



BENEFICIAL OWNERSHIP

How Secrecy Sauces Apparent Corruption To Stifle Gains Of Nigeria's Extractives Sector

A Research Report by

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EXECUTIVE SUMMARY

This research explores the concept of Beneficial Ownership (BO). It approaches the issue first from a global perspective and narrows down to attempts to construct and operationalize the term in Nigeria within the prism of the extractives sector. The research highlights the political and economic context as well as the international dynamics that shape the response of the Nigerian state to the demands of transparency and accountability in corporate ownership in the oil, gas and mining sectors. It also highlights the level of awareness of Beneficial Ownership issues among the general populace of Nigeria, especially with specific reference to civil society.

It further highlights the desideratum of establishing an open register of Beneficial Owners that can advance the pursuit of accountable and transparent transactions as well as minimize corruption in the extractives sector. It is in this regard that this research identifies and engages the challenges and impediments to the realization of declared commitments of the Nigerian government on Beneficial Ownership. And importantly, it offers recommendations to address those challenges which include, among others, a strong emphasis on raising public awareness and citizen engagement on the issue; as well as the roles and expectations of the legislature in making enactments that can aid the fulfillment of commitments already made by the executive arm of government.

In terms of methodology, this research employed desk review, media monitoring, surveys and interviews as tools for data gathering, analysis and prognosis. It contains an aggregation of submissions from the general public, industry players, state actors, development partners and some content analysis of media reportage of issues surrounding Beneficial Ownership.

It is expected that this research advances the conversation on Beneficial Ownership in Nigeria and in a sense, spur civil society and the media to build capacity in order to productively engage relevant stakeholders on the need to pursue global best practices towards transparency and accountability in the extractives sector of the country.

CHAPTER ONE

SETTING THE TONE

1.1 Background and Introduction

The issue of Beneficial Ownership in Nigeria has become of contemporary concern especially with regards to knowing who owns what in the extractive industry, specifically the oil, gas and mining sub-sectors.

Public debate on the matter occurs is constrained by opacity or complete lack of information in some instances. In some other instances, the discourse takes a slide into the realm of politics and resource control agitations from the geo-political point of view. However, a combination of certain extraneous and internal developments has impacted on the conversation necessarily. In this regard, the Panama Papers¹ and the controversies surrounding the Malabu oil² deal are both global and local variables that have provided some sparks in the discourse around Beneficial Ownership in Nigeria. Ditto for the Paradise Papers³ which exposed the deleterious impact of secrecy around businesses and ultimately raised critical questions around beneficial ownership. A more contemporary justification for institutionalizing a transparent assets and corporate ownership in the extractives is the \$9.6billion judicial award secured against Nigeria by an Irish firm, Process and Industrial Development (P & ID) over a controversial gas-to-power transaction. The matter which has greatly embarrassed Nigeria and set off chain reactions because of the huge sum of money involved somewhat speaks to the question of beneficial ownership especially when a Nigerian business tycoon and former top government functionary made claims that he owned and/or financed the said transaction.⁴

Even though these corruption scandals and issues have yet to be fully resolved, they justify in part the need to have a register of beneficial owners of companies in the extractives sector of the country. There is therefore some hope that the push for transparency and accountability in the ownership of corporates and stake holding in the extractives industry will receive the desired attention in Nigeria in the near future.

According to a 2015 briefing by the Natural Resource Governance Institute⁵, secret ownership structures enables some extractive companies to evade taxes or conceal improper relationships with government officials. Disclosing information about companies' "beneficial owners"—that is, the people that actually profit from a company- can help to curb such sharp practices and promote transparency. While an intricate and impervious ownership does not necessarily mean that an extractive company is involved in corruption, ONE campaign⁶ has estimated that developing countries lose \$1 trillion each year as a result of illegal cross-border deals, many of which involve companies with opaque ownership. This means that people who live in resource-rich countries like Nigeria have been found to be at a higher risk of losing out as extractive resources are frequently mismanaged for corrupt purposes. This point is buttressed strongly by a recent assertion by President Muhammadu Buhari that Nigeria lost about \$157.5billion to illicit financial flows between 2003 and 2012.⁷

Similarly, the Extractive Industries Transparency Initiative (EITI) states that the identity of the real or beneficial owners of companies that are licensed to extract oil, gas, and minerals is often hidden under a chain of unaccountable corporate entities. The EITI in an article on its website titled "Ending company anonymity - the key to fighting corruption"⁸ discloses that by 2020, all EITI countries including Nigeria have to ensure that companies that apply for or hold a participating interest in oil, gas or mining must disclose the beneficial owners. The EITI Standard also requires public officials – also known as Politically Exposed Persons (PEPs) - to be open about their ownership in oil, gas and mining companies. Once the ownership information is made public, law enforcement agencies, media and civil society will have the duty to scrutinize and hold to account those who misuse secret companies.

Unfortunately, apart from the possibility that opaque ownership of companies enables corruption, it also exposes honest businesses and other entities transacting with them to risks that could be costly. "Hidden ownership also poses problems for honest companies because they don't know who they are doing business with. Publishing the real owners will help ensure that there is a level playing field for all companies and allow them to know who they are doing business with," the article states.

Furthermore, a 2018 joint FATF-Egmont Group publication⁹ observes that criminals employ a range of methods to hide their ownership and control of illegally acquired assets. Identifying the true beneficial owners represents a major task for prosecutors and law enforcement agencies globally. Systems created to obscure beneficial ownership often use a “hide-in-plain sight” strategy, leveraging global trade and commerce infrastructures to appear legitimate.

Nevertheless, visibility is not equal to transparency, and this corrupt system can be used to enable money laundering, tax evasion, and illicit financial flows (*See Figure 1*). The report notes that the ease with which limited liability companies can be formed, make them particularly exposed, and are seen to be used in building multifaceted legal ownership structures, often involving shell companies.

Within the Nigerian context, the issue of Beneficial Ownership has already been noted earlier to be receiving attention at the highest policy level. The Nigeria Extractives Industry Transparency Initiative (NEITI) is in the forefront of advocating for and driving the realization of the EITI standards in the country. But as also noted earlier, other issues have become integrated or made necessary corollaries in the discourse. For instance, the implementation of the Nigeria Local Content Law¹⁰ in pushing for increased local participation in the oil and gas sector necessarily relates to the Beneficial Ownership conversation. Also, the National Assembly of Nigeria has made efforts to actualize the operationalization of a register of beneficial owners of companies through legislation. Although, such efforts fell through in the last assembly of the legislature (2015 to 2019), it is expected that the moves will be restarted in the current 9th assembly so as to give legislative backing to commitments already made by the Nigerian State.

Figure 1

Beneficial VS Legal Ownership

A **legal owner** is essentially the 'official' or 'formal' owner of a company or property. They are listed in a company's corporate registration, licenses and contracts as direct owners.

A **Beneficial Owner** is the real person behind the scene who ultimately owns, calls the shots, or/and benefits from a company or trust fund.



1.2 Definitions of a Beneficial Owner

There are several definitions of beneficial ownership by various authorities and organizations which provide sufficient elucidation on the topic. But with respect to the focus on extractives, this research is highlighting the following:

- The EITI Standard¹¹ defines Beneficial Owner as “the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity”.
- The Financial Action Task Force (FATF)¹² states that a Beneficial Owner as the “natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.”
- Transparency International¹³ describes Beneficial Owner as “the real person who ultimately owns, controls or benefits from a company or trust fund and the income it generates.”

- As has already been noted in the preceding section, the Natural Resource Governance Institute defines beneficial owners as the people that actually profit from a company.

1.3 Beneficial Ownership in Global Perspective

Beyond the concise definitions provided above, it is necessary to examine the global contexts around the issue of Beneficial Ownership. As indicated earlier, the EITI has been in the forefront of Beneficial Ownership scheme in the world. (See Figure 2) Its efforts date back to 2013 when the Board of the organization resolved to implement a pilot scheme to assess the practicality of using Beneficial Ownership as a means to advance transparency and accountability in extractives.

The Open Government Partnership (OGP) global report on Beneficial Ownership discloses that worldwide, there is a growing push for Beneficial Ownership reforms¹⁴. The OGP is a multilateral initiative that seeks to secure tangible commitments from national and subnational governments to promote openness in government, empower citizens, tackle corruption, and harness new technologies to enhance governance. OGP is overseen by a steering committee made up of governments and civil society organizations. The G8¹⁵, G20¹⁶, and EU¹⁷ member states agreed to establish Beneficial Ownership registries in 2013, 2014, and 2015, respectively.

Figure 2

How countries can achieve beneficial ownership reporting



Source: EITI

In 2016, various countries including Nigeria, Britain, Afghanistan, Kenya, France, and the Netherlands, at the Anti-Corruption Summit in London pledged to establish public registries of Beneficial Ownership.¹⁸ Furthermore, other global initiatives have developed recommendations and issued guidelines regarding Beneficial Ownership such as the 154 members of the OECD's Global Forum¹⁹ and the 37 members of the Financial Action Task Force (FATF).²⁰

Also, the fifth EU Anti-Money Laundering Directive is a significant step towards Beneficial Ownership transparency. While G8 and G20 countries have not committed to publish their registers en masse, the Directive mandates EU members to provide public access to their registers by 2020²¹. All registers must show the Ultimate Beneficial Owner (UBO) and include the basic information such as name, month of birth, nationality, country of residence, and nature/size of the interest held.²² In general, several countries have centralized registers, but only a handful (the United Kingdom, Denmark, and Ukraine) have made their registers public.

In the UK for instance²³, the information on the register is openly available both as a searchable web interface as well as structured data in machine-readable format.

Importantly, the data is available under an open data license which implies that it can be reused by other organizations and individuals without restrictions.

At the extractives sector level, efforts are on-going to increase the number of countries committing to public Beneficial Ownership registers and this is taking place through the EITI. After the pilot scheme, the 50 EITI member countries have unveiled “beneficial ownership roadmaps.” These roadmaps indicate the reforms needed to be compliant with EITI’s beneficial ownership requirement that all companies applying for or holding a participating interest in an oil, gas, or mining license or contract in an EITI member country disclose their beneficial owners by 2020. The EITI requirements have already led no fewer than 20 countries to set up public registers.²⁴ (See Figure 3)

Figure 3



CHAPTER TWO

BENEFICIAL OWNERSHIP IN NIGERIA

2.1 Nigeria's Economic Outlook

Nigeria²⁵ is situated in the West African region between longitudes 3 degrees and 14 degrees and latitudes 4 degrees and 140 degrees. It has a land mass of 923,768 sq.km and is bordered to the north by the Republics of Niger and Chad. Furthermore, it shares borders to the west with the Republic of Benin, and the Republic of Cameroun to the east down to the shores of the Atlantic Ocean which borders the Nigerian Territory to the south. Nigeria's 800km coastline gives it the potential of emerging as a maritime power. Nigeria consists of thirty-six states with Abuja serving as its administrative headquarters and political capital. The last census in 2006 put the country's population at 140,431,790.²⁶ However, the United Nations Population Fund in April stated that Nigeria's population had risen to 201 million people.²⁷ More recently, in July, 2019 the National Population Commission (NPC) estimated that the population of the country had hit 190 million.²⁸

Nigeria is endowed with substantial agricultural, mineral, marine and forest resources. Even though Oil and Gas remain Nigeria's most valuable minerals and source of revenue, the sector's contribution to Gross Domestic Product (GDP) is not very significant. For instance, oil and gas only contributed 9.14% to total real GDP in the first quarter of 2019.²⁹ Apart from the factor of volatility in global prices, exploration and production is threatened by agitations for better deal from companies and government by oil-bearing communities which sometimes lead to restiveness and ultimate disruptions in production. According to the World Bank economic overview on Nigeria³⁰, between 2006 and 2016, Nigeria's Gross Domestic Product (GDP) grew at an average rate of 5.7% per year, as volatile oil prices drove growth to a high of 8% in 2006 and to a low of -1.5% in 2016. Specifically, this volatility in oil resource exploration is directly proportional to the issue of restiveness and occasional violence in the Niger delta, the goose that lays the golden egg for Nigeria. Although experience has shown that criminality has crept into the mix, the overriding motivation for the agitations and restiveness is anchored on the clamour for resource control. Decades of underdevelopment which have plagued the region have led to frustrations and strident calls

for more of the revenues accruing from the resources to be ploughed back into developing the region.

However, Nigeria is blessed with other significant non-oil mineral deposits such as coal, iron ore, gold, limestone, gypsum, kaolin, phosphates, and marble even though the mining industry remains underdeveloped, forcing the country to import minerals that it could produce locally. The potentials of the mining sector are however, agreeably quite versed as it is believed that the sector could contribute up to 3% of GDP by 2025 up from a current contribution of just about 0.5%.³¹

2.2 Corruption and Beneficial Ownership

While the above economic outlook is useful in shaping the conversation on Beneficial Ownership, it is evident that corruption fueled by opaque transactions in the extractives sector further impoverishes citizens, imperils the economy and expands social and political tensions. Nigeria is a resource-rich country that has been beleaguered by large-scale corruption. Hence, Beneficial Ownership is necessarily an important transparency mechanism. For instance, Global Witness uncovered shell companies implicated in the alleged theft of US\$1.1 billion from the award of an oil field to a Nigerian company, Malabu Oil & Gas, which was actually owned by a former oil minister.³² Presently, two global oil companies, ENI and Shell, are standing trial with others in Italy over accusations of corruption related to the deal, estimated to have cost Nigeria US\$6 billion in potential revenues. An estimated US\$15.7 billion in unlawful flows leave the country's financial system annually.³³ The fragility of the Nigerian state becomes a consequent corollary if this scenario is allowed to escalate which of course means that there would be global dimensions the rest of the world should be concerned about.

2.3 The Road to Beneficial Ownership in Nigeria

Nigeria has legal provisions that make vague references to Beneficial Ownership³⁴. For instance, there is a closed register of companies domiciled with the Corporate Affairs Commission (CAC)³⁵. However, many of the names listed in the register are not the real owners and there are no stipulations to verify or sanction persons involved in falsifying

information.³⁶ While there are no statutes that strictly address Beneficial Ownership requirements as of now, reference can be made to the Nigeria Code of Conduct and Tribunal Act (1990) which addresses the issue of ownership disclosures as it concerns Politically Exposed Persons (PEP). This law requires persons holding top positions in government to declare their assets and interests in companies and prescribes sanctions for default. The law does not however require the disclosures to be made public.

In 2003³⁷, Nigeria voluntarily signed up to the global Extractive Industries Transparency Initiative (EITI). The decision to join EITI and establish the Nigeria Extractives Industries Transparency Initiative (NEITI) was taken in the context of the socio-economic reform programme of the second tenure of the Olusegun Obasanjo administration which commenced on May, 29, 2003. Nigeria joined the EITI to promote prudent management of proceeds from its abundant natural resources to reduce poverty and ensure sustainable development. The NEITI is the Nigerian national sub-set of the global EITI.

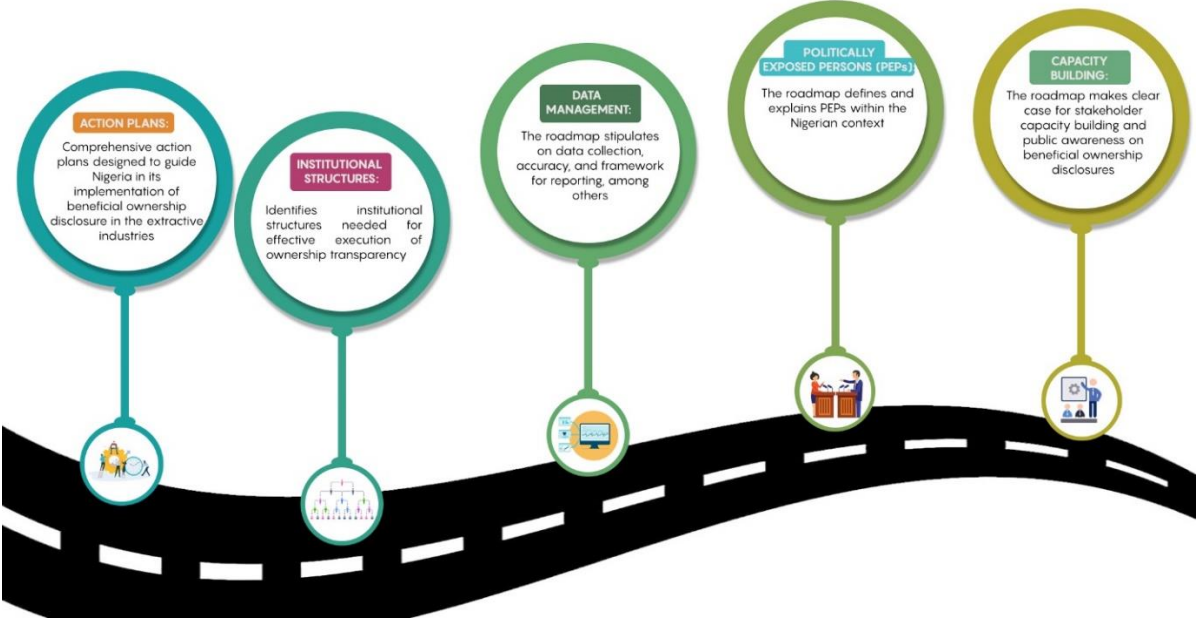
Nigeria participated in the EITI pilot scheme on Beneficial Ownership in 2013 through several stakeholder consultations and advocacy engagements; and was included in the 2012 Reports for Oil and Gas and Solid Minerals sectors respectively.³⁸ The pilot study identified several challenges with the implementation of ownership disclosures including reluctance and/or resistance from companies to cooperate with templates; concerns over confidentiality agreements; use of fronts by Politically Exposed Persons (PEP); political witch-hunt of perceived foes; and most importantly lack of a statutory requirement on Beneficial Ownership.³⁹

Moving forward however, Nigeria in 2016 committed to setting up a national public registry of Beneficial Ownership, which it included in its first OGP National Action Plan. The body responsible for the register is the Corporate Affairs Commission (CAC).⁴⁰ The CAC was created by virtue of the Company and Allied Matters Act (CAMA) 2004 which has scant referrals to Beneficial Ownership without any concrete requirements. Also, the Nigerian Minerals and Mining Act 2007 generally speak of qualification to explore and/or exploit minerals without specific reference to Beneficial Ownership.

But importantly, the Nigeria Extractive Industries Transparency Initiative (NEITI) has unveiled a document titled “Roadmap on Beneficial Ownership disclosure”.⁴¹ The roadmap includes comprehensive action plans designed to guide Nigeria in its implementation of beneficial ownership disclosure in the extractive industries. The document also identified the institutional structures that are needed for effective execution of ownership transparency, clarity on definition of beneficial owners, and explanation on thresholds for open disclosure required in the process. (See figure 4) The roadmap defines those who fall into the category of Politically Exposed Persons (PEPs) and the reporting obligations expected of them as well as the hurdles that may be encountered during the process of data collection, data quality assurance, accessibility, and timeliness. Furthermore, the publication also recognized the need for stakeholder capacity building and public awareness on the principles and benefits of Beneficial Ownership disclosures.

Figure 4

Roadmap on Beneficial Ownership Disclosure



2.4 Parliament and Beneficial Ownership in Nigeria

The role of parliament in the journey towards disclosure of Beneficial Ownership cannot be overemphasized. The legislature is responsible for providing the legal framework that will mandate relevant agencies to obtain and publish beneficial owners of companies. The Nigerian parliament has been involved in the process for several years. Being a political organism, it has also been enmeshed in the politics of assets ownership as well.

Sometimes the politics of assets ownership have tended to becloud debates that could enhance the discourse on Beneficial Ownership in parliament. For instance, in 2013 a senator from the Niger delta had caused a nationwide stir when he reportedly claimed that the real owners of 83 per cent of oil blocks are influential persons from northern Nigeria.⁴² While the controversy stoked by the claim petered out without satisfactory resolution, the episode at least serves as an anecdotal reference to Beneficial Ownership and the need to have proper legislative framework in place to open up the real ownership of companies operating in the oil and gas industry of Nigeria.

2.5 The Proposed CAMA (Amendment) Legislation

The National Assembly has sought to amend the Companies and Allied Matters Act (CAMA). The Senate in May 2018 passed the Bill for an Act to Repeal the Companies and Allied Matters Act 1990 and enact the Companies and Allied Matters Act 2018. On 22 January 2019, the House of Representatives also passed the legislation. The bill was transmitted in March, 2019 to the President for assent.⁴³ As at time of writing this report, there has been no official communication on the fate of the bill at the presidency, prompting conclusion in some quarters that the President may have declined assent.

The bill makes room for disclosures relating to Beneficial Ownership. (See figure 5) Section 119 of the proposed amendment provides that all shareholders with at least 5% shareholding in any company are obligated to disclose such information to the company, with the related requirement that it should be noted in the register of members and annual returns of the company in question.

Furthermore, Section 120 of the Bill provides for the disclosure of capacity by shareholders. According to the Section, every person who holds shares in a company other than as beneficial owner shall within seven days (or such other period as the Commission may by regulation prescribe from time to time) of becoming a holder of the shares indicate to the company in writing the particulars of the identity of the persons interested in the shares in question and whether persons interested in the same shares are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares. The section adds that if default is made by any company in complying with this section, the company and every officer of the company shall be liable to such fines as the Commission may prescribe by regulation for every day during which the default continues.

Other relevant sections include section 121 that provides for the Obligation of Disclosure by substantial shareholder in a public company. Section 122 provides that a person who ceases to be a substantial shareholder must notify the company within 14 days after he becomes aware of this fact and the company upon receipt of such notice must notify the commissioner in writing within 14 days. Section 123 makes provision for a register of interest in shares. Section 124 provides that the matter relating to beneficial interests in shares required by section 124 of the Act shall be entered in a different part of the register of interests which shall be so made up that the entries inscribed in it appear in chronological order.

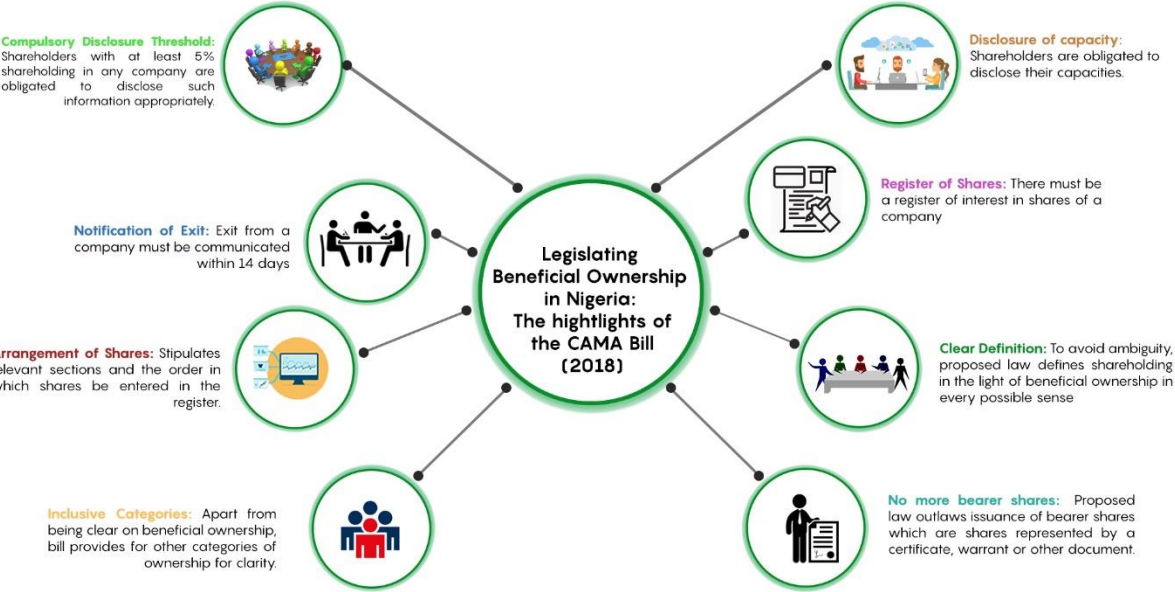
Significantly, the Bill defines a person with significant control as “directly or indirectly holding at least five per cent of the shares or interest in a company or limited liability partnership; directly or indirectly holding at least five per cent of the voting rights in a company or limited liability partnership; directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a company or limited liability partnership”.

Other categories include persons “otherwise having the right to exercise or actually exercising significant influence or control over a company or limited liability partnership; or having the right to exercise, or actually exercising significant influence or control over the activities of a trust or firm whether or not it is a legal entity...”

Furthermore, the Bill outlaws the issuance of bearer shares which are shares represented by a certificate, warrant or other document (in any form or by whatever name called) which indicates that the bearer of the certificate is the owner of the shares.

It is important to note at this junction that the proposed legislation does not explicitly stipulate that the beneficial ownership register be made public.

Figure 5



2.6 Worrisome Executive Inaction

Despite the progress in the disclosure of Beneficial Ownership promised by the CAMA Repeal and Re-enactment bill, President Muhammadu Buhari was quiet during the window allowed for him to assent or decline the bill. The move by President Buhari unsettled many observers due to the President’s previous public commitment to Beneficial Ownership disclosure.

At the Anti-Corruption Summit in London in 2016, President Muhammadu Buhari promised that “Nigeria will establish a transparent central register of foreign companies bidding on public contracts and buying property. We welcome the proposal by developed countries to work together to improve the access of developing countries to beneficial ownership information for use in public contracting.”

By allowing the opportunity of assenting to the CAMA (Amendment) Bill to slip away, the President needs to act quickly to convince the world that he is indeed committed to fulfilling the promise on Beneficial Ownership made before a global audience in London.

CHAPTER THREE

A COST - BENEFIT ANALYSIS

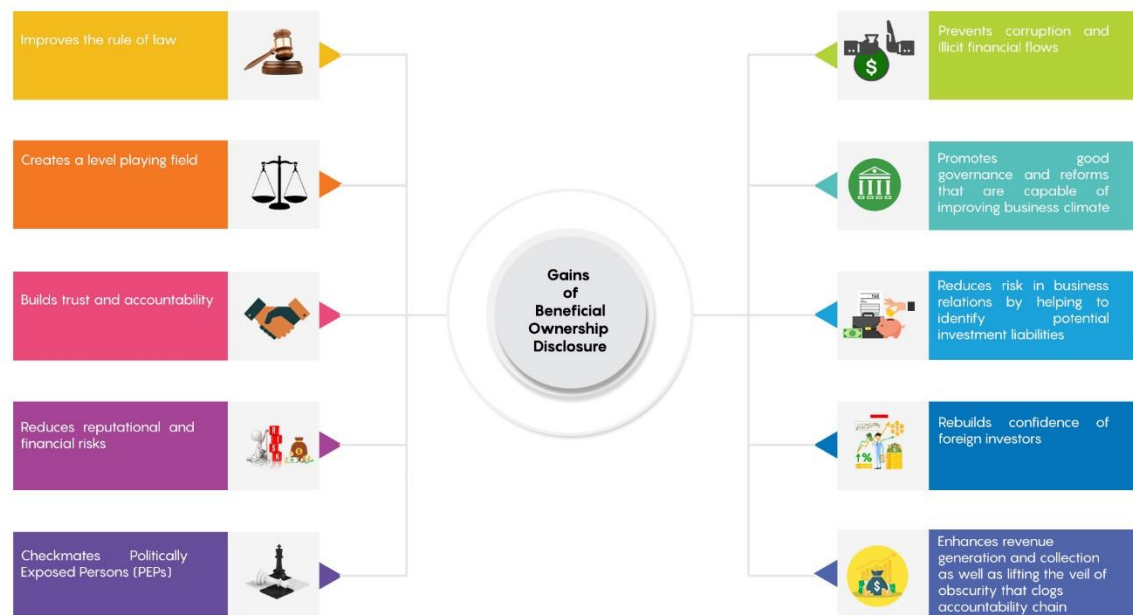
3.1 The Desideratum of a Beneficial Ownership Register

For a country bedeviled by the type of corruption aided by a deep culture of opacity in the extractives sector, there are myriads of benefits inherent in the establishment of a Beneficial Ownership Register in Nigeria. But in what format is the register desirable in the context of the country's circumstances? Should it be open to the general public or just to law enforcement agencies? Are the provisions in the CAMA (Amendment) Bill sufficient to address the issues raised? What are the advantages of an open register? What are the disadvantages? Do the advantages outweigh the disadvantages?

Many commentators including respondents interviewed for this research hold the view that the pros outweigh the cons on this matter. A lawyer and civil society actor, Eze Onyekpere in his article on the Centre for Social Justice blog titled "The Nigerian Beneficial Ownership Journey" notes that experts have observed challenges in the provisions of the amended CAMA.⁴⁴ He argues that "this is still a cumbersome process of going after particular companies to get details of the beneficial owners when the amendment talks about persons who need the information making an application to the company. This should have been replaced with provisions for an electronic portal, available to the public, where individuals can search to access information."

In any case, whilst the register may not be the cure-one-cure-all recipe for tackling the challenges of transparency and accountability in the oil, gas and mining sectors, having it in place is surely a milestone step in the right direction. (See figure 5)

Figure 5



A Beneficial Ownership Factsheet⁴⁵ published by Civil Society Legislative Advocacy Centre (CISLAC) identified several advantages of a Beneficial Ownership register in Nigeria.

A Beneficial Ownership Register will help to:

- ✓ Reduce incidences of money laundering, conflict of interest, terrorism financing, trade and transfer mispricing, tax evasion, bribing and corruption.
- ✓ Checkmate Politically Exposed Persons (PEPs) who intentionally set up a network of companies to hide their identities and cover up corruptly acquired wealth which further increases the risks of corruption.
- ✓ Reinforce the G20 recommendation for countries to “assess the existing and emerging risk associated with different types of persons and arrangements” to be addressed from both domestic and global perspectives.

- ✓ Promote good governance and reforms that are capable of improving business climate by addressing institutional dysfunctions and massive looting.
- ✓ Boost revenue generation and lift the veil of obscurity that clogs accountability chain.
- ✓ Identify avoidable risks and potential investment liabilities while strengthening regulations and law enforcement.
- ✓ Rebuild confidence of foreign investors and improve Nigeria's standing as a reference point for transparency and accountability in business.

These benefits may not be exhaustive but they clearly make for emphasis in advancing the desideratum of having a Beneficial Ownership register in Nigeria.

3.2 Disincentives to Beneficial Ownership Register

Despite the advantages of having a beneficial ownership register, there are still concerns over the cost of establishing, verifying and ensuring compliance. Also, there are concerns over the issue of privacy and right to personal data protection which might expose company owners to political witch-hunt and other security risks. (See figure 6)

Maya Forstater⁴⁶ in her analysis titled "Beneficial Openness: Is More Transparency Always Better?" argues that "Privacy is a human right, which enables us to protect ourselves from unwarranted interference in our lives. Commercial confidentiality is important to allow businesses to gather information, to make decisions and undertake negotiations and to work on ideas and innovations before they launch them.

Figure 6

Arguments against Beneficial Ownership in Nigeria



This school of thought is strengthened by the argument proffered by Diego Zuluaga⁴⁷ a policy analyst at the Cato Institute’s Center for Monetary and Financial Alternatives notes that “the debate is not over whether any information should be collected. The key policy questions are how much information should be collected, by whom, and when it should be shared with government authorities. These questions are a matter of principle but also germane to the cost-benefit analysis. In a free society, the government must have a legitimate public-interest motivation to request information from private individuals and firms. But even if such public-interest grounds are present, the costs of monitoring might be too high relative to the probable benefits.”

However, some industry experts and civil society players hold the view that concerns over privacy and security should be subordinated to the overarching objective of entrenching transparency and advancing anti-corruption measures in the extractives sector of Nigeria.

Dr. Brown Ogbeifun, a former President of Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN), belongs to this school of thought. Though he agrees

that the concerns may be valid “we cannot consistently run away from our responsibilities by hiding under the issues of insecurity of those behind the companies.” He argues further that implementing a Beneficial Ownership regime will help check the use of local fronts by secretive companies with global tentacles with ill-motivations.

Ogbeifun’s position is corroborated by Faith Nwadishi, Convener, Women in Extractives (WIE) and member of the EITI board. According to Nwadishi, corruption is the bane of Nigeria’s extractives industry which therefore makes beneficial ownership a critical requirement for the country. She makes comparisons to buttress her argument: “In Ukraine, where there is a beneficial ownership register, you can access information anywhere from the World. The same happens in the UK. Beneficial Ownership is not a local data but for international use. These petroleum assets are not private assets; they are public assets before somebody acquired a part of them.” Like Ogbeifun, she also admitted that privacy concerns cannot be dismissed but stressed “however, if you do not want to be involved in public business, stay away from public business. If you acquire a public asset for private use, the public should know what you are using it for. The companies that will generate interest are this type of companies and not fully private businesses. Only Publicly Exposed Persons (PEPs) will complain but the advantages outweigh the disadvantages of saying you are putting someone at risk. It is a germane concern but there is only an outrage when you use public funds to acquire private assets. Beneficial Ownership registers do not have personal data like phone numbers, email addresses, or anything that will trace you to the person’s home.”⁴⁸

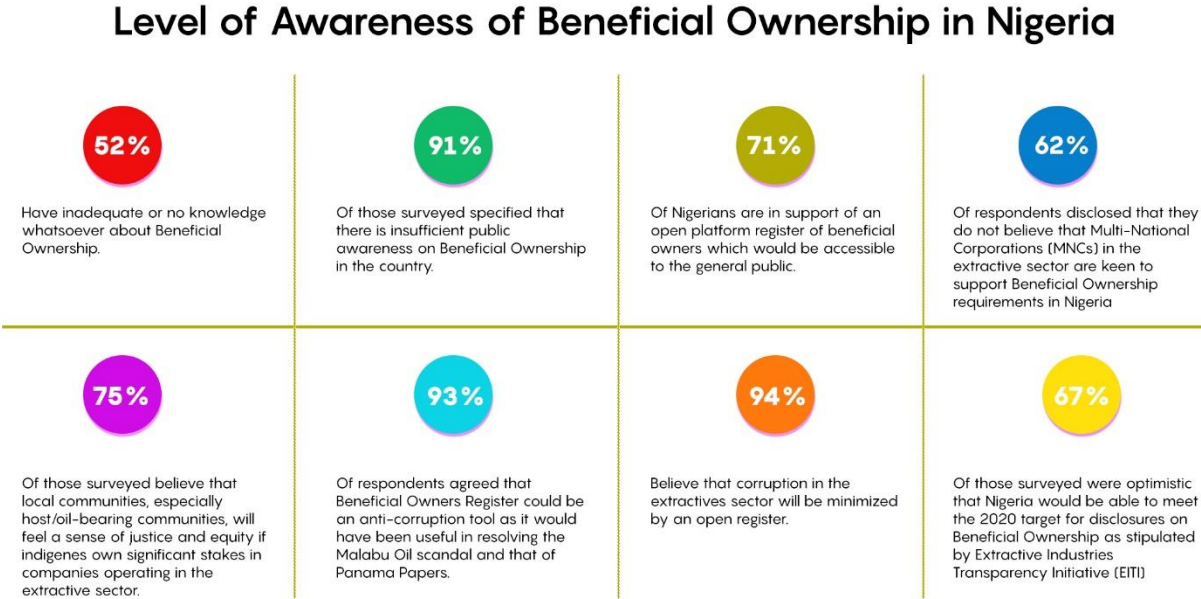
3.3 Public Knowledge of Beneficial Ownership in Nigeria

As already indicated in a previous section of this report, the level of awareness of Beneficial Ownership in Nigeria is abysmal. In a poll conducted on Beneficial ownership as part of this research⁴⁹, it was revealed that majority of Nigerians (52%) have inadequate or no knowledge whatsoever about Beneficial Ownership. 91% of those surveyed specified that there is insufficient public awareness on Beneficial Ownership in the country. The survey also shows that 71% of Nigerians are in support of an open platform register of beneficial owners which would be accessible to the general public. Also, analyses reveals that 62% of

respondents disclosed that they do not believe that Multi-National Corporations (MNCs) in the extractive sector are keen to support Beneficial Ownership requirements in Nigeria with 75% of those surveyed believing that local communities, especially host/oil-bearing communities, will feel a sense of justice and equity if indigenes own significant stakes in companies operating in the extractive sector.

In relation to a question on if a Beneficial Owners Register could be an anti-corruption tool that would have been useful in resolving the Malabu Oil scandal and the Panama Papers, 93% of the respondents agreed it would be a good tool while 94% believes that corruption in the extractives sector will be minimized by an open register. On whether if Nigeria can meet the 2020 target for disclosures on Beneficial Ownership as stipulated by the Extractive Industries Transparency Initiative (EITI), 33% of those surveyed were optimistic whereas 67% of them disagreed. From these results, there is clearly lots of work to be done in raising awareness on the issue. (See figure 7)

Figure 7



Note: Results of an online sample survey conducted for this research

3.4 Beyond the CAMA Bill

From previous sections of this work, it is suggested that progress towards the establishment of a Beneficial Ownership Register in Nigeria is hinged substantially on legislation. Specifically, the CAMA (Amendment) bill has been discussed already. But given the hiccups that have trailed the enactment process and the seeming stalemate on the issue, what are the options open at the policy level for achieving the register or something close to it? Are there ways around the legislative process that the government can latch upon to bring to reality a publicly available register? Is it possible to get corporates to apply such alternative routes to Beneficial Ownership? Some experts think so.

Leo Ugbajah, a consultant in the oil and gas sector, is of the opinion that companies in Nigeria are willing to comply with the beneficial ownership process⁵⁰. He argues that even without a new CAMA in place; other existing laws can be relied upon, backed with Executive Orders, to have a Beneficial Ownership register in place for the extractive industry before 1st January, 2020. In this regard, he refers to the Petroleum Act as well as the Minerals and Mining Act which enables the Honorable Minister of Petroleum Resources and Honorable Minister of Solid Mineral Development respectively to make regulations to guide the sectors. He specifically called on the President to issue an Executive Order directing each of the Honorable Minister of Petroleum Resources and Honorable Minister of Solid Mineral Development to exercise their statutory powers to issue regulations for mandatory disclosures, and establishment of an online register freely available to the public.

In another breadth, NEITI⁵¹ in its May 2016 Policy Brief notes that beyond having a public register by 2020 as demanded by the 2016 EITI Standards, there are other ways in which Nigeria could generate information about beneficial owners in the extractive sector.

The brief speaks of a database of extractive companies for law-enforcement agencies and other government entities which would for instance, make it mandatory for public disclosure of the beneficial owners of companies doing significant contracts with government. The brief further suggests the insertion of beneficial ownership provisions into petroleum sector bills before parliament. And rightly, the brief submits that “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.”













3.5 Positive Steps on Beneficial Ownership

In working to achieve the EITI January 2020 Benchmark on Beneficial Ownership, NEITI has reported substantial progress. (See figure 8) The agency has even announced its readiness to present a register by October, 2019.⁵² The optimism is quite reassuring as seen from this excerpt from the interview by Dr. Orji Ogbonnaya Orji, NEITI’s Director of Communications and Advocacy: “Nigeria is working towards meeting that requirement as contained in the EITI Standards. NEITI has published a beneficial ownership roadmap for implementation by January 2020. A lot of progress has been made so far; the template of the register has gotten to an advanced stage in its development and will be presented to the extractive companies soon. Also procurement and installation of software, test run and commissioning of the register are the next steps on the project. Working with stakeholders, we expect the register to be ready October this year.”⁵³ The agency has also developed a template for beneficial ownership in Nigeria.

Figure 8

Beneficial Ownership Declaration Template

Details to be Disclosed in a beneficial ownership declaration form according to EITI include;

 Full Legal Name of the Company	 Contact Address (Registered Office)	 Unique Identification Number of the Company from CAC	 Date when beneficial interest was acquired
 State if any of the beneficial owner is a Politically Exposed Person (PEP)	 States whether company is a publicly listed company or wholly owned subsidiary of a publicly listed company	 Identity of the Beneficial Owner stating Full name, Date of birth, Nationality and Country of residence	 Shareholder(s) statement if they are a Government or Private entity with their interest in percentage
 Means of contact (Residential/Service Address and any other contact details)	 Information about how ownership is held or controlled over the company as exercised by % of shares and % of direct plus indirect voting rights	 If any of beneficial owner is a PEP, state name, Public office position and role, Date when office was assumed and Date when office was left, if applicable.	 Signed Attestation

With respect to reservations about data privacy and security fears highlighted earlier, the NEITI official harps on “transparency without undermining national security.” He says further: “It only requires full disclosure of the real owners of the company, the level of equity commitment, who owns what in the company and how acquired among other vital questions. If beneficial ownership register has any concerns at all on security, it is failure to disclose this information that has constituted the major problem. This is because disclosure of beneficial owners will help provide information and data on the following: corruption, money laundering, tax evasion, and terrorism financing.”⁵⁴

CHAPTER FOUR

RECOMMENDATIONS AND CONCLUSIONS

4.1 Recommendations

It has been established in previous chapters that Nigeria is still on its journey to having a Beneficial Ownership register. But huddles and craters have been strewn along the way both inadvertently and in a self-imposed sense. For instance, the disturbing fact has been noted that in spite of commitment made by President Muhammadu Buhari to have the register in place in furtherance of the anti-corruption mandate of his administration, an opportunity to legislate on the matter appears to have been frittered away. So what are the steps that need to be taken to speed up this journey and get Nigeria to its destination on Beneficial Ownership in line with the EITI 2020 benchmark? The following sub-sections of this chapter contain recommendations on the way forward. And to make for specificity, the recommendations are presented in a targeted manner so responsible parties can at a glance, be advised on the expectations upon them.

The Executive Arm of Government

President Buhari's non-assent to the CAMA bill means it cannot become law. It is therefore first and foremost imperative for the President as head of Government and prime mover of the executive arm to demonstrate his commitment on Beneficial Ownership by signing the CAMA (amendment) bill that has been passed. If (as is likely to be the case as at time of making this report) the window for his assent has closed, then he must be seen to activate and drive the process for a fresh start to having the legislation in place. With a new assembly of the federal legislature in place, it is expected that an executive bill be sent to parliament without delay.

But in the interim and apart from the proposed CAMA legislation, the President is advised to explore other measures to realize the commitment on Beneficial Ownership he made to the world in 2016. The use of an executive order in this instance may not be entirely out of place

as a stop-gap measure while the legislative mill is activated and allowed time to grind to fruition.

In a sense therefore, relevant departments of government like the Ministry of Justice and Corporate Affairs Commission (CAC) are required to take the lead and advise the President on measures that could advance the realization of a register within the time frame left before the EITI benchmark rolls in.

The National Assembly of Nigeria

Given that the President has not communicated on the CAMA amendment bill passed by the last National Assembly within allowable window by law, it has become incumbent again on the current set of legislators to revisit the bill. Passing the bill and sending to the President for assent again pushes the buck to the Executive to fulfill its commitment on establishing a Beneficial Ownership Register for Nigeria. For the National Assembly, the next line of action will be to re-introduce the bill and kick start the legislative process afresh.

The National Assembly may also need to create a legislative framework for the Open Government Partnership (OGP) in Nigeria so that commitments made under the National Action Plan (NAP) can be aided towards fulfillment within the context of required legislations and executive-legislature harmony.

Civil Society

Previous chapters have already established the low level of public awareness and knowledge on Beneficial Ownership in Nigeria. This means that civil society, used in its broader sense to include the media, now has its work cut out in some sense, especially as it relates to raising the bar on advocacy. Civil Society Organizations and the media have the responsibility of informing and mobilizing the people on the issue of beneficial ownership which is still a relatively unknown term in the public domain. Getting the support and voice of the public will be crucial in making beneficial ownership disclosure in Nigeria a reality.

Also and importantly, the advocacy must be heavy on mounting pressurize on the President to exercise his powers in issuing an executive order that will make the Beneficial Register a reality relying on existing laws as in the absence of a new CAMA.

However, for actors in the civic space to effectively deliver on the expectations on the issue, certain variables need to be addressed.

For one, it is clear and very important that civil society builds its capacity on Beneficial Ownership in order to make informed and evidence-based advocacy on the issue. There is also need to get more actors into extractives advocacy. Civil society needs to undertake specific and more deliberative engagements with state and non-state actors on Beneficial Ownership.

NEITI

Like can be seen from earlier chapters, the Nigeria Extractives Industry Transparency Initiative (NEITI) has been quite proactive and robust in terms of engaging on the issue of Beneficial Ownership in the country. The body has also been working closely with civil society, a relationship that is advised to be scaled up to levels that place the third sector on the driving seat of advocacy efforts on Beneficial Ownership.

What Stakeholders Must Do to Achieve Beneficial Ownership Reporting in Nigeria



The Executive Arm of Government

- *Presidential assent to the CAMA (amendment) Bill after passage by the National Assembly
- *Explore Executive Orders to realize Nigeria's commitment on Beneficial Ownership
- *Empower the Corporate Affairs Commission (CAC) to implement such orders whilst a law is awaited



The National Assembly

- *Re-introduce the CAMA (amendment) bill and speed up the legislative process
- *Create a legislative framework for the Open Government Partnership (OGP) in Nigeria so that commitments made under the National Action Plans (NAP) can be binding
- *Increase productive oversight on beneficial ownership issues



Civil Society Organisations (CSOs)

- *Build capacity on Beneficial Ownership in order to make informed and evidence-based advocacy on the issue
- *Get more actors in the oil and gas sector involved in the advocacy for Beneficial Ownership Register
- *Do more in informing and mobilizing people on the issue of beneficial ownership which is still a relatively unknown term in the public domain
- *Pressurize the President to exercise his powers in issuing an executive order that will make an open Beneficial Register a reality



- *Scale up engagement with civil society
- *Work closely with the CAC and other departments of government

4.2 Conclusion

This research explored the issue Beneficial Ownership in conceptual, generic and contextual terms as it relates to Nigeria. It was able to highlight challenges standing in the way of meeting the EITI standards and proposed some recommendations that can help towards meeting the 2020 benchmark.

It is worthy to note that beneficial ownership disclosure provides a huge opportunity for Nigeria to lead the charge in the campaign to unmask anonymous companies especially in the extractive sector that accounts for the bulk of government revenues. The sector remains plague by complex ownership structures. There are already some forms of ownership disclosure but there is need to expand the scope of such disclosures to reflect the real owners and not just legal owners.

This expansion and deepening of ownership disclosure in the extractive sector will undoubtedly boost the anti-corruption agenda of the current administration and place the country in positive light in the global community.

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