

BENEFICIAL OWNERSHIP

REVEALING WHO STANDS BEHIND THE COMPANIES



Transparency about government revenues from the extractive sector is important for accountability, but says little about who owns and ultimately profits from the activities of the oil, gas and mining companies. With the adoption of the 2016 EITI Standard, the EITI has agreed that all implementing countries must ensure that companies disclose their beneficial owners. As a first step, countries will publish roadmaps outlining the activities and preparations that are considered necessary in order to ensure full implementation of the beneficial ownership requirements by 2020. By this date, implementing countries have to ensure that all oil, gas and mining companies that bid for, operate or invest in extractive projects in the country disclose who their real owners are. This should include the identity of the owner, i.e. the name, nationality and country of interest. In addition, any politically exposed persons holding ownership rights must be identified. It is recommended that the beneficial ownership information is made available through a public registers. At a minimum, the information must be included in the country's EITI Report.

KEY FIGURES

AS OF 4 FEBRUARY 2016

29

COUNTRIES HAVE BEGUN ADDRESSING BENEFICIAL OWNERSHIP

9

HAVE EITI REPORTS THAT DISCLOSE THE BENEFICIAL OWNERS OF ONE OR MORE COMPANIES

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HAVE EITI REPORTS THAT DISCLOSE THE LEGAL OWNERSHIP OF ONE OR MORE COMPANIES

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HAVE EITI REPORTS THAT RECOMMEND FURTHER WORK ON BENEFICIAL OWNERSHIP, INCLUDING PUBLIC REGISTERS

The identity of the real owners – the ‘beneficial owners’ – of the companies that have obtained rights to extract oil, gas and minerals is often unknown, hidden by a chain of unaccountable corporate entities. This problem affects other sectors and often helps to feed corruption and tax evasion. People who live in resource rich countries are at particular risk of losing out as extractive assets are too often misallocated for corrupt reasons.

It has been estimated that developing countries lose USD 1 trillion each year as a result of corrupt or illegal deals, many of which involve anonymous companies¹. In 2013, the Africa Progress Panel estimated that the Democratic Republic of the Congo (DRC) in the period 2010-2012 lost at least USD 1.36 billion from five mining deals hidden behind a structure of complex and secret company ownership². According to DRC’s EITI Reports, this is about the same as the country’s average annual revenue from oil, gas and mining in the same time period. Disclosure of beneficial ownership will help lower the risk of financial misconduct.

In the last three years, the fight against secret company ownership has gained significant momentum. The G8 and G20 have made transparency in beneficial ownership a key priority. The EU has required member states to establish registers. Several countries have passed national legislation and are working towards public registers. Yet, to date, there is relatively little beneficial ownership information out in the open. Ukraine has launched a beneficial ownership register, but is still working to improve the comprehensiveness of the information. The EITI is one of few organisations that is delivering

practical results through annual collection and publication of beneficial information in EITI reports. So far 29 EITI countries have begun to address beneficial ownership. Of these, 23 countries have already asked the oil, gas and mining companies in their countries to disclose who own them. The results are mixed, with only nine countries having been able to get one or more companies to comply.

While the EITI still has a long way to go to make these disclosures complete and comprehensible, a dozen EITI Reports have now resulted in clear recommendations to resource rich governments to establish public beneficial ownership registers. With the 201 EITI Standard, all companies operating in EITI countries will have to disclose the name and identify of their ultimate owners. The fight against corporate secrecy is thus moving forward in EITI member countries

Getting the information about who owns the extractive companies out in the open is only half of the job. The EITI, and in particular citizens in implementing countries, then need to scrutinise what the data means and work out how to use it effectively. More transparency in beneficial ownership is likely to reveal past malpractice, encourage action to hold malpractice to account, and make such behaviour less likely in the future. The first step for EITI countries is now to develop beneficial ownership roadmaps so that this information can get out in the open.

- 1 <http://www.one.org/international/policy/trillion-dollar-scandal/>
- 2 <http://www.africaprogresspanel.org/africa-progress-panel-urges-transparency-in-potential-drc-mining-deal/>

THE TIMELINE

2013

May – EITI Standard recommends establishment of public registers.

May – Africa progress panel publishes Equity in Extractives calling for public registers.

June – G8 at Lough Erne agrees to tackle hidden ownership through national action plans.

October – UK promises to establish a public register of beneficial ownership.

11 countries sign up to EITI beneficial ownership pilot.

2014

October – Ukraine passes law requiring companies to declare their beneficial owners in public registry.

November – G20 agrees high-level principles on beneficial ownership, recognising the need to collect beneficial ownership information.

Denmark announces it will create public beneficial ownership register for Danish companies.

December – EU’s 4th anti-money laundering directive requires countries to maintain registers, though not necessarily public.

NEW EITI REQUIREMENTS ON BENEFICIAL OWNERSHIP

Requirements of the 2016 EITI Standard

- a)** It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. A possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.
- b)** It is required that:
 - i.** The EITI Report documents the government's policy and MSG's discussion on disclosure of beneficial ownership. This should include details of the relevant legal provisions, actual disclosure practices and any reforms that are planned or underway related to beneficial ownership disclosure.
 - ii.** By 1 January 2017, the multi-stakeholder group publishes a roadmap for disclosing beneficial ownership information in accordance with clauses (c)-(f) below. The MSG will determine all milestones and deadlines in the roadmap, and the MSG will evaluate implementation of the roadmap as part of the MSG's annual activity report.
- c)** As of 1 January 2020, it is required that implementing countries request, and companies disclose, beneficial ownership information for inclusion in the EITI report. This applies to corporate entity(ies) that bid for, operate or invest in extractive assets and should include the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Any gaps or weaknesses in reporting on beneficial ownership information must be disclosed in the EITI Report, including naming any entities that failed to submit all or parts of the beneficial ownership information.
- d)** Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed.
- e)** The multi-stakeholder group should agree an approach for participating companies assuring the accuracy of the beneficial ownership information they provide. This could include requiring companies to attest the beneficial ownership declaration form through sign off by a member of the senior management team or senior legal counsel, or submit supporting documentation.
- f)** Definition of beneficial ownership:
 - i.** A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
 - ii.** The multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.
 - iii.** Publicly listed companies, including wholly-owned subsidiaries, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed to facilitate public access to their beneficial ownership information.
 - iv.** In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary of a publicly listed company. Each entity is responsible for the accuracy of the information provided.
- g)** The EITI Report should also disclose the legal owners and share of ownership of such companies.

2015

January – DRC leads the way with EITI Report disclosing beneficial owners.

February – African Union calls for all countries to establish public registers of beneficial owners.

June – Norwegian parliament votes to establish public register of corporate ownership.

July – G7 Summit in Germany reiterates commitment on beneficial ownership.

September – Tanzania enacts EITI legislation requiring extractive companies to disclose their beneficial owners.

2016

January – 28 EITI countries have either attempted to disclose BO information and/ or are working on recommendations for establishing BO registers.

February – EITI requires that countries must disclose their beneficial owners no later than 1 January 2020.

WHAT IS HAPPENING IN EITI COUNTRIES

Cameroon's 2013 EITI report confirms that the government has no policy for the publication of beneficial ownership data. Of the 22 companies in the report, 13 were either state-owned or publicly listed. Of the remaining nine companies, five disclosed their legal owners and one company disclosed their beneficial owner. The report also shows owners of mining licenses. Although many of these appear to be physical persons, the report does not confirm whether they are also the beneficial owners. The report recommends the creation of a public beneficial ownership register.

DRC's 2014 EITI Report shows that 31 out of 63 privately held mining companies disclosed their beneficial owners. This often includes details about the identity of the owners such as the date of birth, or residential address. Previous reports have revealed beneficial owners that were both politically exposed and owners whose birth date is more recent than the year covered by the EITI Report. Only one of the six privately held oil and gas companies disclosed their owners. The report recommends the creation of a public beneficial ownership register.

Ghana's 2014 mining report gives some information about the legal and beneficial owners of the three non-listed mining companies operating in the country. For publicly listed companies, the report references the relevant stock exchanges and listing symbols. Similar information is also available in the 2014 oil and gas report.

Indonesia's latest EITI Report provides names of those with direct participating interest in oil, gas and mining companies but notes that "it is not yet discerned whether this ownership also translates into beneficial ownership". The report concludes that beneficial ownership information is understandably difficult to acquire given that corporate ownership is commonly set in complex layers, and recommends that as a start EITI Indonesia should agree on an appropriate definition of beneficial ownership.

Nigeria participated in the beneficial ownership pilot. Scratching where it itches" is how NEITI described the efforts to shine a light on who ultimately owns and benefits from the oil, gas and mining companies operating in his country. NEITI faced difficulties in obtaining this information. Both the oil and gas and the mining audit provides legal ownership for the companies, which in some cases are natural persons. The report does not confirm if these natural persons are legal owners or beneficial owners

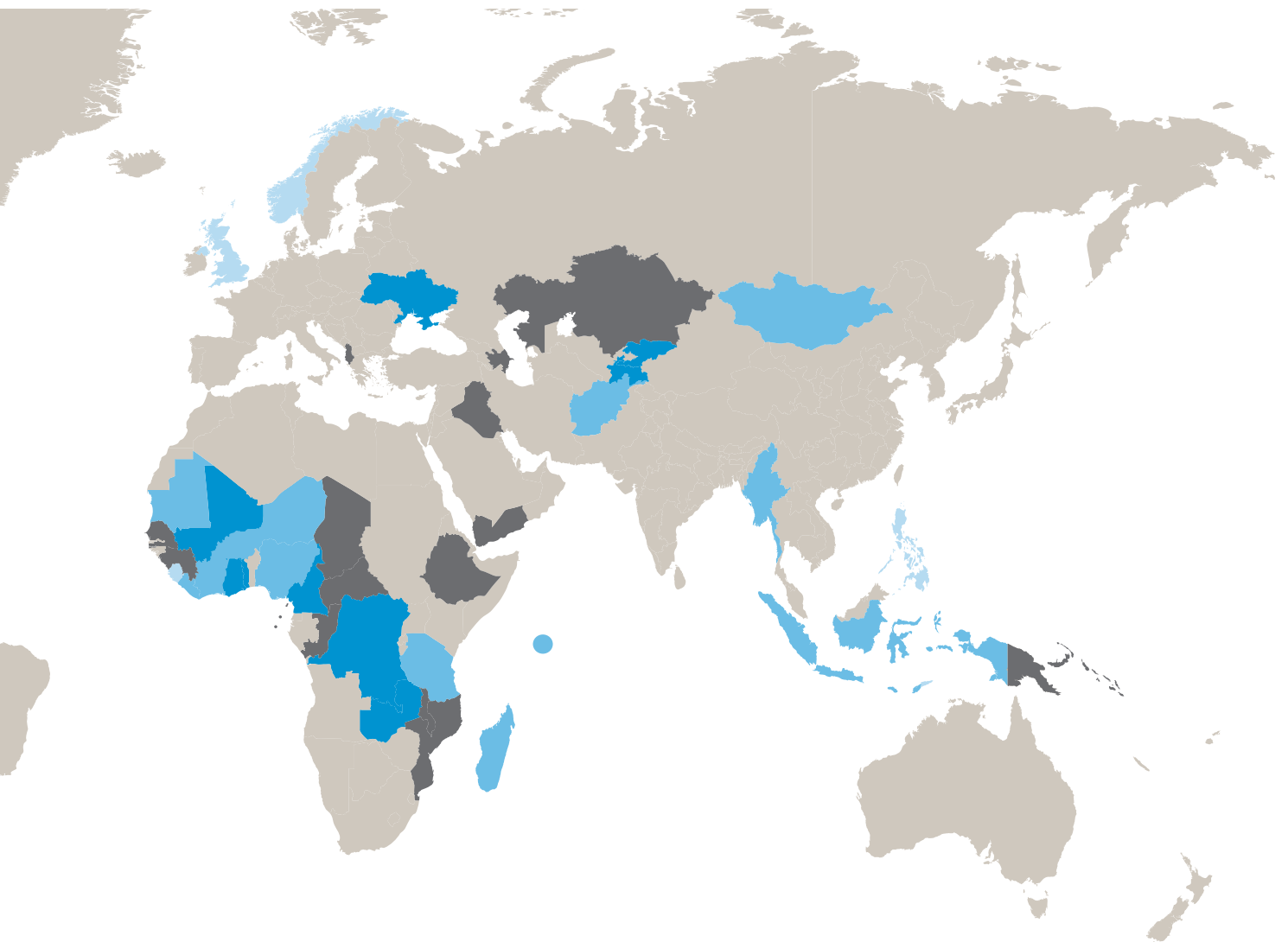
Tajikistan published a beneficial ownership report in 2014. Of the five companies that were neither publicly listed nor state-owned, four provided full information on legal ownership and three provided information about the beneficial owner. The report also shows that most of the companies operating in the extractive sector are either Chinese or Tajik.



Ukraine passed a law in 2014 requiring an upfront disclosure of beneficial ownership of companies to the Ukrainian authorities. All companies previously registered in Ukraine are required to disclose their ultimate beneficiaries in a public register. The EITI Report comments on this effort, noting that 66 of the 120 extractive companies covered by the EITI Report have disclosed their beneficial owners in the public register at the Ministry of Justice

Status of EITI countries

- Countries where one or more company has disclosed their beneficial owners
- Countries where one or more company has disclosed their legal owners
- Countries that have begun addressing beneficial ownership
- Other EITI countries



Myanmar started work on beneficial ownership by mapping the corporate structure of the companies operating in the country. The 2013 EITI Report includes the legal ownership of oil, gas and mining companies. More than 95 % of the extractive companies are Chinese, Myanmar or Thai. The report recommends to establish a public register of beneficial ownership. Global Witness has already documented the beneficial owners of many of the oil and gas companies operating in the country.

United Kingdom has committed to include beneficial ownership disclosure in its first EITI Report due in April 2016. That will complement the UK's forthcoming public registry of ultimate beneficial owners of UK companies established under the UK Small Business, Enterprise and Employment Act 2015.

"Beneficial ownership information enables Nigerians to expose corruption and nepotism in the acquisition process. Besides asking companies to voluntarily disclose information on their ownership structure, including any politically exposed persons, going forward NEITI has also put into effect a mechanism that would enable it to capture ownership of divested wells, license holders, lease holders and companies bidding for extractive industry contracts. In short, beneficial ownership in the extractives sector in Nigeria begins to scratch where it itches."

Nigeria EITI Secretariat

Afghanistan asked companies to report their owners, listing individually any person or entity holding 10% or more of the shares. Beneficial ownership was not investigated.

Burkina Faso took part in the beneficial ownership pilot. Their EITI report did not disclose any beneficial owners but included information on legal owners in particular, country of incorporation, percentage participation and the name of stock exchange for listed companies. Incompleteness of information was the major challenge both in terms of data submitted to the EITI as well as data submitted upon company registration in the country.

Côte d'Ivoire's 2013 EITI Report states that there is no legal definition of beneficial ownership in the country, nor does the government hold a register with this information. In an attempt to collect beneficial ownership information from the companies, the National EITI Council in Côte d'Ivoire applied the beneficial ownership definition used in the EU's 4th Anti-Money Laundering Directive. Although some companies declared their legal owners, no private companies disclosed their beneficial owners. The report recommends further outreach and awareness raising to companies.

Honduras sought beneficial ownership information from four mining companies operating in the country. Two of them provided information about their legal owners, noting that information about beneficial owners was not obtainable as the mother companies were registered in foreign jurisdictions.

Kyrgyzstan made its first attempt at asking companies to disclose beneficial ownership in the 2014 EITI Report. Five companies provided this information and another 15 disclosed their legal owners.

Liberia took part in the beneficial ownership pilot and attempted to obtain beneficial ownership information for active concessions as well changes in ownership in the period 2009-2011. Although several companies responded, declaring both shareholders as well as natural persons as their owners, the report does not confirm whether the natural persons disclosed were also the beneficial owners. The report includes several recommendations for improving beneficial ownership disclosure in the future.

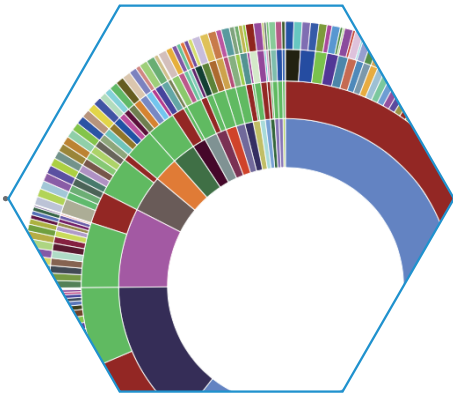
Madagascar's 2014 EITI Report confirms that there is no public register of beneficial ownership in the country and that the Ministry of Commerce only collects information about shareholders. 22 companies voluntarily provided information on legal owners. In some cases, physical persons are listed as owners, but the report does not confirm whether these are beneficial or legal owners.

Mali's 2013 EITI Report explains that there is no legal definition of beneficial ownership in the country, nor does the government hold a register with ownership information. In an attempt to collect this data, Mali applied the beneficial ownership definition used in the EU's 4th Anti-Money Laundering Directive. One company provided beneficial ownership information. The report recommends the creation of a public beneficial ownership register.

Mauritania's 2013 EITI Report recommends that the government establish a public register of beneficial owners. Although an attempt was made to collect this information directly from the companies, only some companies filled in the template largely with legal ownership information.

Mongolia decided to include a section on beneficial ownership in its 2013 EITI Report. Using a simple questionnaire, the MSG asked for beneficial ownership information from any entity holding 5% or more of a mining or petroleum license. While the survey was voluntary, 215 of the 250 companies that participated in the 2013 EITI Report provided information on their equity-holders. Although some equity holders were natural persons, the report did not confirm whether they were legal or beneficial owners. The results were converted into an interactive infographic on the EITI Mongolia website. The 2014 EITI Report was less successful in providing beneficial ownership data. 30 of the 236 companies responded to the request. It does not provide greater clarity on who the legal and who the beneficial owners are

Niger participated in the beneficial ownership pilot. Its 2013 EITI Report does not disclose beneficial ownership but simply notes that all exploration companies are publicly listed and that producing companies are "perfectly possible to identify" through the State's participation in these projects.



← This interactive doughnut chart shows shareholder information from Mongolia's 2013 EITI Report.

Norway's 2013 EITI Report provides information about the Norwegian register of shareholders. It also mentions the ongoing discussions related to establishing a public beneficial ownership register.

The Philippines' 2013 EITI Report sets out the definition of beneficial ownership as per the Securities Regulation Code of the Philippines and explains the filing requirements of the SEC with regards to ownership information. A summary showing the number of beneficial owners per company is provided, but no further details about the identity or level of ownership.

Seychelles made a first attempt at beneficial ownership in its first EITI Report published in February 2016. Although a couple of companies provided shareholder information, most companies did not respond.

Sierra Leone is collecting beneficial ownership information from the 20 largest extractive taxpayers. In addition, steps are being taken to support and improving the due diligence procedures employed by the National Minerals Agency and the Petroleum Directorate in order to make these government agencies better informed in their dealings with prospective commercial partners, and better equipped to lead to the systematic collection and recording of beneficial ownership data.

Tanzania's 2013 EITI Report explains that the Business Registration and Licensing Authority maintain a publicly available register that records information on companies operating in Tanzania. The register maintains information on corporate entity's full name, legal status, year of incorporation, and list of directors. The same information is recorded at the licensing unit at the Ministry of Energy and Minerals during the initial stage of registration of the Mineral Right Holders. However, subsequent changes on the status of the companies made over the years are

recorded at BRELA but not always at Ministry of Energy and Minerals. Information about beneficial ownership is not held in these registries, not was TEITI successful in obtaining this information directly from the companies participating in the EITI Report. However, in 2015 TEITI enacted an EITI law that requires all extractive companies in the country to disclose their beneficial owners.

Timor-Leste's 2013 EITI Report states that most companies operating in the country are publicly listed. It gives listings information for the key operators in the country: Conoco Phillips, ENI and Woodside.

Togo attempted to disclose beneficial ownership in its 2012 and 2013 EITI Reports. In both reports, about half of the companies disclosed their legal owners but no company has yet disclosed the beneficial owners. The report recommends the creation of a public beneficial ownership register.

Trinidad and Tobago is working towards beneficial ownership disclosure and the 2013 EITI Report explains the MSG's definition of a beneficial owner and politically exposed person. The next step will be to collect beneficial ownership data through the 2014 EITI Report.

Zambia has made several attempts at disclosing beneficial ownership, including in their 2013 and 2014 EITI Reports as well as in a separate beneficial ownership report. Despite capacity building and outreach to companies, the response rate has been low. No company provided beneficial ownership information in the 2014 EITI Report. The report cites lack of legislation requiring beneficial ownership disclosure and difficulty in obtaining the information from companies located in foreign jurisdictions as some of the reasons for non-disclosure. It recommends further work on establishing a beneficial ownership register.

"Ukraine became the first country among EITI implementing members that embedded disclosure of beneficial owners into its legal system. This was a result of the active position of civil society in Ukraine, which ultimately enabled the adoption and implementation of the law."

Oleksiy Orlovsky, International Renaissance Foundation



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