



**Transparency & Accountability – Overview of Country Compliance
Supporting Inclusive Resource Development (SIRD)
East Africa
TRAINING PROGRAM
2019**



THE CANADIAN
BAR ASSOCIATION



Global Affairs
Canada Affaires mondiales
Canada



LAW SOCIETY OF KENYA



Tanganyika
Law Society



UGANDA LAW SOCIETY

Transparency and Accountability

- Confidentiality
- Privity of contract
- Commercial Sensitivity



Global norms/Campaigns

- Publish What you Pay- Payments to governments
- Contract transparency- Company Policy
- Beneficial Ownership



Transparency: A changing global norm landscape

EITI- Extractive Industries Transparency Initiative-2021 Contract transparency/ Beneficial Ownership, Payments

ESTMA- Canadian transparency and Impact on companies operating in Kenya

EU directive- Disclosure of Payments to Public Officials- Tullow oil

Dodd Frank 1401- SEC Anadarko operating offshore, Camac (now Erin energy) in Block L1B, L27 and L28 and ERHC operating in Block 11 A in Turkana.



Company Commitments

➤ Contract transparency

“In this 21st century where social media is so important and where society expects corporations to be active in the society itself, transparency [helps] the extractive industries by increasing understanding of all stakeholders...it reinforces the credibility of both the state and investors,” Total CEO Patrick Pouyanne



Company Commitments

➤ Contract transparency

“EITI’s requirement regarding contract transparency, enhances the EITI reporting framework as a mechanism for addressing the companies’ priorities in their fight against corruption. Supply chain transparency is also required” Paul McDade Tullow Oil



Company Commitments

‘Petrobras is committed to good corporate governance practices, which are based on greater transparency and accountability. In this context, we proactively publish in our Transparency Portal information on the contracts where Petrobras acts as contractor, in compliance with the Law on Access to Information.’

‘Newmont supports countries publicly disclosing contracts and licences for the exploitation of oil, gas and minerals, as outlined in the EITI standard’.



EITI in East Africa

Tanzania – Status of implementation- Beneficial ownership roadmap

Uganda- Candidate country

Kenya- Commitments – 2009- to date



Disclosure- Kenya Commitments

➤ IFC – IFC standards on contract transparency- Africa Oil and Tullow received IFC funding

“Africa Oil (IFC has requested Africa Oil and the government of Kenya to disclose the contract, and remains in discussions about potential means and timing)” IFC Website on 2016 investment



Disclosure- Kenya Commitments

➤ Open Government partnership- National action Plan – 2018-2022

“Beneficial Ownership -We will publish a central public register of company beneficial ownership information operating in the Republic of Kenya”



Kenya Law Amendment

Companies Act Section 93A makes it mandatory for companies to keep a register of beneficial owners with the relevant information relating to the said beneficial owners as will be prescribed by the Companies (Beneficial Ownership Information) Regulations, 2019 (the “Regulations”) that are yet to be gazetted.



Why Transparency?

- Social License to operate- Manage Expectations
- Corruption
- Transparency – Better development outcomes
- When not if



ASANTE

Relevant reading

Open Government Partnership-Kenya National Action Plan available at https://www.opengovpartnership.org/wp-content/uploads/2018/12/KENYA_Action-Plan_2018-2020_0.pdf

IFC Disclosure page-

https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/ogm+home/priorities/contract+disclosure

Oxfam Contract Disclosure Survey - https://www-cdn.oxfam.org/s3fs-public/file_attachments/bp-contract-disclosure-extractives-2018-030518-en.pdf

