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Assessment of EITI Beneficial Ownership pilots

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Summary

- As of February 2015, 8 countries (**Burkina Faso, Cameroon, DR Congo, Mozambique, Nigeria (mining only), Niger, Togo, Zambia**) have released EITI reconciliation reports with sections referring to company beneficial ownership. Of the pilot countries, **Honduras'** report is due May 2015, **Kyrgyz Republic's** in the third quarter of 2015, and **Liberia and Tanzania's** in June 2015. This is a commendable step forward by the countries and MSGs involved and a quantity of information has been disclosed.
- While the reports supply useful data on the legal owners of companies, they often lack disclosure of beneficial ownership information which is the purpose of the encouragement and the future requirement. Without beneficial ownership information the anti-corruption purpose is lost. Of the countries that have released reports so far (not including Niger and Mozambique¹), only **DRC** and (arguably) **Togo** revealed any beneficial owners, resulting in just 5.67% of private companies disclosing their beneficial ownership across the six reports. **Nigeria's** mining sector is also supposed to have confirmed some beneficial owners, though this is not what the report indicates.
- In terms of number of disclosures, **DRC** performed the best – with 31% of private companies disclosing beneficial ownership. This is an excellent start in a country where the information is of high public interest. This, combined with other studies, such as that in **Myanmar** in 2014, where a request for voluntary disclosure resulted in 53% of Myanmar-based private companies declaring their beneficial owners on request demonstrates that companies have the ability to supply this information.
- The main obstacles to the disclosure of beneficial ownership information thus appear to be company refusal and/or a lack of knowledge of the pilot or what was required. The voluntary nature of the pilot may have undermined disclosure as companies could simply refuse to give the information.
- The legal ownership information supplied is of value in providing a basis for returning to companies and requesting disclosure of their beneficial owners. In **Burkina Faso**, all non-state companies gave information on their shareholders. Trying to ascertain beneficial ownership from legal ownership is often not possible, it is costly and time consuming which is why we need beneficial ownership disclosure from the companies.

¹ Niger did not contain tabulated information, stating that no company met the requirement for beneficial ownership. Global Witness learnt of the report of Mozambique (which is not a pilot country) late on in the writing of this document. Its disclosures will be assessed separately.

- The priority should be to make it clear to companies that they are requested to disclose beneficial ownership information, as per the Standard. Requiring this information is more likely to garner results than a voluntary exercise.
- In terms of the actual reporting so far, improvements can be made based on the following four categories:
 1. Information requested by the current template disclosure form but omitted from the final EITI report. This should be added in future and includes:
 - a. **A definition of beneficial ownership.** Where no definition of beneficial ownership is given it is hard to assess what information is provided. (**Burkina, Cameroon, Togo, Nigeria** gave no definition);
 - b. **Ensuring that identifying information is provided:** there is a lack of identifying information including company identification numbers (none but **Cameroon** provided this); country of registration for entities (none except **Togo** and **Nigeria**); full name, date of birth and address of the beneficial owners (none) and whether any individual is politically-exposed (none except **DRC** provided this, though not all countries stipulated for PEP disclosure); how the ownership is manifested (none but **DRC** in places);
 - c. **Supplying the date of the information, nor confirmation of its accuracy** by, for example, providing the name of the official who signed it off (none).
 2. The information requested by the Standard needs to be made more explicit or clarified on the template disclosure form:
 - a. There is confusion between the ultimate owner and the immediate parent company in the shareholder section (**Cameroon**);
 - b. State companies are not disclosing the beneficial owners of their partners (**Togo, Zambia, DRC, Burkina**);
 - c. The Standard states that the partners of a Joint Venture should disclose separately, yet there is no indication of which, if any, are joint venture partners (all)
 3. Lack of clarity / mistakes made on behalf of the reconciler.
 - a. The beneficial owner field is sometimes given as 'Not Applicable' when in fact the company should disclose (**DRC, Nigeria**)
 - b. Reports state 'Not Communicated' for companies that are exempt (**Nigeria, Togo**)
 - c. Lack of clarity and other mistakes (particularly **DRC, Nigeria, Cameroon**)
 4. Other issues not covered by the above
 - a. Lack of the beneficial ownership information for bidding companies (all)

Section 1: Beneficial Ownership through EITI & the Pilot Scheme

Preamble

The 2013 EITI Standard included a ground-breaking new provision which marks a new frontier in the promotion of transparency in extractive deals: “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) and the level of ownership.”

The acknowledgment of the need for this information marks a major milestone in progress towards true transparency in oil, gas and mining deals. It will be the first attempt in many of these countries to publicly reveal those in a position to benefit and are responsible for the companies that operate or invest in extractive licences.

The new EITI requirement is in line with other efforts to make beneficial ownership more transparent: the G8 and the G20 have made commitments to ensure that every registered company is required to know their real owners; the new EU anti-money laundering directive calls for national registers which allows for, at the minimum, public access if they can show a "legitimate interest"; the UK has agreed to create a new public register of beneficial owners (and there are similar measures afoot in Denmark, France and Ukraine); and the US appropriations rule calling on multi-lateral development banks to collect and publish beneficial ownership information on who they give contracts to.

It is a truly exciting development, but one that requires considerable thought regarding exactly how the above requirement will be implemented and be the most effective at increasing transparency; as an emerging policy area, it is clear that obstacles will be encountered along the way. In light of this, the EITI Secretariat initiated a pilot scheme involving 11 countries during which any issues arising could be dealt with. This paper assesses the progress that pilot countries have made so far on publishing beneficial ownership information by analysing this data in detail, and suggests how the process can be improved in time for when beneficial ownership disclosure becomes a requirement from 1st January 2016.

The global standard for beneficial ownership has two prongs: legal ownership and control. A person may legally own shares but not control a company (legal ownership), and a person can control a company (beneficial ownership) without owning shares. The EITI process requires both shareholders and beneficial owners to be disclosed. Shareholder information is important, but on its own it is not sufficient to increase transparency because a) it is only ‘first tier disclosure’ so doesn’t pierce through complex company ownership structures, and b) shareholders can be other companies (not natural persons) or, if natural persons, nominees (a lawyer, for example) representing the actual owner. A company cannot be a beneficial owner. A natural person who is a shareholder may also be a beneficial owner but there is no certainty unless the company declares that he/she is. All licence

holding companies should know their beneficial owners, i.e. the natural persons controlling and financially benefiting from the company.²

A company that only discloses its legal owners may be hiding its beneficial owners; without this information the corruption risk is greater as the real owners could be anyone – corrupt government officials (from home or abroad) and members of their families, warlords, the financially incompetent, tax avoiders, environmental abusers and so on. **Revealing and hopefully thus preventing these types of people from exploiting oil and gas licences is why the requirement was included in the 2013 Standard.**

Companies that are publicly traded on a stock exchange – be it in Nigeria or London – are exempt from beneficial ownership disclosure. This is not a ‘free pass’ – it is a requirement of stock exchanges that beneficial ownership information is made available to the public, and often at a lower level of share ownership than proposed by MSGs through EITI (London’s stock exchange requires disclosure at 3% of share ownership, for example). Beneficial ownership disclosure should therefore not be seen as a crackdown on local companies; encouraging local content and indigenous company participation is a very positive development in the extractive industry, enabling development and distribution of benefit and know-how, and these companies are often willing to take extra steps towards transparency. Indeed, in a recent study by Global Witness of beneficial owners of licence holding companies in Myanmar, 53% of those registered locally voluntarily disclosed their beneficial owners, a greater percentage than those registered abroad.³ However, the location of a company actually tells us little about the ultimate owners: a company registered in Nigeria may have no Nigerian beneficial owners and a company registered in the Cayman Islands and investing in Nigeria may be owned only by Nigerians. This is one of the reasons for the beneficial ownership requirement: to see who is actually in control and potentially benefitting from the natural resources.

The report is split into three sections. The first section looks at the pilot process, the definition of a beneficial owner and what should be disclosed. The second section analyses some general ways in which the reporting could be improved, based on six pilot country reports that have been released so far that contain beneficial ownership information. The final section looks at the best way to analyse this data in order to show how many companies of different types have disclosed beneficial ownership information.

In short, the conclusion is that many companies simply did not supply any information on their beneficial owners, and this is perhaps the most major issue to be addressed going forward.

The Beneficial Ownership Pilot: Participating Countries

Over the past two years a pilot program has assessed the possibility of the disclosure of beneficial ownership through EITI.

At various points, 14 countries expressed interest in the pilot: **Burkina Faso, Cameroon, DR Congo, Honduras, Iraq, Kyrgyz Republic, Liberia, Niger, Nigeria, Tajikistan, Tanzania, Togo, Trinidad &**

² Under very widely adopted international AML standards, banks have to identify the beneficial owners of their customers, and they usually do this by asking the customer directly. So in theory, any company with a concession, and with a bank account, should know its beneficial owner. Any company that claims not to would automatically be raising a red flag.

³ <http://www.globalwitness.org/sites/default/files/Global%20Witness%20-The%20shell%20starts%20to%20crack%20-%20October%202014.pdf>

Tobago and **Zambia**. **Cameroon's** MSG did not reply to the request to join the pilot in time, so are not officially participating the country's latest EITI report contains beneficial ownership information. After officially joining the pilot, **Iraq** and **Trinidad & Tobago**, have since withdrawn, though the latter is still interested in the issue

Apart from the above countries, **Mongolia**, **Myanmar**, **Norway**, **the Philippines**, **Sierra Leone**, and **the United Kingdom** have also expressed an interest in, or committed to beneficial ownership disclosure. The **UK** has committed to including beneficial ownership disclosure in its first EITI report without piloting and **Mongolia** is proposing to include beneficial ownership in its EITI law.

While **Nigeria** originally agreed to participate in the pilot, the MSG announced that they would only focus on releasing legal ownership and not beneficial ownership. The eventual report appears to reflect this, though there are discrepancies between what was disclosed and was reported (see section on p17). (see below).

According to the EITI beneficial ownership page: "**Niger** was supposed to include beneficial ownership data in the 2012 EITI Report published in December 2014, but this data has not been collected or included. It is unclear whether Niger will remain part of the pilot."⁴ A section on beneficial ownership is included in the latest Niger EITI report, though it is rather cursory, stating that no company met the requirement for disclosure. The Niger National Coordinator stated at the March 2015 Beneficial Ownership Seminar that Niger is preparing a more detailed breakdown for its next report.

While this report was being finalised, Global Witness learnt that **Mozambique**, a non-piloting country, had issued a report that reveals some beneficial ownership information. This data will be analysed subsequently.

The Process

The piloting process involved the completion of a scoping study to assess existing laws and information. Some, but not all, of these scoping studies have been published on the EITI website. It would be useful to have all scoping studies uploaded to the EITI website so observers can examine the legal framework and other issues in the various countries.

No country had an existing public register of beneficial owners. The Secretariat recommended that where beneficial ownership registries do not exist the companies themselves are asked to disclose this information. Participating countries therefore included a beneficial ownership disclosure form for companies to fill in as part of their reporting requirements.

The EITI secretariat developed a template⁵ in consultation with the EITI beneficial ownership Advisory Panel which clearly sets out what information should be disclosed by companies. While some countries adhered to the suggested format, others chose to issue their own forms. In certain cases, particularly the DRC, it appears that the format used has caused some confusion about the information to be disclosed. The lessons learned from the pilot process will be analysed in mid-2015,

⁴ <https://eiti.org/pilot-project-beneficial-ownership>

⁵ <http://eiti.org/files/Template%20beneficial%20ownership%20declaration%20form.doc>

with a decision to be made at the Board meeting in October 2015 regarding what exactly will be required when beneficial ownership disclosure becomes a mandatory requirement in January 2016.

Definition of beneficial ownership

The definition of a beneficial owner is stated in the 2013 EITI Standard:

- 3.11(d) *(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) Where the multi-stakeholder group addresses beneficial ownership, the multi-stakeholder group should agree an appropriate definition of the term beneficial owner. The definition should be aligned with 3.11(d)(i) above and take international norms and relevant national laws into account*

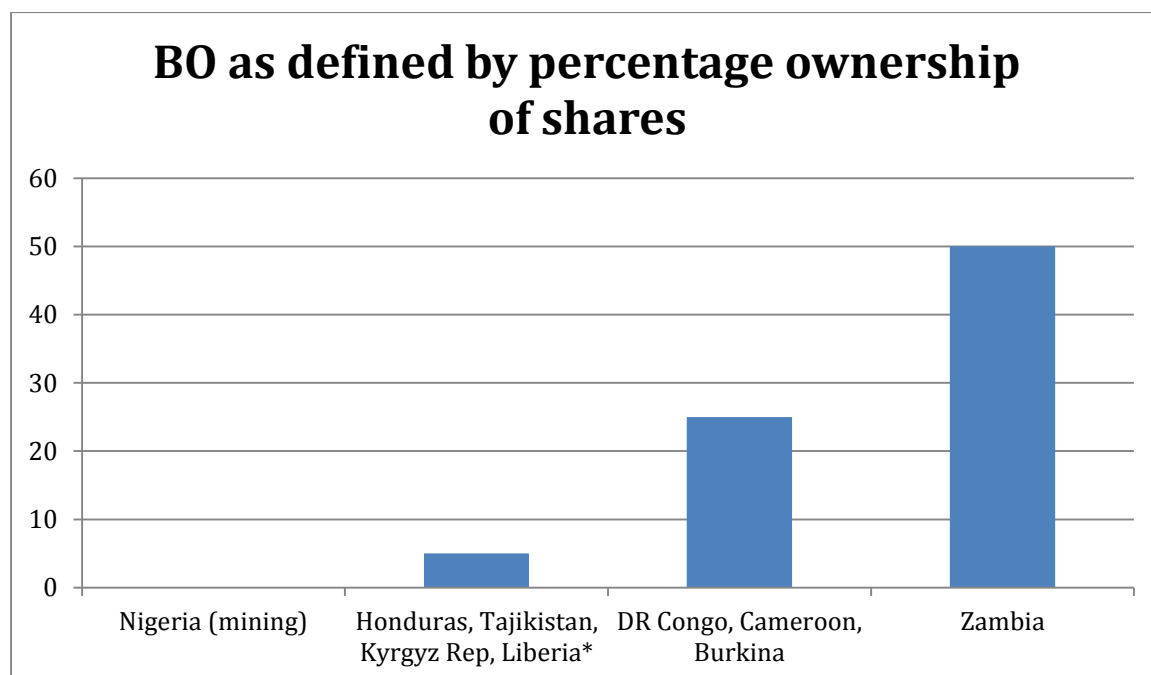
Though some international definitions stipulate a beneficial owner as a natural person who possesses more than 25% of company shares this is by no means the only definition (the banking industry often uses a definition of 10% as does the US FACTA Act which requires foreign financial institutions to provide information on US tax payers to the US authorities); because of the greater risks of corruption in extractive countries, Global Witness' recommendation for the pilot and beyond is for a **5% or lower threshold** to be used. Corruption often flourishes through shareholdings of smaller stakes, as these entities draw less attention to themselves. Global Witness' investigations feature many examples where the corrupt have taken a stake in the company of under 25% (See box below)

Examples where hidden shareholders holding less the 25% of company shares raise red flags

1. In Azerbaijan, a gold mine was awarded to a UK company which allegedly involved the daughters and wife of Azeri President Ilham Aliyev. They ultimately owned 11% of the company.
2. In Zimbabwe, a diamond mining concession was allocated to a company called Mbada. Just under 25% of Mbada was passed to a third party, Transfrontier, which has an opaque company structure based in secrecy jurisdictions and tax havens. The beneficial owners of Transfrontier are unknown.
3. A US company, Cobalt International Energy formed joint ventures in Angola with two companies, Nazaki Oil and Gas and Alper. Nazaki originally held 30%, later dropping to 15%. Alper held 10%. Nazaki was found to be owned by Angolan Vice President Vicente, Director of the National Reconstruction Office General Kopelipa and his advisor General Dino. Alper's ownership is also suspected to include officials. Cobalt is now under an FCPA investigation.
4. Statoil's deals in Angola have also been under considerable scrutiny. In July 2005, Norsk Hydro (a company that later merged with Statoil) was awarded a 20% share in an oil licence in Angola. Two 15% slices were awarded to two Angolan private companies, Somoil and Angola Consultancy Resources. At the time, Norsk Hydro was "concerned about partnering with a company whose owners are unknown" but went ahead with the deal anyway.
5. In 2005, a subsidiary of Swiss corporation Weatherford entered into a joint venture in Angola with two local entities. The joint venture was split 45/45/10, with the 10% share held by "the relative of an Angolan Minister."

There is a danger that by using a high threshold, the process will fail to reveal many beneficial owners of companies receiving extractive licences, and will result in only cursory information that will not be of benefit. Fewer actual owners will be identified, allowing the identities of those involved in potentially corrupt behaviour to remain hidden. A lower threshold will help prevent this.

The threshold actually agreed by MSGs of pilot countries covers a range of values:



Liberia initially decided on a 10% threshold but this has since been lowered to 5% for companies involved in Agriculture, Mining and Oil (the threshold of 10% remains for other companies). An additional point of disclosure has also been added to the Liberian process – that if no single shareholder holds over the relevant threshold (5% or 10%, depending on the sector), then the top five shareholders by percentage must be revealed. This is a useful addition to the beneficial owner definition. It is perhaps worth considering whether it would be better for the EITI to have a standard definition of beneficial ownership with a fixed percentage for all countries to use. This would end possible confusion and allow for better data comparison and analysis.

Nigeria decided to remove the concept of thresholds, arguing that all people who benefit should be revealed. Though this appears to be a good idea in principle, in light of the data that has come from the first report, it may have had the effect of muddying the waters between shareholders (the people who own shares not via proxies or nominees) and those beneficial owners in a position to control and benefit the company the most. This is discussed further below.

Politically Exposed Persons (PEPs)

The Secretariat’s Terms of Reference for the beneficial ownership pilot recommends that companies disclose all officials who are PEPs, irrespective of the percentage of share ownership held, a position that is supported by Global Witness. This is because of the greater corruption risk that PEPs pose, as PEPs are in positions of power and may abuse their position to benefit. There is also the great public

interest of knowing whether any public officials or members of their families hold stakes in projects they have jurisdiction over. According to the Secretariat's website, **Honduras** and **Kyrgyz Republic** agreed to disclose PEPs who hold over the 5% threshold and **Tajikistan** agreed to reveal all PEPs. Of the other pilot countries it appears that only **DRC** has attempted to include this element in its disclosures (see *Lack of other identifying information, PEPs*).

The **UK** is also considering the disclosure of PEPs at a threshold lower than for other beneficial owners.

Section 2. Report Analysis: How can we improve disclosure?

Results in summary

As of February 2015, 7 pilot countries (**Burkina Faso, Cameroon, DR Congo, Togo, Nigeria (mining only), Niger, Zambia**) have released EITI reconciliation reports with sections referring to company beneficial ownership.

Out of the remaining countries involved in the pilot, **Honduras'** report is due May 2015, **Kyrgyz Republic's** the third quarter of 2015, and **Liberia** and **Tanzania's** June 2015. **Tajikistan's** is due as of February 2015 but is severely delayed. This means that for the mid-2015 analysis of how the pilot project is progressing we may have to rely on the seven reports released so far, plus the reports of Honduras and maybe Liberia and Tanzania if they are released on time. A non-pilot country, **Mozambique**, released an EITI report with beneficial ownership information in it in December 2014, though this report is not analysed here.

Turning to the reports themselves, **Niger** did not supply a table of data on either legal or beneficial ownership, claiming that all the companies involved are either listed on the stock exchange, State organisations or with State participation (AREVA, CNPC for example) and that the study "does not pertain to artisanal or small mining operators". In future reports, **Niger should list all of the companies involved, irrespective of whether they are a listed or a state company.**

Global Witness has made a detailed analysis of the other six reports. The following conclusions can be made (these are discussed in greater detail in Section 3):

- o **Beneficial ownership:** The reports are dominated by a lack of disclosure of beneficial ownership information by companies. Only the **DRC** report featured multiple companies disclosing beneficial ownership (out of 71 private companies, 22 companies (all from the mining sector) provided full beneficial ownership information). **Togo** had just 1 partially disclosing company (with some debate over whether the report revealed up to 12). **Zambia, Nigeria (mining only), Cameroon** and **Burkina Faso** featured zero (with debate concerning up to 34 of the Nigerian entries, see below). Expressed as a percentage across the six reports, **only 5.67% of private companies disclosed their beneficial ownership.** The EITI's *Implementation Progress Report, October – December 2014* ("The Progress Report") interprets companies that feature natural persons as legal owners as to have revealed their beneficial owners. This may be based on comments from the Nigerian Secretariat that suggest that these companies confirmed these legal owners were the beneficial owners. (See p18, below)

- o **Legal ownership:** The picture regarding the disclosure of shareholders was mixed. In Burkina Faso, all non-state companies produced information on their shareholders (though one failed to give full information), a positive result. However, in other countries many companies provided no information about their shareholders, meaning that across the six reports, **35.11%** of private companies revealed no information on either beneficial or legal owners.

The lack of disclosure of beneficial ownership identified in the first bullet point is the most important and most troubling conclusion and should be the area of focus for further investigation. For example, the Progress Report notes that “Zambia attempted to obtain beneficial ownership information from the reporting companies, but none of the private companies returned the beneficial ownership declaration form.” This should be investigated – did a lack of awareness or understanding on behalf of the companies lead to non-disclosure, did the companies not think that disclosure was necessary (as the pilot process was voluntary), or did they even refuse to disclose?

The Progress Report notes that Zambia will publish a supplementary report that seeks to obtain the data from the private companies. This is a step that other countries (Nigeria, for example) should consider doing when a large number of companies do not disclose their beneficial owners.

Recommendations for improvement

This section deals with improvements that could be made to the process in future. They break down into four categories:

1. Information omission and lack of clarity in EITI reports
 - There is information requested via the template disclosure form that has not been entered (or entered adequately) into the final EITI report.
 - Information collection is also hampered by lack of clarity in the tables regarding which companies have to disclose and the definition of beneficial ownership being used. Another example: the tables contain virtually no information on how the ownership is exercised – through shares, voting rights, or indirect means (beneficial ownership can be exercised through other means than legal shareholding, as discussed below) – and contains none of the identifying data (DOB, contact address) recommended by the pilot project’s Terms of Reference.
2. Need for more accuracy in the reporting template
 - Small changes to reporting template could be made to improve the clarity of reporting. For example, sometimes the licence holder’s shareholder is given as the immediate parent company (‘the next step up’), at other times the ultimate owner (‘the end of the chain’). Guidance should also be given on how to deal with Joint Ventures.
3. Reconciler mistakes
 - Apparent mistakes made by the reconciler should be eliminated to improve clarity.

4. Issues surrounding disclosure of the beneficial ownership of bidding companies.

- The problem of collecting the beneficial ownership of bidding companies should also be addressed. This sits outside of the above problems as these companies are not covered by the current process of disclosure.

Moving forward

The majority of this section documents where the process could be improved and as such could be seen to be rather dispiriting. It is worth then perhaps again reiterating the major step forward that these countries have taken in disclosing the beneficial owners of licence holding companies. Each of the reports has its own successes: **Burkina** and **Cameroon's** reports give the company identification number and the date of creation of the licence holder, **Togo's** confirms the location of each shareholder, **Nigeria's** report drills down to a minority level of shareholdings, **Zambia's** contains detailed information on where each company is listed and clarifies which shareholders are private, listed or natural person. **DRC's** contains the most amount of information about beneficial owners.

The next task for the EITI is to put all the positives of the reports together and address the points below in order to create a process that allows citizens to see who stands behind the companies that benefit from natural resource licences.

Example from the DRC report

The following extract from the DRC report (p150) demonstrates the immediacy of the information. From the first entry we can clearly see that the company in question (Societe Minere Du Katanga) has two shareholders that are companies (Kalyan Limited and Shukrana Limited) and that these two entities have a single beneficial owner each. The second entry indicates that the shareholders are Gecamines (a state entity) and an entity that holds under the threshold to be considered a beneficial owner. The third entry indicates entities that are listed on a stock exchange and are therefore exempt from disclosure (*see also p17 below*). The following sections discuss how this information can be improved.

SOCIETE MINIERE DU KATANGA	SOMIKA	KALYAN LIMITED	50.00%	CHAITANYA CHUG (50%)
		SHUKRANA LIMITED	50.00%	RAHIM UMEDALI DHROLIA (50%)
COMPAGNIE MINIERE DU SUD-KATANGA	CMSK	GECAMINES	99.00%	N/A
		SIMCO	1.00%	N/A
SOCIETE MINIERE DE KABOLELA ET KIPESE	SMKK	EMERALD STAR	50.00%	Société cotée en bourse
		COFIPARINTER	50.00%	Société cotée en bourse

No definition of beneficial ownership given

Six of the seven reports display the information as a list of companies in table format. The tables clearly separate the data into legal ownership (i.e. shareholder information) and beneficial ownership information. This is useful for analysis of company structures and to distinguish shareholders from 'real' ultimate beneficial owners, which are what the pilot is aimed at revealing. Furthermore, those companies that did not provide either legal or beneficial ownership can easily be identified by scanning down the list.

The legal ownership information in the DRC report drills down to, for some companies, shareholdings as low as 0.01% – which provides a useful level of detail. However, legal ownership alone, while useful for certain purposes, is not necessarily the same as beneficial ownership, which is

why the EITI asks for them to be disclosed separately. Legal ownership no matter how detailed is not a replacement for beneficial ownership information.

Only the **DRC** and **Zambia** reports have a definition of beneficial owner. Zambia used the definition according to the Mines and Minerals Development Act 2008: “a person is deemed to have control of a company, if the person holds a total of 50% or more of the equity shares of the company or if the person is entitled to appoint, or to prevent the appointment of, half; or more than half; of the number of Directors of the company.”

DRC’s report states that a beneficial owner is: “the natural person who ultimately owns or controls directly or indirectly a sufficient percentage of shares or voting rights in that legal entity, including through bearer shares, other than a company listed on a regulated market that is subject to disclosure requirements consistent with equivalent international standards. A percentage of 25% plus one share is proof of ownership or control by participation, which applies to any level of direct or indirect participation [*Translated by google*]”. As discussed above, using high thresholds reduces the quantity of data to be disclosed. For example, the Zambian report features a private entity holding a 30% stake in a licence holding company. Despite the sizable nature of this stake, the company does not have to reveal its beneficial owners because of the definition set by the MSG.

The other reports contain no such definition and it is not clear what definition of beneficial ownership was being used. This makes it harder to assess the actual disclosures and how they measure up to this definition. The reports of **Burkina Faso** and **Cameroon** appear to use a threshold of 25% as entities that hold less than that are given as ‘NA’ (not applicable). **Togo**’s report gives ‘NC’ to shareholders even less than 5%, so it remains unclear what definition was used.

In addition, the concept of beneficial ownership is not just limited to the issue of share ownership. As a recent draft report by Natural Resource Governance Institute states:

- *The understanding of “ownership” must go beyond simple direct legal title to equity in the company (e.g. shareholders listed the shareholder registry) by reaching all the way up chains of ownership.*
- *The definition should also reach cases where an individual with no equity interest in a company, by virtue of indirect relationships or other lines of influence, receiving a significant part of the company’s economic benefit (e.g. excess cash flow). The reference to “substantial economic benefit” in the U.S. definition above captures this angle.*
- *Finally, provision should be made for instances where an individual with no equity interest has a significant say in company decision-making (e.g. “control” through powers of attorney or contractual arrangements).*

This issue is dealt with in the next section.

Lack of other identifying information, ownership details, PEPs

One area that could be improved quickly and simply is the information needed to identify both companies and natural persons. **Cameroon** and **Burkina Faso**’s reports allow for quick and easy identification of the licence holding company by including the company identification number and the date of registration. **Zambia**’s report appears to give the full name of the corporate entity.

However, **DRC, Nigeria** and **Togo**'s reports do not give the full name of the entity or the place of registration making it very difficult to identify the actual company that holds the licence. For example, three licence holders in Togo's report are given simply as "RRCC", "SGM" and "TGC SA". This increases the likelihood of confusing these entities with other companies (either those that are part of the same group of companies or others that are completely unrelated).

A similar lack of information relates to natural persons. The Secretariat's Terms of Reference for the pilot project states: "Pilot countries may also wish consider disclosing additional information about the beneficial owner(s) such as (i) nationality; (ii) the residential address(es), or the service address(es) where there are documented privacy concerns, of the beneficial owner(s); (iii) the date of birth of the beneficial owners; (iv) country of residence; and (v) means of contact. Pilot countries are encouraged to require disclosure of the names of any politically exposed persons who have an interest in an extractive company regardless of the level and the means of control the politically exposed person has of the company."

Out of the above, **Togo, Burkina Faso** and **Nigeria**'s reports identify the nationality of the legal shareholder (both companies and natural persons), but outside of this identifying information is thin on the ground across the six reports. In some instances the beneficial owners are not even given full names – in one instance the DRC report says that the beneficial owner is "Mr Forrest directement et indirectement". It should make no difference if the person in question is a well-known figure in-country (as is the case here): the beneficiary's full name should be included to prevent confusion and misidentification.

On the issue of PEPs, it appears that **DRC** agreed for PEPs to be disclosed, as the table states that one of the beneficial owners is a member of parliament who was elected in 2011, though as the Progress Report states, "it is not clear whether this interest was acquired before or after he was elected."

In the Nigerian mining report, a small section is included on what the provisions are for PEP disclosure: "Nigerian regulation does not require companies to disclose beneficial ownership information, and government officials are not required to report their financial interests in the sectors they oversee." This underlines the importance of having PEP disclosure as part of the process; it is troubling that Nigeria and many of other pilot countries have not appeared to include PEP disclosure as part of the process.

Despite the disclosure template supplied by the EITI Secretariat outlining that the reporting company should clarify how the ownership is exercised – through shares, voting rights, or indirect means – none of the existing reports include this information, except for one entry in the DRC report which addresses the issue of direct and indirect voting rights.

Lack of contextual information and accuracy of data

The Progress Report states: "In all three countries [**Nigeria, Togo, DRC**], the reports provide limited contextual information about beneficial ownership and do not explain what steps were taken to verify the veracity of the beneficial ownership declarations [...] it is also not clear at what point in time the beneficial ownership information is applicable i.e. whether the names listed are the beneficial owners as per 31 December 2014 or whether the information dates further back."

Global Witness further recommends that companies report all beneficial ownership changes that have occurred over the previous reporting year (it is unlikely that this will increase the reporting burden considerably). This method is in line with what is proposed with the new UK register of beneficial owners.

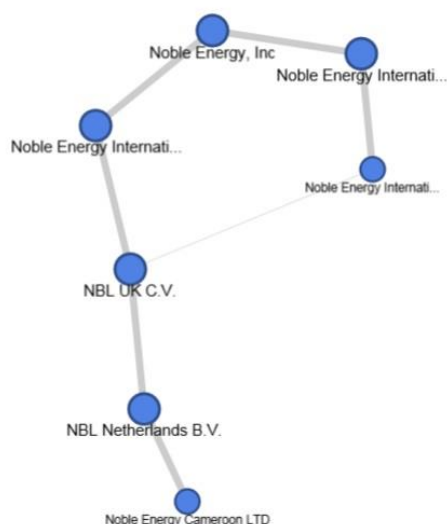
It would also be useful to have the name of the senior company official who has signed off on the information it has provided. The template disclosure form does include a section for the name and position of the official who responsible for signing off the information. This could be included in the final table.

Confusion of ultimate owner versus immediate parent

Another area where reporting is not clear and could be improved relates to the difference between the parent company and the ultimate 'beneficial owner'. All six reports give the name of the company holding the licence and in a separate column the names of their legal owners. This is indicated simply by 'Name / % participation' in the reports of **Togo** and **Nigeria** and by 'Actionnaire / Shareholder' in the **DRC**, **Burkina**, **Zambia** and **Cameroon** reports. However, research by OpenOil has revealed that the entity entered into this field is sometimes the immediate parent ('one step up') but at other times it is the ultimate owner 'at the top of chain'. For example, in the **Cameroon** report, Kosmos Energy's shareholder is given as 'Kosmos Energy Operating' – a company registered in the Cayman Islands. The final column says the shareholder is listed on the New York Stock Exchange. But it is not Cayman's Kosmos Energy Operating that is listed in New York, but Kosmos Energy Ltd. The reverse situation happens with Nobel Energy Cameroon Ltd – its shareholder is given as Noble Energy Inc, registered in USA. This entity, as the final column indicates, is listed in New York. But it is not the immediate parent company of Noble Energy Cameroon Ltd. In fact, there are many intermediate steps between this company and the ultimate owner Noble Energy Inc, as this graphic from OpenOil demonstrates:

Ownership chain of Nobel Energy Inc. (a publicly listed company)

[Source: OpenOil]



It is unclear from the EITI report whether what was given in the table reflects what the companies revealed about their shareholders, or whether the reconciler has ‘joined the dots’ and added the ultimate owner in the shareholder column. Companies need more guidance on what information should be included in the ‘shareholder’ field. Global Witness suggests that the immediate parent is given in this field, with the ultimate owner indicated in the final ‘beneficial ownership’ field. If the licence-holding company is ultimately owned by a listed company, then this entity should be given in the final field.

This would omit, however, information about ‘how the ownership is exercised’ – the companies that lie in between. As this information may be quite complicated (see for example the Nobel Energy diagram above) it is suggested that this information could be included in a separate section, or companies could include this information on their website.

State companies not disclosing BO of their partners

The Secretariat’s TOR for the pilot recommends that **state companies reveal the beneficial owners of their partners** (“State-owned companies should also be encouraged to disclose the names of the other (non-state) beneficial owners of joint ventures”). This has not happened in the reports so far.

An example of this is Kalsaka Mining from **Burkina Faso**. A company called Imar-B holds a 12% stake, with the Burkina state holding a 10% stake. If the entity is classed as a joint venture, then not only should Imar-B disclose its beneficial owners, but the state should also reveal this information. This is important because it allows for another method of disclosure (i.e. via the state), allowing for a double-check of the two data sets, and indicates that the state is transparent when dealing with the issues of the identity of its partners.

It is unclear how this information is being collected from state companies, if at all. The template disclosure form could be amended to allow state companies to enter this information.

Problems with Joint Ventures

The Standard states: “In the case of joint ventures, each entity within the venture should disclose its beneficial owner.” However, this causes a problem when trying to assess which entities are joint ventures and which are simply companies with two (or more) shareholders. To solve this problem, Joint Ventures need to be indicated in both the template declaration form (which does not mention joint ventures) and by the resulting table that gives the beneficial ownership information.

A further problem is that legal definition of a Joint Venture is itself slippery; this could be addressed by asking the company to declare whether it is a Joint Venture. However, this brings with it the problem of whether a company could circumvent beneficial ownership disclosure through EITI by not declaring itself a joint venture. For example, Company Y has two shareholders, one holding 80% and one 20%. If it declares that it is a joint venture (or is legally deemed to be so) then both companies will have to disclose down to the threshold set by the MSG. If it doesn’t declare itself a JV (or is legally not considered one) then, using a +25% definition of beneficial ownership, the 20% entity will not have to disclose any information on its beneficial owners.

It is unclear how the above has or has not affected the reports released so far as joint ventures are not indicated. If all licence holding companies in certain countries are classed as joint ventures, all participants would have to disclose separately, irrespective of the share percentage held.

Misuse of ‘not applicable’

The beneficial ownership sections of all of the reports are dominated by instances of ‘NA’ (“not applicable.”) The ‘NA’ response should only be used where to indicate that a company does not have to disclose because it is state-owned, is a public company listed on a stock exchange, or because the shareholder does not qualify as a beneficial owner as per the definition agreed by the MSG. The **DRC** report in particular is not very clear in indicating why a company does not have to disclose. The **Zambia** report makes it much clearer when a company is listed. For future reports, clarity would be improved if the reason for why a company is listed as NA was indicated.

This would prevent companies from being listed erroneously as NA, as has happened in both the **Nigeria** and **DRC** reports:

- In six instances in the DRC report companies that do not appear to be state or listed entities holding over 25% are given as ‘NA’.⁶
- In two instances in the Nigeria report companies that do not appear to be state or listed entities holding over 25% are given as NA.⁷

Misuse of ‘Not Communicated’

The other most common answer given in the beneficial ownership field is ‘NC’ (non-communicate / not communicated). But in the reverse situation to above, in some cases this seems to have been done in error – where companies that should be exempt from reporting (and therefore ‘not applicable’) have been listed as ‘not communicated’.

Sometimes this happens when the company is publicly traded. Presumably this means that the company did not report to confirm it was listed (and therefore exempt), and so the fault lies here with the company in question and not the reconciler. An example here is the **DRC** report, which states that Total SA, a publicly traded company, is the 100% owner of Total RDC (the entity that holds the licence), yet the beneficial ownership entry is given as NC.

But in the reports of **Nigeria** and **Togo**, private entities that hold under the threshold for disclosure are also given as NC. As stated above, it isn’t clear in these reports what the threshold is, but in the **Togo** report, for example, many entities holding under 5% are given as “NC”.

For example, in the below example, Quartz Ltd is given as a 4% shareholder of WACEM, a percentage that should put it under the threshold for beneficial ownership disclosure. Yet the final column gives NC instead of NA.

⁶ These are 1. Earing Source Investment Limited (a 49% of Congo International Mining Corporation Sprl), 2. Inland Global Ltd. (a 45% shareholder in Societe Golden Africa Ressources [sic?] Sprl) and 3. Wanbao Rexco (a 49% shareholder in Feza Mining), 4. Cominiere (a 28% shareholder in Somimi) 5. Sokimo (a 35% shareholder in Mineral Invest International Congo), and 6. Cominiere (again) (a 32% shareholder in Societe D’Exploitation des Gisements de Malemba Nikulu Sprl)

⁷ 1. Triacta Holding (a 100% subsidiary of Triacta) 2. CAT International Ltd (a 100% subsidiary of Mother Cat Ltd)

Annexe 1 : Propriété réelle

No.	Nom de ma société	Nom/Entité	% Participation	Nationalité de l'Entité	Coté en bourse (ou/non)	Place boursière	Propriétaires et % de détention <i>(À remplir uniquement si l'entité n'est pas cotée)</i>
1	SNPT	Etat Togolais	100%	Togolaise	NON	NA	NA
		Etat Togolais	10%	Togolaise	NA	NA	NA
2	WACEM	KENELM Ltd	40%	Royaume - Uni	NC	NC	NC
		Mr MOTAPARTI Prasad	24%	Indienne	NC	NC	NC
		RAFLES HOLDINGS	17%	Panama	NC	NC	NC
		QUARTZ Ltd	4%	Royaume - Uni	NC	NC	NC
		Privés Togolais	5%	Togolaise	NC	NC	NC

Is this a data entry mistake, or has a beneficial ownership declaration form been sent not just to Wacem but to all of its shareholders as well? This problem is compounded by the confusion over joint ventures, which is dealt with above.

Lack of clarity of BO when natural person is a legal owner

The biggest issue to address emanates from a lack of clarity surrounding the beneficial ownership tables, resulting in wildly different interpretations of the data. The EITI's Progress Report assesses three of the reports released so far – **Nigeria (mining), Togo and DRC**. Regarding Togo, it states: "12 of the 37 companies either fully disclosed the name of their beneficial owners, the level of ownership and the nationality of their beneficial owners, or indicated that they were publicly listed or fully owned by the State. Seven companies did not disclose beneficial ownership data, but included the names of their shareholding companies. 18 companies did not disclose any data at all."

Looking at the report in detail indicates that things are not this simple. 10 companies in total feature natural persons as holding 100% of the shares. A further 4 companies feature natural persons holding part of the company. It is reasonably clear that 12 of these companies have been adjudged to have revealed their beneficial owners, but this is not what the report says – as the final column ('propriétaires') is left as NC.

The effect is more pronounced in the Nigeria report. According to the Progress Report's tally for Nigeria: "28 companies either fully disclosed the name of their beneficial owners, the level of ownership [...] or indicated that they were publicly listed. 21 companies provided partial disclosures [...] 17 companies did not provide any information." [Note: the Progress Report tallies the number of companies as 66, not 65 as we have done below]. Looking at the entries, 19 companies have natural persons who own 100% of the shares. 8 companies have some share ownership by natural persons. A further five companies gives names of natural persons in the 'name/entity' field but have no number given for the percentage of shares held, or in, one case (Mother Cat Ltd) gives the two individuals as holding "0.00%." For all of these natural persons, the final field (labelled as 'owner' which is itself not clear enough) is given as NC or NA. So going by what the chart says, the actual figure of companies disclosing partial or full beneficial ownership information is not 49 (Progress Report's number, including listed companies), or 32 (our number given above) but zero.

This is because a company that gives natural persons as shareholders (and not further companies) does not mean that these people are the beneficial owners. They may sometimes be, but often natural persons given as shareholders are proxies – lawyers, or other nominees – who are representing the actual beneficial owners. There is no way of telling unless the company itself

confirms who the beneficial owners are, and there is no indication that this has happened from the information in the Togo and Nigeria reports alone.

However, the situation is complicated further by the statement of a Nigerian representative at the March 2015 EITI Beneficial Ownership Seminar that all the companies that gave natural persons as shareholders confirmed that these individuals are also the beneficial owners, and this is further compounded by the suspicion that this is not true in all cases.

The analysis below assess the data based on what the chart actually indicates (i.e. that these natural persons are just the legal owners, and not the beneficial owners). If the companies are indeed confirming that these people are the beneficial owners then this should be indicated clearly in the table.

Lack of clarity elsewhere and other mistakes

Here is another example from the **Togo** report:

Collecte et conciliation des paiements et des recettes du secteur extractif au titre de l'année 2012

No.	Nom de ma société	Nom/Entité	% Participation	Nationalité de l'Entité	Coté en bourse (oui/non)	Place boursière	Propriétaires et % de détention <small>(si naturel (s), entreprise et (s) (s), d'Etat / (s) (s) (s))</small>
17	Global Merchants	Etat Togolais	10%	Togolaise	NA	NA	NA
		Vikrama	85%	Indienne	NON	NA	100
		Reddy Amaranath	5%	Indienne	NON	NA	100

This entry for Global Merchants indicates that the State of Togo holds 10%, and that “Vikrama”, an Indian citizen, holds 85% and “Reddy Amaranath” an Indian citizen, holds 5%. The final column shows “100” which presumably means that both own 100% of their respective stakes, but it is not clear. It also indicates another problem – that it sometimes is not absolutely clear whether the shareholder is a natural person or a company – could “Vikrama” actually be an Indian company? It shows the need for full names of natural persons and corporate entities. Zambia’s report addresses this issue by clearly indicating whether the shareholder is a private entity, a state company or a natural person.

The way of indicating beneficial ownership in the DRC report is different from the method in the Togo report. Whereas the Togo report indicates 100, representing (presumably) that “Vikrama” holds 100% of the 85% stake, in the DRC report the final column gives the person’s beneficial interest as a percentage of the overall company:

HUACHIN MINING SPRL	NG SIUKAM	50.00%	NG SIUKAM à 50%
	PAN DING JI	45.00%	PAN DING JI à 45%
	CHEBIB MOUKACHAR	5.00%	CHEBIB MOUKACHAR à 5%

Other entries also lack clarity in the DRC report. In the example given on p11, the table fails to state that Gecamines is a state entity and fails to provide the name of the stock exchange on which the two entities are listed. Further research indicates that the two entities (Emerald Star and Cofiparinter) may not in actual fact be listed or subsidiaries of listed entities.

Meanwhile, the **Cameroon** report features 1 (only) private company appearing to give its beneficial ownership details: a company called Razel states that its owners are six named individuals plus a company. As stated above a company cannot be a beneficial owner. It is also unclear what the numbers following the entries mean, but presumably they are the number of shares held. This would make the six named individuals nominal shareholders only. Perhaps these shares are indicative of control over the company (and thus constituting beneficial ownership)? But without further information we cannot claim this to be an example of beneficial ownership disclosure:

Nom de la société	NIU	Date de création	Activité principale	Entité cotée ou filiale à 100% d'une société cotée en bourse	Actionnaires	
					Actionnaires et % de participation	Information sur la propriété réelle
Razel	M077800000963N	01/07/1998	Travaux publics	Non	RAZEL-BEC FAYAT (100%) Française	-RAZEL-BEC SAS: 9 994 -Philippe Bourjallat: 1 -Laurent Chauvel: 1 -Jérôme Perrin: 1 -Serge Aillaud: 1 -Jean Guillaume: 1 -Marc Petit: 1

The **Burkina Faso** report, which is generally set out clearly, giving company identification number and identifying natural persons, has one mistake in this field in that it gives the beneficial owner of a private company as another non-listed private company (“25. Pan African Minerals”) – a company cannot be the beneficial owner.

As highlighted in the above section, the **Nigeria** report features a company with two individuals holding 0%. Does this indicate that these people are beneficial owners with the ability to control the company but do not hold any shares? Without more information we cannot say. If it does indicate this, it is very confusing as their names have been entered into the section where shareholders are usually given. To remedy this, the columns labelled ‘name/entity’ and ‘owner’ should be labelled ‘shareholders’ and ‘beneficial owners’ in future.

Other mistakes and typographical errors, presumably on behalf of the reconciler, are fairly common throughout the reports. For instance, in the **Nigeria** mining report: a) on one occasion the legal owner is given as ‘Nil’ instead of NA or NC b) Turkish is spelt ‘Turkishh’ c) a natural person (Ayodele Oluwasusi) is given as being listed on the Nigerian Stock Exchange.

Problem of collecting BO of bidding companies

The Standard states: “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.” The method through which the above data has been collected (analysing registries and then asking the companies for disclosure) is a sound process for collecting data on those companies that operate or invest in extractive assets.

But this process is not suitable for collecting data on those that bid for assets, because only those companies that already hold licences (and are therefore reporting revenues) are sent disclosure forms as part of their EITI reporting process. The Secretariat should draw up some guidelines on how this problem is to be addressed.

Section 3. Report Analysis: how many companies reported?

Difficulty of analysis

The analysis of the information contained in EITI reports presents particular challenges. The following section analyses the data in a number of ways, indicating the various challenges along the way and trying to address them. In this way the analysis is much more in depth than that contained in the Progress Report, whose data analysis could be improved in a variety of ways.

It is worth reiterating first that the quality and quantity of the data provided by countries relies on the definition that the MSG has chosen being strong. The reports show that there are many private shareholders holding a percentage stake lower than the threshold, meaning that the owner of these entities does not have to be identified. If the number of undisclosed entities is particularly high, an MSG could decide to alter the definition of beneficial ownership, lowering the percentage, in order to generate a more complete data set on who owns of these entities. As stated above, using a high threshold (such as 50% as in Zambia) may result in disclosures that are inadequate. The Zambian MSG will argue that its definition is in line with its Mines and Mineral Act but the MSG could agree on using a different definition.

The first task at hand is to assess the number of reporting companies in each country and calculate the number that a) reported beneficial ownership, b) reported just legal ownership (i.e. shareholder information) but not beneficial ownership, and c) reported neither legal nor beneficial ownership. The following chart therefore analyses the information contained in the six EITI reports released so far by pilot countries which contain beneficial ownership information in table form (i.e. Niger is omitted).

Chart 1.

Country	Number of licence holders	No legal OR beneficial ownership was contained in table	Only legal information was disclosed in table	Legal information plus full or partial BO was disclosed in table, including state & listed
DR Congo	118	16	52	50
Nigeria	65	19	37	8
Togo	37	18	15	4
Zambia	30	8	9	13
Burkina	26	0	8	18
Cameroon	22	3	9	11

This is very much the approach of the Progress Report; on DRC it comments: “49 companies either fully disclosed the name(s) and level of ownership, or indicated that they were publicly listed or state-owned. 56 companies provided partial disclosures i.e. a mix of names of shareholding companies and beneficial owners. 11 companies did not provide any information.” In our chart, 2 companies that did not disclose beneficial owners were identified as being in liquidation, and these

were included to the total, making a total of 13. The Progress Report appears not have counted these, giving the number as 11.

Addressing state and listed companies

It becomes clear that even if this misconception of a beneficial owner is rectified, the analysis of the data could be improved in a number of ways to make it more accurate and useful. This brings us to our first two challenges:

1. Data could be skewed by large number of state or listed companies. Example: A country has 1000 licence holding companies and only 10 (1%) did not disclose beneficial ownership. This may appear to be a good result. But if those 990 are all publicly traded or state companies which are therefore exempt from disclosure, then the failure rate for private companies (which is, after all, the sector this requirement in the Standard aims to open up) is 10/10 or 100%. Therefore for more accurate analysis, private companies have been isolated and analysed separately below.
2. A company may only be reporting its shareholders (legal ownership) as it has no beneficial owner according to the definition agreed by the MSG. The Progress Report addresses this aspect – stating accurately that for 2 companies in DRC no one shareholder held over 25% of the shares. For clarity these companies have been tallied separately below and put into a different column. One thing to bear in mind when looking at the data is that it attempts to compare data across various countries where the definition of beneficial owners (as defined by the MSG) are different (for example, someone who holds 45% of company shares is classified as a BO in DR Congo but not in Zambia), with the result that countries that are using a definition with lower thresholds will have more companies that feature beneficial owners.

In order to address challenge 1, those given as state or publicly listed or had no beneficial owner (as defined by the definition) have been separated from the others. If we address these above issues the chart starts to look a little different:

Chart 2.

Country + number of licence holders)	Indicated in chart as listed, or subsidiaries of listed companies	State companies	Company had no shareholder over threshold for BO disclosure	No legal OR beneficial ownership was contained in table	Only legal information was disclosed in table, not BO	Legal information plus full or partial BO was disclosed in table
DR Congo (116 [^])	19'	11	2	14	48	22 ^{^^}
Nigeria (65)	7	1	1	19	37	0
Togo (37)	1	2	0	18	15	1
Zambia" (30)	12	1	0	8	9	0
Burkina (26)	18	0	0	0	8*	0
Cameroon (22)	9	1	0	3	9*	0

[^] As 2 companies were in liquidation these have been removed from the calculations

^{^^} 1 company that disclosed beneficial owners but no information on shareholders has been counted here

“Zambia features several Chinese companies that are both listed (in Hong Kong) and managed by a state-owned supervision council, and ZCCM-IH which describes itself as a state company but is listed in Lusaka and London. The Chinese companies have been counted in the above chart as listed companies, and the Zambian company (ZCCM-IH) as state.

[‘]1 partial (ie. in one instance a company was revealed to have a listed shareholder but other shareholders holding over the % threshold were private)

^{*} 1 partial (ie. in one instance a full breakdown on all shareholders was not provided)

The removal of the number of state and listed companies starts to make the picture look less rosy, with DRC being the only country to have more than one company report its beneficial owners.

Addressing duplicate companies

The separation of the data in this way allows us to calculate the percentages of the companies that are reporting legal and/or beneficial information. But before we get to the table, there is one other challenge to consider.

3. One company may hold more than one licence through shareholdings. Example: a country has 10 licence holding companies. 2 disclose full beneficial ownership. But the legal information released by the others reveals that all eight have the same majority shareholder, a private company. It may appear that 80% of licence holders have not disclosed beneficial ownership, but in effect only one company has not disclosed out of three, therefore 33.33%. For the purposes of this analysis, we have not removed any duplicates (so in the above example, the figure for non-disclosure would be 80%), the rationale being that if one company so dominates licences, this should be reflected in the final percentage.

Chart 3.

Country	% of companies that disclosed no information on legal or beneficial ownership and were not given as state or listed	% of companies for which legal information was given, not including state or listed companies	% of companies that disclosed some or all BO, not including state or listed companies
DR Congo	16.66%	57.14%	26.19%
Togo	52.94%	44.12%	2.94%
Cameroon	25.00%	75%	0%
Burkina Faso	0%	100%	0%
Nigeria	33.93%	66.07%	0%
Zambia	47.06%	52.94%	0%

There is one important clarification needed when assessing the above table. The column documenting the percentage of companies disclosing beneficial ownership means exactly that, as it

is only the companies themselves that can report on their beneficial ownership. However, the middle column (the percentage of companies for which legal ownership information is given) does not necessarily mean that the companies themselves volunteered this information. This information can be collected from some national company registers so it may not be down to company reporting through EITI at all.

Indeed, the Progress Report states in regard to the Nigeria mining report “most of the information has been obtained from the company register.” There is no way of telling from the chart exactly how the data was obtained, or indeed, if it has come from a company register, whether it is up to date and accurate. A country may have a higher percentage of legal ownership disclosure but this may solely be down to the fact that the national registry collects this information, is easily accessible, and has been used in this regard. It arguably should not be the reconciler’s job to be consulting the national company register.

Addressing the problem of non-reporting listed companies

We are now getting to a rather better set of numbers which we can analyse. However, we can go still further – firstly by clarifying which companies are partially disclosing beneficial ownership and which are fully disclosing, and by considering one final challenge:

4. Non-reporting listed companies could skew the data on private companies. Example: a country has 100 licence holding companies (none of which are state-owned). 10 private companies give full beneficial ownership information, but 90 do not disclose. This would appear to be a bad result. However, further research on the 90 reveals that all are listed companies or subsidiaries of listed companies and would therefore be exempt from disclosure, but the companies simply did not reply to the beneficial ownership request, which in their case but would solely be to state that they are listed. Therefore we need to differentiate between private companies and non-reporting listed companies, especially as it is clear from looking at the EITI reports that many listed companies have not indicated to the reconciler that they are listed and therefore exempt from disclosure (including eni, Glencore, Total, Chevron and others). It is worth noting that the information regarding whether a non-reporting company was a subsidiary of a listed company can only be obtained after further research, so the following table takes into account information not included in the EITI report, but available through internet searches.

The Final Tally

When isolating non-reporting listed companies in the case of DRC, the effect is quite dramatic: we go from 19 listed companies to 32, reducing the number of companies that reported legal but not beneficial ownership from 48 to 38 (see below) and those that reported nothing from 14 to 11.

The following table gives us a fairly good idea at the number of private companies that did or did not disclose. When looking at this table it is important to note that it is possible that more companies that appear to be private are actually undisclosed subsidiaries of listed companies and would therefore be exempt. This is why it is vital for listed companies to declare which companies that hold licences are their subsidiaries.

Chart 4.

Country + number of licence holders	Companies where no beneficial ownership disclosure is needed			Companies where disclosure was needed (private entities)			
	Listed, or subsidiary of listed	State companies	No shareholder over threshold for BO disclosure	Didn't reveal legal beneficial owner	Legal ownership information only	Legal ownership + partial BO provided	Legal Ownership + full BO info provided
DR Congo (116)	32	11	2	11	38	6	16
Nigeria (65)	7	1	1	19	37	0	0
Togo (37)	2	2	0	18	14	0	1
Zambia (30)	14	1	0	7	8	0	0
Cameroon (22)	11	1	0	3	7*	0	0
Burkina (26)	20	0	0	0	6*	0	0

*1 partial disclosure

The most important fields in the above table are the final two – which indicate how many private companies revealed their beneficial ownership, either fully or partially. By comparing this number to the number of private companies in total we can express the disclosure as a percentage:

Chart 5.

Country	% of private companies that disclosed no information on legal or beneficial ownership	% of private companies for which legal information was given	% of private companies that disclosed some or all BO as well as legal ownership
DR Congo	15.49%	53.52%	30.99%
Togo	54.54%	42.42%	3.03%
Burkina Faso	0%	100%	0%
Cameroon	30.00%	70.00%	0%
Nigeria	33.93%	66.07%	0%
Zambia	76.67%	23.33%	0%

Averaging out the numbers across the six reports, gives the following result:

- **5.67%** of private companies disclosed their **beneficial ownership**
- **59.22%** of private companies disclosed (or had collected) their **legal ownership**.
- **35.11%** of private companies revealed **no information on either beneficial or legal owners**.

Further analysis

As stated above, though there are some ways in which future disclosures can be improved, it is a ground-breaking moment to have information about beneficial ownership revealed. This can be

used a starting part for further analysis. OpenOil has already started the process of mapping out the legal ownership chains of companies based on this information.

Another idea would be to examine the number of locally registered companies that have disclosed beneficial owners, compared to foreign entities. Or, as in the following example, we can start to assess how many licences in each country belong to the private sector, to listed companies and to the state.

Chart 6.

Country	% of companies that hold licences that are state owned	% of companies that hold licences that are publicly traded	% of companies that hold licences that are privately owned
Togo	2/37 = 5.41%	2/37 = 5.40%	33/37 = 89.19%
Nigeria	1/65 = 1.54%	7/65 = 10.77%	57/65 = 87.69%
DR Congo	11/116 = 9.48%	32/116 = 27.59%	73/116 = 62.93%
Zambia	1/30 = 3.33%	14/30 = 46.67%	15/30 = 50%
Cameroon	1/22 = 4.55%	11/22 = 50%	10/22 = 45.45%
Burkina Faso	0/26 = 0%	20/26 = 76.92%	6/26 = 23.08%

From the above we can see that **Burkina Faso** has awarded most licences to public companies, with only a low percentage (six licences in total) awarded to private entities. On the other hand, **Nigeria (mining)** and **Togo** have a very high percentage of private ownership, the majority of which in **Togo** gave no information on legal or beneficial ownership. This is of obvious concern.

Conclusions and Recommendations

It is a landmark moment in the history of EITI to have the first reports published which contain information about beneficial ownership of licence holders. However, many of the reports have not succeeded in obtaining this information and the question has to be asked why.

The main conclusion from our data analysis is that many companies simply did not report on their beneficial owners. This is important when addressing not only private companies, but also public companies, many of whom did not even confirm to the reconciler that they were listed and therefore exempt from disclosure.

Progress has been made, but more work needs to happen on collecting more data on beneficial ownership. The following recommendations act as a starting point for this process.

1. The Secretariat should publish all scoping studies on the EITI website.

2. The Secretariat should clarify which of the countries are still involved in the pilot, and correct other information that may be incorrect or out of date.
3. Where possible the reconciler should aim to have a unified template of the table in which it tabulates the beneficial ownership information, as currently some reports possess fields that others do not. Though this may be difficult to achieve across different reconcilers, out of the 7 reports released so far with beneficial ownership information in them, 6 have been completed by Moore Stephens.
4. The definition of beneficial ownership that the MSG has agreed, including what extra information has been agreed to be disclosed, should be clearly indicated within the report. MSGs should be encouraged to view beneficial ownership disclosure more broadly by including additional identifying details, as recommended in the TOR.
5. MSGs and other parties need to work with the reconciler to improve the standard of data and presentation in the report. This is recommended in the Progress Report (“There also seems to be a need to work with Independent Administrators on presentation of the findings, including providing a summary of the approach agreed by the MSG on reporting thresholds, definitions, data reliability and timelines.”) This would include:
 - a. Full names of corporate entities (plus identification numbers) should be utilised
 - b. Where a company does not have to disclose information (“NA”) the reason why it does not have disclose to should be clearly indicated.
 - c. Natural persons should be identified as such.
 - d. A proper format for indicating beneficial ownership and the method of control should be utilised.
 - e. Other information allowing for the identification of beneficial owners (DOB, means of contact) should be included.
 - f. The source of information on legal ownership should be clarified – whether it comes from the companies or from national registries.
6. Some of the above can be addressed by improving the template disclosure form provided to companies.
7. The Secretariat should address unresolved problems – the disclosure (and definition of) Joint Ventures and the disclosures of companies that bid for licences.
8. MSGs should identify deficiencies in the process to understand better why many companies did not report their beneficial owners.
9. Companies should be made aware of the importance of beneficial ownership disclosure in time for 2016. This is recommended in the Progress Report (“capacity building for reporting companies to increase understanding of the details of the beneficial ownership declaration form appears important to ensure more complete disclosures.”)
10. The Progress Report recommends: “civil society also needs to be more engaged to ensure that the data is not only disclosed, but that it includes the necessary detail to be useful.” This

would include conducting studies that would assess the released information and highlight those companies that have not disclosed beneficial ownership.

11. MSGs should also start to consider how to better use this information. Information needs to be put it into machine readable format and converted into a public registry of beneficial ownership, as the Standard suggests. The Progress Report notes: “none of the pilot countries has yet given considerations to [a beneficial ownership registry] despite it being an important part of the recommendation on beneficial ownership in the EITI Standard.” This registry should be searchable and kept up to date.

END