



The Need to Know Who Owns What in Nigeria's Extractive Sector

Disclosing the real owners of companies operating in the extractive sector in Nigeria will expand the frontiers of transparency and accountability and yield other benefits to the country

The extensive buzz generated by the “Panama Papers”¹ has focused global attention on the potential and real dangers of anonymous companies. Known by a variety of names—offshore companies, shell companies, corporate ‘get-away cars’² etc. — these companies pose practical risks to the finances of countries, to their standings in the eyes of their citizens and in the comity of nations, and even to their security and stability. Anonymous companies are used to deny countries of valuable revenues through tax avoidance, and sometimes outright tax evasion; then, the shroud of secrecy around them is used not only to mask possible corrupt relationships with government officials but also to obscure probable links to money laundering, drug trafficking, and terrorism financing.

While there could be some innocuous reasons for hiding the real owners of companies and it is not an illegal practice in most countries, the existence of such companies, on the balance, constitutes a real and present danger to developing countries like Nigeria. According to “The Trillion-Dollar Scandal,”³ a 2014 report by the ONE campaign, at least \$1 trillion is lost by developing countries every year to the use of anonymous companies and other fraudulent schemes. This figure is more than seven times the amount of total aid flow to developing countries in 2015⁴ and about 40% of what the United Nations estimates that developing countries need to achieve sustainable development.⁵ Both the OECD and the European Network on Debt and Development⁶ estimate that developing countries lose \$2 for every \$1 that flows into these countries as either development assistance or foreign investment. Tax avoidance and evasion by secret companies account for the largest share of this loss.

¹A major leak of 11.5 million documents by the International Consortium of Investigative Journalists detailing secret offshore holdings of 214,000 entities connected to people in more than 200 countries, see: <https://panamapapers.icij.org/20160403-panama-papers-global-overview.html>

²‘Leak of the Century: The Lesson of the Panama papers’ The Economist, available at: <http://www.economist.com/news/leaders/21696532-more-should-be-done-make-offshore-tax-havens-less-murky-lesson-panama-papers>

³“The Trillion Dollar Scandal”, ONE, available at: https://s3.amazonaws.com/one.org/pdfs/Trillion_Dollar_Scandal_report_EN.pdf

⁴“Development Aid Rises in 2015”, OECD News Release, Available online at <http://www.oecd.org/newsroom/development-aid-rises-again-in-2015-spending-on-refugees-doubles.htm>

⁵“Investing in the SDGs: An Action Plan”, UNCTAD, World Investment Report 2014, Available online at: http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf

⁶“The State of Finance for Developing Countries, 2014”, EURODAD, Available online at: <http://www.eurodad.org/files/pdf/54f98666925bf.pdf>

Action Points

- **Govt. should initiate policy and legal frameworks on ownership disclosure in Nigeria;**
- **Beneficial ownership reporting should start with the extractive sector, building on NEITI's reports;**
- **Ownership disclosure should be incorporated in the Petroleum Industry Governance Bill before the Senate;**
- **Nigeria should beat the EITI deadline by at least two years.**

According to Section 2.5 of the 2016 EITI Standards⁷, implementing countries such as Nigeria are expected to maintain a public register of the beneficial owners of all corporate entities that bid for, operate or invest in extractive assets, including the identities of their beneficial owners, the level of ownership and details of how ownership or control is exerted. All EITI-implementing countries are expected to publish a beneficial ownership roadmap by January 2017 and start full implementation by January 2020.

As Africa's biggest economy and most populous country, and as a country highly exposed to the negative impacts of anonymous companies, Nigeria should seize the opportunity to lead the charge in the growing campaign for full disclosure of ownerships of companies across the Nigeria's extractive sector, which despite the slump in oil prices still accounts for the bulk of government revenues, a sector where complex ownership structure is often the norm, and one in which some form of ownership disclosure has already been introduced but is in need of both expansion and deepening. Apart from Nigeria being seen to be in the vanguard of a global movement, the promotion, expansion and deepening of ownership disclosure of all companies that operate in Nigeria's oil, gas and solid minerals sector align with the anti-corruption agenda and the ongoing oil sector reforms of the President Muhammadu Buhari administration.

Besides, it is in the best interest of Nigeria and Nigerians as full ownership disclosure has practical implication for increasing government revenues, reassuring investors interested in partnering with local companies, reducing the incidence of corruption and money laundering, and cutting off funding for drug lords and terrorists. It is therefore important for the President Buhari administration to prioritize this aspect of transparency and champion policy and legal frameworks for lifting the veil of secrecy on ownership of companies in the extractive sector in Nigeria. In particular, full ownership disclosure will facilitate the present thrust of the Nigerian government to trace, recover and repatriate the country's stolen assets in foreign jurisdictions. At present the problematic process of recovery of stolen assets in other jurisdictions is compounded by absence of relevant information occasioned by secrecy and opaqueness of the real actors behind the transactions.

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When Real Owners Stay Off the Radar...



The practice of cloaking the real owners of companies manifests in different forms in the extractive sector. This ranges from chains of ownership (where many companies, including those registered in tax havens and secret banking jurisdictions end up owning a particular company), nominee shareholding (where a shareholder holds stock on behalf of a third party), trusts (where a trustee acts for and in the interest of the beneficiary) and the use of fronts or stand-ins.

⁷ The EITI Standard 2016, available online at: https://eiti.org/files/english-eiti-standard_0.pdf

In most resource-rich countries, anonymous ownership serves as a vehicle for concealing illicit wealth and conflict of interests by Politically Exposed Persons (PEPs). When government officials and politically connected individuals seek to profit from a country's mineral assets, they do so using fronts and ownership structures that do not provide sufficient information about the true identities of the natural persons behind the title. But then the real problem is not just about anonymity. It is that this lack of transparency allows influential officials to use their positions to extract maximum rent from a country's mineral resources with minimum or no benefit to the citizens.

In practical terms, billions of dollars are lost annually which politically connected individuals appropriate to themselves using fronts and secret ownership arrangements. A famous example is the controversy around OPL 245 where a former minister of petroleum, Dan Etete, awarded the oil license to Malabu Oil allegedly using fictitious name and company address to conceal his identity and interest in the company.⁸ Similarly, the granting of pioneer status in which the Nigerian government lost over \$1.17 billion (from 2009-2014) to some upstream companies⁹ may not be unconnected with the influence of the true beneficial owners behind the scene.

In general, local and international oil companies operating in developing countries typically exhibit a complex structure of ownership that makes it difficult to identify the real individuals behind these companies or their connection to companies with whom they transact business.

These relationships matter because the amount of tax which a company pays depends on the profit it declares to the tax authorities. But the size of the profit depends on the cost of operations. If a company finds a way to incur huge cost for its operations, then it would declare little or no profit or even declare a loss. As a result, it pays little or no tax. If this scheme allows the same company to go back to its suppliers and service providers to get a refund after declaring little profit and paying little or no tax, then the shareholders keep almost everything and the society gets the short end of the stick. Cost-padding, a practice known as gold-plating in the extractive sector, is suspected to be widespread.

The above form of "transfer pricing" is difficult to detect where fuzzy relationships exist between companies transacting business with each other or where companies engaged in some (or different) transactions are owned and/or controlled by the same individuals or entities. It is designed primarily by owners to evade tax. Fortunately, a reporting system which makes it possible for everyone else to know the identity of the owners or ultimate beneficiaries of both companies significantly lowers the incentive for businesses to cheat the government and society in this manner. Same with trade mispricing which allows companies to over-invoice imports (inputs) or under-invoice exports (products) in order to increase cost, reduce profits, and ultimately pay little tax. A well-designed beneficial ownership map can help flag these sorts of relationships between companies engaged in the extractive sector.

As the leaks from the Panama Papers show, the biggest victims of these practices are developing countries, or generally countries with relatively weak institutions of accountability and tax authorities. It is worse where these countries are reliant on the activities of large corporations to exploit their resources to generate revenues without which government is unable to provide services to citizens. Oil and gas companies in Nigeria operate within a typical corporate environment, complete with a complex web of commercial relationships and corporate identities, that requires utmost regulatory vigilance by accountability institutions.

⁸ Shell and Eni's Misadventures in Nigeria, Global Witness Briefing, available online at: <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-and-eni-misadventures-nigeria/>

⁹ NEITI 2013 Audit Report

Unmasking the Real Owners of Extractive Companies in Nigeria

APPENDIX 1 (2012 Oil and Gas Industry Audit Report)

BENEFICIAL OWNERSHIP

I.	FULL LEGAL NAME OF COMP.	RC NO	CONTACT ADDRESS	SHAREHOLDER(S)		DECLARANT	NAME OF AGREEMENT
				Govt/private entity	% Interest		
1.	MOBIL PRODUCING UNLIMITED	RC 6284	MOBIL HOUSE LEKKI EXPRESS VICTORIA ISLAND LAGOS	MOBIL DEVELOPMENT NIGERIA INC.	50	NAME: SADIQ A. ADAMU POSITION: COMPANY SECRETARY EMAIL: SADIQ.A.ADAMU@EXXONMOBIL.COM PHONE NO: 09091022066	JOINT VENTURE
				MOBIL EXPLORATION NIGERIA INC.	50		
2.	ESSO EXPLORATION PRODUCTION NIGERIA LIMITED	RC 214536	MOBIL HOUSE LEKKI EXPRESS VICTORIA ISLAND LAGOS	ESSOMOBIL NIGERIA HOLDING ONE	90	NAME: CHIKA M. IKEM OBIH (MFR) POSITION: COMPANY SECRETARY EMAIL: CHIKA.M.IKEM-OBIH@EXXONMOBIL.COM PHONE NO: 09091022079	PRODUCTION SHARING AGREEMENT
				ESSOMOBIL NIGERIA HOLDING TWO	10		
3.	MONI PULO LIMITED	RC 183333	NO 5 ODDNI STREET, AMADI PORT HARCOURT	MRS. SEIHYE O. BULU-BRIGGS	81	NAME: MRS SOLATE OVUN AKAROLO POSITION: DUTY MANAGER EMAIL: Solate.lulu-briggs@monipulo.com PHONE NO: 08033368672	
				MRS. SOLATE OVUNDAH- AKAROLO	5		
				MISS. RACHEL O.B. LULU-BRIGGS	5		
				O.B. LULU-BRIGGS FOUNDATION	9		
4.	NIGER DELTA PETROLEUM RESOURCES LIMITED (INDPR)	RC 256022	15 BAPTUNDE JOSE ROAD, VICTORIA ISLAND LAGOS	NIGER DELTA EXPLORATION PRODUCTION PLC (NDEP)	100	NAME: FEMI BALOGUN	

There are some 'sunshine' laws and provisions which, though do not expressly address the issue of beneficial ownership, could be used to enhance the cause of unmasking the real owners of extractive companies in Nigeria. These 'sunshine' provisions, however, have limitations and can at best be seen as interim and complementary instruments

Beneficial owners are the real, life and blood individuals who profit from and exercise control over the companies (as opposed to legal owners and fronts usually filed in registration documents). Having a public registry of beneficial owners of extractive companies will definitely limit abuses perpetrated through use of anonymous covers. No such registry exists in Nigeria at the moment.

In 2013 Nigeria volunteered, alongside 11 other EITI-implementing countries, to pilot the reporting of Beneficial Ownership in the oil, gas and mining sector. Hence, in the NEITI Oil and Gas Audit Report of 2012, which was released last year, 'beneficial ownership' information was published for 40 of the 42 companies covered by the oil and gas audit, and 32 of the 65 companies covered in the solid minerals audit.¹⁰ The ownership information is captured through templates filled out by companies and validated with records at the Corporate Affairs Commission (CAC) and the Department of Petroleum Resources (DPR). In the pilot, however, most of the ownership information was for the "legal owners" as opposed to the "beneficial owners."

With these publications, Nigeria thus became one of the growing number of EITI countries that have disclosed ownership information so far¹¹. The information collected represents a useful starting point. However there is some distance to travel before it can be said that identities of the 'real owners' of companies operating in the oil and gas sector is available to the public. The EITI acknowledges Nigeria's effort at beneficial ownership reporting only as disclosure of 'legal owners'. This is significant because the distinction between legal and beneficial ownership reporting form the crux of the objective of disclosing the real (beneficial) owners of extractive companies.

¹⁰ The same set of information (with minor changes) is repeated in the NEITI Oil and Gas Audit report for 2013, which was yet to be released to the public as at the time of writing this paper.

¹¹ Beneficial Ownership: Revealing who stands behind the Companies" EITI Beneficial Ownership Factsheet, 2016 https://eiti.org/files/eiti_bo_factsheet_en_final.pdf

While it provided a valuable learning experience, there is significant room for improvement from the initial pilot. Of the 40 companies covered by the 2012 oil and gas report, only 21 listed at least one 'natural person' as part of their registered beneficial owners. The rest of the companies listed other corporate bodies as beneficial owners, requiring further search to be conducted. In other cases, the named persons were likely the appointed legal directors, rather than the true beneficiaries who really control the companies. Achieving beneficial ownership reporting, as required by the EITI, will not be an easy task as it is well known that oil and gas companies have many means of hiding their ultimate beneficial owners. A records search at the Corporate Affairs Commission (CAC) is an obvious first step for anyone wanting to know a firm's owners. Yet often, the names on records raise more questions.

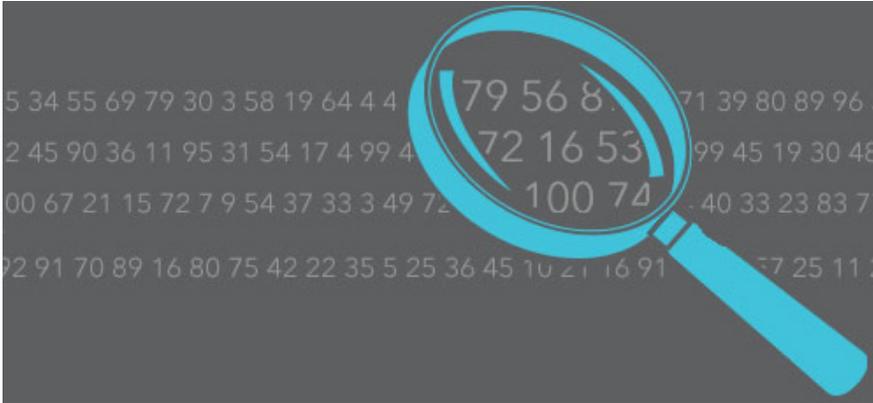
In furtherance of its commitment to implementing the standards of the Financial Action Task Force (FATF), Nigeria established a Financial Intelligence Unit (NFIU) in 2004 to implement the FATF standards against money laundering and terrorism financing. The establishment of the NFIU also fulfils Nigeria's commitment to the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). The Money Laundering Prevention Act was therefore promulgated to operationalise the anti-money laundering provisions of the FATF and GIABA. The law mandates the Nigerian banks and Designated Non-Financial Institutions (DNFIs) to identify and also verify the identity of beneficial owners of the accounts of legal entities carrying out financial transactions with these institutions. However, these institutions may not have the capacity or incentive to conduct the required level of customer scrutiny nor would these checks result in greater transparency. Clearly, the scale and pervasiveness of the abuses currently being investigated by the Economic and Financial Crimes Commission (EFCC) is clear evidence that both the law and its enforcement need to be scaled up.

Fortunately, the recent implementation of the the Bank Verification Number (BVN) requirement by the federal government has succeeded in putting faces to corporate and private accounts through the use of bio-metric data. This has substantially reduced the use of these accounts for money laundering and corruption. By 'following the money,' government can trace the actual beneficial owners of the extractive industry companies. These requirements can be strengthened to achieve a more effective beneficial ownership transparency by using the information to augment a publicly available beneficial ownership register.

There are some 'sunshine' laws¹² and provisions which, though do not expressly address the issue of beneficial ownership, could be used to enhance the cause of unmasking the real owners of extractive companies in Nigeria. These 'sunshine' provisions, however, have limitations and can at best be seen as interim and complementary instruments. They cannot therefore replace the need for clear policies and legislations for public disclosure and publication of the real owners of extractive companies in the country. One of such complementary provisions is the Freedom of Information Act, which avails citizens of the opportunity to request for certain categories of information from public institutions. But the FOI Act does not cover private entities and the most that petitioners can extract from public institutions is information about legal ownership and not necessarily beneficial ownership.

Another complementary requirement is the Code of Conduct and Tribunal Act which requires government officials, including Politically Exposed Persons (PEPs), to declare their assets and to disclose

¹² Laws like the Freedom of Information (FOI) Act and the Code of Conduct and Tribunal Act designed to open up the activities of public officials and government operations to greater public scrutiny.



their interests in private and public companies. Though the Act prescribes punishments for violations, the assets declaration has not yet acquired the ‘sunshine’ status as the declared assets are not put in the public domain. The Open Government Partnership (OGP), to which Nigeria hopes to attain full membership, requires that assets declaration records should be made accessible to the public.

Even at that, asset declaration covers only the public sector. For the private sector, two legal authorities can be invoked: the common corporate law¹³ and the Public Complaints Commission Act. The former allows for the lifting of the veil of incorporation to identify the real owners of a company when fraud is alleged to have occurred. But a suit has to be filed and this provision is only available to an aggrieved party, not to the public. The last complementary provision is the PCC Act which empowers the Commission to request for any information from any organization, including the private sector. But this is contingent on both a complaint and a request, and there is no guarantee that it will yield any information beyond the legal ownership of companies.

The above shows that while the complementary provisions can be useful, they are clearly limited if the goal is to unveil the real owners behind anonymous companies. The beneficial ownership reporting which started with the NEITI audit reports of 2012 is a good starting point but clearly needs building upon. Building on what already exists in the NEITI audits, tapping into the growing global consensus on the need for public disclosure of beneficial owners of extractive companies, and aligning with the ongoing reform of the oil sector and the anti-corruption and change agenda of the President Buhari administration, Nigeria can lead in this arena. Nigeria can and should establish its public register of beneficial owners of companies involved in exploration, production, trading, import, export, and provision of other services in the extractive sector of the country well ahead of the 2020 deadline.

There is nothing that says Nigeria cannot beat this deadline by at least two years. Taking this leap will provide another opportunity to solidify its credential as leader among EITI-implementing countries and a champion of transparency and accountability in the extractive sector.

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¹³ Pilot Assessment of Beneficial Ownership Disclosure: Nigeria’s Experience, Unpublished NEITI Paper 2015, Available online at: https://eiti.org/files/nigeria_bo_pilot_report.pdf



Options and Next Steps

There is no doubt that beneficial ownership transparency can be an effective tool for reducing corruption and lowering the risk of financial misconduct in the extractive sector in Nigeria. But the transition from the pilot phase to the full-implementation will not be without challenges. Nigeria, like the rest of the world, is faced with the difficulty of determining the best strategies for ensuring corporate ownership transparency. Former EITI Chair, Claire Short, acknowledges that “while no one doubts the importance of the EITI moving in this direction, we should not underestimate the effort that it will require.”¹⁴

Beyond having a public register by 2020 as demanded by the 2016 EITI Standards, other ways in which Nigeria could generate information about the real owners of companies in the extractive sector include the following: creating a beneficial ownership database of extractive companies accessible only to law-enforcement agencies and other government entities; making policies that make it mandatory for public disclosure of the beneficial owners of companies doing significant contracts with government; and passing legislations that make it mandatory for companies to disclose their beneficial owners at the point of incorporation. In terms of legislation, beneficial ownership provisions could be inserted in the Petroleum Industry Governance Bill (PIGB) presently before the Senate and same could be undertaken through amendments to the Companies and Allied Matters Act (CAMA) and the Petroleum Act 1969. Also, the Code of Conduct Bureau and Tribunal Act could be amended to make it mandatory for public officials to make their assets declaration public.

To deepen what already exists on beneficial ownerships in the 2012 and 2013 NEITI audits, it will be important to tailor the beneficial ownership reporting initiative not only to comply with the EITI requirements but also to enable it to be meaningful to government’s anti-corruption campaign. This will involve a redefinition of the coverage, level of disclosure required and outreach to covered entities to ensure clarity on requirements, strategies and mechanisms, timeframes, means of verification of

¹⁴ “Challenge three: Revealing Who Owns the Extractive Companies” Clair Short, available online at: <https://eiti.org/blog/challenge-three-revealing-who-owns-extractive-companies>.

company data, penalties for non-compliance, and how best to publish information gathered. This will be followed by amending, re-drafting or determining new legislation that would be necessary in order to entrench the new practice. This process should involve an extensive engagement with the National Assembly, civil society, and other accountability actors, a process that should be guided by a robust communication strategy.

Nigeria, through the work of NEITI, has made some significant strides in promoting revenue transparency in the extractive sector. The Nigerian National Petroleum Corporation (NNPC), the state oil company once renowned for opacity, is also opening up and sharing details of its operations with the public through monthly publications. All these align with the anti-corruption stance of the President Buhari administration. Implementing and institutionalising a robust mechanism for ownership transparency in the extractive sector in Nigeria will be a logical extension of the work done on revenue transparency, a more systematic and more sustainable way of fighting corruption, a necessary reinforcement of the on-going reforms of the extractive sector in Nigeria. Like Jonas Moberg, the head of EITI Secretariat noted recently, “revenue transparency without ownership transparency is a bit like having number plates on cars but keeping the registry of who the plates belong to secret, even to the government itself.”¹⁵

The campaign for knowing the real owners of the companies in the extractive sector is gathering momentum globally especially after the leak of the “Panama Papers”. With the London Anti-Corruption Summit coming after the Panama Papers, the campaign for revealing the real owners of companies will stay high on the global anti-graft agenda. Nigeria should seize this momentum, not just to ride on the bandwagon but to strengthen the fight against one of its major challenges in its most strategic sector.

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¹⁵ Jonas Moberg, “The Panama Files and the EITI Ground-breaking Rules on Ownership Reporting”, available online at: <https://eiti.org/news/panama-files-and-eiti-ground-breaking-rules-ownership-reporting>.



NEITI, the Nigerian chapter of the global EITI, is mandated by the NEITI Act (2007) to promote transparency and accountability in the management of revenues from oil, gas, and solid minerals sectors in Nigeria.

The NEITI Policy Brief is one of NEITI's policy and advocacy instruments, designed to focus the attention of policy makers and the populace on important issues in the extractive sector in Nigeria.

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