



**Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019**



THE CANADIAN
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Setting Up For Failure?

Disclosure of Production Sharing Contracts

- **Stabilization Clauses:** *contract entered into by the host state and a foreign investor to avert any party from taking independent decisions to alter, abrogate or terminate the contract entered into by both parties.*
- **Tax Incentives and exemptions:** Income Tax Act Cap. 470 Part III Section 13 (1), (2) and (3)
- Cost recoveries – cost audits

Aggressive tax planning

- Use of low tax jurisdictions

Hedging of Future Revenue – ChemChina UK Ltd??



Petroleum Act, 2019

Distribution of resources between Corporate entity and National Government

- R-Factor Revenue Split – Part VII Section 37

$$R = \frac{\text{Cumulative Inflows (Cost Petroleum + Profit Petroleum – Production Cost – Decommissioning Cost)}}{\text{Cumulative Cash Outflows (Exploration Cost + Development Cost)}}$$

Distribution of resources between National and County Government

- All upstream petroleum operations that generate revenue shall be shared between the 3 entities; National government, County government and the Local community.
 - a) The County government 20% : Section 58 (2)
 - b) National government 75%
 - c) Local Community 5% : Section 58 (3)
- Reviewed within ten (10) years: Section 58 (5)



Revenue Management at Community Level

Provision within the law – Petroleum Act 58 (3)

- Establishment of a Trust Fund
- County Assembly to legislate on the Board of Trustees
- Composition of the Board of Trustees in consultation with Local Community
- Prudent utilisation of the revenue



Possible Conflict Areas

Aggressive Tax Planning

- Mandatory Disclosure Rules: OECD Mandatory Disclosure Rules (MDR) on Common Reporting Standards (CRS) Avoidance Arrangements and Opaque Offshore Structures

Case Study:

Uganda Revenue Authority versus Tullow Oil

-26th January 2010, TUL and Heritage signed a Sale and Purchase Agreement (the “SPA”) under which TUL would acquire Heritage’s 50% participation rights in Exploration Areas EA1 and EA3A. URA claimed On the 24th February 2011, the respondent made an objection decision that adjusted the assessment on the TUL. The assessment No. SA/LTO/2569 of US\$ 390,924,460 was amended to US\$ 387,748,469, while assessment No. SA/LTO/2570 of US\$ 84,999,660 was unaffected, resulting in a total of **US\$ 472,748,128**.



Contd...

Tax Justice Network Africa vs Cabinet Secretary for National Treasury, Kenya Revenue Authority and Attorney General

- A declaration that the failure, refusal and or neglect of the Respondents to subject the Kenya Mauritius Double taxation Avoidance Agreement to Ratification pursuant to the Treaty making and Ratification Act 2012 Contravened Article 10 (a) (c) and (d) and 201 of the Constitution of Kenya.
- The Petition relates to the Constitutionality of the Kenya Mauritius double Taxation Avoidance Agreement done at port Luis in the Republic of Mauritius on 11th May 2012 which was meant to place the competitiveness of Kenyan companies at par with that of other African countries having tax treaties with Mauritius e.g. Botswana, Lesotho, Madagascar, Mozambique, Namibia, Rwanda, Senegal, Seychelles, Swaziland, South Africa, Tunisia, Uganda and Zimbabwe and others out of Africa like India.

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Access to Information

- Access to Information Act – public disclosure of contracts
- Beneficial ownership

Community Boards/Committees

- Constitution and representation Board of trustees
- Prudent utilization of revenue

Own Source Revenue

- Intergovernmental fiscal transfers
- Own Source Revenue Bill and Policy



Opportunities

- Legislative support to Counties
- Alternative Dispute Resolution
- Civil Litigation by communities
- Disputes between National and County Government



Thank You

