

**DCAF Submission to OHCHR Report “Extractive sector, just transition and human rights” to be presented to the 78<sup>th</sup> session of the UN General Assembly in September 2023**

**12 May 2023**

DCAF – The Geneva Centre for Security Sector Governance welcomes the opportunity to provide input to the report “Extractive sector, just transition and human rights” to be presented to the 78<sup>th</sup> session of the UN General Assembly in September 2023.

We encourage the Working Group to consider responsible security management, conflict prevention and respect for international humanitarian law (IHL) as key challenges and risks to communities living in regions or countries that are affected by the energy transition, as the move away from coal is unleashing a slow process where there is an increase in extraction of oil or liquified natural gas (LNG). In addition to the increase in extraction of critical minerals essential to the production of batteries.

Since 2012, DCAF has partnered with the International Committee of the Red Cross (ICRC) in a partnership to promote responsible business conduct and respect for the security, human rights, and dignity of local communities. DCAF is a Swiss-based international foundation dedicated to improving the security of states and their people within a framework of democratic governance, the rule of law, respect for human rights, and gender equality. The ICRC is an impartial, neutral and independent humanitarian organisation whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

**Rationale:**

The increased pressure on the extractive industry to mitigate the effects of climate change is driving significant market demand for so called “green energy,” including natural gas and critical minerals that fuel the production of batteries. Most of these resources are found in countries with weak rule of law, underdevelopment, and multinational investments that contribute to or entrench inequality, violence, and conflict.

Extractive companies in the energy transition rely on security providers to protect their business operations – whether through arrangements with public security forces (national police or armed forces), in-house security teams, or hiring private security providers. However, communities must not be victims or collateral damage in the name of the energy transition and protecting revenue and assets. Companies must ensure early and transparent engagement and communication with host

communities, identify the root causes of violence or conflict, and prove the social benefits of investments.

### **Summary of Assessment:**

Countries and regions that are producing oil, gas, and critical or 'rare-earth minerals' are the key players in the energy transition. At the same time, these countries are the most negatively impacted by the effects of climate change and are the most vulnerable to societal tensions, deterioration of human security, and conflict.

It is our assessment that extractive companies require further knowledge and tools on conflict prevention and responsible security management, to the extent that their operations are based in complex environments and conflict-affected areas. Our recommendations to the consultation are as follows:

- Home governments of extractives companies (i.e., where companies are headquartered or based) should implement adequate regulations, mechanisms or processes to ensure companies and their security providers respect security, human rights and IHL when applicable (Question 1).
- By building capacities of host States (producing countries) to manage security, human rights and IHL risks, home governments can ensure that international initiatives like the SDGs, the UN Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights (VPs) are applied in a way that promotes multistakeholder engagement and is inclusive and responsive to rights holders (Questions 2-3).
- To ensure that rights holders are represented in the just energy transition, it is essential that companies engage community members and their representatives in direct, meaningful, inclusive, and transparent ways, such as through multi-stakeholder working groups on business and human rights (Question 9).
- To manage and respond to risks that arise in conflict-affected contexts, companies must assess and understand drivers of inequalities, tensions and conflict. As part of conflict prevention efforts, companies must include responsible security management in heightened human rights due diligence processes (Question 13).
- Across their staff and operations, companies must increase their knowledge of the unique rights, protections and responsibilities that flow directly from IHL - the legal framework applicable in armed conflict. This will enable all departments to implement steps to ensure respect for IHL. Failure to comply may translate into civil and criminal liabilities, or in the most serious cases into prosecution for war crimes, crimes against humanity and genocide (Question 9).

- Grievance mechanisms should not just provide a remedy, but also inform and empower companies to change policies as a result of the lessons learned. In this way, grievance mechanisms can also have a preventative function (Questions 15, 18).

### **Full Assessment:**

#### *State duty to protect human rights*

- Establishing clear obligations and responsibilities between host/producing governments and companies to monitor security providers, ensure professional conduct, and redress any abuses (Question 1):

Ensuring accountability by companies and their security providers starts with holistic government regulatory approaches that are consensus-based and rooted in proven international good practice. Producing/host governments can ensure this accountability by [developing more effective MoUs with extractive companies](#), clearly defining roles and responsibilities of [public security assigned to extractive sites](#), and implementing [rules on the use of force by security providers](#). There is a wealth of resources to support more effective regulation of business, security and human rights, many are gathered on the DCAF-ICRC Knowledge Hub [here](#).

- Home government support and capacity building of host governments (Questions 2-3):

With adequate support and knowledge, producer countries can build their capacities to mainstream and implement international norms on business and human rights. In turn, this will support international initiatives on business and human rights like the SDGs, the UNGPs and the VPs to ensure they are applied in a way that promotes multistakeholder engagement to be responsive to rights holders and resonate with them. For example, DCAF and its local partners in the Democratic Republic of Congo (DRC) have worked with the Ministry of Human Rights to lead the process of the Congolese government to join the Voluntary Principles on Security and Human Rights (VPs). The VPs Initiative is expected to admit the DRC government as an engaged member in May 2023 and will trigger an 18-month period during which the government will commit to develop a national action plan in consultation with the stakeholders of its mining industry and its fast-expanding petroleum industry.

Home states should also work with producer countries to support ministries of justice and/or human rights in engaging with ministries of natural resources, land management, environment, and others. In practical forums, In the DRC, previous experiences with VPs implementation by transnational companies and the long-standing presence of multistakeholder groups in mining provinces were key factors for the process to be built around exchanges and lessons learnt, from the ground up.

#### *Corporate responsibility to respect human rights*

- Multistakeholder engagement to ensure that rights holders' needs are represented during/as a result of the just transition (Question 9):

Heightened human rights due diligence requires companies to engage with all relevant affected groups in their operations and especially in setting up their security management processes. Early, meaningful, transparent, and genuine engagement with affected groups is essential. [Multistakeholder working groups on business, security and human rights](#) such as Voluntary Principles Working Groups (WGs) can act as force-multipliers in contexts where there are significant risks of social conflict. Engagement of stakeholders will drive heightened human rights due diligence and will allow for a more complete conflict analysis. In [Mozambique](#), where multinational interest in extracting important LNG reserves has intensified conflict and violence based on extremism rooted in underlying underdevelopment and social inequalities, a local civil society leader has created [national and regional WGs](#) to connect civil society, the national and provincial government, companies, and international partners. The WGs address how major international companies can sustain operations and positively contribute to peace and development and ensure that security forces deployed to protect company operations do not further create security and human rights risks.

Multi-stakeholder in-country processes that connect companies and national actors in dialogues on business and human rights have a proven track record of success when it comes to lowering human rights risks. They identify, monitor, and find solutions to key security and human rights challenges and are critical for conflict analysis. For example the South Kivu WG in the DRC has developed [lessons learned](#) on the positive role that multi-stakeholder dialogue can play in the extractives sector, showing concrete improvements in security and human rights on mine sites such as [Twangiza, Bitale](#), and [Nyabibwe](#). In 2022-23, the WG covering the Haut-Katanga and Lualaba provinces in the DRC provided dedicated training for two large extractive companies on the Voluntary Principles: [Tenke Fungurume Mining](#) and Boss Mining. Communities around the mines face significant human rights challenges as they live side by side with mining activities on the concession. Thanks to previous engagement between the WG and companies, the companies viewed the WG as a trusted partner and engaged actively in the training. The workshops enabled frank discussions and participants identified joint solutions to security and human rights challenges. The trainings were a first step in enabling the companies to resume dialogue with communities. Both companies are now engaging regularly with the WG.

- Ensuring implementation of IHL and including responsible security management in heightened human rights due diligence processes (Question 13):

Business operations in conflict-affected and high-risk areas cannot be considered neutral, as their mere presence and actions will inevitably impact the dynamics of the conflict. Businesses should apply heightened human rights due diligence in order to ensure respect for human rights and [international humanitarian law \(IHL\)](#). These processes should be applied along the entire value chain and at all levels of company operations, including contracts with security providers, trainings, and contingency planning. Companies should implement a conflict sensitive approach to identify if and how their operations may be linked to conflict-affected and high-risk areas, and effectively prevent, manage and address conflict-related risks, starting by seeking to understand conflict

dynamics. Companies that conduct a conflict sensitivity analysis to identify how they relate to these dynamics can avoid causing, exacerbating or driving conflict. Practical guidance for companies on conflict sensitivity can be found in the [Armed Conflict fact sheet](#), in the [Conflict Prevention Tool](#), and on page 53-56 of the [Security and Human Rights Toolkit](#).

- Increasing company knowledge of the unique rights, protections and responsibilities that flow directly from IHL (Question 9):

IHL binds both State and non-State actors, including businesses whose activities are closely linked to an armed conflict. Companies can therefore risk legal liability for any breach of these obligations - both criminal responsibility for the commission of, or complicity in, war crimes and civil liability for compensation and damages. Moreover, the managers and staff of business enterprises may face prosecution and civil liability in a personal capacity. Some of the most salient human rights risks in the extractive industry are abuses caused by public and private security providers, land expropriation, forced displacement and forced labour. It is essential that companies exposed to these types of risks understand the principles of IHL and how they apply to their business. Increasing awareness of IHL among company staff and ensuring a company's policies and practices align with IHL standards will help to minimise the risks to, and created by, their operations, workforce and infrastructure. This also sends a strong message of commitment to observing international legal obligations.

#### *Access to remedy*

- Ensuring that lessons learned from remedy and grievance mechanisms lead to change in policies and ensure prevention of future abuses (Questions 15, 18):

Companies too often use grievance mechanisms solely as a remedy when abuses have already occurred, and harm cannot be reversed. As part of a prevention mindset, companies should ensure that [effective operational grievance mechanisms](#) promote continuous stakeholder engagement, create lessons learning, and prompt companies to adapt processes, policies and practices to prevent any future issues.