based conflicts*

Both governments and companies have all too frequently excluded local communities from decision-making processes with respect to mining projects. In the absence of their participation, communities often perceive that the benefits from mining activities are enjoyed by others far away from the mining sites while they are left to shoulder the impacts, including loss of livelihoods, environmental degradation and cultural invasion, and receive little or nothing in return. This is a common basis of many resource-based conflicts.

To avert or mitigate conflicts and achieve sustainable development, communities must be consulted and engaged at every stage of development so that they are appropriately informed about the potential benefits to the local area as well as the potential risks before they arise. Increasingly, the success of mining companies depends on ensuring constructive relations with communities surrounding mining operations. In the event of community opposition or conflict, a company can incur substantial direct and opportunity costs, including permanent damage to its reputation. Investing in a Social License to Operate should, therefore, be an integral part of the risk profile of every mining project.

### *Acquiring and maintaining a Social License to Operate is a complex, ongoing process*

Put simply, a Social License to Operate refers to the ongoing acceptance or approval by local communities and stakeholders of extractive companies and their operations. However, acquiring a social license to operate is a complex process that varies widely depending on the local context and the nature of mining operations involved. Obtaining an SLO typically entails a systematic approach by the mining company that includes ongoing, open consultations with stakeholders at the local level so as to identify community needs for the development of CSR and local content programs and to ensure appropriate and fair compensation to all parties affected by the company's operations. It also entails implementation of a robust communication strategy to ensure that all key stakeholders are kept informed about what is going on in a transparent and timely manner.

### *What an SLO is not*

A Social License to Operate is not legally binding and the process of acquiring an SLO is not standardized. An SLO is not something that can be granted or provided by the government or authorities. It is not given in writing. It is not permanent. It is not based on a particular task or transaction and it is not transferable, so you cannot buy an SLO. It is not the same in every case, and it is not the same as free prior and informed consent.

There is no 'one-size-fits-all' or 'blanket' approach in negotiating a social license to operate. Local communities have divergent and changing needs and so mining companies need to engage in continuous dialogue and relationship building with key stakeholders



*A bulldozer clearing vegetation for mining in Ghana*

based on trust and respect of the local people and the local culture to ensure ongoing approval. However, acquiring and maintaining an SLO is not only relevant to the extractive sector, it is unavoidable. Business investors that disregard this concept do so at their own peril.

### ***A Social License to Operate Extends Beyond Corporate Social Responsibility***

The concept of SLO goes beyond the notion of CSR. CSR is usually a gesture (given in cash or kind) by a business investor/mining company to support local initiatives, which the company perceives as beneficial to the local communities. In contrast, SLO is the social acceptance by local communities of mining companies and that their operations are responsible, transparent and mutually beneficial. When the local community is satisfied that its values and those of the mining company are sufficiently aligned, the community enters into an informal mutual agreement which allows the mining operations to proceed. The idea behind SLO is that mutual benefits accrue to all parties. On the other hand, circumstances in which a company may be denied an SLO include dissatisfaction by the local community with the way the company treats local stakeholders and/or carries out its business, for example, the company fails to fulfil its obligations and promises, or engages in environmentally damaging or otherwise unsustainable mining practices.

### ***The quality and timing of community engagement is all important***

The quality and timing of community engagement by a company is a core aspect of acquiring and maintaining a social license to operate. Companies should start early to build good relationships. They need to start the process before drilling the first hole in the ground. They should certainly not wait until something goes wrong.

Companies need to be knowledgeable and responsive to the genuine needs and concerns of the community from the earliest stages of the project as many environmental, social and economic issues arise during the exploration and construction phases. If mining activities are to help communities achieve sustainable development, communities must be able to effectively participate in decision-making processes so as to avert or minimize problems. Indeed, the process of acquiring an SLO provides the company an opportunity to tap into the indigenous knowledge of the area, which can be invaluable in the design and implementation of mining projects.

Benefits to local communities need to be maximized and the negative impacts avoided or mitigated. Benefits also need to be shared equitably within communities and sustained after the life of the project. Given that severe impacts may be experienced in the early stages of a project, companies may need to pay benefits before production starts and revenue starts flowing. The issue of youth unemployment in areas surrounding extractive sites is a core issue in the SLO equation, particularly in areas where small miners are thrown out of work without any provision or opportunities to secure alternative livelihoods.

However, relationships based solely on providing monetary or other benefits are typically not the most constructive or long-term relationships. The behaviour of the company and its staff, particularly security personnel, as well as standards of company governance, including accountability, fairness and transparency of communication and negotiations, and genuine care and respect for community well-being, can significantly impact a community's perception of the company. When company-community relations are collaborative, trusting, respectful and culturally sensitive, people are more inclined towards a more constructive approach, which, in turn, can reflect positively on the initial and ongoing approval of operations.

Another key challenge with respect to gaining a social license to operate is to know who best reflects the views of the community. Therefore, stakeholder mapping is very important for companies to identify who has influence and to implement a proper community engagement process. Each different stakeholder group will inevitably have its own agenda, interests and roles.

### ***Government plays a key role in facilitating the SLO process***

The government plays an essential role by creating the enabling environment for the SLO process to take place. Prudent policies and actions of the government—including, protection of property rights, employment policies and labour law, project licensing procedures, regulations on local content requirements, rates of compensation for individuals and communities, and the system of environmental monitoring and compliance—all powerfully influence the context for company-community relationships and the development of the social license to operate. The government needs to provide the frameworks, institutions and manpower to safeguard people's rights and ensure remedies when things go wrong.

Getting the balance right is one of the challenges for government. If the regulatory environment excessively favours one side or the other then difficulties and conflicts



*Participants at the roundtable discussion*

can arise. For example, if companies are favoured too much, then communities may feel disenfranchised, vulnerable and potentially hostile and disruptive to the proposed development. If communities are favoured too much, companies may decide not to invest or invest elsewhere. The government, however, needs to recognize the big power differential that exists between a big corporation and a local community.

The government is also best positioned to understand a country's best interests over the longer term, to outline development plans, set priorities and oversee implementation. In particular, local governments have a vital role to play given their intimate knowledge of communities. They need to ensure that communities are aware of their rights and obligations and the opportunities that come with new developments, while monitoring company operations to ensure adherence to laws and regulations. Of equal importance, politicians and governments need to sensibly communicate with citizens about the potential benefits that will flow from the discovery of natural resources so as not to unrealistically raise the expectations of the people, which, in turn, can lead to unreasonably high demands from communities that cannot be met. Ethical leadership at all levels of government is required to provide the foundation for the open, transparent and fair relations between companies and local communities which lie at the heart of the social license to operate.



## Introduction



Mr. Dennis Rweyemamu, Head of Research & Policy at UONGOZI Institute delivering welcoming remarks on behalf of the CEO.

As part of its work to support leaders in Tanzania, the Institute of African Leadership for Sustainable Development (UONGOZI Institute) has a dedicated program on Natural Resources Management for Human Development. This program aims to support the Tanzanian government to improve governance in the extractive sector and to secure the best possible returns for the country while bringing about broad-based domestic growth and development.

The extractive sector is one of the key growth sectors in many countries in the Africa region, including Tanzania. However, the sector also has the largest incidence of conflicts and disputes between resource companies and local communities. Managing relations within the extractive industry is, therefore, a key consideration to secure optimal benefits from the sector.

Given the increasing importance of formulating business development models that take into consideration the well-being of local communities surrounding extractive sites, the Institute organized a regional roundtable on the theme *Managing Relations between Investors in the Extractive Sector and Local Communities*. The event took place at the Julius Nyerere International Conference Centre in Dar es Salaam on 14 June 2016. The Hon. George Simbachawene, Minister of State for Regional Administration and Local Government within the President's Office, officiated at the event.

The forum brought together experts in the extractive sector from Tanzania and internationally, including representatives from seven countries in Africa—Kenya, Uganda, Rwanda, Mozambique, Ghana, the Republic of South Sudan, and Comoros. Delegates included high-level representatives from government, regional and international organizations, academia, the private sector and civil society. The meeting featured a series of expert presentations and two broad-ranging panel discussions moderated by Mr. Aidan Eyakuze, Executive Director of Twaweza East Africa.

The primary goal of the roundtable was to examine the concept of “Social License to Operate (SLO)”. The forum aimed to identify best practices with respect to acquiring and maintaining an SLO, thereby avoiding social conflicts, and, in turn, costly delays to mining operations, including the possible shutdown of mines and projects due to community opposition. Specifically, the forum sought to:

1. Enhance understanding of the concept of SLO in the extractive sector
2. Understand how SLOs are obtained and maintained
3. Reflect on the experiences of Tanzania in the application of SLOs
4. Learn from both successful and the not very successful cases of SLO applications from other countries.

## THE STRUCTURE OF THE REPORT

This report presents edited highlights from the roundtable's presentations and panel discussions. **Section 1** summarizes the opening address by the Hon. George Simbachawene, Minister of State for Regional Administration and Local Government within the President's Office. In his address, the Minister emphasized the need for community engagement and participation in decision-making if relations between investors and local communities are to be improved.

**Section 2** provides edited highlights from the keynote presentation by Dr. Ian Thomson, the Principal of ShingleSpit Consultants Inc. from Canada. His address set the overall context for the meeting by introducing the concept of Social License to Operate and its essential role in mitigating risk in the extractive sector and building desired relationships between companies and communities.

**Section 3** shares key findings from a 2015 study of social license to operate in Tanzania presented by Dr. Lemayon Melyoki from the University of Dar es Salaam. The study examined historical and existing projects within the petroleum and mining sectors in Tanzania and assessed the degree to which companies have secured SLOs for these operations. Selected comments from the brief plenary discussion held following the presentations by Dr. Thomson and Dr. Melyoki are presented in **Section 4**.

**Section 5** provides edited highlights from the first panel discussion on the topic Challenges in obtaining and maintaining a social license to operate.

**Section 6** summarizes the key points from the presentation by Dr. Mohammed Amin, Executive Director of the Africa Centre for Energy Policy. Using Ghana as a case study, Dr. Amin discussed how to manage conflicts in communities surrounding extractive projects in the African context.

**Section 7** then summarizes the key points from the presentation by Mr. Anthony E. Paul, an adviser to the Minister of Petroleum in Ghana. Mr. Paul discussed the topic of local content as a tool for obtaining an SLO in the extractive sector, again based on the experience of Ghana. Selected comments from plenary discussion are included in **Section 8**.

**Section 9** presents highlights from the second panel discussion which explored the roles of stakeholders in ensuring companies obtain legitimacy and acceptance from local communities.

**Section 10** summarizes the fourth and final presentation during the event by Dr. David Reyes from Triple R Alliance on the topic of how government policies influence social license to operate. A short conclusion completes the report.

# 1 Opening Address: Community engagement— The key to improved relationships in the extractive sector



*Hon. George Simbachawene, Minister of State, President's Office - RALG, delivering the opening address.*

## HON. GEORGE SIMBACHAWENE, MINISTER OF STATE, PRESIDENT'S OFFICE—REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT

The Honorable Minister commenced his address by acknowledging that mining-related company-community conflicts have increased in recent years, which has created the perception that such conflicts are inevitable. Therefore, he commended the UONGOZI Institute for organizing the roundtable and welcomed the distinguished group of participants and experts assembled.

### THE GENESIS OF CONFLICTS IN THE EXTRACTIVE SECTOR

The Minister began by describing how conflicts in the extractive sector have tended to arise. He said that resource-rich countries with limited productive capacity like Tanzania often sought to develop their mineral endowment by attracting foreign investors. Once these investors came into the country, they would engage with the government. However, a fundamental problem arose because

both governments and companies failed to consider local communities as important stakeholders in decision-making processes.

He added that if communities were appropriately informed and involved they would understand the potential benefits to the local area as well as the potential risks before they arose. Presently, however, in the absence of their participation, communities usually perceive that the benefits from mining activities are enjoyed by others far away from the mining sites while they are left to shoulder all of the impacts, including loss of livelihoods, environmental degradation and cultural invasion, and receive little or nothing in return. This is the basis of resource-based conflicts.

Small disputes have often escalated into major conflicts between companies and communities. And these conflicts can be very costly and damaging to a company's local and international reputation, hamper its access to finance and business partners, and affect its ability to attract and retain skilled workers. In extreme situations, communities may delay or stop projects through civil strikes or by vandalizing infrastructure.

### Hon. Minister Simbachawene

*In my view, conflicts are occurring mainly due to exclusion of communities in decision making. Decisions are made far away from where mining is going to take place, and communities are not engaged.*

### THE VITAL IMPORTANCE OF COMMUNITY ENGAGEMENT

The good news is that there is growing acknowledgement within the extractive sector of the need to engage local communities and acquire what is called a “*social license to operate*”. The Minister related that, if done well, community engagement “*establishes mutually beneficial relationships between a company and local stakeholders, helps to ensure that company operations meet the expectations of local communities, creates an environment conducive to investment, and demonstrates value protection to companies interested in investment or acquisition.*” In these ways, the presence of investors can be a driver of economic development—through the company’s contracts, supply chain, employment of local people and the taxes it pays. In contrast, poor relationships with communities can cause conflict that jeopardizes both the investments and local economic and social gains.

He suggested that these community negotiations and consultations “should address fundamental issues such as compensation, corporate social responsibility initiatives, and alternative jobs in case some members of the local communities lose their jobs in favour of operations by large-scale investors”. Through appropriate engagements, the Minister felt sure that the incidence of conflicts could be reduced.

### DECENTRALIZATION BY DEVOLUTION—EMPOWERING PARTICIPATION AND DECISION-MAKING BY LOCAL COMMUNITIES

The Minister then described the Tanzanian government’s policy of Decentralization by Devolution (D-by-D). Directly relevant to the issue at hand, D-by-D was implemented as a means to empower people to make decisions and enhance service delivery at the local level. Under this policy, the roles of stakeholders at the council and sub-district level are clearly defined. Community participation, therefore, is one of the most important manifestations of true decentralization.

If mining activities are to help communities achieve sustainable development, communities must be able to effectively participate in decision-making processes in establishing mining operations so as to avert or minimize problems. Company-community relationships need to be collaborative, trusting, respectful and culturally sensitive. Benefits to local communities need to be maximized and the negative impacts avoided or mitigated. Benefits also need to be shared equitably within communities and sustained after the life of the project.

### THE ROLE OF LOCAL GOVERNMENT

The Minister then turned to the role of local government. He said that local government authorities (LGAs) are important actors in the process. LGAs are responsible for representing their local community and advocating on behalf of their constituents to central government and other statutory bodies. However, given that they are the level of government closest to the people, mining companies often see this connection with the local community advantageously and may use the LGA as the ‘eyes and ears in the town’,

providing information and advice on community sentiment and concerns. However, the Minister cautioned that:

**“...agreements negotiated solely between local authorities and mining companies may not always be recognized as legitimate by local people. Local authorities must, in the course of their decision-making process, give consideration to the views and preferences of persons in the communities likely to be affected by extractive activities.”**

### **THE RESPONSIBILITY OF COMMUNITIES**

The Minister added that communities must also take a share of responsibility on why relations with mining companies have tended to be poor. Communities do not always use the opportunity for engagement with investors effectively. However, in their defence, he said that communities are frequently not aware of their right to participate in decision making, and local authorities and mining companies do not always inform them in a timely and appropriate way.

He further counselled that self-interested groups within communities must be guarded against. Communities are far from monolithic and far from immune to capture by local elites who primarily represent their own narrow interests. Indeed, many communities, particularly villages with natural resources, may be fractured and their leadership may be highly contested and fluctuating as different strata or factions compete for dominance. Consequently, local governments and companies may face considerable challenges in achieving effective participation and identifying needs and targets in these communities. In turn, the planning and implementation of mining operations and community programs can be challenging.

### **LESSONS FOR IMPROVED COMMUNITY-COMPANY RELATIONSHIPS**

Based on his experience, the Minister outlined a set of lessons that are essential to managing community-investor relations in the extractive sector. They are:

- \* Communities have rights, including traditional land rights, that must always be respected
- \* Communities are the company’s most valuable local resource, as employees, as sources of indigenous knowledge and as partners in the industry
- \* Communities must be consulted and engaged in a meaningful way at every stage of development so that they can understand how they will be affected by operations, plan for the changes, and contribute their knowledge to the design of mitigation strategies

- \* Local governments have an important role to play as they know their communities and what they need
- \* Government at all levels needs to enhance monitoring of company operations and enforce compliance with laws that protect communities surrounding extractive sites from harmful social and environmental impacts.

The Minister emphasized the need to optimize community participation if relations between investors and local communities are to be improved. He reiterated the commitment of the Tanzanian government to continue with decentralization “so as to make citizens’ participation even simpler, more transparent, more equitable and more inclusive.” In doing so, the government hopes to attract investors but also promote the peace and security and prosperity of local communities. And, with respect to the extractive industry, he highlighted the statutory requirements under the recently enacted Petroleum Act of 2015 that companies prepare a credible CSR plan on an annual basis, which is jointly agreed with the relevant local government authority and takes into account the environmental, social, economic and cultural priorities of the host community.

In closing, he wished for fruitful deliberations. In particular, he encouraged participants to offer suggestions on ways in which the government can play its role in managing relations between investors in the extractive sector and local communities. As guest of honour, he declared the regional roundtable officially open.



*Village residents meeting with a mining investor.*

Source: [www.sfcg.com](http://www.sfcg.com)

## 2 Keynote Presentation: The Social License to Operate — Reality, myths and the dark side



DR. IAN THOMSON — PRINCIPAL, SHINGLESPIT CONSULTANTS INC., CANADA

### WHAT IS A SOCIAL LICENSE TO OPERATE? AND WHAT IT IS NOT?

To begin, Dr. Thomson gave an overview on what is meant by a “social license to operate”.<sup>2</sup> In simple terms, an SLO is the ongoing approval or acceptance by the local community of a mining or other project in a given area. It is an intangible attribute of the relations between local stakeholders and the company, which indicates that the actions and operations of a company are acceptable and/or approved by the community.

The SLO concept recognizes that a government may issue a legal license for a company or project to go ahead but that it is the community in the area of the mine that grants permission in the form of social approval for a company or project to operate. Having a “piece of paper” is no longer a guarantee of project acceptance. The SLO is a genuine and measurable social phenomenon because local communities can and do have power over corporations,

Dr. Thomson then pointed out what an SLO is not. An SLO is not something that can be granted or provided by the government or authorities. It is not given in writing. It is not permanent. It is not based on a particular task or transaction and it is not transferable, so you cannot buy an SLO. It is not the same in every case, and it is not the same as free prior and informed consent. Neither is an SLO the same as sustainable development. However, the quality of relationships that exist when a social license is in place is the perfect foundation for sustainable development initiatives that will benefit communities.

### THE CONSEQUENCES OF NOT HAVING AN SLO

The consequences of not having an SLO can be profound. Companies may be denied access to land, face extended delays or stoppages in operations, and project costs can skyrocket. And companies can end up with a bad reputation, which is perhaps the most significant and enduring cost to the company. For example, recent quantitative research on gold mines internationally indicated that having an SLO was worth up to 60% of corporate asset valuation. And, in Australia, the company AGL Energy lost 74% of its value when analysts discovered stakeholder conflict. In the worst cases, such as particular conflicts in the mining industry in Latin America, lives were lost, projects ended, laws changed with respect to mining operations, and companies decimated.

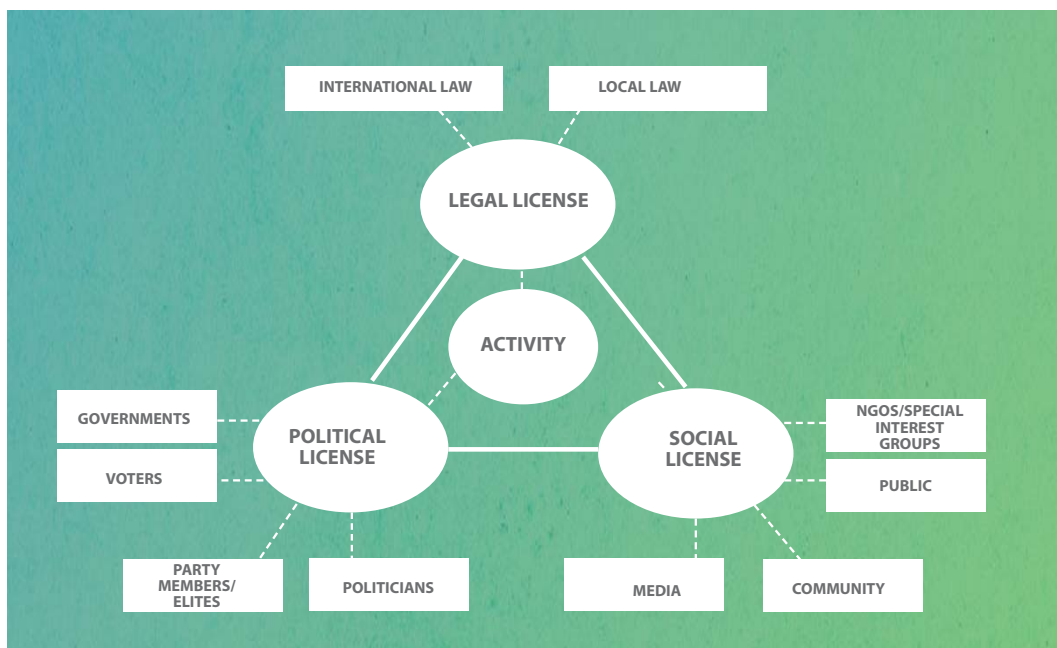
*Dr. Ian Thomson  
presenting on the Social  
Licence to Operate*

<sup>2</sup> The term was coined by Jim Cooney and shared at a World Bank meeting in early 1997. Mr. Cooney was a Canadian mining executive who spearheaded the mining industry’s movement to sustainable development while working as chief executive at Placer Dome (later known as Barrick Gold).

### AN SLO DOES NOT OPERATE IN ISOLATION

Dr. Thomson then went on to discuss that a social license doesn't exist in isolation from other factors. As indicated in Figure 1, the SLO operates in relationship with the provision of a legal license within a particular jurisdiction (and the applicable domestic and international laws). An SLO is also interrelated with the political license, which is determined by many factors and stakeholders, including the government of the day, the political party in power, and the views of voters.

**Figure 1:** The relationship between political, legal and social license



Source: Morrison, J. (2014) *The social license: How to keep your organization legitimate*. London: Palgrave MacMillan.

The enabling environment created by government, therefore, has a significant influence on the process of developing and maintaining an SLO. For example, if the regulatory environment excessively favours one side or the other then difficulties and conflicts can arise. For example, if companies are favoured too much, then communities may feel disenfranchised, vulnerable and potentially hostile and disruptive to the proposed development. If communities are favoured too much, companies may decide not to invest or invest elsewhere.

Getting the balance right is one of the challenges for government. But companies, too, must do their homework. They should not expect government to give or 'enforce' a legal license without popular political support for their project. And, in some countries (e.g., Canada), the SLO has become a requisite component of the legal license.

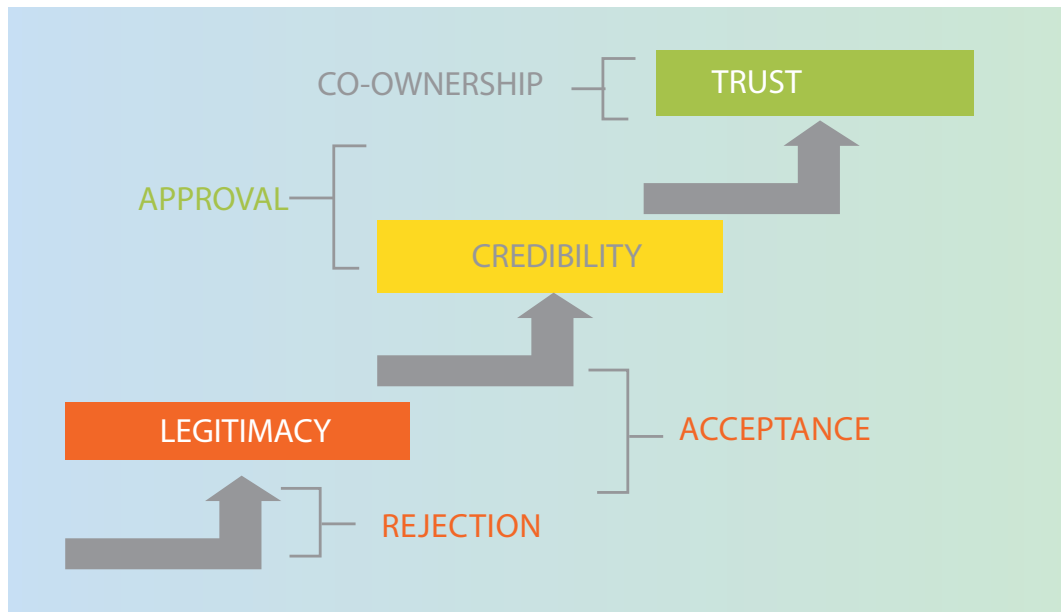


The social license may also fill gaps in governance, for example, in remote areas where government is absent, in cases of jurisdictional dispute (both at sub-national or international level), and in novel (unregulated) industries or markets.

### THE THREE COMPONENTS OF A SOCIAL LICENSE TO OPERATE

Figure 2 presents a model of the social license to operate. As Dr. Thomson explained, acquiring an SLO can be seen as having three aspects or phases with respect to community perceptions. The first is legitimacy, i.e., whether the community feels that a proposed project is legitimate; the second is credibility, i.e., whether the activities of the company are credible; and the third and final phase is trust, i.e., whether trust exists between the company and community. These different aspects of an SLO are gained sequentially. They are cumulative. As such, they can work in both directions—the company can lose trust, lose credibility and/or lose legitimacy. As the diagram illustrates, if the community feels that something is legitimate, they are more likely to accept it, and if the community views the company’s actions as credible, they are more likely to give their approval for the project. He further related that “when things really work out... people start self-identifying with the project and say it’s our mine or it’s our project.” In this situation, the community may feel a sense of co-ownership of the project.

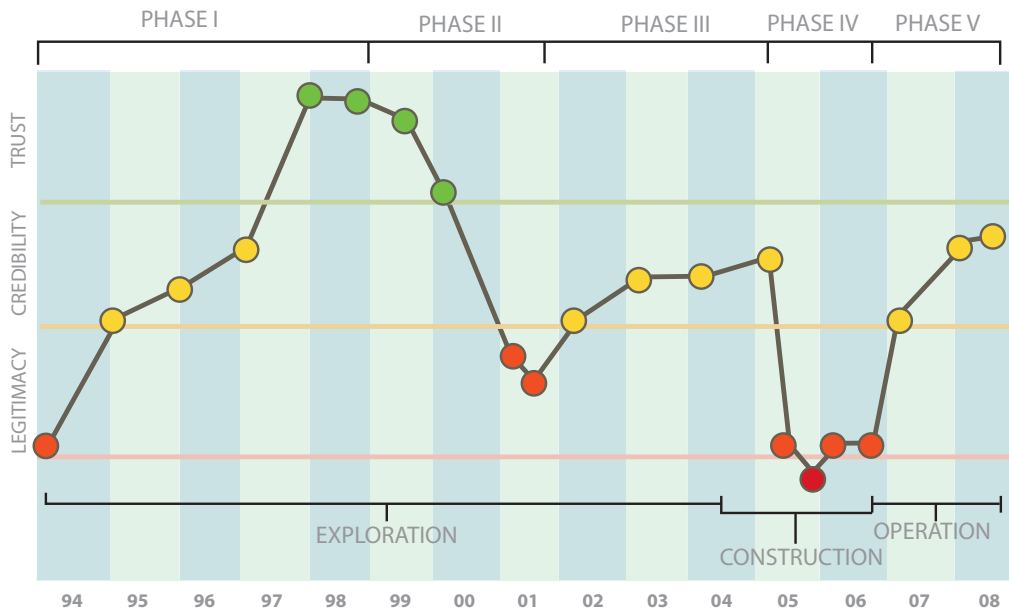
**Figure 2:** The three aspects/phases in gaining a social license to operate



### THE DYNAMIC NATURE OF THE SLO PROCESS

Dr. Thomson then used the example of the San Christobal Mine, a silver, lead and zinc mine in central Bolivia to highlight the dynamic, impermanent and non-transferable nature of the social license to operate. Figure 3 tracks the status of the SLO between the community and company managing the mine, in terms of credibility, legitimacy and trust over the period from 1994 to 2008. As can be seen, the company initially gained and built a great relationship during the early stages of exploration of the mine. But through a series of management changes, the relationship faltered, then recovered in part before plunging to a serious low point during construction of the mine. A further change of company management ushered in a different attitude that led to better relations during the operational phase of the mine, whereby the credibility of the company was restored. But notably, the SLO never reached its early success and probably never will, strongly indicative that once trust is lost, it is extremely difficult to regain. This, in turn, highlights the critical importance of showing respect for the local community. Achieving credibility, legitimacy and trust depends on respect, above and beyond any monetary or other benefits that are negotiated.

**Figure 3:** Evolution of the Social License to Operate, San Christobal Mine, Bolivia



### **PATTERNS IN THE SOCIAL LICENSE TO OPERATE OVER THE LIFE OF A MINE**

Citing research on other mines, Dr. Thomson noted that “some fairly persistent patterns” can be discerned in the SLO process over the life of a mining project. He related that, “operating mines tend to have relatively stable social licenses. In contrast, the social license during exploration, particularly mining exploration:

**“is quite volatile and always conditional [as] nobody knows quite what’s going to happen next...the social license is conditional pending confirmation, and it tends to be conditional positive or conditional negative depending on the ongoing experience in that relationship between the project proponent and the community.”**

And, finally during construction:

**“...the social license is chronically unstable...because there’s so much change happening so rapidly that communities become very stressed and the relationship becomes very, very stressed. Many projects lose their social license in construction and often never fully recover it afterwards and one of the problems that we see in operating mines can be traced back to construction and sometimes even all the way back in what happened in the exploration.”**

The quality and timing of engagement by a company are essential for acquiring and maintaining a social license to operate. Companies must start early to build good relationships.

### **MYTHS AND REALITIES OF AN SLO**

In the next part of his presentation, Dr. Thomson sought to dispel some of the common misunderstandings of the social license to operate by asking a series of question and providing answers based on accumulated experience in the field.

#### **Q. Do communities have the power to veto a project?**

**A.** The answer is they can’t have a veto power because they are not part of the decision making process. On the other hand, they have all the power to get in the way and make things difficult...maybe even stall a project, and maybe even stop it. But it’s not the same as a veto. [Hence] it’s very much in the hands of the company to get out there in front of all this to make sure that none of these problems develop to begin with.

#### **Q. If a project is advancing and operating, why worry about the level of social license?**

**A.** If you don’t have a very good social license...what you’re going to be living with is constant rumbling trouble and the cost and problems that go with it. So it’s worth investing early to build that better relationship. And since that better relationship is not necessarily all about money...then why not do it.

**Q. Is the social license to operate a code phrase for more handouts or extortion?**

A. Unfortunately, yes, it certainly can be. It certainly can be but again it's very much in the hands of the company to get out in front of that and not allow that type of a situation to develop. If you start early you can reduce, not necessarily eliminate that risk, but you can certainly reduce it.

**Q. Do all opinions in the community carry weight?**

A. No they don't. You have to know the community structure...you are dealing with. Where is there power in the community? Where is there influence in the community? Whose decision or whose opinion really counts? Who's just making a lot of noise?

**Q. What about socially responsible companies in an industry that's lost its social license?**

A. Clearly, it's an uphill struggle. But [there are] responsible, reliable, good companies taking their time, working diligently to build the sorts of relationship that will make it possible to work successfully, even in situations that might otherwise appear to be quite intimidating.

**WHEN POLITICSTAKES OVER: THE DARK SIDE OF AN SLO**

Dr. Thomson also cautioned that there is a dark side with respect to the SLO. It can be abused by people who politicize the SLO process to further their own interests. He counselled that the social license to operate works at its best at the community level. He considered that to speak about an SLO at a sub-regional or a national level might be a misuse of the term social license because those levels are typically the areas for higher-level government policy and government actions.



*Participants of the forum during Dr. Ian Thomson's presentation on SLO.*

## PROVIDING AN ENABLING ENVIRONMENT: THE ROLE OF GOVERNMENT IN THE SLO PROCESS

To conclude his address, Dr. Thomson offered the following recommendations on what governments can do to facilitate the SLO and improve public confidence in their role. He recommended that the government:

- \* Separate the promoter of the industry from the regulator. If they are both in the same ministry, no one is really quite sure whether they can trust what's going on. The government should not try to play two acts at the same time.
- \* Create a balanced and legal policy framework that does not favour one side over the other. Additionally, it may be valuable to establish an entity responsible for compliance that both companies and communities can turn to when things aren't going right.
- \* Protect property rights, including traditional land rights and water rights, especially given the big power differential that may exist between a big corporation and a local community. And, in all dealings, corruption must be avoided as it distorts the process and makes relationship building ever more difficult.
- \* Strengthen government authorities at the local level.
- \* Create stability and sustainability for local populations by ensuring they receive genuine benefits, for example, a direct revenue stream from the mining company that is invested back into the community.
- \* Encourage community-based environmental monitoring. Credibility in mining activities increases significantly if communities participate in ensuring that environmental impacts are properly managed.
- \* Require community-company agreements which clearly set out the rules and defines the roles and the responsibilities of all partners at the local level. In this way, communities don't have to rely on the good will and benevolence of the company.

## 3 Keynote Presentation:

### The Social License to Operate in the Extractive Sector in Tanzania - Key findings from oil and gas and mining projects



*Dr. Lemayon Melyoki, making the second keynote presentation on Social Licence to Operate*

#### **DR. LEMAYON MELYOKI, UNIVERSITY OF DAR ES SALAAM**

In this presentation to the roundtable, Dr. Melyoki summarized the key findings from a 2015 study of the Social License to Operate in Tanzania that focuses on the mining and oil and gas sub-sectors. As in other countries, SLOs have become increasingly prominent in Tanzania in response to the failure of formal licensing processes to articulate and properly address the concerns of local communities in areas surrounding mining sites. For mining companies, obtaining a license from the government and meeting formal regulatory requirements are no longer adequate to ensure smooth operations. Instances of protest, violence and vandalism as well as delays, interruptions and even shut down of mining activities have been experienced.

#### **DESCRIPTION OF THE STUDY**

The current study was undertaken to assess if and how companies obtain and maintain SLOs in Tanzania. The study interviewed 205 people, including community members and representatives of civil society organizations in areas affected by extractive projects, local government officials (at regional, district and village levels), and staff of the mining companies. For the oil and gas sub-sector, extractive projects in Mtwara and Lindi regions were examined. For the mining sector, projects in Shinyanga, Geita and Mara regions were studied. Dr. Melyoki's comments are summarized below for each sub-sector under four key aspects with respect to achieving an SLO: i) community engagement; ii) corporate social responsibility and local content initiatives; iii) procedural fairness and compensation; and iv) stakeholder relationships.

#### **THE STATUS OF SLO IN THE OIL AND GAS SUB-SECTOR: THE EXPERIENCE IN MTWARA AND LINDI REGIONS**

##### **Description of the sites examined by the study**

The sites examined by the study were located in Msimbati and Madimba villages within Mtwara district of Mtwara region and Kilwa district in Lindi region. The Tanzania Petroleum Development Corporation (TPDC), the national oil company of Tanzania, operates in these regions alongside several multinational petroleum companies.

In Lindi region, PanAfrican Energy Tanzania Limited is the operator of the Songo Songo gas wells and gas processing plant on behalf of Songas Ltd who owns the infrastructures (two gas processing trains, a high pressure 12" 25km offshore pipeline and a 16" 207km onshore pipeline). , located near Songo Songo Island, a small island off the southern

coast of Tanzania. The Songo Songo field has been producing gas from Songo Songo since 2004. The pipeline from Songo Songo transport gas to Dar es salaam for electricity generation at the Ubungu plant also owned by Songas. A significant proportion of the gas generated at Songas Ubungu Plant is sold to Tanzania Electric Supply Company Limited (TANESCO).

In Mtwara, the onshore gas fields (Mnazi Bay) have almost similar age (in terms of exploration, discovery and development) as the Songo Songo gas fields. M&P, Wentworth Resources and TPDC have been producing gas from the Mnazi Bay concession with production facilities based at Msimbati since 2006. Gas extracted goes to the new government-owned (TPDC) gas processing plant and pipeline terminal at Madimba, which was completed and commissioned during October 2015. From there, processed gas is piped to Dar es Salaam. In Mtwara also, Statoil, ExxonMobil and BG have discovered significant quantities of gas in deep sea but are still developing and preparing for production. Negotiations on different contracts between the IOCs and the government are also developing.

### **Community engagement**

Dr. Melyoki related that the SLO experiences in Mtwara and Lindi regions were very different. In Mtwara, the study found that no clear community engagement strategy was put in place prior to commencing gas production. As a result, local communities received mixed messages from different stakeholders including politicians and civil societies organizations; some said that Mtwara would be another Dubai, others said that all of the gas would be piped to Dar es Salaam, hence, Mtwara would receive little or no benefit. In addition, during within same period of time, commercially viable natural gas were discovered in the offshore of Mtwara. This also increased the speculations and expectations leading to the famous Mtwara riots and violent demonstrations in 2013 in opposition to construction of the then new 532 kilometers pipeline and the Madimba Gas Processing plant.

In stark contrast, PanAfrican Energy Tanzania Ltd implemented a much more robust process of community engagement and consultation with local government authorities in Lindi - favoured by the fact that the fields are within a small island (Songo Songo Island which is registered as a village due to its geographical and population size) located 15 kilometers from the Beaches of Kilwa, resulting in a positive community-government-company relationships. Therefore, apart from robust community engagements, location of the fields and number of villages surrounding the infrastructures made it easier for PanAfrica Energy to obtain and maintain their SLO.

### **Corporate social responsibility and local content initiatives**

As with community engagement, the corporate social responsibility initiatives undertaken by companies in the two regions were very different. In Mtwara, exploration companies supported the education sector by constructing schools and offering some scholarships and employment opportunities for the youth from the Madimba and Msimbati communities where gas extraction takes place. However, these investments were perceived by locals to be “peanuts” compared with the negative effects of company operations, including the noise and pollution created by heavy trucks, threats to road safety and



*Mtwara gas project Source [www.news.cn](http://www.news.cn)(1)*

other inconveniences experienced by communities. The activities of the company were perceived as an “invasion” or close to it. The investment was also seen as negligible in comparison with perceived revenues from gas exploration activities.

In Lindi (Kilwa), the situation was much better. Again, PanAfrican Energy, the operator in the Songo Songo gas field, maintained very good interaction with the community and implemented CSR projects that were considered life changing by the communities in Kilwa. In addition to support to education and health, the company connected nearly every household in Songo Songo village to electricity at no cost. It also created opportunities for locals to engage in small-scale business activities. The company also paid local taxes on time, which were used for local development. Findings in Lindi indicate that the company did its homework and engaged positively with communities to identify and meet local priorities. As a result, it secured a social license to operate. However, the study did not manage to obtain the amount of money spent per year of CSR projects for comparisons between the Lindi projects and Mtwara onshore projects.

### **Procedural fairness and compensation**

In terms of procedural fairness, in Mtwara, communities that had to give up title to land for exploration and extractive activities (Msimbati and Madimba villages) perceived that the compensation was low, neither reflecting market values nor fulfilling promises made by politicians. In Lindi, low rates of compensation were also given for land used by investors but communities perceived they had been fairly compensated based on the package of benefits provided.



### **Stakeholder relationships**

The study found that Mtwara has had and still has a vibrant network of civil society organizations but they felt excluded from discussions about the benefits that gas would bring to local communities. Once again, in Lindi, relationships among project stakeholders—communities, companies and local government—indicated to be more positive even though the research noticed there are no CSOs in Kilwa engaged in the oil and gas issues. Majority are located in Mtwara town and few in Lindi town.

## **THE STATUS OF SLO IN THE MINING SECTOR IN TANZANIA: CASE STUDIES FROM SHINYANGA, MARA AND GEITA REGIONS**

### **Description of the sites examined by the study**

Shinyanga region is endowed with significant quantities of mineral deposits. Exploration activities and production of minerals are occurring in different districts. Buzwagi Gold Mine is located less than five kilometers from Kahama Town Council and Bulyanhulu Gold Mine is located in Msalala Council which is part of the Kahama District both mines are operated by Acacia Mining (formerly Barrick Gold). Mwadui Diamond Mine is located in Kishapu district of Shinyanga region. It is one of the oldest mines in Africa having opened in 1940. There are two sites within Mwadui Mine, one operated by Petra Diamonds, the other by El Hilal, a local Company. Geita Gold Mine is in Geita District of Geita region and North Mara Gold Mine in Tarime district of Mara region are both operated by Acacia Mining.

### **Community engagement**

Overall, the study found that there was little to no meaningful community engagement in the mining sites examined. In villages around the Mwadui mine and in Kishapu district no meaningful engagement had occurred and the companies struggled to operate in those areas. Engagement at Buzwagi, Bulyanhulu and North Mara had been problematic but some improvements were noted during the time of the study. Community engagement around the Geita mine remained a problem. There was lot of community tension. Despite receiving payments of tax, nearly everybody interviewed was deeply frustrated.

### **Corporate social responsibility and local content initiatives**

Recent engagement at the Buzwagi, Bulyanhulu and North Mara sites had led to some kind of agreements between the companies and surrounding communities, whereby communities would supply young men to provide security at the mines and the company would support the design and implementation of community projects.

CSR initiatives around Mwadui diamond mine were somewhat better. The companies had supported the construction of offices for the village and the ward and the school nearby had water, although the water supply had only been put in place recently. These new developments were considered to be significant by the communities but there was a sense of frustration as to how a company like De Beers could operate the mine for so many years and still be surrounded by a poor community.

**Procedural fairness and compensation**

The Mwadui Diamond Mine has been operating since before independence (1940) so the issues of compensation and procedural fairness were very different at that time. However, El Hilal, a local investor had recently acquired part of the Mwadui mining site and the communities had reported that this local miner was not inclusive and consultative.

At Buzwagi Gold Mine, the compensation “process” was reported as being fair but the rate of compensation provided was very low. Respondents reported that it did not reflect the value of land that they were giving up. At Bulyanhulu, Geita and North Mara, compensation payments were not well handled. Some respondents reported that they had not been paid for seven years after evaluation of their land, leading to bitterness. In North Mara, a practice was reported by the community that was complicating the compensation process. People who owned land close to the mine would seek to acquire additional land and build structures on the land in the period before the company would want to expand. In this way, community members would seek to increase the value of their land, so as to secure higher rates of compensation when the company eventually expanded the mine site. This complicated the calculation of compensation and the company was not always able or willing to match those unexpected increases.

**Stakeholder relationships**

In general, the relationships among stakeholders are strongly influenced by the degree of community engagement which was very limited at the sites examined. The involvement of CSOs was almost non-existent. In addition, there were concerns about how taxes were calculated. Even officials in the local authorities that reported receiving a fair share of local taxes, still expressed reservations as to whether what they were paid was what they should have been paid. In other words, there was a lack of transparency around the calculations of the local taxes. Most significantly, the massive unemployment resulting from displacement of small miners affected the relationships between the company, communities and local authorities.

## CONCLUSIONS

To conclude his presentation, Dr. Melyoki provided a set of key observations derived from the study together with recommendations to address the challenges identified in obtaining and maintaining SLOs in Tanzania.

- \* SLOs are limited in the petroleum sector and a critical problem in the mining sector.
- \* Effective community engagement, timely knowledge of local impacts and benefits as well as procedural fairness were key factors in building relationships and obtaining an SLO.
- \* The important role of CSOs and regional authorities in the SLO process should not be overlooked.
- \* Land and compensation agreements must be transparently negotiated and appropriately documented. The process needs to be formalized to avoid all kinds of promises being made that cannot be fulfilled.
- \* The issue of youth unemployment in areas surrounding extractive sites is a core issue in the SLO equation and needs to be taken seriously by the companies and government authorities, particularly in areas where small miners are thrown out of work without any provision or opportunities to secure alternative livelihoods.
- \* Clear guidelines on the role of LGAs in the SLO process are required, including their involvement in the granting the formal mining licenses. LGAs involved in the study frequently complained that when companies commenced operations in the local area, they were in the dark as to the contents of mining agreements. The role of LGAs as liaison between local communities and investment companies is essential and needs to be supported to ensure healthier relationships among all stakeholders.

## 4 Highlights of the plenary discussion



*Mr. Aidan Eyakuze moderating the panel discussion.*

A short plenary discussion was held following the presentations by Dr. Thomson and Dr. Melyoki. The moderator invited questions from the floor. Selected questions and answers are highlighted below.

**QUESTION FROM FREDRICK MANGASINI, SENIOR GEOLOGIST WITH THE STATE MINING CORPORATION OF TANZANIA (STAMICO):**

Could joint ventures with local communities be one way to create the social license with the communities?

**RESPONSE FROM DR. THOMSON:**

Dr. Thomson responded that it is difficult for communities to participate directly in a joint venture because they don't necessarily have the capacity or the financial capability. On the other hand, communities have been granted an interest in the company that leads the project. They have a block of shares [or] they may have a seat on the board as a consequence of that. That collaboration has been very helpful. However, there is much more evidence of joint ventures in community development, where communities and companies worked together on certain aspects of long-term development for the community.

**QUESTION FROM JOYCE MKURUNI, COMPANY SECRETARY WITH THE KENYA CHAMBER OF MINES:**

Have formal agreements between companies and local communities been used elsewhere? From a legal perspective, is it possible to negotiate and enforce a binding agreement with community representatives?

**RESPONSE FROM DR. THOMSON:**

Dr. Thomson said that company-community agreements are widely used in different parts of the world. Indeed, to his knowledge, they have been incorporated into relevant legislation in thirteen countries. They were first implemented with communities of indigenous people in Canada and Australia. They are called community benefit agreements or community development agreements and they worked. They are also extremely popular, very widely used, and very successful in Latin America. A model agreement has been developed by the Rocky Mountain Mineral Law Foundation and there is plenty of background case law. If well developed, these agreements can be extremely important. He added:

**“What is often more important than the agreement itself, is the process of reaching the agreement, the relationship building and the negotiating process that brings companies and communities together to sort out certain problems. That is often the more important part of the whole process.”**

## 5 Panel discussion: Challenges in obtaining and maintaining a social license to operate



The panel from L-R: Amb. Ian McAlister, Amb. Ami Mpungwe, Mr. Aidan Eyakuze (Moderator), Hon. James K. Avedzi (MP), and Mr. Deo Mwanyika

### PANELLISTS:

1. Mr. Deo Mwanyika, Vice President, Corporate Affairs, Acacia Mining
2. Hon. James K. Avedzi (MP), Member of the Parliament of Ghana (Ketu North Constituency) and current Chairman of the Parliamentary Committee for Finance
3. Amb. Ami Mpungwe, Former Ambassador of Tanzania to South Africa and currently Chairman of Tanzania Chamber of Mines and Energy (TCME)
4. Amb. Andrew McAlister, Former High Commissioner of Canada to Tanzania and currently Chairman of McAlister Consulting Corporation

**Moderator:** Mr. Aidan Eyakuze, Executive Director, Twaweza East Africa

This discussion explored various dimensions of the social license to operate, particularly on how to build trust and ensure fair dealings with local communities. Edited highlights from the discussion are presented below.

### ON THE CHALLENGES IN GAINING THE TRUST OF THE LOCAL COMMUNITY

Mr. Mwanyika concurred with earlier presentations that the mining sector faces a critical problem in terms of license to operate. The principal reason why it faces this problem is the lack of trust between companies and local communities. Gaining and keeping the trust of a community can be very difficult to achieve. Trust is intangible. And trust is not permanent. A company can build trust over time then lose it in an instant.

He said that an underlying cause of distrust among people in local communities is their lack of understanding of the nature of the mining process itself as well as the terms of the mining agreements. Mines are often located in remote rural areas and people in these communities typically have a low level of literacy. They may have been engaged in small-scale mining activities. They know that gold is valuable, but they do not realize the quantity and quality of the deposit, how deep the gold is found, and how very small

amounts of gold are extracted from huge quantities of earth. He informed the group, that, on average, it takes 1 tonne of ore-bearing rock to produce 1 gram of gold. This is difficult for most people, even the well-educated, to comprehend. This lack of understanding can easily translate into a lack of trust, in the mining companies and contracts, especially the royalty agreements.

### ON THE NEED FOR COMPANIES TO BECOME PART OF THE LOCAL DNA

Ambassador Mpungwe remarked that the world is changing and it is changing fast. Local populations are no longer condemned to be passive spectators of economic activities pursued by mostly foreign companies. In many countries in Africa—South Africa, Zimbabwe, Zambia, Ghana and Tanzania—there is growing demand for local participation. And a huge challenge is the disparity in political and economic power between the big mining companies in the extractive sector and small rural communities. Companies need to recognize and respond to these realities.

“Unless these companies become part of the local DNA, they become antibodies. (They become viruses)... This is my advice to any company, our challenge is to become part of the local DNA, it’s not a license only...it’s not something that you leave to the investor relations department or public relations and then you as an MD you stay away, it has to be part of the life of the company.”

### ON THE IMPORTANCE OF PRUDENT COMMUNICATION BY POLITICIANS ON NATURAL RESOURCES

Hon. Avedzi highlighted the importance of politicians and governments to prudently communicate with citizens with respect to extractive resources. Using the example of the discovery of oil in Ghana, he counselled that politicians should be careful not to unrealistically raise the expectations of the people about the potential benefits that will flow from the discovery of natural resources, as this can lead to unreasonably high demands from communities residing near to those discoveries.

He added that companies are often dismissive of the need for good relations with the local community:

**“That is the behaviour of the oil companies. They are coming to take your oil. They’ll sell the product to other foreign countries. They make their money. They don’t care about what the people or the community they’ve taken their product from, because they do not depend on those people to make their profits.”**

But the local community can make life extremely difficult, therefore, the company must work to establish a social license to operate. The company needs local participation to stay and work in an area. In closing his comments, he counselled that a company should use “the SLO [as] a management tool...to keep you upright and make sure that you do the right thing all the time.”



*Hon. James K. Avedzi (MP)*



Amb. Andrew McAlister

### ON THE NEED TO IDENTIFY WHO REFLECTS COMMUNITY VIEWS

Amb. McAlister related that any expatriate project anywhere in the world will have supporters and opponents. Therefore, the greatest challenge with respect to gaining a social license to operate is to know who best reflects the views of the community. There is no substitute for having extensive local knowledge of the specific community you are working in. Therefore, structured dialogue and stakeholder mapping are very important for companies to earn and maintain trust of the local community

**“You need a structured dialogue from the very beginning. Right from the days of exploration to project development to construction...Even if you don’t have anything in particular to talk about, my experience has been that you need to have regular meetings and soon as it becomes clear, if you have your eyes and ears open, soon it becomes clear who in the local community represents the broad public opinion in that community.”**

### ON THE NEED FOR ETHICAL LEADERSHIP AT ALL LEVELS

Referring back to his earlier comments on the critical task of the company to become part of the local DNA, Amb. Mpungwe added that creating an environment that brings trust and confidence is also the task of local government leadership and civil society institutions. Leadership is needed at all levels.

Ethical leadership...should be very open and very clear for the people. And transparent. It is through this way that we can build the trust. But when you have a leadership that is either not open and transparent then things get confused and therefore the trust and confidence and the harmony disappears.

### ON THE FAIR DISTRIBUTION OF NATURAL RESOURCE BENEFITS—LOCAL OR NATIONAL? NOW OR LATER?

Amb McAlister outlined two of the main arguments with respect to the distribution of benefits from natural resources. As is the present thinking in Ghana and Tanzania, natural resources can be rightly viewed as the heritage of the entire nation, and, hence, the benefits derived from those resources should be utilized for national development. However, on the other side, local communities need to be properly, and if need be, disproportionately, compensated for the significant detrimental impact of extractive projects on their lives and the surrounding environment. Together with heightened expectations on the potential benefits, he felt that a strong case could be made for giving local communities an increased share of revenue from the resources produced.

He also highlighted the difficulty that royalty payments are typically only made to communities once the resource has been produced and sold. However, the impacts of the mine may have already been experienced by the local community for many years, throughout the exploration and construction phases of the project. Therefore, he recommended that various revenue sharing arrangements need to be explored, including the possibility of pre-payment of benefits for the immediate impacts of a mining project. Leaving the payment of benefits until after extraction could have lasting detrimental effects on securing and maintaining the social license to operate.

### ON THE IMPORTANCE OF HAVING AN SLO

Panellists and participants during plenary discussion agreed upon the absolute necessity of having an SLO in place.

Mr. Mwanyika: From experience, you cannot do without an SLO. Having a legal license alone is not enough. Mining companies need to invest in the engagement of stakeholders. At the exploration and prospective stages, the mining company is taking a risk and shareholders need to be realistic about the costs of doing business.

Amb. McAlister: Companies cannot avoid SLOs. They need to start the process before you drill the first hole in the ground. They also need to understand the communities they are working with. The day a mining company lands in a community expectations skyrocket. Part of the job is for the mining company to be clear and explain what they are doing, the risks they are taking, and make modest investments in SLO.



*Amb. Ami Mpungwe*

Amb. Ami Mpungwe: Investing in an SLO should be part of the risk profile of a mining company. It is the only way a company can be part of the local DNA. At a higher level, it is a tragedy. The continent is so rich, yet so poor. This brings to the fore the question of leadership and governance. In countries where there are strong government institutions trying to observe the rule of law and push for democracy there are less problems.

Hon. Avedzi added that since SLOs at the exploration phase are part of the risk, they should be tax deductible or have an element of cost sharing with the government.

An SLO is not legal binding, neither is it time bound. It is about how you can manage the people in the local communities where you are doing your business. It is based on good neighbourliness. If awareness-raising in the community is done properly right from the beginning there should be less chance for conflict to arise. Companies have to find a way of working with local communities, listen to them and respond to their genuine concerns. A company cannot simply come and operate, pollute the environment and water sources and then leave.



## 6 Managing conflicts in communities surrounding projects in the extractive sector in Africa: Ghana as a case study



*Dr. Mohammed Amin Adam presenting the case study of Ghana on Managing conflicts in communities in the extractive sector*

**DR. MOHAMMED AMIN ADAM, EXECUTIVE DIRECTOR, AFRICA CENTRE FOR ENERGY POLICY, GHANA**

This presentation focused on ways to manage conflicts in mining communities using experiences from the extractive sector in Ghana. Dr. Adam commenced his address by highlighting the relevance of Ghana's experience to the topic at hand. As is well known, Ghana is rich in resources, not just gold but also other minerals, including oil and gas. Revenues from these resources have contributed significantly to the development of the country. However, exploitation has also come at considerable cost, especially to communities surrounding the mining projects, in terms of environmental destruction, human rights abuses, community displacement and low compensation, all of which have provoked conflicts.

### **BALANCING THE INTERESTS OF ALL STAKEHOLDERS IS KEY TO REDUCING THE INCIDENCE OF CONFLICTS**

To achieve sustainable benefits from natural resources, Dr. Adam emphasized the importance of balancing the interests of all stakeholders. This can be achieved through instruments such as social contracts (between citizens, communities /NGOs and the government), resource contracts (between mining companies and the government) and social licenses (between local communities and mining companies). Conflicts often arise when the interests of only one party are achieved, for example, a disequilibrium between communities and companies will undermine a social license to operate. But it is also important to recognize that the government by its actions and inaction can also undermine the social license to operate. For instance, the government may build expectations among local communities that cannot be met.

### **THE PRINCIPAL CAUSES OF CONFLICT IN MINING COMMUNITIES IN GHANA**

Dr. Adam identified the following six main causes of conflicts in mining communities in Ghana.

1. *Management and distribution of revenues.* Mineral revenue is determined by the fiscal regimes in mineral contracts. However, communities feel a sense of ownership to mineral rights. Therefore, they expect much from the revenue derived from mines

but often the distribution of revenue does not adequately address community development challenges. Some of the reasons for this are: i) Revenues are biased towards central government; ii) Lack of transparency in the process of deciding and making distributions; iii) Lack of capacity of local authorities to invest ceded revenue effectively; and the iv) Lack of capacity by local authorities to properly plan for community development. All of these factors can cumulatively act to thwart the reasonable development interests of communities. In turn, mining companies are blamed for the low level of development in areas surrounding the mine. They are often the first point of attack as they are nearer to the communities than the central government.

2. *Compensation and resettlement.* In Ghana, the Constitution posits ownership of mineral rights in the Republic. Empowered by this, the Government can lease mineral concessions to companies without the permission of surface right owners. As a result, companies are left to negotiate land rights with surface right owners, which exposes companies to community disaffection and dissatisfaction. Historically, compensation paid has often been low, has not reflected market rates, is undermined by inflation, has been provided as a one-time, does not require payment for future loss of income, and amounts received are further undermined by inflation.
3. *Lack of alternative livelihoods.* Linked to the issue of compensation, communities may lose traditional sources of income. People have to secure alternative livelihoods due to the loss of their land or occupation but the company may offer few opportunities for employment or re-skilling.
4. *Environmental impacts.* Mining projects have caused serious water and land pollution and degradation in Ghana, including the spill of harmful chemicals. These environmental impacts understandably exacerbate tensions between companies and communities.
5. *Illegal mining activities.* It is estimated that there are 300,000 illegal miners in Ghana, some of whom operate within the concessions of mining companies. Such illegal operations lead to conflicts with the private security personnel of mining companies as well as local law enforcement agencies. These conflicts have led to deaths and injuries. This has been an extremely challenging issue to address as politicians and traditional rulers are often involved (family members, groups affiliated to political parties, etc.)
6. *Security effects.* Closely linked to illegal mining activities, companies frequently face serious security threats and crime due to the presence and/or influx of illegal miners, who may steal equipment and import arms into communities. The security threat is compounded given that private security personnel of companies are by law not supposed to be armed and because public security forces (police and military) are limited in number and often overstretched.

Indeed, Dr. Adam related that the mining company, AngloGold Ashanti has taken Ghana to international arbitration because illegal miners have taken over part of its concession and the government has withdrawn security from that concession because they have been overwhelmed as a result of the low numbers of the security personnel in that area. He added that:

**“I’ve heard often people say in communities that if social license to operate is expensive, try conflict!...The money being spent by AngloGold Ashanti at arbitration, the time that is being wasted at arbitration are the consequences that you face, if you see social license to operate to be expensive.”**

### THE DRIVERS OF CONFLICT IN GHANA’S MINING SECTOR

Dr. Adam then identified three main drivers of historical conflicts in the mining sector in Ghana.

1. *Mining induces impoverishment in communities.* Two theories have been advanced to explain this phenomenon. The first theory posits that the presence of the mine destroys the livelihoods of communities. Together with environmental problems that affect community development, these losses to communities are more than the “rent” that is distributed over time to the communities. The second theory posits that mining deprives people and communities of their possessions, for example, land and culture, and then it deprives them of their natural resources.
2. *The legacy cost of mining.* Mining has been occurring in Ghana for over a century but people have become more aware of the legacy of damage that mining has wrought on their communities and environment. As a result, communities are now demanding reparation. They are demanding compensation for the historical cost of mining that is powerfully impacting on their lives today.
3. *Unfulfilled agreements and broken relationships.* The third driver of conflicts relates to the failure of companies and the government to fulfil agreements and promises to communities leading to difficult and broken relations.

### HOW DOES GHANA ADDRESS CONFLICTS IN MINING COMMUNITIES?

Dr. Adam then turned to how these drivers of conflict can be addressed. He cautioned that:

**“If we are not able to address them then the cost to mining companies would be so great that their investment will suffer. The cost to the country will also be great because development financing will suffer.”**

He began by identifying the three conventional approaches that are being used to address conflicts, i.e., preventive measures, control measures and/or compensatory measures. But, all of these approaches must be guided by two fundamental principles: i) building relationships through trust, and ii) creating a shared value. He emphasized that all efforts to fulfil these principles and achieve these outcomes must be guided by effective consultations and community sensitization at every stage of the project, from exploration

and design and development of the site through construction and operation of the mine to closure and post-closure.

Presently, Ghanaian law provides for consultations in gaining access to land for petroleum operations and during the Environmental Impact Assessment (EIA) process. With respect to gaining access to land, the law stipulates that persons having a title to or interest in the land are to be notified and compensation and resettlement determined. With respect to consultations during the EIA process, Dr. Adam noted several significant limitations, including the technical nature of the issues being discussed, the illiteracy and limited understanding of the issues by individuals in the community, and lack of interest in the process because the expectations of the people in terms of benefit are often not met. Moreover, wide gaps in Ghana's consultation framework are visible. There is no provision for consultations during the period of mining operations or mine closure, which are critical stages in the value chain. Therefore, companies must develop their own mechanisms for consultations with communities across the life of the project and the entire value chain.

## TWO MODELS FOR CONFLICT RESOLUTION

Dr. Adam then described two models that have been used repeatedly by mining companies in Ghana to resolve conflicts in mining communities: 1. Public Private Partnerships (PPP) and 2. Voluntary Best Practices Standards (VBPS)

### *Public Private Partnerships (PPPs)*

To begin, the PPP model does not refer to project financing but refers to building partnerships between the private sector, the communities and the public sector to address issues confronting communities and thereby prevent conflicts. Various types of partnerships have been utilized in Ghana, including:

- \* Advocacy and awareness raising partnerships, under which private companies develop conflict management systems and procedures, and actively participate in protecting community interests through advocacy. For example, Newmont Ghana Limited established a Resettlement Negotiation Committee to negotiate resettlement complaints in collaboration with local authorities and government ministries.
- \* Social investments partnerships, whereby private companies provide financial, in-kind and other support to communities, for example, building social infrastructure, such as education and health facilities. One example of a social investment initiative is the five-year DFID-funded Western Regional Coastal Foundation program which has established a platform of dialogue to help improve relationships between the oil and gas companies and communities and channel CSR funding to priority sectors in the communities.
- \* Core business partnerships, in which private companies collaborate to create employment opportunities, foster entrepreneurship, contribute to economic growth and implement environmental and ethical standards within their operations. The establishment of the Enterprise Development Center by the oil company, Tullow Ghana Limited, is one example of this type of partnership.



(Left) Sam Thakkar (Uganda) and (Right) James Sanawa (Tanzania Petroleum Development Cooperation - TPDC) contributing to the discussion.

### ***Voluntary Best Practices Standards (VBPSs)***

The PPPs discussed above often involve agreements between companies, communities and governments. However, Ghana does not have mandatory legal requirements for Community Development Agreements (CDAs). Therefore, mining companies have adopted what are called Voluntary Best Practices Standards (VBPSs) to develop agreements with communities to manage the development challenges that give rise to conflicts. However, in the absence of legal obligations for signing agreements at the community level, companies have often resorted to the path of least resistance rather than develop sustainable initiatives for addressing development challenges. Where the standards are used for conflict management, they also face challenges because communities in most cases see these agreements as company initiatives and not owned by the community. And in cases where an agreement has provided a process for investigations of complaints, the same people who make the complaints about the challenges in their communities do not cooperate with the entities set up to handle complaints.

### **A VISION FOR VOLUNTARY BEST PRACTICES**

Notwithstanding the historical challenges faced by VBPSs, Dr. Adam concluded his presentation with a set of observations on the potential for their use in Ghana and elsewhere in Africa. On an optimistic note, he said that:

- \* Where industry recognizes community development and conflict prevention as a priority by adopting best practices, they help generate their social license to operate.
- \* Voluntary best practices in some cases have exceeded existing legal community development agreements. Indeed, in some countries, there are no limits to what can be done. But this requires capacity building in communities so that they can effectively negotiate their interest.
- \* When companies have freedom to comply with international standards on a voluntary basis, they can work to develop sustainable community development initiatives.

In closing, he added a cautionary note that where legally-mandated community development agreements are in place, which is starting to happen in Ghana, government has tended to abandon its responsibility to communities. For voluntary best practices to be effective in addressing community concerns and thereby preventing and managing conflicts, efforts from all stakeholders including government will be essential.

## 7 Local content as a tool of obtaining social license to operate in the extractive sector—A lesson from Ghana

MR. ANTHONY E. PAUL, PRINCIPAL CONSULTANT AND ADVISER TO THE MINISTER OF PETROLEUM, REPUBLIC OF GHANA.

### THE RISE OF SOCIAL LICENSE TO OPERATE

Mr. Paul began by describing the reasons behind the rise in prominence of the social license to operate and the case for local content. Historically, the activities of extractive companies have disrupted livelihoods, damaged the environment and undermined governance in communities adjacent to or affected by operations. Outsiders come in, take the best jobs and remove the resources. Locals are largely excluded, except for menial tasks or low value services. And the community is left with a hole in the ground.

However, people’s understanding of their ownership, control and relationship to natural resources has changed over time. Communities are increasingly demanding the right to participate in and benefit from the exploitation of natural resources. But the models of contract and legislation to enter relationships between investors and governments have not changed to keep pace with community perceptions.

### EXTRACTING A NATURAL RESOURCE—WHO PAYS?

Who pays for the extraction of a natural resource, for example, oil, is an interesting question. Taking the company view, an investor spends the money on goods and services to extract the oil. However, looking more

closely at the situation, the company is able to raise finance to fund its operations largely through securing the license to extract the oil—the value of which is reflected in its share price. Then, through the sale of the oil produced, the company is reimbursed for its expenditure, for tax paid, for bank interest and charges, and for profits. Hence, it is actually the local community as owner of the resource that pays for those goods and services to extract the oil. As communities are increasingly aware of the “who pays” equation, they have a growing sense that they have a right to benefit from the spend of “their own” money.



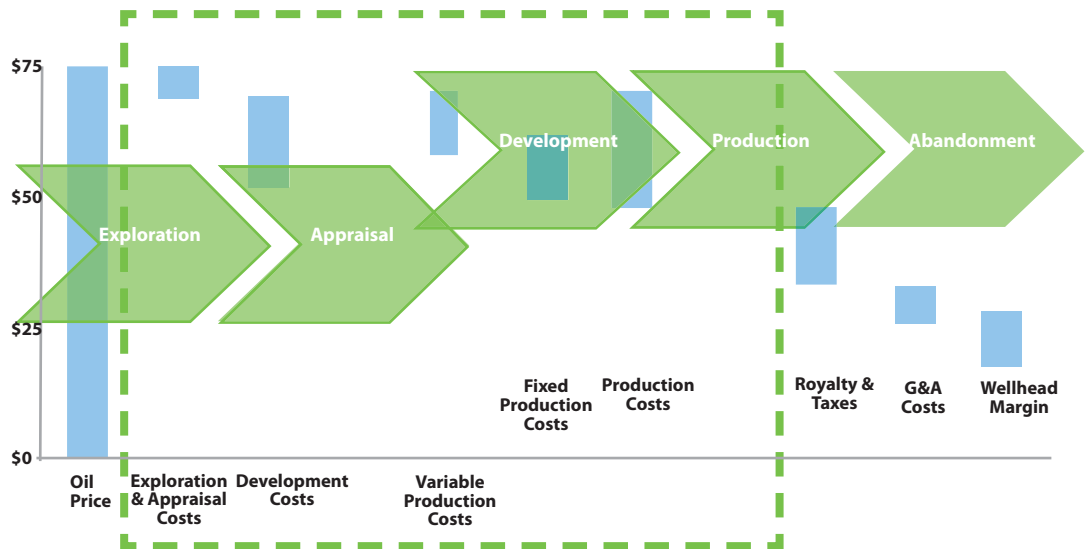
*Mr. Anthony Paul, presenting on local content as a tool of obtaining SLO*

### THE CASE FOR LOCAL CONTENT

As one of the **largest spenders in the local economy**, the procurement practises of companies, have a significant role to play in building **human and business capacity**. Therefore, local content can be significant source of income to both the local and national economies, potentially much higher than any sums paid to government through taxes and royalties. As illustrated by the boxed area in Figure 4, local content targets the money spent before costs are recovered and profits made and taxes paid.

**Figure 4:** The income potential of local content in the petroleum industry

#### *E&P Industry Overview - Illustrative Costs Only*



He added:

**It's also important to know that this is the area in which skills that are needed can often times be used to develop not only the oil and gas sector, but other sectors. So local companies and locals building [the] skills to support these services can actually build skills that are sustainable beyond oil and gas.**

### CAPACITY BUILDING IS THE KEY TO INCREASED LOCAL CONTENT

Mr. Paul suggested that, being such a strong industry with solid practices, the oil and gas sector has the potential to really improve the quality of skills and services in the communities and countries in which they operate. He remarked:

**They can actually raise the tide of all the other companies who work alongside them. And that can happen in a way that, if local companies, communities, people get some of that revenue from the expenditure through providing services, the impact on your local community can be quite large.**

However, Mr. Paul debunked the traditional premise that local goods or services should only be considered if they are already competitive. This argument is illogical and counter to the goal of increasing local content and participation. Instead, local people and businesses first need a fair chance to participate and compete. And for them to have a fair chance to participate they need experience. Therefore, the concept of local content has moved from simply meaning what the company puts into the local community into what the company puts in to build capacity in the local community. Through knowledge transfer and by adhering to the sector's high standards, local content can significantly enhance the capacity and competitiveness of local companies and institutions.

Indeed, supplier development is the hallmark of great companies. In this way, companies benefit from lower cost services provided by local suppliers and they ensure accessible and affordable skilled personnel at or near the site of operations. It makes good business sense and enhances the social license to operate. And, if done well, it creates an advantage to the company when competing for access to new licenses in other places.

### A MODEL PROCESS FOR ACHIEVING LOCAL CONTENT: THE EXPERIENCE OF GHANA

Mr. Paul said that developing local content is a strategic, long-term investment, requiring a thought-out process that involves different stakeholders over the life of the project. He emphasized that, "Local content isn't actually secured until a [mining] company actually buys a service...in other words, spends in the local economy.

But, to understand what skills to build, what services to create or improve, requires knowledge of what products and services are demanded by mining companies and how they go about procuring these good and services. Therefore, to begin, a government must do a market analysis and use the results to set goals and create a strategy that can form the basis of a well thought out local content policy. He described a six-step process whereby local content must be:

1. **Identified** through market analysis
2. **Sought** through a well-considered vision, goals and strategy
3. **Guided** via the principles by which stakeholders conduct their affairs
4. **Enabled** through human and business capacity development including specific skills to build and which systems to improve
5. **Delivered** via strategic procurement of goods and services including continuous supplier development
6. **Assured** through an appropriate governance framework to ensure compliance and the realization of benefits.



He described that all pillars for promoting local content are in place in Ghana. Companies are expected to contribute to building capacity among their own staff and within their supply chain. Of particular note, the Local Content Legislative Instrument (LI 2204) of 2013 stipulates that:

- \* All contractors must ensure that local content is a key component of their activities.
- \* Preference is to be given to indigenous Ghanaian companies participating in petroleum activities, i.e., companies that are incorporated in Ghana with at least 51% Ghanaian equity ownership and at least 80% of Ghanaians in senior management positions.
- \* Contractors must submit comprehensive local content and procurement plans annually to the Ghanaian Petroleum Commission.
- \* Contractors must also monitor their sub-contractors and allied entities to comply with the LI.

For example, with respect to employment, every job role is classified by the competencies required, not the job title. This means that an expatriate worker can improve the capacity of a local staff member by developing specific targeted competencies. The local may not necessarily displace the expatriate within two years but the system is evolving whereby the capacity of local staff and companies is built to deliver the skills and services that the sector demands.

#### **WHAT EXTRACTIVE COMPANIES CAN DO**

Mr. Paul offered the following suggestions where extractive companies can do better with respect to local content.

- \* Think strategically, act practically and be innovative in procurement and supplier development, and in finding ways to give preference to local/community employees/providers
- \* Treat local content as a right of local communities and not goodwill
- \* Collaborate among themselves, with government, with education and small and medium enterprise (SME) development initiatives
- \* Respect local communities—don't outsource relationships
- \* Understand and support national development objectives as well as community concerns and needs
- \* Show leadership in communicating and working with contractors and local communities
- \* Comply with legislation and regulation, acting as partners rather than adversaries.

## 8 Highlights of plenary discussion

A short plenary discussion was held following the presentations by Dr. Adam and Mr. Paul. Selected comments are highlighted below.

**Mr. Paul:** [The local content approach in Ghana] is working, [but] it's not as quick as you would all like...the natural tendency of oil and gas operators and mining engineers is to mitigate risks...[and] adding a new supplier is a risk, so there's a natural resistance to what is desired.

**Hon. Elly Karuhanga:** Chairman, Uganda Chamber of Mines and Petroleum making a contribution. If you get into oil business or mining, and you don't do local content, you are digging a grave for yourself...My advice to my friends in Tanzania and other African countries who are here, who are lucky to find these minerals and this oil and gas, [is to] start local content laws early before production.

**Dr. Adam:** [I agree] that local content is a necessary evil. But if local content is important, so is social license to operate. Because the delivery of local content is done through processes that led to social license to operate. [For instance]...the local content law gives targets on how many local people you should employ. [However], the skills that you provide to the people in the community is what will make it possible for them to be employed by the company, through which the company can then achieve its local content target...The company cannot just go into a community and start recruiting people. Community entry is key, consultation is key...So local content may be important but to achieve local content requires elements of social license to operate, otherwise you will have problems.

## 9 Panel discussion: The role of stakeholders in ensuring that companies obtain legitimacy and acceptance from local communities



The panel from L-R: Dr. Flora Kessy, Mr. Aidan Eyakuze (Moderator), Dr. Paul Bagabo, and Dr. David Reyes

### Panellists:

1. **Prof. Flora Kessy**, Mzumbe University
2. **Dr. Paul Bagabo**, Manager, Natural Resources Governance Institute, Uganda
3. **Dr. David Reyes**, Social Specialist with Triple R Alliance, Canada

**Moderator:** Mr. Aidan Eyakuze, Executive Director, Twaweza East Africa

In this panel discussion, the moderator focused the discussion on power relations during the negotiation process with mining communities as well as forces outside the community that can influence relations between companies and local communities. Highlights of the discussion are summarized below.

### ON POWER BROKERS IN COMPANY-COMMUNITY RELATIONSHIPS

Reflecting on his experience in the oil industry in Uganda, Dr. Bagado said that many stakeholders were required to enable President Museveni's directives to be translated into law, including technical and legal specialists in Ugandan ministries and local government. But beyond the actions of powerful people, he considered that communities must be convinced that a mining project will bring lasting benefits. And to achieve this, transparency, community awareness and meaningful community engagement are essential ingredients in the negotiation process. Companies must also be seen to be good corporate citizens, including through payment of their rightful share of taxes.

Dr. Kessy remarked that it is often assumed that the government, especially central government, holds the power, and that once the government issues a license to a company then mining operations can start. However, people at the local level increasingly have power over whether and how smoothly a project can go ahead. But how to define the “community” and who to talk to in the community are specific to the local context. Therefore, she highlighted the vital importance for companies to perform stakeholder mapping to identify who has influence and to implement a proper community engagement process. Doing so will help to avoid serious conflicts, like the type that arose in Mtwara, where the agenda was hijacked by politicians, another big power holder. Dr. Kessy also highlighted that local civil society organizations (CSOs) can be important brokers as well as business people in the community. But each different stakeholder group will inevitably have its own agenda, interests and roles.

**Dr. Flora Kessy**

*You will never know  
who has power until  
when you see chaos  
like what happened  
in Mtwara.*

Dr. Reyes concurred with the comments by the other panellists but added that:

**“There is the official power structure, which any company must understand rather well and... within that structure there is a lot of manoeuvring for each individual to make sure he grabs and holds on to as much power as he can. But then there is the unofficial power structure which is much more difficult to figure out and certainly companies would do well to understand that but sometimes find it difficult or don’t put in enough effort or resources to make sure that they do. ”**

He further remarked that “in poor communities people with money wield a certain level of power.” He then went on to describe an oil and gas project located in a rebel-held area of Colombia. The project was owned by a company based in Europe that decided to defer to their local staff for advice on how to operate effectively in this environment. This turned out to be a highly successful strategy. In doing so, the communities themselves became power brokers. Through engagement, the interests of the company and community were aligned such that the communities defended the company. In contrast, Dr. Reyes described the circumstances at the North Mara Gold Mine as one of the more difficult experiences, a very hard place to work and an extremely complex situation.

### **ON THE APPLICATION OF THE LEGAL SYSTEM IN THE EXTRACTIVE SECTOR**

**Dr. Bagabo** commented that the legal system lays the foundations of the way mining companies should operate and relate to other stakeholders. However, he added that informal arrangements have helped to clear the path where the implementation of the legal system may have resulted in costly delays.



Dr. Flora Kessy

**Dr. Kessy** commented that there are occasions when what a policy or law stipulates is not fair to the community. For example, compensation rates may be very outdated. Therefore, companies need to ask themselves what is fair to communities. By going the extra mile or paying higher than legislated compensation rates, companies can earn greater legitimacy and achieve more peaceful relations.

#### **ON THE ROLE OF GOVERNMENT IN AVOIDING SHORT-TERM FIXES TO LONG-TERM ISSUES**

**Dr. Reyes** highlighted the important issue of time. Companies must be responsive over the short term to their shareholders of their investments and no manager wants to report poor performance. On the other side, communities may also be in hurry as they are struggling to meet their daily needs. As a consequence, both parties to an agreement are inclined to short-term thinking and short-sighted problem solving. To avoid this tendency, he highlighted the important role of government:

**“...among the various stakeholders, it’s probably government foremost that is in a position to apply that longer-term, more foresighted approach in problem solving.”**

Competent and legitimate CSOs may also play a role but the government has a bigger and more urgent role to play.

Dr. Lemayon Melyoki concurred that the role of government is very important. He said that: [the government] has a role in influencing the perception that the company is acceptable. He felt that CSOs can certainly play a “brokerage role to educate the communities, to pass information that is available from the government side but is not reaching the communities...to be somewhere in the middle” but that all stakeholders need to be recognized for their different roles and given space in the engagement process.

#### **ON FOUR ELEMENTS FOR BETTER RELATIONSHIPS WITH COMMUNITIES AND SMOOTH OPERATIONS FOR COMPANIES**

In her concluding remarks, Dr. Kessy emphasized that, terminology aside, what is desired is the smooth and peaceful operations of a mining company in a local community. To achieve this, she recommended that four elements need to be in place: 1) Continuous community engagement, i.e., engagement at all levels with the right messages for every group; 2) Procedural fairness, i.e., everything has to be perceived as fair and this will

require day-to-day liaison with communities to openly communicate and manage expectations; 3) Comprehensive CSR/local content strategies, including employment and business opportunities; and 4) Good relationships among all stakeholders.

She suggested that a social license to operate can be viewed as a marriage. Just as it is between a man and wife, for a company and community to live together in harmony necessarily requires ongoing discussion and changes in living arrangements.

**“...when people want to get married, they love each other. Then when they sign the marriage certificate, it’s a consent, isn’t it? But when they start living as a man and a wife the procedures have to change. There are things which really have to change, the operations have to change so for me and you to continue living together in harmony otherwise the relationship, it breaks. [It is] the same with social license what we agree today has to be maintained through various discussions, various requirements, so that we maintain it and it doesn’t break.”**



*Protests in Mtwara, Tanzania over natural gas.*

*Source: [www.maleko.blogspot.com](http://www.maleko.blogspot.com)*

# 10 How government policies influence the social license to operate



*Dr. David Reyes presenting on government policies' effect on SLO*

Dr. David Reyes, Triple R Alliance

## THE CONCEPT OF SOCIAL PERFORMANCE

Dr. Reyes commenced his presentation by introducing the concept of “social performance”. Social performance refers to:

**“...how well a project can adapt to the local context, how well leading practices and relevant standards are applied, and about acknowledging the link between how well a company manages social issues and the success of the business”.**

Closely related to “social license to operate”, Dr. Reyes considers social performance to be a more useful term than “corporate social responsibility”. Citing research that most project delays in the oil and gas sector are “above ground” issues—in other words, social issues—then it reasonably follows that efforts to enhance

social performance can have a significant effect on overall company performance. Better social performance leads to a more resilient social license to operate, and, in turn, a more predictable operating environment with fewer delays and more efficient operations.

Similar to the three aspects of the SLO described by Dr. Thomson in his keynote presentation (see Figure 2), Dr. Reyes described three levels of performance. A close relationship exists between a company’s social performance and the process of approval of the project at community level; the higher the social performance, the stronger and more resilient the SLO and the more welcome the project by the community. Companies, therefore, need to strive to improve their social performance such that local people approve of the project rather than oppose even sabotage it, which can be very costly to the company.

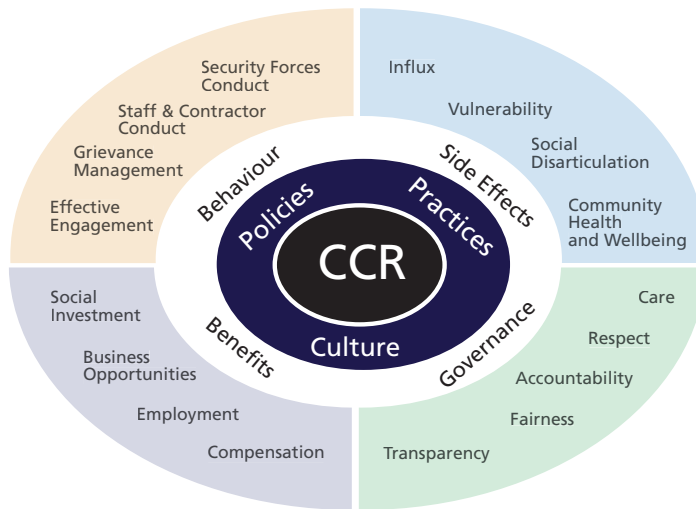
## BUILDING CONSTRUCTIVE COMPANY-COMMUNITY RELATIONS (CCR): WHAT NEEDS TO BE DONE?

Dr. Reyes used Figure 5 to highlight important things that companies can and need to do to improve social performance and strengthen social license. Issues of community benefits from the project, including compensation and access to employment and other business opportunities are indeed significant, but relationships based solely on providing monetary or other benefits are typically not the most constructive or long-term relationships.

For example, the **behaviour** of the company and its staff, including security personnel, can significantly impact a community’s perception of the company, positively or negatively, and, in turn, their initial and ongoing approval of operations. Appropriately managing the side effects of operations and ensuring good governance, including accountability, fairness and transparency of communication and negotiations, and genuine care and respect for community well-being, are also key aspects of company-

community relations. Where people feel abused and vulnerable, they find overt and subversive ways of harming a project. Where they feel safe, people play a more constructive role.

**Figure 5: Determinants of company-community relations**



### IMPROVING SOCIAL PERFORMANCE IS EVERYONE'S BUSINESS

Dr. Reyes remarked that, until now, social issues affecting company-community relations have not been a core component in management decision-making within extractive companies. These issues have not been given full or equal voice around the table. But, recent developments in the sector indicate that companies are starting to realize that improving social performance is not only everyone's job within the company itself but necessarily extends to all project partners and stakeholders. For example, the behaviour and actions of engineering contractors responsible for construction of the project—the phase of the project when serious conflict with local community often arises—have tremendous influence on the long-term potential for the project to secure a social license to operate. Individual companies and the industry overall are increasingly acknowledging the importance of social performance to the long-term success of their operations.

### EXPANDED COMMUNITY ENGAGEMENT: THE HEART OF BETTER SOCIAL PERFORMANCE

Expanded community engagement is a core aspect of improving social performance. Taking the example of Environmental and Social Impact Assessments (ESIAs), Dr. Reyes remarked that community engagement has up to now been largely restricted to informing stakeholders on what is happening, and seeking and considering stakeholders' feedback on the project's policies, activities and impacts, but with no real commitment to integrate the feedback. Increasingly, he suggested that this basic level of community engagement and company response would be insufficient. A shift is

**Dr. David Reyes**

*"...the more that people are affected by extractive activities, the more they should have a say in decision making."*





*Community meeting in North west Ghana Source: sacrednaturalsites.com*

required to increase the levels of participation of local stakeholders in decision-making towards greater involvement and collaboration with communities on matters relevant to their interests. However, local stakeholders' capacity to understand the mining contracts also needs to be built so that their participation in decision-making processes is meaningful.

In addition, companies need to do a social risk analysis to ensure that they devise effective actions rather than putting a band-aid over a risk. They need to address causes of conflict rather than the symptoms. The most effective way to minimize risk is to adopt an interest-based approach, under which the company identifies and addresses the underlying interests of the local community rather than specific positions or demands. For example, a community may want the company to build a health clinic but the underlying reason they want a clinic is to reduce child mortality, which may be more effectively addressed by other interventions that the company can support.

### **THE INFLUENCE OF GOVERNMENT ON THE SOCIAL LICENSE TO OPERATE**

Dr. Reyes highlighted the significant influence of government policies and actions on the social license to operate. For example, employment policy and labour law may stipulate who can and cannot be recruited by companies (locals vs. expatriate staff), the process of project licensing (whether transparent or not), the system of environmental monitoring and compliance, as well as rates of compensation for individuals and communities affected by extractive projects. Prudent policies and actions of the government, therefore, set and subsequently influence the context for company-community relationships and the development of the social license to operate.

Companies have a duty to respect people's rights, not just directly, but also through relationships with other actors, including government and private businesses with ties to government. However, the government's role is foremost. It must provide the frameworks, institutions and manpower to safeguard people's rights and ensure remedies when things go wrong. Companies also have a role to play in local development, but, again, the government is best positioned to understand the country's best interests over the longer term, to outline development plans, set priorities and oversee implementation. Providing essential services to ensure community well-being, such as education and health, are the primary responsibility of government.

### **THE CORROSIVE NATURE OF CORRUPTION**

Dr. Reyes concluded his presentation by highlighting the corrosive nature of corruption. Corruption by any party inhibits social performance and jeopardizes the SLO by undermining trust, wasting or diverting limited resources, preventing the distribution of benefits, and/or rewarding self-interested behaviour. In contrast, a high-level commitment to root out corruption can inspire confidence in local people who might otherwise lack the courage to stand up to manipulative leaders.

## Conclusion

The concept of ‘Social License to Operate’ is not legally binding and the process of acquiring it is not standardized. However, securing and maintaining an SLO is unavoidable. Investors in the extractive sector that disregard this concept do so at their own peril. Companies need to effectively engage local communities to build amicable relationships and ensure the ongoing acceptance of their activities. They need to provide accurate and timely information about the risks and benefits involved in extractive activities, and be respectful and sensitive to local culture and norms, and consistently adhere to leading practices and relevant standards. Transparency in all interactions is key to building trust and confidence. When negotiations are based on trust and respect it is easier for companies to gain and keep an SLO. Once lost, an SLO is incredibly difficult to regain.

Time is of the essence with respect to acquiring an SLO. Companies need to be knowledgeable and responsive to the genuine needs and concerns of the community from the earliest stages of the project as many environmental, social and economic issues arise during the exploration and construction phases. They should not wait until something goes wrong.

Discussions revealed a dark side to SLOs where consultations may be hijacked by self-interested individuals and groups. Due to increased successes in gaining compensation through informal channels, SLOs have been used for political gain in some instances. Politicians have tapped into formal and informal powers to gain influence in local and national constituencies by raising expectations among their constituents and supporters. Therefore, companies need to conduct a comprehensive stakeholder analysis to identify whom they should be dealing with.

The government plays an essential role by creating the enabling environment for the SLO process to take place. Prudent policies and actions of the government—for example, employment policies and labour law, project licensing procedures, regulations on local content requirements, rates of compensation for individuals and communities, and the system of environmental monitoring and compliance—all powerfully influence the context for company-community relationships and the development of the social license to operate. The government needs to provide the frameworks, institutions and manpower to safeguard people’s rights and ensure remedies when things go wrong.

The government is also best positioned to understand a country’s best interests over the longer term, to outline development plans, set priorities and oversee implementation. In particular, local governments have a vital role to play given their intimate knowledge of communities. They need to ensure that communities are aware of their rights and obligations and the opportunities that come with new developments, while monitoring company operations to ensure adherence to laws and regulations. Therefore, ethical leadership at all levels of government is required to provide the foundation for the open, transparent and fair relations between companies and local communities which lie at the heart of the social license to operate.

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## Appendix A:

### List of Participants Regional Administration and Local Government:

NAME	TITLE	REGIONAL OFFICE
Albert Msovela	Regional Administrative Secretary	Shinyanga
Anderson Msumba	Town Director	Kahama Town Council
Ramadhani Kaswa	Regional Administrative Secretary	Lindi
Conrad Millinga	Assistant Administrative Secretary	Regional Commissioner's office- Mbeya
Coletha V. Shayo	Regional Administrative Secretary	Manyara
Veronica A. Kessy	District Executive Director Acting RAS	Rungwe
Noel S. Kazimoto	Chairperson	Morogoro
Boniphace Butondo	DED	Kishapu
Wilson S. Nyamunda	DED	Kishapu
Patrick Karangwa	District Council Chairman	Msalala District- Kahama
Ezekiel M. Mwakuta		Rungwe

### Government Agencies:

NAME	TITLE	REGIONAL OFFICE	COUNTRY
Dr. Deogratias Lwezaura	Acting Director General	Rufiji Basin Development Authority	Tanzania
Christine Murebwayize	Chairperson	Farmers chambers - P.S.F	Rwanda
Albert Ngusaru	Director of Treasury and Funding	Tanzania Agriculture Development Bank	Tanzania
James Sanawa	Manager- Oil Business	TPDC	Tanzania
Zena Kongoi	Acting Managing Director	STAMICO	Tanzania
Joyce Mkururi	Company Secretary	Kenya Chamber of Mines	Kenya
Moses Njiru	CEO	Kenya Chamber of Mines	Kenya
Justine Birishi	Executive Member	Kenya Chamber of Mines	Kenya
Elly Karuhanga	Chairman	UCMP	Uganda
Ashaba Aggrey	Board Director	UCMP	Uganda
Eugene Isaya	CDO	TPDC	Tanzania
Fredrick Mangasini	Senior Geologist	STAMICO	Tanzania
Paul Bagabo		NRGI	Uganda

## Private Sector:

NAME	TITLE	COMPANY	COUNTRY
Merian Sebungya	Director	Private Sector Foundation	Uganda
Anael Macha	Environment Consultant	City Engineering Co. Ltd.	Tanzania
Rose Mayembe	Environmental Engineer	City Engineering Co. Ltd.	Tanzania
Major (rtd) RB Mwchwampala	Logistics, Liaison & Compliance	KIBO MINNING PLC	Tanzania
Ami Mpungwe	Chairman	TCME	Tanzania
Patricia Mhondo	External Relations Manager	BG- SHELL	Tanzania
Peter Bofin		Martello Research	Tanzania
Edmundo Mateus Matesso	Commercial Director	AUTOGAS	Mozambique
Dr. Beny Lugenga	Geologist	General Exploration Ltd	Tanzania
Dr. Gideon H. Kaunda	Executive Chairman	PANGAGA SECURITIES LTD	Tanzania
David Spencer	Managing Director	General Exploration Ltd	Tanzania
Ian Thompson		ShingleSpit Consultants Inc	Canada
Andrew McAlister	President	McAlister Consulting	Canada
Alex Lugendo	Chief Advisor	Acacia Mining	Tanzania
Ssebuggwawo Geoffrey	Director	Private Sector Foundation	Uganda
Ignace Amani Mchalo	Technical Director	Legendary International	Tanzania
Jim Kabeho	Director	Private Sector Foundation	Uganda
Dr. Samwel Nyantahe	Chairman	Confederation of Tanzania Industries	Tanzania
Simon Mbilinyi	Director	MADABA Minerals	Tanzania
Mohammed Amin Adam	Executive Director	Africa Centre For Energy Policy	Ghana
Asa Mwaipopo	General Manager	Acacia Mining	Tanzania
Naomi Norah Makota	Senior Consultant- Social Performance	Stat Oil Tanzania	Tanzania
Juliet Mboneko Tibaijuka	Sustainability Leaders	Stat Oil Tanzania	Tanzania

## Ministries:

NAME	TITLE	MINISTRY	COUNTRY
<b>Chacha Marwa</b>	Ag. Commissioner for Minerals	Ministry of Energy & Minerals	Tanzania
<b>Ibrahim D. Kalengo</b>	Principal Statistician	Ministry of Finance & Planning - Planning Commission	Tanzania
<b>David Batali Oliver Samson</b>	Director	Ministry of Environment & Forestry	Republic of South Sudan
<b>James Avedzi</b>	Member of Parliament	Parliament of Ghana	Ghana
<b>Korondo Matet</b>		Ministry of Petroleum	Republic of South Sudan
<b>Hon. Dak Duop Bichok</b>	Minister of Petroleum	Ministry of Petroleum	Republic of South Sudan
<b>David Deng Gach Pal</b>	Private Secretary & Consultant Advisor	Ministry of Petroleum	Republic of South Sudan
<b>Philip Chuol Chawechlual</b>	Executive Director, Office Minister	Government of Republic of South Sudan	Republic of South Sudan
<b>Anthony Paul</b>	Advisor to the Minister	Ministry of Petroleum	Ghana
<b>Saidi M. Kalunde</b>	Senior State Attorney	Attorney General's Chambers	Tanzania
<b>Asanterabi Sangenoi</b>	Assistant Director	Prime Minister's Office	Tanzania
<b>Suzana G. Mwangoka</b>	Asst. Director- Rural Physical Planning	Ministry of Lands	Tanzania

## Development Partners:

NAME	TITLE	ORGANISATION	PHONE
<b>Aaron Cunningham</b>	Program Analyst	UNDP	0688 651 064
<b>H.E Dr. Ahamada El Badaoui Mohamed</b>	Ambassador of Comoros	Embassy of Comoros in Tanzania	682074453 / 0716 525 721/ 0682 074 453

## Secretariat:

NAME	TITLE	ORGANISATION	COUNTRY	PHONE
Aidan F. Eyakuze	Executive Director	Twaweza	Tanzania	0713 787 055
Betty Jayne Humplick	Rapporteur	Private (Self Employed)	Tanzania	255 716 163 838/ 0787 000 155
Ernest Mwamwaja	Lecturer	SUA	Tanzania	0755 862 885/ 0755 862 885

## Appendix B: Roundtable Program

Time	Activities
08.00 – 08.30	<b>Registration</b>
08.30 – 08.40	<b>Introduction and welcoming remarks</b> Head of Research and Policy, UONGOZI Institute, Mr. Dennis Rweyemamu (On behalf of the CEO)
08.40 – 9.00	<b>Keynote address:</b> Minister of State President’s Office - Regional Administration and Local Government. Hon. George Simbachawene (MP)
09.00 – 09.40	<b>Keynote presentation:</b> Social License to Operate. What is it and its role in risk mitigation and building desired relationships between companies and communities, Dr. Ian Thomson, Principal of ShingleSpit Consultant Inc. Canada
09.40 – 10.00	<b>Questions and answers</b>
10.00 – 10.20	<b>Break</b>
10.20 – 10.30	<b>First presentation</b> Key findings from the study on social license to operate in Tanzania. The case of Petroleum and Mining Sectors, Dr. Lemayon Melyoki, University of Dar es Salaam
10.30 – 11.30	<b>Moderated panel discussion:</b> Challenges in obtaining and maintaining a social license to operate. Panellists: <ol style="list-style-type: none"> <li>1. Mr. Deo Mwanyika, Vice President, Corporate Affairs at ACACIA Mining Tanzania.</li> <li>2. Hon. James K. Avedzi (MP), Member of Parliament (Ketu North Constituency Ghana) and current Chairman of Parliamentary Committee for Finance</li> <li>3. Amb. Ami Mpungwe, Former Ambassador of Tanzania to South Africa and currently Chairman of Tanzania Chamber of Mines and Energy (TCME)</li> <li>4. Amb. Andrew McAlister, Former High Commissioner of Canada to Tanzania and currently Chairman of McAlister Consulting Corporation</li> </ol> <b>Moderator:</b> Mr. Aidan Eyakuze, Executive Director, Twaweza East Africa
11.30 – 11.40	<b>Break</b>



<b>11.40 – 12.10</b>	<p><b>SECOND PRESENTATION:</b></p> <p>Managing conflicts in communities surrounding projects in the extractive sector of Africa – Ghana as a case study - Dr. Mohammed Amin, Executive Director, Africa Centre for Energy Policy (ACEP), Ghana.</p>
<b>12.10 – 12.30</b>	<b>Questions and answers</b>
<b>12.30 – 13.40</b>	<p><b>Third presentation</b></p> <p>Local content as a tool of obtaining Social License to Operate in the extractive sector. A lesson from Ghana - Mr. Anthony E. Paul, Principal Consultant and Adviser to the Minister of Petroleum, Republic of Ghana.</p>
<b>13.40 – 14.00</b>	<b>Question and answers</b>
<b>14.00 – 15.00</b>	<b>LUNCH BREAK</b>
<b>15.00 – 16.00</b>	<p><b>Moderated panel discussion:</b></p> <p>The roles of stakeholders in ensuring companies obtain legitimacy and acceptance from the communities</p> <ol style="list-style-type: none"> <li>1. Dr. David Reyes, Social Specialist with Triple R Alliance, Canada.</li> <li>2. Dr. Lemayon Melyoki, Senior Lecturer, University of Dar es Salaam</li> <li>3. Mr. Paul Bagabo, Natural resources governance institute, Manager, Uganda</li> <li>4. Prof. Flora Kessy, Mzumbe University</li> </ol> <p>Moderator, Mr. Aidan Eyakuze, Executive Director, Twaweza East Africa</p>
<b>16.00 – 16.10</b>	<p><b>Fourth presentation</b></p> <p>How Government policies influence social license to operate, Dr. David Reyes, Social Specialist with Triple R Alliance, Canada.</p>
<b>16.10 – 16.40</b>	<b>Questions and answers</b>
<b>16.40 – 16.55</b>	<b>Tea break</b>
<b>16.55 – 17.10</b>	<p>Summary of key messages from the roundtable</p> <p>Moderator</p>
<b>17.10 – 17.30</b>	<p><b>Closing and way forward</b></p> <p>Mr. Dennis Rweyemamu, on behalf of CEO UONGOZI Institute</p>
<b>17.30 – ON</b>	<b>Networking and Cocktails</b>

### **UONGOZI Institute**

The Institute of African Leadership  
for Sustainable Development

### **Contact Us**

We have a fully stocked Resource Centre  
containing numerous publications.

### **Telephone**

Landline +255 (0)22 2602917

Fax +255 (0)22 2602918

### **Address**

Plot 62, Msasani Road

P.O. Box 105753,

Dar es Salaam,

Tanzania

[info@UONGOZI.or.tz](mailto:info@UONGOZI.or.tz)

[www.UONGOZI.or.tz](http://www.UONGOZI.or.tz)

twitter: UONGOZI Institute (@UONGOZI)

FaceBook: UONGOZI Institute

YouTube: UONGOZIInstitute

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