

Disclosing beneficial ownership information in the natural resource sector

OGP Openness in Natural Resources Working Group | Issue Brief | February 2016

A product of the close collaboration of the working group's co-anchors: the governments of Mexico and Indonesia, the World Resources Institute, and the Natural Resource Governance Institute

I. Introduction

With 51 countries developing new national action plans (NAP) by June 2016, there is a unique opportunity to commit to good governance of the oil, gas and mining sectors, which are at a particularly high risk of corruption in resource-rich countries. **This briefing aims to encourage and orient Open Government Partnership (OGP) countries to commit to beneficial ownership disclosure, which impact the natural resource sector.** It explores the rationale behind this commitment, provides country examples, and offers ideas around good practice. It draws heavily from the Natural Resource Governance Institute's (NRGI) briefing [Owning Up: Options for Disclosing the Identities of Beneficial Owners of Extractive Companies](#).¹

II. Why does beneficial ownership matter in the extractive industries?

Secret ownership structures enable some oil, gas, and mining companies to evade tax payments or hide improper relationships with government officials. Publishing information about companies' "beneficial owners"—the individuals that ultimately control or profit from a company—can help deter such practices and enable their detection. While a complex and opaque ownership structure is no sure sign that an extractive company is engaging in financial misconduct, the [ONE campaign](#)² has estimated that developing countries lose \$1 trillion each year as a result of corrupt or illegal cross-border deals, many of which involve companies with unclear ownership.

Extractive companies play a crucial role in turning a country's natural resources into revenues that can serve development. However, if authorities award licenses based on political connections rather than competency, it is unlikely that the country will partner with the most qualified companies or obtain the best deals. Participation of public officials or politically exposed persons in extractive projects may also create conflicts of interest and facilitate the diversion of public revenues through corruption.

Likewise, the benefits a country sees from the extractives sector depend on effective tax collection, which companies can evade by using complex ownership structures. Some extractives companies—especially those with footprints in many countries—use chains of legal ownership to avoid taxes in the jurisdictions where they actually produce, buy, or sell minerals or hydrocarbons. The African Union and UNECA estimate that Africa loses more than [\\$50 billion every year](#)³ from fraud and tax avoidance.

Publishing information about the individuals who ultimately profit from a company can help deter the syphoning of public money, conflicts of interest, and tax evasion. It can do so by, for example, revealing the use of shell companies located in tax havens, or showing when an oil company owned by a politician receives a valuable license.

III. How do extractive companies conceal their beneficial owners?

Beneficial owners of oil, gas, and mining companies have many means to hide their interests, such as:

Means to hide interests	Description
Substituting natural persons	One or more people stand in as shareholders for the beneficial owner. These can include family members, fronts, or aliases.
Inserting opaque entities into the ownership structure	Politicians and other politically influential individuals can hide behind corporate shareholders, such as community development corporations and trusts, with unclear beneficiaries. Such vehicles can funnel money and control into more influential private hands.
Holding assets and sending payments offshore	Setting up legal entities in offshore locations can provide other options for moving money to hidden persons and masking lines of benefit and control. Authorities in many banking secrecy and tax haven jurisdictions do not disclose company shareholders, much less beneficial ownership, making it even more difficult for investigators to pinpoint true owners, and for the governments of producing countries to fully assess and collect taxes.
Suspect commercial relationships	Extractive companies can pay their hidden beneficial owners using suspect commercial transactions, such as service contracts that are paid regardless of performance. While such transactions may sometimes more closely resemble simple bribes, they could be proof of hidden beneficial ownership if the recipient also controls the paying company's operations such that he or she can direct the company to make payments.

IV. International initiatives and country practices on beneficial ownership disclosure

There has been a growing international trend to make ownership structures more transparent to shed light on potential criminal activities. In June 2013, **G8** leaders agreed to a set of [principles on beneficial ownership transparency](#).⁴ The principles state that companies should obtain their beneficial ownership information and that the information should be accessible to law enforcement and other competent authorities. Additionally, countries should consider making such information available to financial institutions and other regulated businesses. These principles were largely reiterated by the **Financial Action Task Force**—the body setting international anti-money laundering standards—in their [Guidance on Transparency and Beneficial Ownership](#)⁵ in October 2014 and by the [G20 in their High Level Principles on Beneficial Ownership](#)⁶ in November 2014.

In the natural resource sector, the **Extractive Industries Transparency Initiative (EITI)**⁷ is leading on the subject. The 2013 EITI standard encourages the disclosure of beneficial ownership information: 11 EITI countries (including Honduras, Liberia, and Tanzania, which are OGP countries) have participated in a pilot of this new provision, and the UK has included beneficial ownership requirements in [its reporting process](#).⁸ Results of the pilot have been [mixed](#):⁹ coverage of beneficial owners has been uneven, and countries do not always disclose ultimate owners. The [Democratic Republic of Congo](#)¹⁰ is one of the better performers among the countries in the pilot project. The 2016 EITI Standard, which is expected to be adopted by the EITI International Board at the end of February 2016, will require countries to request, and companies to disclose, beneficial ownership information by 1 January 2020. By 1 January 2017, stakeholders must develop a roadmap outlining how they will pursue such disclosure. Information about the identity of the beneficial owner should include the name, nationality, and country of residence of the beneficial owner (who must be a natural person); the level of ownership; details about how ownership or control is exerted; and identify any politically exposed persons. Companies will have to assure the accuracy of the information provided, and companies that fail to submit all or part of such information must be named.

More and more countries realize the importance and benefits of disclosing information about companies' real owners. The [UK](#)¹¹ is leading by example by passing legislation which will enforce a publicly accessible register of who ultimately owns and controls British companies. Prime Minister David Cameron first suggested this change at the [2013 OGP summit in London](#).¹² [Denmark](#),¹³ [the Netherlands](#), [Norway](#)¹⁴ and

[Ukraine](#)¹⁵ are following similar steps. The [European Union](#)¹⁶ also finalized a measure in May 2015 requiring all member States to create central registries of beneficial ownership information for companies established in their countries and to make that available to anyone who has a “legitimate interest” in finding out who is behind a company.

The **United States** has also taken early steps toward making beneficial ownership information available in its October 2015 [NAP](#).¹⁷ The Department of the Treasury and the White House will continue engaging Congress to build bipartisan support to require that meaningful beneficial ownership information be disclosed at the time a company is formed. The government has already started identifying beneficial owners in the [luxury real estate sector](#), which is prone to money laundering. It also commits to satisfying the beneficial ownership requirements under the EITI standard. It is not clear yet what the format of the database will be and who will get access to the information.

Another example is the **Kyrgyz Republic**, which requires companies to name their beneficial owners to government when doing business with the state. To illustrate, Articles 27 and 30 of the Kyrgyz Republic’s 2012 amendment to its [Subsoil Law \(No.77\)](#)¹⁸ require companies to attach information about their ultimate beneficial owners when applying for a license. The law further provides that failure to provide accurate information is grounds for terminating a license.

V. Recommendations

OGP governments can improve transparency and accountability in the natural resource sector by including commitments on beneficial ownership disclosure in their NAPs. Following the steps from the countries with beneficial ownership disclosure commitments, countries may consider the following options:

- a. **Commit to establish a public register of beneficial owners in open data format**, as in the UK. Data users must be able to analyze the data and combine datasets from different sources. Company identifiers should be used for maximum comparability. Policymakers would need to ensure that the register does not leave out key extractive sector players who might not be registered in the country.
- b. **For resource-rich countries, start by committing to beneficial ownership disclosure in the extractive sector**. Countries could, for example, establish a register of beneficial owners for license-holding companies, such as that encouraged by the EITI.
- c. **Require beneficial ownership information as part of the application for a license / agreement with governments involving natural resources**, as in Kyrgyz Republic.

To implement the commitment, the following should be considered:

Broad strokes	Questions to ask
Rationale	What issue do you seek to address through transparency in company ownership?
Scope of Disclosure	<ul style="list-style-type: none"> • Which companies will be covered? • What level of disclosure will you require? • How do you protect individuals who might be at risk of harm through disclosure of this information? • What are the sanctions for individuals or companies that deliberately provide false information, or fail to provide information?
Information Collection	<ul style="list-style-type: none"> • What are the methods for collecting information? What is a workable method to confirm information? • What is a possible timeline for collecting information?
Publication	<ul style="list-style-type: none"> • How will you disseminate the information? • How will the registry operate in practice? • How will you publish using open data format?

Use of information	How do you improve extractive sector governance based on information?
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RESOURCES

- For a more detailed discussion on beneficial ownership disclosure, see NRGi's [Owning up: Options for disclosing identities of beneficial owners of extractive companies](#).¹⁹
- For a fuller understanding of the impact of beneficial ownership opacity, see Global Witness's [Poverty, Corruption and anonymous companies: how hidden company ownership fuels corruption and hinders the fight against poverty](#).²⁰

ABOUT THE OPENNESS IN NATURAL RESOURCES WORKING GROUP

The [OGP Openness in Natural Resource Working Group](#),²¹ co-chaired by the governments of Indonesia and Mexico, the [Natural Resource Governance Institute](#)²² (NRGI) and the [World Resources Institute](#)²³ (WRI), is a community that fosters the creation and implementation of concrete and impactful natural resource-related commitments. It seeks to be a platform for peer exchange, and to be a safe space for discussion among stakeholders who are more often than not seen to sit on opposite sides of the table. For peer learning and support, idea exchange, and grounded discussions on your natural resource commitments, contact the working group through:

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To access the sites hyperlinked in this brief, go to:

- 1) <http://www.resourcegovernance.org/publications/owning-options-disclosing-identities-beneficial-owners-extractive-companies>
- 2) <http://www.one.org/us/2014/12/05/trillion-dollar-scandal-the-biggest-heist-youve-never-heard-of/>
- 3) <http://www.theguardian.com/global-development/2015/feb/02/africa-tax-avoidance-money-laundering-illicit-financial-flows>
- 4) <https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements>
- 5) <http://www.fatf-gafi.org/documents/news/transparency-and-beneficial-ownership.html>
- 6) <http://www.opengovguide.com/standards-and-guidance/g20-high-level-principles-beneficial-ownership-transparency/>
- 7) <http://www.eiti.org>
- 8) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440677/Final_Reporting_Template_Oil_and_Gas.xls
- 9) <https://eiti.org/news/scratching-where-it-itches>
- 10) <http://progrep.eiti.org/2015/looking-ahead/beneficial-ownership>
- 11) <http://www.opengovpartnership.org/country/united-kingdom/commitment/beneficial-ownership>
- 12) <https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013>
- 13) <http://www.gfintegrity.org/press-release/gfi-praises-denmark-commitment-crack-anonymous-companies-public-registry/>
- 14) <http://www.taxijustice.net/2015/06/05/norwegian-parliament-votes-for-public-registry-of-ownership/>
- 15) <http://globalcompliancenews.com/ukraine-disclosure-beneficial-ownership-required-20141027/>
- 16) <http://www.europarl.europa.eu/news/en/news-room/20150513IPR55319/Tougher-rules-on-money-laundering-to-fight-tax-evasion-and-terrorist-financing>
- 17) https://www.whitehouse.gov/sites/default/files/microsites/ostp/final_us_open_government_national_action_plan_3_0.pdf
- 18) <http://www.nytimes.com/2016/01/14/us/us-will-track-secret-buyers-of-luxury-real-estate.html>
- 19) <http://www.resourcegovernance.org/publications/owning-options-disclosing-identities-beneficial-owners-extractive-companies>
- 20) <https://www.globalwitness.org/en/archive/anonymously-companies-global-witness-briefing/>
- 21) <http://www.opengovpartnership.org/node/5717>
- 22) <http://www.resourcegovernance.org/>
- 23) <http://www.wri.org/>