Taxation of the Extractives

Presentation
By
Moses Njiru Njeru
Chief Executive
Kenya Chamber of Mines
At
The 4th Annual Tax Summit
At
KSMS, Ruaraka

Outline of Presentation

- Background of KCM
- Provisions in the Constitution of Kenya in Respect to Minerals in respect to Minerals
- Benefit sharing formula
- Local content
- Extractives, What do they means to a Stakeholder
- Key Stakeholders and Engagements

Kenya Chamber of Mines

- Registered in 2000
- 200 members
- Advance, promote and protect the mineral industry in Kenya
- Lobbying for a more favorable environment for the mineral development value chain in Kenya
- KCM is a BMO drawing membership from the players in the mineral development value chain.

Provisions in the Constitution of Kenya in Respect to Minerals

Article 62 states that all mineral are held in trust for the people of Kenya by the National Government

Article 62(1)(f) defines all mineral and mineral oils as public land placed under the management of National Government

Article 66 requires that Parliament enact legislations that ensure investment benefit local communities and their economies

Article 69 requires that state ensure sustainable development and management of natural resources and ensure equitable sharing of accruing benefits

Key Provisions in the Legislation on Benefit sharing

The Mining Act 2016 guides on how upstream mineral developers engage with the Kenya Minerals.

Of importance to note is that the Mining Act 2016 provides how royalty payments are shared among the;

National Government,

County Government;

Community around the mine sites

At the rate of 70:20:10 respectively

Mineral Resource: What do they mean to a Stakeholder

They bring about **Emotions** to **Communities** living around the mineral deposit

They provide very **Lucrative** opportunities to **Investors** and **Government**

Require **High Capital** to develop that must be provided by the **Investor**

The ventures are **High risk** that require to be managed by **Government** and **Investor**

But

The **Communities** living around the Resource have **Rights** that need protection through guarding the **Resource**

The **Government** has **power** that has to be exercised in order to develop the available **Resource**

The **Investor** has the **Capital and information** on how to commercialize the **Resource**

Key Stakeholders

This makes

The Communities around the Resource

The investor on the Resource

The Government owning the Resource

Key Stakeholders

But

The **Key Stakeholders** hamper differing interests and expectations on the same **Resource**, a perfect situation for **Conflict.**

However allowing **conflict** shows missed **opportunity**. Therefore it must be **avoided**.

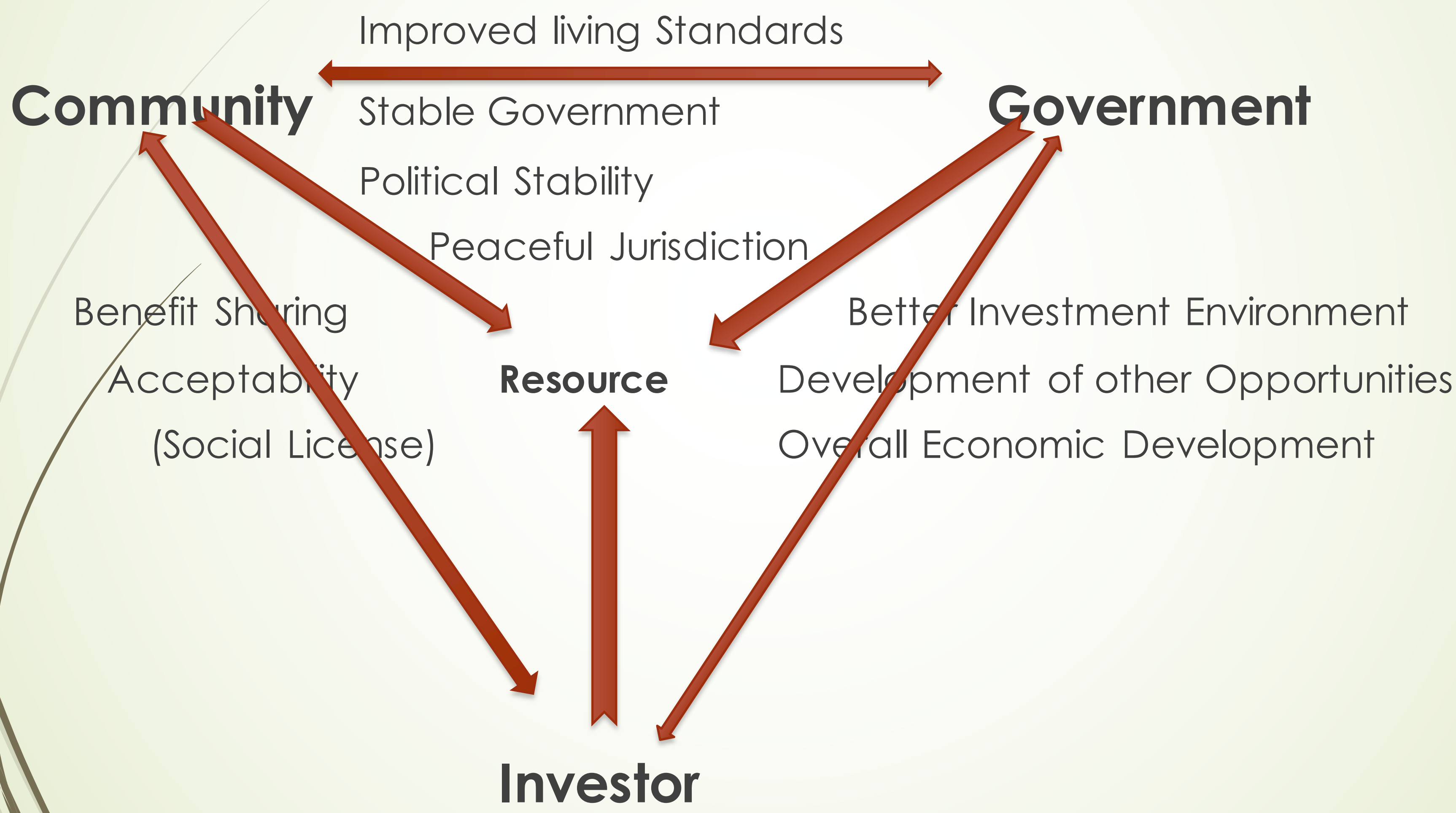
- **Engagement**

- Its only through Engagement that Resource Conflicts are avoided

- Such engagement must be candid , truthful and based on transparency and accountability

- **How???**

Engagements



Case Study – Gold Trade in Kenya

Gold Export Statistics

Year	Quantity (gms)	Value (Kes)
2008	339,923	592,890,948/=
2009	1,055,330	2,283,686,205/=
2010	2,355,176	6,216,996,383/=
2011	1,635,597	5,650,820,050/=
2012	3,642,122	11,919,684,925/=
2013	2,073,575	7,432,562,263/=
2014	237,054	695,314,422/=
2015	336,938	964,027,244/=

What Happened

On 16th August 2013, royalty rates chargeable on minerals extracted and traded in Kenya were published via the Legal Notice No. 187 of the Kenya Subsidiary Legislation, 2013.

Part 2(f) of the Legal Notice states that the royalty rate chargeable in respect to extracted gold, silver, platinum and other platinoid group metal is 5% of the gross sales value.

Part 3 of the Legal Notice, states that mineral dealers, shall pay royalty of 2% of the gross sales value of the gold to be exported.

This meant that the buying price of gold by the gold dealers was in effect raised by 2% owing to the fact that the 5% by mining companies could be absorbed through cost control measures.

How Does the Legal Notice affect Gold Trade

Let's use real situation outlined below to understand better the environment for gold trade created by the mentioned chargeable royalty rates.

Assume that:

- the exchange rate is Kes 101.6 for USD;
- an ounce is equivalent to 31.1035 grams;
- Gold produced by the artisanal miners is around 80% pure.

And

- the World gold price stand at USD 1334/ounce;
- gold is trading Uganda at 1316USD/ounce and destined for export;
- In Kenya, gold is offered to dealers at Kes 4300/gram of pure gold, (USD 1316/ ounce) same as Uganda;
- The sale price by the dealers to the export market is usually USD 3 less than the World price, implying that the dealer is likely to sale at USD 1331/ounce. ***Note: trading in gold at international level is like dealing with currency.***

When a royalty of 2% is added to the export price, the minimum selling price gets to USD 1357.62/ounce, way above the World price.

Why Get Bothered as a Country

Minerals are commodity for trade. They are economic enablers. When a jurisdiction fails to create a favorable environment for mineral business, it fails to capitalize on the available potential to grow its economy.

In the case of our Country, Kenya, the following are the losses:

- Kenya losses on attracting foreign exchange;
- Kenya losses on corporate tax payable at 30%;
- Kenya losses on collecting the targeted royalty rates from traded gold;
- Kenya fails to promote its artisanal and small-scale miners by providing environment for legitimate trade;
- Kenya fails to become a mineral hub by attracting gold from other regions;
- The import-export trade imbalance continue hurting our economy;
- Kenya encourages illegal gold trade forcing legal traders out of business;
- Kenya fails to create job opportunities within the gold sector;
- Kenya fails to be recognized as a gold producer internationally;

Thank you.