



## **Beneficial ownership transparency in Africa**

### ***The state of play in 2020***

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## Executive Summary

Leak after leak has confirmed what African citizens have long suspected: the elite hide their actions and identities to loot state resources and reduce taxes owed. African countries are taking action to domestically address financial secrecy, including requiring the beneficial owners of companies, partnerships, foundations and trusts to register.

In 2015, the High Level Panel on Illicit Financial Flows from Africa, established under the direction of the African Union and United Nations Economic Commission for Africa Conference of African Ministers of Finance, Planning and Economic Development, articulated the entrenched social and economic inequalities which blight many African countries. The High Level Panel was emphatic that the year-on-year haemorrhaging of government revenues was a fundamental obstacle to achieving sustained human development, the fulfilment of basic human rights and the ending of poverty.

Identifying, registering and disclosing the people who ultimately own or control legal vehicles is a key policy for promoting and protecting domestic revenue mobilisation that may otherwise be eroded by illicit cross-border financial transactions including money laundering, tax evasion and avoidance, corruption and terrorist financing. Ending anonymous ownership of companies and other legal entities through beneficial ownership disclosure was a key recommendation made by the High Level Panel.

This report examines the state of beneficial ownership transparency in Africa today. It comparatively assesses the registration and disclosure requirements for the ownership of legal vehicles, including companies, partnerships, trusts and private foundations, across 17 African countries as of April 2020, drawing on the data of the 2020 edition of the Tax Justice Network's Financial Secrecy Index and supplementary research of beneficial ownership legislation introduced after the publication of the index in February 2020.

African countries are making progress towards ending the abuse of corporate secrecy and this paper discusses the state of play and possible next steps of action. Laws requiring beneficial ownership to be registered with a government authority have been enacted in seven of the African countries assessed during this study. However, no country in Africa, or indeed the world, yet achieves the ideal level of beneficial ownership registration for every type of legal vehicle.

Beneficial ownership transparency can be more effective on the continent by improving legislation and implementation in the following ways:

- Beneficial ownership provisions should apply to all legal vehicles in all sectors, including companies, partnerships, trusts and foundations.

- All bearer shares should be prohibited or at least immobilised by a government authority.
- The definition of beneficial owner should not have a minimum threshold, ie, it should apply to every shareholder holding at least one share.
- Legal and beneficial ownership information provided should be comprehensive, accurate and up to date and for the full ownership chain.
- Beneficial ownership registration information should be verified and non-compliance should be met with sanctions.
- Registries housing legal and beneficial ownership information should be made publicly available.

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## 1. Introduction

According to the International Consortium of Investigative Journalists' Luanda Leaks investigation, Africa's wealthiest woman and daughter of former Angolan president, Isabel dos Santos, allegedly moved millions in public assets and revenue<sup>2</sup> out of Angola, a diamond-rich yet highly unequal country.<sup>3</sup> Comprising over 715,000 documents, the Luanda Leaks on the surface sounds like just another story of corruption in Africa. However, the leaked documents suggest that dos Santos and her husband were only able to move the ill-gotten gains thanks to a web of at least 94 secrecy jurisdictions across the world through an "archipelago of shell companies".<sup>4</sup> Indeed, as Claudia Gastrow writes in *Africa is a Country*, "'African corruption' is only African as regards its victims, its perpetrators are institutions and individuals from across the globe who are willing to loot without conscience as they watch their offshore accounts grow".<sup>5</sup>

Financing Africa's development is deeply undermined by financial secrecy. Illicit financial flows from the continent dwarf overseas development assistance<sup>6</sup> and erode the sovereignty of nations in raising revenues domestically for public expenditure and investment. Illicit financial flows, made possible through international financial secrecy networks, are a heavy burden on the backs of African countries and its citizens. In 2015, in 30 African countries, capital flight averaged about two-thirds of gross domestic product and vastly exceeded external debt.<sup>7</sup> While illicit assets abroad are private, debt is a collective liability of current and future generations of Africans.

Africa is in fact a net creditor to the world. Between 1970 and 2015, the continent lost approximately US\$1.4 trillion in capital flight, vastly more than the total of the stock of debt owed as of 2015 (US\$496.9bn) and the cumulative amount of foreign aid received in the same period (US\$991.8bn).<sup>8</sup> These flows

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<sup>2</sup> International Consortium of Investigative Journalists, 'Luanda Leaks', *International Consortium of Investigative Journalists*, 2020 <<https://www.icij.org/investigations/luanda-leaks/>> [accessed 14 April 2020].

<sup>3</sup> United Nations Development Programme, *Human Development Report 2019: Inequalities in Human Development in the 21st Century. Briefing Note for Countries on the 2019 Human Development Report: Angola* (2019) <[http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/AGO.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/AGO.pdf)> [accessed 14 April 2020].

<sup>4</sup> Sydney P Freedberg and others, 'How Africa's Richest Woman Exploited Family Ties, Shell Companies and inside Deals to Build an Empire', *International Consortium of Investigative Journalists*, 2020 <<https://www.icij.org/investigations/luanda-leaks/how-africas-richest-woman-exploited-family-ties-shell-companies-and-inside-deals-to-build-an-empire/>> [accessed 14 April 2020].

<sup>5</sup> Claudia Gastrow, 'Laundering Isabel Dos Santos', *Africa Is a Country*, 2020 <<https://africasacountry.com/2020/01/laundering-isabel-dos-santos/>> [accessed 14 April 2020].

<sup>6</sup> According to Mick Moore, Wilson Prichard and Odd-Helge Fjeldstad (*Taxing Africa. Coercion, Reform and Development* (London, 2018), 65), revenue losses through corporate tax avoidance alone in sub-Saharan Africa was equal to between one and two thirds of its total official development assistance in 2014

<sup>7</sup> The ratio of entire capital flight to gross domestic product in 2015 ranges from 9.9% for Egypt to 705.9% for the Republic of Congo, in Ndikumana and Boyce, *PERI - Capital Flight From Africa*.

<sup>8</sup> The study used data for 30 African countries, which when combined account for 92 percent of the continent's gross domestic product. Ndikumana and Boyce, *PERI - Capital Flight From Africa*.

are a substantial obstacle in the continent's arduous journey towards prosperity and prevent nations from becoming independent of external aid.

Fundamentally, illicit financial flows continue to impair the ability of African governments to address a range of inequalities felt sharply by the most marginalised and vulnerable in society. Illicit financial flows "are transfers of money from one country to another that are forbidden by law, rules or custom".<sup>9</sup> Analysis of the vulnerability of the continent to illicit financial flows that moves beyond the numbers reveals how Africa is far more vulnerable to illicit financial flows and financial secrecy than responsible for causing the vulnerability.<sup>10</sup>

The COVID-19 pandemic and its economic aftermath have again exposed how African countries disproportionately experience the brunt of "systemic inequalities in the current social, political and economic systems".<sup>11</sup> Illicit financial flows also militate against governments fulfilling their obligation to deliver basic rights such as universal health care.<sup>12</sup> These concerns were most recently repeated and reinforced by the United Nations Secretary-General António Guterres when he wrote in the context of gender equality, "global tax competition, tax avoidance and illicit financial flows have concentrated resources in the hands of a powerful few, while depriving public budgets of much needed resources".<sup>13</sup>

The problem of financial secrecy was put squarely on the continent's policy agenda with the establishment of the High Level Panel on Illicit Financial Flows, chaired by former South African president Thabo Mbeki, and the panel's report analysing the scale, nature and solutions.<sup>14</sup> African countries are united under Agenda 63 to "reverse the illicit flows of capital from the continent", adopted by African heads of state in 2015, at the African Union.<sup>15</sup> Not only African

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<sup>9</sup> For further information about each country's vulnerability to various forms of illicit financial flows over different periods of time, see Tax Justice Network, 'Illicit Financial Flows Vulnerability Tracker', 2020 <<https://iff.taxjustice.net/>> [accessed 22 June 2020].

<sup>10</sup> Charles Abugre and others, *Vulnerability and Exposure to Illicit Financial Flows Risk in Africa* (20 August 2019) <<https://papers.ssrn.com/abstract=3440066>> [accessed 22 June 2020].

<sup>11</sup> Tax Justice Network Africa, *Covid-19 Pandemic: An Opportunity for Structural Reforms to Create a People-Centred Economic System*, 15 June 2020, 19 <<https://taxjusticeafrica.net/wp-content/uploads/2020/06/TJNA-STATEMENT-ON-COVID-19.pdf>> [accessed 16 June 2020].

<sup>12</sup> Bernadette O'Hare, 'International Corporate Tax Avoidance and Domestic Government Health Expenditure', *Bulletin of the World Health Organization*, 97 (2019), 746–53.

<sup>13</sup> António Guterres, *Review and Appraisal of the Implementation of the Beijing Declaration and Platform for Action and the Outcomes of the Twenty-Third Special Session of the General Assembly: Report of the Secretary-General* (13 December 2019), 4 <<https://undocs.org/pdf?symbol=en/E/CN.6/2020/3>> [accessed 16 June 2020].

<sup>14</sup> African Union Commission and United Nations Economic Commission for Africa, *Illicit Financial Flow: Report of the High Level Panel on Illicit Financial Flows from Africa* (2015) <[https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf)> [accessed 8 November 2017].

<sup>15</sup> African Union, *Agenda 2063: The Africa We Want*, September 2015, 18 <[https://au.int/sites/default/files/documents/36204-doc-agenda2063\\_popular\\_version\\_en.pdf](https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf)> [accessed 18 May 2020].

governments lose out; globally an estimated US\$500bn in revenues is lost annually through corporate tax abuse.<sup>16</sup>

Unveiling the beneficial owners who control companies and other legal entities is one of the recommendations made by the High Level Panel for African countries and the continent's partners "to determine where illicit funds are moving and who is moving them".<sup>17</sup> Thus to be able to stem illicit financial flows and protect domestic revenue mobilisation, African countries can take collective and domestic action to address financial secrecy at home through requiring the registration and updating of legal and beneficial ownership information of companies and other legal vehicles (such as partnerships, trusts or foundations), verifying this information and putting it in the public record. As this report shows, progress is being made in this direction.

The report explores the state of play in legal and beneficial ownership registration in 17 African jurisdictions. It draws on data from the 2020 edition of the Financial Secrecy Index,<sup>18</sup> which has been published every two years by the Tax Justice Network since 2009.<sup>19</sup> It further complements and can be read alongside the 2018 and 2020 Tax Justice Network studies on the state of play of beneficial ownership registration around the world (covering 112 and 133 jurisdictions, respectively).<sup>20</sup> A preliminary assessment is included for new beneficial ownership legislation introduced in Egypt and the Seychelles after the publication of the 2020 edition of the index.

The paper commences with a short discussion on the case for beneficial ownership disclosure, what it is and what it might achieve, followed by presenting how beneficial ownership registration and disclosure can be

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<sup>16</sup> Alex Cobham and Petr Janský, *Global Distribution of Revenue Loss from Tax Avoidance: Re-Estimation and Country Results*, WIDER Working Paper (Helsinki, March 2017)

<<https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf>> [accessed 19 October 2017].

<sup>17</sup> African Union Commission and United Nations Economic Commission for Africa, *Illicit Financial Flow: Report of the High Level Panel on Illicit Financial Flows from Africa*, 81, 86.

<sup>18</sup> Tax Justice Network, 'Financial Secrecy Index', *Financial Secrecy Index, 2020* <<https://fsi.taxjustice.net/en/>> [accessed 5 May 2020].

<sup>19</sup> Of the 133 jurisdictions covered in the Financial Secrecy Index, 17 are African. These include: Algeria, Angola, Botswana, Cameroon, Egypt, Gambia, Ghana, Kenya, Liberia, Mauritius, Morocco, Nigeria, Rwanda, Seychelles, South Africa, Tanzania and Tunisia. Nine of these jurisdictions (Botswana, Cameroon, Egypt, Gambia, Ghana, Kenya, Liberia, Mauritius, Nigeria, Rwanda, Seychelles, South Africa and Tanzania) had been included in the 2018 edition of the Financial Secrecy Index. In the Financial Secrecy Index 2020, further African countries were included. Egypt, Morocco and Nigeria were included because they were among the top 94 jurisdictions in their share in the global market of offshore financial services in the 2018 edition of the index, Rwanda was included because of its ambitions to establish a financial centre, and Algeria, Angola, Cameroon and Tunisia have been included because of financial support and our commitments under the NORAD-financed 'Financial Secrecy and Tax Advocacy in Africa' project (2017–2022). For further information, see Tax Justice Network, *Financial Secrecy Index 2020 Methodology* (February 2020)

<<https://fsi.taxjustice.net/PDF/FSI-Methodology.pdf>> [accessed 15 April 2020].

<sup>20</sup> Andres Knobel, Moran Harari and Markus Meinzer, *The State of Play of Beneficial Ownership Registration: A Visual Overview*, 2018 <<https://www.taxjustice.net/wp-content/uploads/2018/06/TJN2018-BeneficialOwnershipRegistration-StateOfPlay-FSI.pdf>> [accessed 27 January 2020]; Moran Harari and others, *Ownership Registration of Different Types of Legal Structures from an International Comparative Perspective: State of Play of Beneficial Ownership - Update 2020* (1 June 2020) <<https://www.taxjustice.net/wp-content/uploads/2020/06/State-of-play-of-beneficial-ownership-Update-2020-Tax-Justice-Network.pdf>> [accessed 4 June 2020].



implemented well. This precedes an overview of the current status of beneficial ownership disclosure in Africa, as assessed in the Financial Secrecy Index. The Financial Secrecy Index serves as a benchmark of ideal transparency. This includes an analysis of beneficial ownership disclosure in policy and practice for four types of legal vehicles (companies, partnerships, trusts and private foundations). The conclusion brings together key recommendations for potential next steps for African countries to further safeguard revenues and sound economic development and governance.

## 2. The case for beneficial ownership disclosure

Disclosing the real, natural persons who own or control companies, partnerships, trust and foundations greatly lowers the risks of illicit and illegal practice and makes it harder for authorities to turn a blind eye.

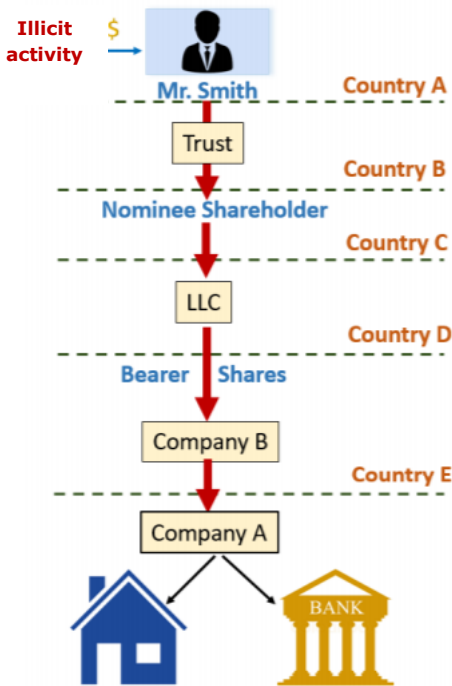


Figure 1. Economic activity through a complex system of legal vehicles

A beneficial owner is always a natural person who owns, controls or ultimately benefits from a legal entity or structure, but their identity can be obscured by various legal entities or structures. When countries do not require the registration of both legal and beneficial owners then the beneficial owners—the natural persons benefitting from the set up—can remain hidden. This is explained in more detail in Chapter 5.

Identifying a beneficial owner can be a very challenging task because the natural person (the actual living and breathing person) can own or control a legal vehicle in a number of ways, such as through shares, nominees, joint ownership arrangements, voting rights or other rights to make decisions or exert control.<sup>21</sup> The longer the chain of legal vehicles and the more jurisdictions the entities span, the harder it becomes to work out who controls each layer of legal vehicles and to

identify the real owner at the top of the chain – eg, to identify Mr Smith in Figure 1.<sup>22</sup> When individuals use nominees or bearer shares, it becomes even more difficult to identify and verify beneficial owners. It is also very difficult to identify

<sup>21</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes and Inter-American Development Bank, *A Beneficial Ownership Implementation Toolkit*, 2019, 8 <[https://finance.belgium.be/sites/default/files/201903\\_OECD\\_IDB\\_BeneficialOwnershipToolkit\\_EN.pdf](https://finance.belgium.be/sites/default/files/201903_OECD_IDB_BeneficialOwnershipToolkit_EN.pdf)> [accessed 13 April 2019].

<sup>22</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes and Inter-American Development Bank, *A Beneficial Ownership Implementation Toolkit*, 5.

beneficial owners when the beneficial owner or their legal vehicles are resident in jurisdictions that do not have a public beneficial ownership register and are not party to automatic exchange of information agreements.

As a result, people who wish to escape the law use the opacity of legal vehicles available across multiple secrecy jurisdictions to hide their identity, the true purpose of their activities and the source or use of funds or property associated with their legal vehicles. This may be for tax avoidance purposes, for enabling and hiding the proceeds of criminal activities from authorities, such as money-laundering, bribery and corruption, or for financing terrorism.

Business owners who choose to setup their business as a corporation, instead of as a sole proprietorship, general partnership or other type of business, benefit from limiting their personal liability. In exchange for this protection, owners should be required to reveal their identities. There is nothing integral to owning a company or any other legal vehicle that requires this information to be kept private and in fact this information is vital for countries, creditors and other third persons who may be affected.<sup>23</sup> Consequently, public beneficial ownership registries are being established by governments in the pursuit of public policy goals.<sup>24</sup> Where legal vehicles are known to be used in ways that run counter to the public good and the interests of society, reduced privacy through the disclosure of owners can be seen as the price owners must pay for using a specific legal vehicles.<sup>25</sup> Nevertheless, to address the legitimate concerns of privacy and data security, governments must establish what kind of data should be disclosed to achieve its goals of eliminating illicit financial activity and improving public oversight and scrutiny of corporate practice.

Information on beneficial owners is of interest and useful to many different stakeholders including financial institutions, law enforcement agencies, civil society, journalists and other companies or legal vehicles. In 2017 alone, the British public registry for beneficial owners as part of Companies House<sup>26</sup> was accessed more than two billion times.<sup>27</sup> The British government's review<sup>28</sup> of its public register for beneficial owners in 2019 shows just how many different

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<sup>23</sup> Andres Knobel, 'Trusts: Weapons of Mass Injustice?? A Response to the Critics', 2017 <<https://www.ssrn.com/abstract=3043825>> [accessed 18 March 2020].

<sup>24</sup> Open Ownership, The B Team and The Engine Room, *Data Protection and Privacy in Beneficial Ownership Disclosure*, May 2019 <<https://www.openownership.org/uploads/oo-data-protection-and-privacy.pdf>> [accessed 28 May 2020].

<sup>25</sup> Maugham, 'Waiving the Right to Privacy', *Waiting for Godot*, 2016 <<https://waitingfortax.com/2016/04/22/waiving-the-right-to-privacy/>> [accessed 29 May 2020].

<sup>26</sup> Companies House, 'Companies House Service', 2020 <<https://beta.companieshouse.gov.uk/>> [accessed 29 May 2020].

<sup>27</sup> Global Witness, *Getting the UK's House in Order: New Analysis of the Company Register*, May 2019, 3 <<https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/getting-uks-house-order/>> [accessed 29 May 2020].

<sup>28</sup> Department for Business, Energy & Industrial Strategy, *Review of the Implementation of the PSC Register*, March 2019 <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/822823/review-implementation-psc-register.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf)> [accessed 29 May 2020].

stakeholders use this information. All law enforcement agencies interviewed had used the register to inform criminal investigations, and all financial institutions accessed the register to identify the beneficial owners of prospective corporate clients. In addition, about one-fifth of the 500 companies interviewed had used the register to look up information about other businesses, such as about clients and customers. And if costs rather than privacy concerns are seen as a barrier to implementation of public beneficial ownership registries, compliance costs in the UK were relatively low, especially for small businesses with simple ownership structures. Overall, the mean cost was £287 and the median cost was £125, with most costs borne in the first submission to the register.<sup>29</sup>

African citizens and civil society groups on the continent have been demanding public beneficial ownership disclosure as part of efforts to stop illicit financial flows out of the continent, both through tax avoidance and evasion and corrupt practices, across sectors.<sup>30</sup> Beneficial ownership disclosure can allow better oversight by the public and their representatives, especially when entities are involved in extracting mineral resources that are vested in the state on behalf of the people or are bidding for public contracts. Indeed, beneficial ownership information is vital for monitoring compliance where countries have laws in place that require a certain proportion of mineral rights be held by indigenous or other specified groups or prioritise majority women-owned companies in a mining company's procurement of goods and services.

To improve domestic revenue mobilisation, revealing who is really benefitting from a legal structure acts as a deterrent to would-be tax evaders and avoiders as well as provides information for authorities to investigate whether tax

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<sup>29</sup> Department for Business, Energy & Industrial Strategy, *Review of the Implementation of the PSC Register*, 5.

<sup>30</sup> See, for example, pan-African civil society advocacy for the implementation of the High Level Panel report, *Beyond the Mbeki Report* (2015) <<http://twnafrica.org/wp/2017/?p=1883>> [accessed 16 June 2020]; and specifically for beneficial ownership disclosure in the wake of leaks, Robert Ssuuna, 'One Year After The Paradise Papers: Should We Keep The Hope Alive?', *Tax Justice Network Africa*, 2019 <<https://taxjusticeafrica.net/one-year-after-the-paradise-papers-should-we-keep-the-hope-alive/>> [accessed 16 June 2020]; there are also many examples of calls for beneficial ownership disclosure at the national level, such as in Nigeria, CISLAC, 'Public Registers of Beneficial Ownership: Essential or Overhyped?', *CISLAC Nigeria | Civil Society Legislative Advocacy Centre*, 2019 <<https://cislacnigeria.net/public-registers-of-beneficial-ownership-essential-or-overhyped/>> [accessed 16 June 2020]; and in South Africa, Andrew McGregor, 'Advocacy: A Call for Disclosure of Beneficial Owners', *AmaBhungane*, 2019 <<https://amabhungane.org/stories/advocacy-a-call-for-disclosure-of-beneficial-owners/>> [accessed 16 June 2020]; and Corruption Watch, 'SA Making Progress on Beneficial Ownership, but CSOs Left Out', *Corruption Watch*, 3 September 2018 <<https://www.corruptionwatch.org.za/sa-making-slow-progress-beneficial-ownership-csos-left/>> [accessed 16 June 2020]; and finally in specific sectors, such as in the extractive industries, where call for beneficial ownership disclosure is made in light of governments' commitments to the Africa Mining Vision, Olufolahan Adeleke and Tracy-Lynn Humby, *Regulatory Requirements Pertaining to Ownership, Operational and Financial Disclosure in South Africa: Beneficial-Ownership and Tax-Benefit Disclosures* (2016) <[http://www.osf.org.za/wp-content/uploads/2018/05/OSF-Extractives-Working-Paper\\_Beneficial-Ownership-and-Tax-Benefit-Disclosures-Open-Society-Foundation-for-South-Africa-OSF-SA-Publications.pdf](http://www.osf.org.za/wp-content/uploads/2018/05/OSF-Extractives-Working-Paper_Beneficial-Ownership-and-Tax-Benefit-Disclosures-Open-Society-Foundation-for-South-Africa-OSF-SA-Publications.pdf)> [accessed 30 April 2020]; and the Extractive Industries Transparency Initiative, Kaulungu Simwaka, *Press Release: Publish What You Pay Malawi: "Following The Money": Malawi Embarks onto the Right Path towards Ensuring Transparency and Accountability in the Extractives Industry* (30 October 2015) <<https://mininginmalawi.com/2015/11/02/press-release-publish-what-you-pay-malawi-following-the-money-malawi-embarks-onto-the-right-path-towards-ensuring-transparency-and-accountability-in-the-extractives-industry/>> [accessed 16 June 2020].

liabilities have been met. Public beneficial ownership registries may also make it easier to tax ultra-high net worth individuals, as registries can show the assets, means or jurisdictions where African residents may have stashed their wealth. Of course, raising revenue is but one function of a strong taxation system, political representation is another central result of taxation: “The act of paying tax, especially direct taxes (those on income, profit, and capital gains) [...] leads taxpayers to see government as spending their money-and therefore to seek accountability for how that spending is made”.<sup>31</sup>

Further, successful asset recovery relies on beneficial ownership disclosure. Greater cooperation between jurisdictions to share tax information aims to help authorities detect illicit activities and ultimately convert information into revenues through recovered assets. Cooperation takes the form of sending and receiving information between authorities in jurisdictions, including legal and beneficial ownership information on legal entities and arrangements, which is central in the fight against illicit financial flows. This exchange of information relies on jurisdictions entering agreements with each other.

### **3. Beneficial ownership disclosure at work**

This section briefly considers actions being taken across the world to improve beneficial ownership transparency to address the challenge of illicit financial flows.

The report produced by the High Level Panel on Illicit Financial Flows from Africa, often referred to as the Mbeki Report, showed that beneficial ownership disclosure housed on public central registries is vital not only for African nations but also for all Africa’s partners because of the nature of illicit cross-border financial transactions that sees a web of legal vehicles be used when the intention is to move illicit money.<sup>32</sup> As such public central beneficial ownership registries are needed in every jurisdiction.

Countries around the world are already required to make sure information on beneficial ownership is available to authorities and to exchange with foreign jurisdictions as per the Financial Action Task Force (FATF) Recommendations<sup>33</sup> on Anti-Money Laundering and Combating the Financing of Terrorism. Over 200 countries and jurisdictions have committed to implement these

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<sup>31</sup> Alex Cobham, ‘Procuring Profit Shifting: The State Role in Tax Avoidance’, in *Tax, Inequality, and Human Rights*, ed. by Philip Alston and Nikki Reisch (2019).

<sup>32</sup> African Union Commission and United Nations Economic Commission for Africa, *Illicit Financial Flow: Report of the High Level Panel on Illicit Financial Flows from Africa*, 81, 86.

<sup>33</sup> Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)* (Paris, June 2019)

<<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> [accessed 29 January 2020].

recommendations. Similarly, OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has requirements for beneficial ownership information for authorities domestically and for exchange.<sup>34</sup>

The Global Forum on Transparency and Exchange of Information for Tax Purposes was established to support international cooperation between jurisdictions through the Exchange of Information on Request and the Automatic Exchange of Financial Account Information Standard. The Common Reporting Standard for the automatic exchange of financial account information, developed in 2014,<sup>35</sup> and the Multilateral Competent Authority Agreement, subsequently signed to implement the standard, aim to ensure government authorities have the correct information on residents' tax and bank accounts held in other jurisdictions. African countries have already converted information into revenues. For example, Uganda recovered US\$14m in taxes as a result of the exchange of information between 2015 and 2018, Tunisia generated almost US\$2mn in additional taxes after receiving confirmation of an undeclared foreign bank account, and Togo recouped US\$1m on of compromised taxes following investigations of unknown activities of a taxpayer upon an exchange of information request from a treaty partner.<sup>36</sup>

Yet the effectiveness of the automatic exchange of information hinges, in part, on banks and financial institutions holding the correct information for the owners of accounts and assets. As per the Common Reporting Standard, beneficial owners must be identified and reported in some cases, such as when an account is held by a company or trust with "passive" income (interests or dividends, for example). Public beneficial ownership registries would in these cases allow banks to cross-check the information and pave the way for the identification of beneficial owners for any company and trust, including those with active income, such as from sales of goods or services, whose beneficial owners do not need to be identified under the Common Reporting Standard.<sup>37</sup>

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<sup>34</sup> The Global Forum has assessed the availability of beneficial ownership information since 2016. For further information, see the OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes, *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information Request for Tax Purposes*, 2016 <<http://www.oecd.org/tax/transparency/about-the-global-forum/publications/terms-of-reference.pdf>> [accessed 28 March 2019]; See also, Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency in Africa 2020: Africa Initiative Progress Report: 2019* (2020) <<https://www.oecd.org/tax/transparency/documents/Tax-Transparency-in-Africa-2020.pdf>> [accessed 25 June 2020].

<sup>35</sup> OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters. The CRS Implementation Handbook*, 2014 <<https://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>> [accessed 22 January 2020].

<sup>36</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency in Africa: Africa Initiative Progress Report 2018* (February 2019), 37 <<https://www.oecd.org/tax/transparency/africa-initiative-report-2018.pdf>> [accessed 4 June 2020].

<sup>37</sup> Tax Justice Network, *The CRS and Automatic Information Exchange: Why We Also Need Corporate and Trust Registries Too* (April 2013) <<http://www.taxjustice.net/wp-content/uploads/2013/04/CRS-vs-registries.pdf>> [accessed 26 May 2020]; Knobel, Andres and Meinzer, Markus, 'Drilling down to the Real Owners – Part 1. More than 25% of Ownership' & "Unidentified" Beneficial Ownership: Amendments Needed in FATF's Recommendations and in EU's AML Directive' (2016) <[tax justice network !\[\]\(76ed173333c92c9299ab53cb9062415e\_img.jpg\) TAX JUSTICE NETWORK AFRICA](http://www.taxjustice.net/wp-</a></p></div><div data-bbox=)

Examples of asset recovery and increased tax collection exist as cited above, but many African countries are not signatories to the Multilateral Competent Authority Agreement. Of the 17 African countries included in the 2020 edition of the Financial Secrecy Index, only seven countries—Ghana, Liberia, Mauritius, Morocco, Nigeria, the Seychelles and South Africa—have signed the agreement.<sup>38</sup> However, Liberia, Morocco, and Nigeria have not started exchanging information and Ghana only has non-reciprocal arrangements, which means that Ghana sends information to 63 jurisdictions but receives no information from other jurisdictions.<sup>39</sup> For African countries, therefore, in the absence of extensive automatic exchange of information relationships and of suitable infrastructure and systems in some cases, public beneficial ownership registries would allow authorities and citizens to identify residents' with assets and interests held in other jurisdictions.<sup>40</sup>

In some regions, beneficial ownership rules have gone further, spurred on by extraordinary revelations in the Panama Papers and Paradise Papers of the use of anonymous companies and other legal vehicles by the rich, famous and those moving dirty money.<sup>41</sup> In the European Union, for example, the fourth Anti-Money Laundering Directive approved in 2015 requires member countries to establish central registries of beneficial owners for companies and for some trusts.<sup>42</sup> In 2018, the European Parliament took it a step further by adopting a fifth directive that requires public access be granted to these registries.<sup>43</sup>

Two global transparency initiatives are also driving action on beneficial ownership disclosure. The voluntary Extractive Industries Transparency Initiative requires

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content/uploads/2013/04/TJN2016\_BO-EUAMLD-FATF-Part1.pdf> [accessed 27 January 2020]; Markus Meinzer, 'Automatic Exchange of Information as the New Global Standard: The End of (Offshore Tax Evasion) History?', *SSRN Electronic Journal*, 2017 <<http://www.ssrn.com/abstract=2924650>> [accessed 29 January 2020].

<sup>38</sup> OECD, *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date* (24 December 2019) <<https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/crs-mcaa-signatories.pdf>> [accessed 26 May 2020].

<sup>39</sup> This information is correct as of May 2020 as per the OECD, 'Activated Exchange Relationships for CRS Information', 2020 <<https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/>> [accessed 26 May 2020].

<sup>40</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency in Africa 2020: Africa Initiative Progress Report: 2019*, 8–9.

<sup>41</sup> ICIJ, 'The Panama Papers: Exposing the Rogue Offshore Finance Industry', 2018 <<https://www.icij.org/investigations/panama-papers/>>; ICIJ, 'Paradise Papers: Secrets of the Global Elite', 2017 <<https://www.icij.org/investigations/paradise-papers/>> [accessed 20 May 2020].

<sup>42</sup> European Parliament and European Council, *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA Relevance)*, 2015 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>> [accessed 27 January 2020].

<sup>43</sup> European Parliament and European Council, *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU*, 2018 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>> [accessed 5 May 2020].

participating countries, including almost half of all African countries,<sup>44</sup> to ensure all companies applying or holding an interest in an extractives contract or licence disclose their beneficial owners and publish the disclosures on a public register.<sup>45</sup> In 2019, a coalition of governments that are committed to free, public beneficial ownership disclosure established a set of principles as part of the Beneficial Ownership Leadership Group under the Open Government Partnership.<sup>46</sup>

Based on the 2020 edition of the Tax Justice Network’s Financial Secrecy Index, and additional changes since the completion of research, 81 of the 133 countries included in the index have laws and regulations for beneficial ownership registration.<sup>47</sup> Of these countries, 68 countries have partial or complete registration of beneficial owners, and in some cases, this is not only for companies, but also for partnerships, trusts and foundations.<sup>48</sup> Thus, progress is being made globally, but more can be done to ensure more effective beneficial ownership transparency.<sup>49</sup>

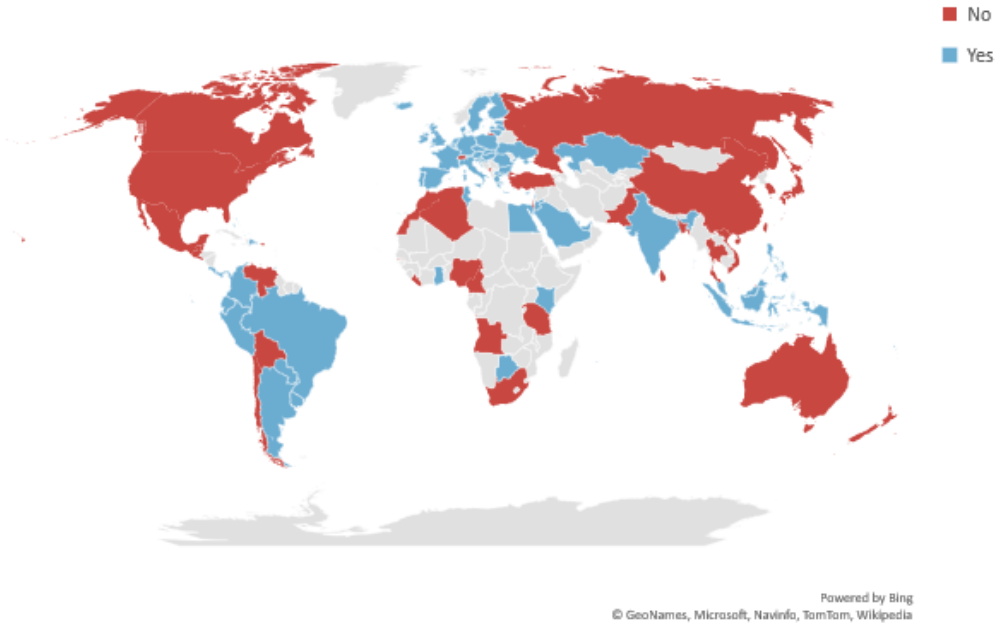


Figure 2. Map of jurisdictions with laws and regulations for beneficial ownership registration in 2020

<sup>44</sup> Extractive Industries Transparency Initiative International Secretariat, 'Countries', *Extractive Industries Transparency Initiative* <<https://eiti.org/countries>> [accessed 4 May 2020]; Victor Ponsford, ed., 'EITI In Africa' (2018) <[https://eiti.org/files/documents/eiti\\_africa\\_brief\\_en.pdf](https://eiti.org/files/documents/eiti_africa_brief_en.pdf)> [accessed 4 May 2020].  
<sup>45</sup> Extractive Industries Transparency Initiative International Secretariat, 'EITI Validation Guide', 2019, 14 <[https://eiti.org/files/documents/2019\\_eiti\\_validation\\_guide.pdf](https://eiti.org/files/documents/2019_eiti_validation_guide.pdf)> [accessed 4 May 2020].  
<sup>46</sup> Open Government Partnership, 'Beneficial Ownership Leadership Group', *Open Government Partnership*, 2019 <<https://www.opengovpartnership.org/beneficial-ownership-leadership-group/>> [accessed 25 May 2020].  
<sup>47</sup> For further information about commitments and action taken by countries around the world, see 'Worldwide Commitments and Action', *OpenOwnership*, 2020 <<https://www.openownership.org/map/>> [accessed 19 June 2020].  
<sup>48</sup> Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 10.  
<sup>49</sup> For a more detailed discussion, see Knobel, Harari and Meinzer, *The State of Play of Beneficial Ownership Registration: A Visual Overview*, 5–6.

## 4. Beneficial ownership disclosure at its best

At the international level, standards on transparency relating to beneficial ownership are anchored on three main initiatives promoted by the Financial Action Task Force, the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Extractive Industries Transparency Initiative, as explained in the previous chapter. These are certainly going some way in promoting the enhancement of international standards of beneficial ownership, but there is still a long way to go on the journey towards effective disclosure.

So what does effective beneficial ownership transparency look like? The Tax Justice Network developed a checklist in 2017 of what needs to be included in a corporate registry for effective beneficial ownership disclosure.<sup>50</sup> Seven key aspects of beneficial ownership registration with a government authority, such as a tax authority, central bank, or registrar of companies, are described below and show what beneficial ownership registration can and needs to look like.<sup>51</sup> All of these areas, except verification and sanctions, are assessed in the Financial Secrecy Index and will be examined in the following chapter in relation to the 17 African countries included in this report.

**Scope:** All legal vehicles should be covered. This means that any legal structure that is separate from a natural person and allowed to operate in a country's economy by owning assets or providing or acquiring goods or services should be required to register its beneficial owners. Typically, most countries only cover legal persons, like companies, and not legal arrangements, like trusts, or only cover some types of partnerships.

**Triggers:** Beneficial ownership registration should be required on the incorporation of all types of legal vehicles. Any of the following three criteria should trigger the registration of beneficial owners with an authority.<sup>52</sup>

- 1) Place of incorporation or governing law: A prerequisite for a legal vehicle to legally exist and operate in an economy should be the registration of its beneficial owners. This includes legal persons (such as a company) incorporated in a country, or trusts created in accordance with the laws or governed by the laws of a country.
- 2) Local operations: Legal vehicles incorporated domestically, especially foreign legal vehicles, that seek to operate in a country should register

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<sup>50</sup> Andres Knobel, Markus Meinzer and Moran Harari, 'What Should Be Included in Corporate Registries? A Data Checklist-Part 1: Beneficial Ownership Information', 2017 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2953972](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953972)> [accessed 28 August 2017].

<sup>51</sup> For a more detailed handling of this checklist, see Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 11–15.

<sup>52</sup> Andres Knobel, 'The EU's Latest Agreement on Amending the Anti-Money Laundering Directive: At the Vanguard of Trust Transparency, but Still Further to Go', 2018 <<https://www.taxjustice.net/2018/04/09/the-eus-latest-agreement-on-amending-the-anti-money-laundering-directive-still-further-to-go/>, <https://www.taxjustice.net/2018/04/09/the-eus-latest-agreement-on-amending-the-anti-money-laundering-directive-still-further-to-go/>> [accessed 21 January 2020].



their beneficial owners. Here “operate” should be understood as any legal vehicle that has interests in real estate, a bank account, or in a registrable asset located in a country as well as those that provide goods and services or earn income subject to tax.

- 3) Resident participant: Countries should require domestic and foreign legal vehicles to register beneficial owners where residents in that country are related to a vehicle, such as by being a shareholder, director, settlor, protector, trustee, or beneficiary.

**Defining the beneficial owner:** The definition of the beneficial owner determines how many individuals will be subject to registration rules. No threshold for beneficial ownership registration means that all individual beneficial owners for companies will be required to register. Most countries include thresholds based on one interpretation of the recommendation made by the Financial Action Task Force,<sup>53</sup> where an individual holding “more than 25%” of the capital of an entity will be considered a beneficial owner. In principle, this means that if a family of four, say two parents and two children, together own a company with equal shareholding or voting rights, the parents and children would each own only 25% and not more than 25%, and so the company would not have to register any beneficial owners.<sup>54</sup> Individuals who want to get around registration rules will make sure to structure legal vehicles to avoid having to register the beneficial owners. It could be argued based on the Financial Action Task Force’s glossary definition of a beneficial owner that anyone with any level of ownership could be identified as a beneficial owner—even someone holding just a single share. This would be the only way to ensure all beneficial owners are registered.<sup>55</sup> This is already the case for trusts under the Financial Action Task Force recommendations and European Union’s fourth anti-money laundering directive where all parties to a trust should be considered the beneficial owners of the trust regardless of percentage interest in the trust.

**Registered information:** Comprehensive identity information about a beneficial owner and the type of ownership should be recorded. Ideally, for recording a beneficial owners’ identity, this should include their name, address, national identification number, date of birth and tax identification number. Information on beneficial ownership arrangements should include how the individual controls the

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<sup>53</sup> For a discussion of whether the Financial Action Task Force’s recommendation should actually be interpreted as recommending the ‘more than 25%’ threshold, see Andres Knobel, ‘The Achilles Heel of Effective Beneficial Ownership Registration: Why Is Everyone Fixed on 25%?’, *Tax Justice Network*, 2017

<<https://www.taxjustice.net/2017/05/11/achilles-heel-effective-beneficial-ownership-registration-everyone-fixed-25/>, <https://www.taxjustice.net/2017/05/11/achilles-heel-effective-beneficial-ownership-registration-everyone-fixed-25/>> [accessed 7 May 2020].

<sup>54</sup> Example drawn from Knobel, Andres and Meinzer, Markus, ‘Drilling down to the Real Owners – Part 1. More than 25% of Ownership’ & ‘Unidentified’ Beneficial Ownership: Amendments Needed in FATF’s Recommendations and in EU’s AML Directive’, 3–4.

<sup>55</sup> Knobel, Andres, ‘Not Just about Control: One Share in a Company Should Be Enough to Be a Beneficial Owner’, 2019 <<https://www.taxjustice.net/2019/10/02/not-just-about-control-one-share-in-company-should-be-enough-beneficial-owner/>> [accessed 27 January 2020].

legal vehicle (for example, ownership, voting rights, the right to appoint majority of the board of directors), the percentage of their ownership or control, the date from when they became a beneficial owner, and if applicable, the legal chain or nominees through which the beneficial owner exercises control.

**Verification:** Beneficial ownership registration information is typically declared by the beneficial owner or legal vehicle themselves so verifying the information is vital.<sup>56</sup> This could include validating information through an online form (such as with tax identification), cross-checking information for consistency (eg, checking if the registered name and address match other relevant government records), and designing a system to flag strange cases (eg, if a person with no declared income, bank account or local residence appears to own a large local company). Additional actions could be taken, such as requiring financial institutions to report mismatches between the holder of an account for a legal vehicle and the registered beneficial owners, requiring information to be certified by a corporate service provider or notary and making the information publicly available to deter falsification, since non-governmental organisations and journalists have proven themselves willing to investigate information and to reveal inaccuracies.<sup>57</sup>

**Sanctions:** Non-compliance with beneficial ownership registration requirements, such as not providing, providing incomplete, or falsifying information, should result in sanctions. Monetary penalties may act as a deterrent, but might also simply be considered a worthwhile cost by beneficial owners for engaging in illegal, lucrative activities. Criminal sanctions might be more effective. Most importantly, beneficial ownership registration must be a pre-condition for legal vehicles to operate in a country, as mentioned above. As a minimum, the ideal sanction should at least require that registered information prevails over secret (unregistered) agreements. This means if Mary is registered as the beneficial owner, but Olu is the individual with effective control pursuant to a secret agreement, all corporate decisions taken by Olu should be considered void, and Mary should be able to vote, control and receive dividends (because after all, she is registered as the beneficial owner), even if that violates the secret agreement.

**Access:** Ideally, all information should be held in a central register, available for free to the public in open data format. Obstacles such as requiring payment and allowing non-machine readable images of hand-written documents must be addressed.

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<sup>56</sup> For a more in-depth discussion on verification of beneficial ownership information, see Andres Knobel, *Technology and Online Beneficial Ownership Registries: Easier to Create Companies and Better at Preventing Financial Crimes* (Rochester, NY, 1 June 2017) <<https://papers.ssrn.com/abstract=2978757>> [accessed 12 December 2018]; Andres Knobel, 'Beneficial Ownership Verification: Ensuring the Truthfulness and Accuracy of Registered Ownership Information', *SSRN Electronic Journal*, 2019 <<https://www.ssrn.com/abstract=3320600>> [accessed 3 September 2019].

<sup>57</sup> For example, see Robert Palmer and Sam Leon, 'What Does the UK Beneficial Ownership Data Show Us?', *Global Witness*, 2016 <<https://www.globalwitness.org/en/blog/what-does-uk-beneficial-ownership-data-show-us/>> [accessed 7 May 2020].

## 5. Beneficial ownership disclosure in Africa

The 2020 edition of the Financial Secrecy Index included 17 African countries.<sup>58</sup> This section presents the state of play of ownership registration and disclosure in Africa as of April 2020. It is based on the 2020 edition of the Financial Secrecy index with preliminary research into the new laws introduced in Egypt and the Seychelles after publication of the index in February 2020; some methodological caveats are explained in Annex 1. A note on methodology. Of the seven key aspects of beneficial ownership registration discussed in the previous section, all but two are assessed by the Financial Secrecy Index. Verification and sanctions are not assessed here or by the index.

In the figures below, three colours are used to indicate transparency and secrecy. Blue is used to show the transparent, best cases, while red reveals the worst, most secretive cases. Shades of yellow or orange are used to indicate cases that fall in between or are unknown.

An important first step for any country is to introduce legislation that requires the recording of beneficial ownership information. In Africa, of the 17 countries studied, 7 jurisdictions have introduced legislation; these include Botswana, Egypt,<sup>59</sup> Ghana, Kenya, Mauritius, the Seychelles<sup>60</sup> and Tunisia.

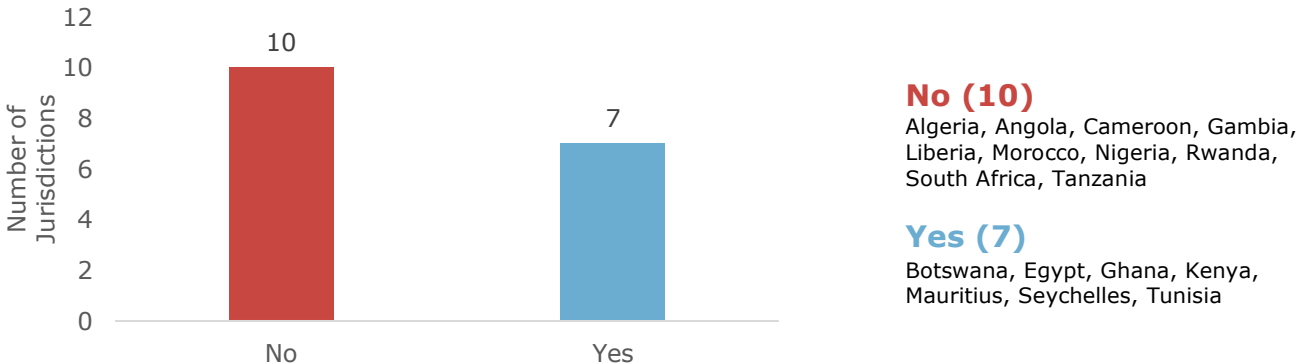


Figure 3. African jurisdictions with beneficial ownership registration legislation

<sup>58</sup> Of the 133 jurisdictions covered in the Financial Secrecy Index, 17 are African. These include: Algeria, Angola, Botswana, Cameroon, Egypt, Gambia, Ghana, Kenya, Liberia, Mauritius, Morocco, Nigeria, Rwanda, Seychelles, South Africa, Tanzania and Tunisia. Nine of these jurisdictions (Botswana, Cameroon, Egypt, Gambia, Ghana, Kenya, Liberia, Mauritius, Morocco, Nigeria, Rwanda, Seychelles, South Africa and Tanzania) had been included in the 2018 edition of the Financial Secrecy Index. Egypt, Morocco and Nigeria were included in the indexes because of their high share of the global market of offshore financial services. Rwanda was included because of its ambitions to establish a financial centre, and Algeria, Angola, Cameroon and Tunisia have been included because of our commitments under the NORAD-financed 'Financial Secrecy and Tax Advocacy in Africa' project (2017–2022). For further information, see Tax Justice Network, *Financial Secrecy Index 2020 Methodology*.

<sup>59</sup> Egypt approved legislation for the registration of beneficial ownership information in March 2020, after the publication of the Financial Secrecy Index 2020; a preliminary assessment is included in this paper only and may be subject to change in the next edition of the Financial Secrecy Index. For further information, see Mohamed Hashish, *New Legal Requirement For Maintaining A Beneficial Owners Register In Egypt*, 16 March 2020 <<https://www.mondaq.com/contracts-and-commercial-law/904348/new-legal-requirement-for-maintaining-a-beneficial-owners-register-in-egypt>> [accessed 25 May 2020].

<sup>60</sup> The Seychelles approved legislation for the registration of beneficial ownership information in March 2020, after the publication of the Financial Secrecy Index 2020; a preliminary assessment is included in this paper only and may be subject to change in the next edition of the Financial Secrecy Index. See the new law here, Government of Seychelles, *Beneficial Ownership Act, 2020*, 2020 <<https://www.fsaseychelles.sc/wp-content/uploads/2020/03/Beneficial-Ownership-Act-2020.pdf>> [accessed 25 May 2020].

In the countries that have beneficial ownership laws, the requirements for registration vary and as such there may be loopholes that need to be addressed before a country can be considered to have effective beneficial ownership registration requirements as described in the previous section.

Defining who needs to be registered as a beneficial owner is key to effective registration and disclosure. Definitions of beneficial owners for legal entities, such as companies, usually include a threshold of ownership or interest in the legal entity expressed as a percentage of shareholding. This means, only those individuals who pass the thresholds are considered as beneficial owners and will have to register. The lower the threshold, the better authorities can ensure ownership is not intentionally split up by individuals to avoid detection and disclosure. Ideally, any individual who ultimately owns, directly or indirectly, at least one share or has the right to at least one vote should be registered as a beneficial owner.<sup>61</sup> The Financial Action Task Force recommendations have been widely interpreted to understand the threshold as “more than 25% of ownership”. This means that a beneficial owner only needs to register if they have more than 25% of shares or voting rights, although this interpretation may not have been what the Financial Action Task Force initially intended.<sup>62</sup> Of all 133 jurisdictions assessed in the Financial Secrecy Index, the majority apply this threshold. Nevertheless, countries can and do implement lower thresholds, including three African countries (Botswana, Kenya and Tunisia).

Five of the seven African jurisdictions with beneficial ownership legislation require companies to record beneficial ownership information with variance in the thresholds. This is described from the most to least transparent in terms of thresholds below:

- **Botswana:** All companies including external companies must provide the Companies and Intellectual Property Authority with the beneficial owners, and any changes must be recorded within 14 days. According to Botswana’s Companies (Amendment) Act of 2018, a beneficial owners is defined as “a natural person who, directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, is the ultimate beneficiary of a share or other securities in a company”.<sup>63</sup> Given that no thresholds are defined, Botswana requires all beneficial owners to

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<sup>61</sup> Knobel, Meinzer and Harari, ‘What Should Be Included in Corporate Registries?’, 7–8.

<sup>62</sup> For a discussion of whether the Financial Action Task Force’s recommendation should actually be interpreted as recommending the “more than 25%” threshold, see Knobel, ‘The Achilles Heel of Effective Beneficial Ownership Registration’.

<sup>63</sup> Parliament of Botswana, *Companies (Amendment) Act, 2018*, 2018, sec. 2(a) <<https://www.cipa.co.bw/wp-content/uploads/2019/06/22-Act-29-06-2018-COMPANIES.pdf>> [accessed 13 May 2020].

be registered.<sup>64</sup> Botswana joins just three other countries worldwide (Argentina, Ecuador and Saudi Arabia) with transparent measures that can be interpreted as requiring all beneficial owners with just one share to register, since Botswana's definition of a beneficial ownership does not include control through other means separate from ownership and at least does not include a threshold.<sup>65</sup>

- **Kenya:** In 2019, Kenya introduced the Companies (Beneficial Ownership Information) Regulations, which sets the threshold as 10% for beneficial ownership registration with the Registrar and requires any changes to be registered within 14 days.<sup>66</sup> A beneficial owner is defined as the natural person who "(a) Holds at least 10% of the issued shares in the company either directly or indirectly; (b) Exercises at least 10% of the voting rights in the company either directly or indirectly; (c) Whether a person holds a right, directly or indirectly, to appoint or remove a director of the company; or (d) Whether a person exercises significant influence or control, directly or indirectly, over the company".<sup>67</sup>
- **Tunisia:** In Tunisia, the threshold for the registration of beneficial owners for all companies is higher: "The natural person or persons holding directly or indirectly a participation equal to or exceeding 20% of the share capital or voting rights in the entity".<sup>68</sup> This must be registered with the National Centre for the Registry of Enterprises for all companies.<sup>69</sup>
- **Ghana:** In Ghana, on incorporating a company, beneficial owners must be recorded, as per the Companies Act of 2019. This Act defines a beneficial owner "an individual (a) who directly or indirectly ultimately owns or exercises substantial control over a person or company; (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons; (c) on whose behalf a transaction is conducted; or (d) who exercises significant control or influence over a legal person or legal arrangement through a formal or informal agreement".<sup>70</sup> Here, "substantial control" is

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<sup>64</sup> Tax Justice Network, *Financial Secrecy Index 2020: Botswana: Beneficial Ownership Record*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=BW&InfoID=471&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=BW&InfoID=471&Per=20)> [accessed 13 May 2020]; See also guidance from Companies and Intellectual Property Authority, 'Beneficial Owner – CIPA', 2020 <<https://www.cipa.co.bw/beneficial-owner.html>> [accessed 13 May 2020].

<sup>65</sup> Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 23.

<sup>66</sup> Tax Justice Network, *Financial Secrecy Index 2020: Kenya: Beneficial Ownership Record*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=KE&InfoID=471&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=KE&InfoID=471&Per=20)> [accessed 13 May 2020].

<sup>67</sup> Attorney General of Kenya, *Companies (Beneficial Ownership Information) Regulations, 2019*, 2019, First Schedule

<[https://brs.go.ke/assets/downloads/Companies%20\(Beneficial%20Ownership%20Information\)%20Regulations,%202018.pdf](https://brs.go.ke/assets/downloads/Companies%20(Beneficial%20Ownership%20Information)%20Regulations,%202018.pdf)> [accessed 13 May 2020].

<sup>68</sup> TPA Global, 'Tunisia Clarifies The Determination And Disclosure Of Ultimate Beneficiaries', *TPA Global*, 2019 <<https://www.tpa-global.com/2019/02/07/tunisia-clarifies-the-determination-and-disclosure-of-ultimate-beneficiaries/>> [accessed 13 May 2020].

<sup>69</sup> Tax Justice Network, *Financial Secrecy Index 2020: Tunisia: Beneficial Ownership Record*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=TN&InfoID=471&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=TN&InfoID=471&Per=20)> [accessed 13 May 2020].

<sup>70</sup> Parliament of Ghana, *Companies Act, 2019*, 2019, CMXCII, pt. First Schedule, sec. 383.

understood to be any beneficial owner with more than 25% control as per the Financial Action Task Force threshold for controlling ownership.<sup>71</sup>

- **Seychelles:**<sup>72</sup> Likewise, in the Seychelles, the 25% control threshold is understood to apply. As per the Beneficial Ownership Act, assented by the president in March 2020, a “beneficial owner” means one or more natural persons who ultimately own or control a customer or the natural person or persons on whose behalf a transaction is being conducted and includes those natural persons who exercise ultimate effective control over a legal person or a legal arrangement”.<sup>73</sup>

Two of the seven African countries with beneficial ownership legislation do not have clear thresholds or have exceptions for companies. In Mauritius,<sup>74</sup> not all companies are required to register beneficial ownership information and in Egypt,<sup>75</sup> the threshold level and definition of beneficial owner are not clear.

Given that beneficial ownership registration for all entities is not yet ideal in any country, even in countries with laws that comply fully with Financial Action Task Force recommendations, entities can still be arranged so as to register without any beneficial owners or, in the case of companies, with a senior manager in place of a real beneficial owner. As a result, it is important to assess if at least legal ownership registration is effective for companies and partnerships. This provides a holistic picture of the ownership structures of an entity.<sup>76</sup>

Figure 4 presents the difference between a beneficial and legal owner and how they sometimes may be the same person. Here, the legal owner of Company A is Company B, yet Company B is owned by a separate individual, who is both the legal and

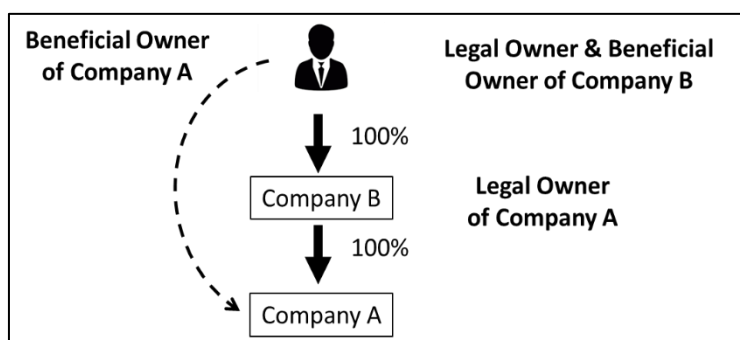


Figure 4. Beneficial and legal owners

<sup>71</sup> Tax Justice Network, *Financial Secrecy Index 2020: Ghana: Beneficial Ownership Record*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=GH&InfoID=471&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=GH&InfoID=471&Per=20)> [accessed 13 May 2020].

<sup>72</sup> The approval of the beneficial ownership law in the Seychelles took place after the launch of the 2020 edition of the Financial Secrecy Index and hence is not included in the detailed country report available on the Financial Secrecy Index Website.

<sup>73</sup> Government of Seychelles, *Beneficial Ownership Act, 2020*, sec. 3.

<sup>74</sup> Tax Justice Network, *Financial Secrecy Index 2020: Mauritius: Beneficial Ownership Record*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=MU&InfoID=471&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=MU&InfoID=471&Per=20)> [accessed 25 May 2020].

<sup>75</sup> A beneficial owners register was introduced in Egypt in 2020 as per a ministerial decree on 1 March, but “The Decree does not specify or provide any definition for the legal terms of Beneficial Owner, Ownership, Control and/or Legal Interest”. Hashish, *New Legal Requirement For Maintaining A Beneficial Owners Register In Egypt*. The approval of the beneficial ownership law in Egypt took place after the launch of the 2020 edition of the Financial Secrecy Index and hence is not included in the detailed country report available on the Financial Secrecy Index Website.

<sup>76</sup> Tax Justice Network, *Financial Secrecy Index 2020 Methodology*, 36–37.

beneficial owner of Company B and the beneficial owner of Company A. This is an example of a simple ownership chain, but if registration requirements in the country where this ownership chain is based were not comprehensive, the authorities may only know about Company B as the legal owner of Company A and not know about Company A's beneficial owners. If Company B's ownership of Company A was set up by nominee directors (eg, the beneficial owner's lawyers), the beneficial owner of Company A—the natural person—can remain hidden to the authorities. More legal vehicles and structures could be added to make a very complex web of ownership. This could be set up across different jurisdictions, making it near impossible for a tax authority or public protector to track who is actually benefiting from the arrangement where beneficial ownership registration is not required.

Registration is considered effective where all legal vehicles within each category and all types of owners have to register and update legal or beneficial ownership information, and where bearer shares are not available or pose no risk. This includes all types of corporations and limited liability companies within the companies category and all limited and general partners within the partnerships with limited liability category. For private foundations and trusts, it is acceptable if all parties to the trust or foundation register legal or beneficial ownership information; this includes at least the settlor or founder, enforcer or protector, trustee or foundation council, and beneficiaries. Foreign law trusts with a local trustee are considered acceptable when they have to register the local trustee.

No jurisdictions assessed in the Financial Secrecy Index of 2020 have both effective legal and beneficial ownership registration, let alone online access for all legal vehicles assessed (companies, partnerships with limited liability, private foundations and domestic law trusts and foreign law trusts with a local trustee). For African countries examined, as will be discussed below, no country provides online public access in any form for legal or beneficial ownership information.

Globally, Ecuador comes closest to reaching the ideal level of transparency for legal and beneficial ownership registration. Ownership information for companies and partnerships and domestic law trusts is available for free online.<sup>77</sup>

## 5.1 Companies

In Africa, the registration requirements for company ownership are more comprehensive than for other legal vehicles. This section explores legal and beneficial ownership requirements for companies and factors that affect the effectiveness of those requirements that are in place.

Beneficial ownership disclosure for companies is especially important in addressing corruption risks, such as in public procurement and contracting in the

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<sup>77</sup> For a detailed overview of information available in Ecuador's online registry, see Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 69–73.

extractives sector, where public officials or family members (politically exposed persons) can otherwise hide behind a veil of secrecy afforded by not being required to register legal and/or beneficial owners. The use of complex corporate structures with anonymous companies can give the process of issuing licences or awarding contracts the appearance of being fair, but behind the scenes politically exposed persons and associates may be exploiting relationships or even paying bribes to access public resources and assets.

Leak after leak, from the Panama Papers<sup>78</sup> in 2016 to the Luanda Leaks<sup>79</sup> in 2020, show how the political elite around the world and in Africa hide behind complex company structures and anonymity. For example, the Democratic Republic of the Congo may have lost at least US\$1.36bn between 2010 and 2012 alone as a result of five mining deals with companies in complex structures with secretive company ownership.<sup>80</sup> More recently, a leak to the Platform to Protect Whistleblowers in Africa revealed that negotiations of a contract exceeding US\$1bn between the Congolese government and the global port operator Dubai Port World for the construction of the country's largest deep-water port in the city of Banana aimed to "create a corporate structure allowing the personal enrichment of several political figures, including [former] Congolese President Kabila".<sup>81</sup>

A company<sup>82</sup> is a legal person or entity which has a corporate personality that is distinct from its members. This means a company's existence is not affected by the change of members or death or insolvency of owners; this explains why updating beneficial ownership information is crucial as members can change. Typically, companies are formed with capital that is usually divided into shares held by shareholders who are liable to the creditors of the company up to the value of the original investment in the company. This type of company is called a company limited by shares. In more unusual cases, a company may be limited by guarantee, where the capital is divided by members of a company, rather than by shares, and members act as guarantors.

For companies limited by shares, shares may give the holders economic rights to receive dividends and/or be attached to political rights, ie the right to vote or appoint a director to the board. Shares may be registered to a specific

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<sup>78</sup> ICIJ, 'The Panama Papers: Exposing the Rogue Offshore Finance Industry'.

<sup>79</sup> International Consortium of Investigative Journalists, 'Luanda Leaks'.

<sup>80</sup> Africa Progress Panel, *Equity in Extractives: Stewarding Africa's Natural Resources for All*, Africa Progress Report, 2013, 55–58 <<https://reliefweb.int/sites/reliefweb.int/files/resources/relatorio-africa-progress-report-2013-pdf-20130511-125153.pdf>> [accessed 4 June 2020].

<sup>81</sup> PPLAAF, 'The Banana Port Papers', 2017 <<https://pplAAF.org/cases/the-banana-port-papers.html>> [accessed 4 June 2020].

<sup>82</sup> "Examples of companies include joint-stock companies (also called *Société Anonyme*, *Sociedad Anónima* or *S.A.*, *Aktiengesellschaft* or *AG*), limited liability companies (LLC, also called *Sociedad de Responsabilidad Limitada* or *SRL*, or *Gesellschaft mit beschränkter Haftung* or *GmbH*), partnerships limited by shares (also called *Sociedad en comandita por acciones* or *société en commandite par actions* or *SCA*)" Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 25.



shareholder or may be “shares to bearer”. The owner of a bearer share is whoever is holding the document or paper representing the share. These have huge risks for transparency as the owner can change simply by one person passing on the bearer share document to another person.

Registration requirements for both legal and beneficial ownership will not be effective where bearer shares are allowed. Bearer shares pose a risk when they are available or are not registered or immobilised by a government authority, or when unregistered bearer shares continue to retain their rights (ie are not cancelled) even if not converted to a registered share or immobilised by a public authority by a certain date. As Figure 5 shows, in 10 African countries, bearer shares do not pose a risk for ownership transparency, while in Angola, Kenya, Liberia, Morocco, South Africa and Tanzania, bearer shares put the effectiveness of any beneficial ownership laws in jeopardy. In addition, given that the status of bearer shares in Algeria is unknown, they are also considered to be a risk. In other words, for these seven countries where bearer shares are a risk, even when there are requirements in place for registering, updating or making public legal or beneficial ownership information, the risk posed by bearer shares renders these requirements ineffective.

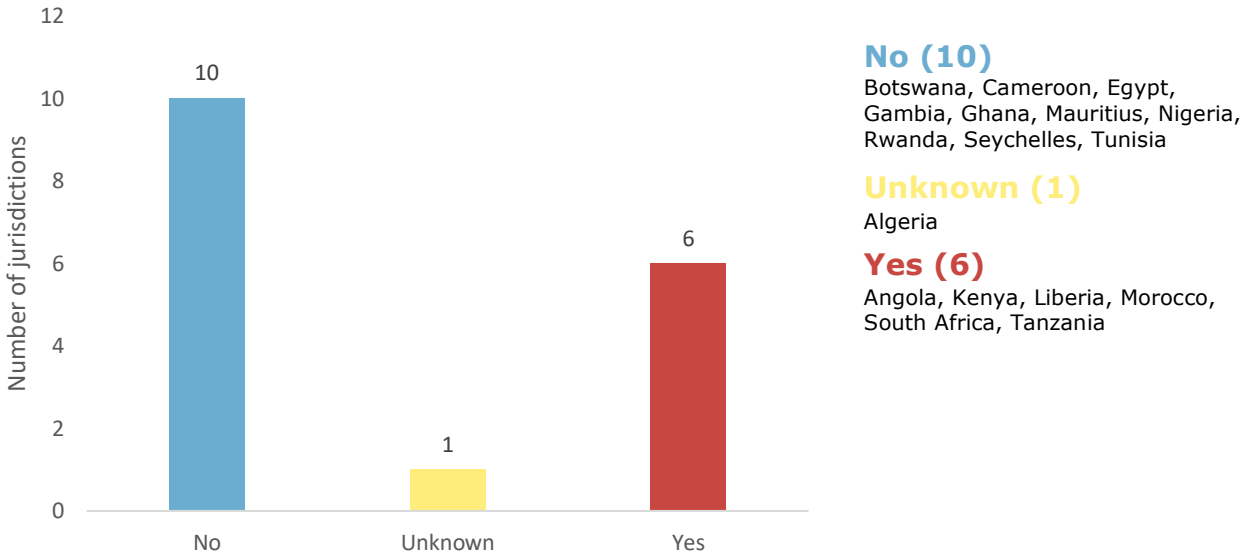


Figure 5. Availability of bearer shares in African jurisdictions

Effective legal ownership registration is in place when all domestic companies are required to register all of their legal owners and this information is updated annually. In such cases, information, including at least the name and address or date of birth or national identification number, should be available online and accessible to the public, ideally for free and in an open data format.

For the 10 African countries where bearer shares pose no risk, only 6 countries, (Botswana, Ghana, Egypt, Mauritius, Nigeria, Rwanda) have effective legal ownership registration requirements for companies as shown in Figure 6 and

Table 1. Only in Ghana and Rwanda does this information have to be updated annually, but this information is not online.

Figure 6. Effective registration of company legal ownership information

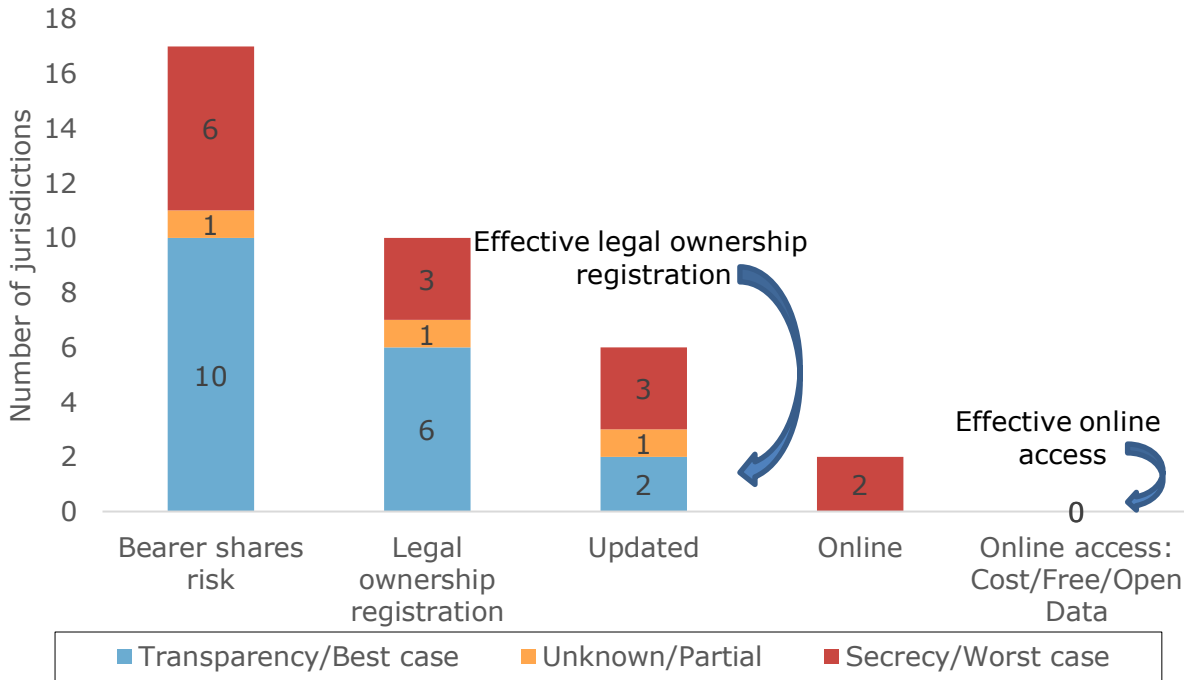


Table 1. Effective registration of company legal ownership information

Do bearer shares pose a risk?	Does comprehensive legal ownership information have to be registered for companies?	Does legal ownership information have to be updated?	Is the information online?	If the information is online, is it available in any of the below formats?
No (10): Botswana, Cameroon, Egypt, Gambia, Ghana, Mauritius, Nigeria, Rwanda, Seychelles, Tunisia	Yes (6): Botswana, Ghana, Egypt, Mauritius, Nigeria, Rwanda	Yes (2): Ghana, Rwanda	Yes (0)	Open Data (0)
				Free (0)
				Cost (0)
		No (2): Ghana, Rwanda		
		Unknown (0)		
		Unknown (1): Egypt		
		No (3): Botswana, Mauritius, Nigeria		
	Unknown (1): Gambia			
	No (3): Cameroon, Seychelles, Tunisia			
Unknown (1): Algeria				
Yes (6): Angola, Kenya, Liberia, Morocco, South Africa, Tanzania				

There is even more room for improvement in beneficial ownership registration on the continent. For beneficial ownership registration to be effective, bearer shares must be cancelled, be made unavailable or be immobilised. All domestic companies must be required to register all of their beneficial owners in all cases, except for common exemptions for state-owned companies and listed companies.<sup>83</sup> The effectiveness of beneficial ownership registration is also dependent on the information being updated along with the threshold set for registration; it should not be higher than the “more than 25% ownership” threshold. Like effective legal ownership registration, beneficial ownership transparency is at its best when information is available online, ideally at a low cost, or even better for free and in open data format.

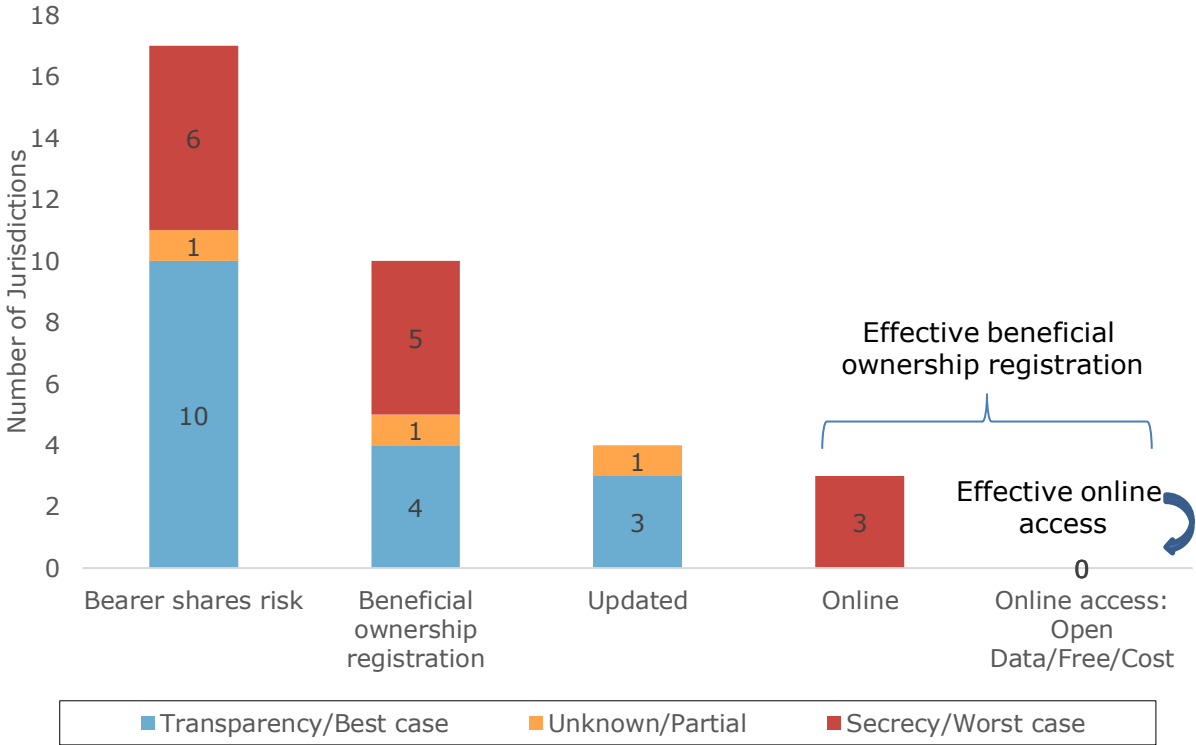


Figure 7. Effective registration of company beneficial ownership information

Only Botswana, Ghana and the Seychelles (out of 17 African jurisdictions covered by the 2020 edition of the Financial Secrecy Index) have effective beneficial ownership registration: bearer shares pose no risks and all types of companies have to register and update their beneficial ownership information, as shown in

<sup>83</sup> Companies listed on stock exchanges are usually excluded from the requirement to register beneficial ownership information. However, this is based on an incorrect interpretation of Financial Action Task Force’s recommendations, which establish an exemption during customer due diligence procedures because a regulator already requires this information. In other words, listed companies should only be waived for redundancy reasons when their beneficial ownership information is already available, as long as they indicate where this information is registered. For further information, see, Knobel, Andres and Meinzer, Markus, ‘Drilling down to the Real Owners – Part 1. More than 25% of Ownership’ & ‘Unidentified’ Beneficial Ownership: Amendments Needed in FATF’s Recommendations and in EU’s AML Directive’, 21.

Figure 7. Effective registration of company beneficial ownership information and Table 2. If the bearer share risk was addressed in Kenya,<sup>84</sup> it would join Botswana, Ghana and the Seychelles in having effective beneficial ownership registration. None of these three jurisdictions have made the information available online.

Table 2. Effective registration of company beneficial ownership information

Do bearer shares pose a risk?	Does comprehensive beneficial ownership information have to be registered for companies?	Does beneficial ownership information have to be updated?	Is the information online?	If the information is online, is it available in any of the below formats?
No (10): Botswana, Cameroon, Egypt, Gambia, Ghana, Mauritius, Nigeria, Rwanda, Seychelles, Tunisia	Yes (4): Botswana, Ghana, Seychelles, Tunisia	Yes (3): Botswana, Ghana, Seychelles	Yes (0)	Open Data (0)
				Free (0)
				Cost (0)
			No (3): Botswana, Ghana, Seychelles	
			Unknown (1): Tunisia	
	No (0)			
	Unknown (1): Egypt			
	No (5): Cameroon, Gambia, Mauritius, Nigeria, Rwanda			
Unknown (1): Algeria				
Yes (6): Angola, Kenya, Liberia, Morocco, South Africa, Tanzania				

When assessing if both legal and beneficial ownership information is registered, updated and available online, Table 3 reveals that none of the African countries assessed are yet in a position of optimum transparency. Ghana is leading for ensuring both the registration of legal and beneficial ownership information and requiring this to be updated, yet this information is not online. Of 133 assessed countries in the Financial Secrecy Index 2020, Ecuador is the only country that has free online access for both updated legal and beneficial ownership information, and two countries (Ireland and Estonia) provide online access to this information for a fee.<sup>85</sup>

<sup>84</sup> Tax Justice Network, *Financial Secrecy Index 2020: Kenya: Are Bearer Shares Available?*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=KE&InfoID=172&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=KE&InfoID=172&Per=20)> [accessed 15 May 2020].

<sup>85</sup> Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 35.

Table 3. Effective registration of company beneficial and legal ownership information

Does comprehensive beneficial and legal ownership information have to be registered for companies?	Does the information have to be updated?	Is the information online?	
Both beneficial and legal owners (2): Botswana, Ghana	Both beneficial and legal owners (1): Ghana	Both beneficial and legal owners (0)	
		Only beneficial owners (0)	
		Only legal owners (0)	
	Neither (1): Ghana		
Only beneficial owners (1): Botswana	Only legal owners (0)	Neither (0)	
			Only legal owners (0)
			Neither (0)
Only beneficial owners (1): Tunisia			
Only legal owners (4): Egypt, Mauritius, Nigeria, Rwanda			
Neither (10): Algeria, Angola, Cameroon, Gambia, Kenya, Liberia, Morocco, Tanzania, Seychelles, South Africa			

## 5.2 Partnerships with limited liability

Partnerships are another type of legal vehicle designed originally for an association of persons to engage in business activity together and to share the profits. Thirteen African countries assessed in the Financial Secrecy Index have partnerships with limited liability, while in Botswana, Ghana, Rwanda and Tanzania these are not available.

Partnerships with limited liability are opaque when limited partners do not need to register or update ownership information and they may also not be covered by beneficial ownership registration laws. Both limited partnerships (LPs) and limited liability partnerships (LLPs) are considered here.<sup>86</sup> In limited partnerships (LPs), limited partners have limited liability while general partners administer the partnership. In limited liability partnerships (LLPs), all partners have limited liability. In contrast, in general partnerships, which are not covered here or in the Financial Secrecy Index, all partners are liable for all debts of the partnership.

For the 13 African jurisdictions where partnerships with limited liability are available, effective legal ownership registration is considered to be in place when all domestic partnerships must register all partners (general and limited partners) and this information is updated at least annually. Where this is the case, the availability of legal ownership information online, for free and in open data format is assessed, including at least the name and address, date of birth, or national identification of legal owners.

<sup>86</sup> "Partnerships with limited liability include LPs (also known as *sociedad en comandita simple* or *société en commandite simple* or SCS), LLPs, and even LLLPs in the US (limited liability limited partnerships)" (Harari and others, *Ownership Registration of Different Types of Legal Structures from an International Comparative Perspective: State of Play of Beneficial Ownership - Update 2020*, 39).

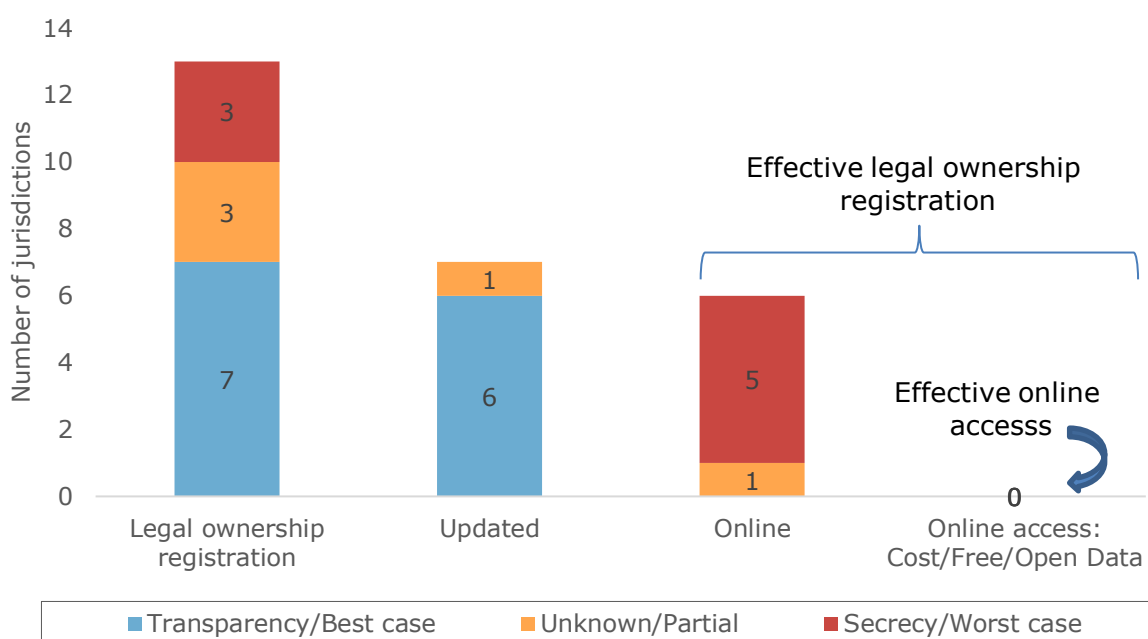


Figure 8. Effective registration of legal ownership information for partnerships with limited liability

In Kenya, Liberia, Morocco, Mauritius, Nigeria and Tunisia, as Figure 8 and Table 4 show, legal ownership information must be registered and kept updated for partnerships with limited liability. However, in no jurisdiction is this information available online in any form. In Cameroon, the Seychelles and South Africa although partnerships with limited liability are available the legal ownership information does not have to be registered.

Table 4. Effective registration of legal ownership information for partnerships with limited liability

Does comprehensive legal ownership information have to be registered for partnerships with limited liability?	Does the information have to be updated?	Is the information online?	If the information is online, is it available in any of the below formats?
Yes (7): Egypt, Kenya, Liberia, Morocco, Mauritius, Nigeria, Tunisia	Yes (6): Kenya, Liberia, Morocco, Mauritius, Nigeria, Tunisia	Yes (0)	Open Data (0)
			Free (0)
		Unknown (1): Liberia	Cost (0)
			No (5): Kenya, Morocco, Mauritius, Nigeria, Tunisia
Unknown (1): Egypt			
No (0)			
Unknown (3): Angola, Algeria, Gambia			
No (3): Cameroon, Seychelles, South Africa			

There are even greater risks for registration of beneficial owners in African countries for partnerships with limited liability. Only in the Seychelles and Tunisia do beneficial owners need to register and only in the Seychelles does research suggest that this has to be updated at least annually. Again, no information is available online.

Figure 9. Effective registration of beneficial ownership information for partnerships with limited liability

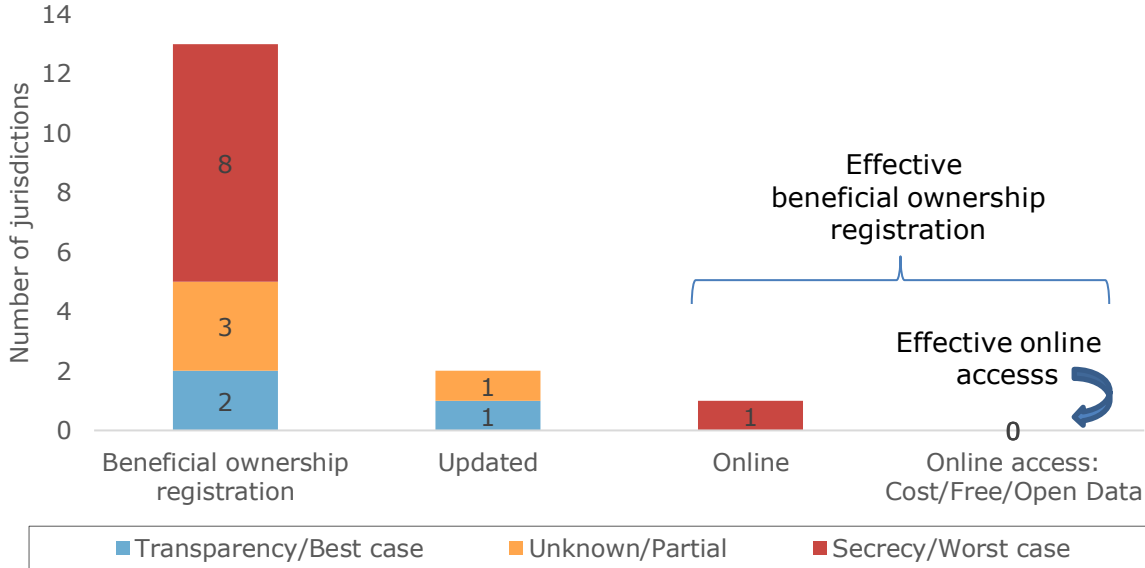


Table 5. Effective registration of beneficial ownership information for partnerships with limited liability

Does comprehensive beneficial ownership information have to be registered for partnerships with limited liability?	Does the information have to be updated?	Is the information online?	If the information is online, is it available in any of the below formats?
Yes (2): Seychelles, Tunisia	Yes (1): Seychelles	Yes (0)	Open Data (0)
			Free (0)
		No (1): Seychelles	Cost (0)
Unknown (3): Angola, Algeria, Egypt	Unknown (1): Tunisia		
	No (0)		
No (8): Cameroon, Gambia, Kenya, Liberia, Mauritius, Morocco, Nigeria, South Africa			

No African country has both comprehensive legal and beneficial ownership registration for partnerships with limited liability, which includes at least annually updated information, as Table 6 shows. This information is not available online for any partners. Comparatively, of the 120 countries included in the 2020

edition of the Financial Secrecy Index with partnerships with limited liability, only four jurisdictions—Ecuador, Estonia, Germany and Slovenia—have both effective legal and beneficial ownership registration for general and limited partners and provide online access to this information.<sup>87</sup>

Table 6. Effective registration of beneficial and legal ownership information for partnerships with limited liability

Does comprehensive legal and beneficial ownership information have to be registered for partnerships?	Does the information have to be updated?	Is the information online?
Both beneficial and legal ownership (1): Tunisia	Both beneficial and legal ownership (0)	Both beneficial and legal ownership (0)
		Only beneficial owners (0)
		Only legal owners (0)
		Neither (0)
Only beneficial owners (1): Seychelles	Only beneficial owners (0)	
Only legal owners (6): Egypt, Kenya, Liberia, Mauritius, Morocco, Nigeria	Only legal owners (1): Tunisia	
Neither (5): Algeria, Angola, Cameroon, Gambia, South Africa	Neither (0)	

### 5.3 Private foundations

Private foundations can be used for both laudable and nefarious purposes. Like trusts discussed below, they may be abused to concentrate wealth, avoid tax and anonymously control assets and entities. Here, only private foundations are considered as they can be established for the private benefit of a family or family members. In contrast, welfare foundations, not assessed here, can only be set up for a public purpose and for the public benefit, such as for education or religious causes.

Private foundations are considered legal persons like companies but they have an ownership structure that is similar to trusts since there is no owner or shareholders. A founder (or settlor) transfers assets to the foundation for administration so that the assets are held separately from the founder’s personal wealth. It is typically governed by its article or by-laws. A council administers a foundation and has the authority to distribute income or assets to the beneficiaries of a foundation, which could, of course, include the founder themselves or the founder’s own family. The council makes decisions according to its articles and usually on the instruction of the founder. Private foundations are available in 5 of the 17 African countries assessed in the Financial Secrecy Index 2020: Cameroon, Gambia, Liberia, Mauritius and the Seychelles.

<sup>87</sup> Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 48.



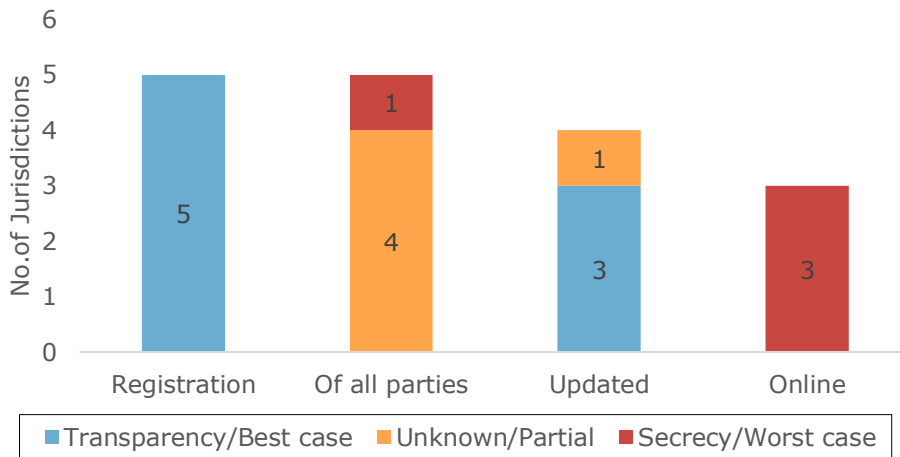


Figure 10. Effective registration of ownership information and online access for private foundations

All private foundations have to register in the five African countries and no information about any parties to a foundation is available online as Figure 10 above and Table 7 below show. However, no country requires the registration of all parties to a foundation, which includes the founder or settlor, the council members, the enforcer or protector and the beneficiaries. Frequently, legislation is not clear about whether beneficial owners need to be registered or if a legal nominee or entity could be named instead. All jurisdictions but Gambia<sup>88</sup> require some registration of some parties to a foundation.

In the Cameroon, all parties have to be registered, except the enforcer or protector, and this information must be updated with identifying information including names, identity number, addresses and function although it is not clear if this has to be the beneficial owners.<sup>89</sup> Similarly, in Mauritius, all parties except the enforcer or protector must be registered and kept updated with the Registrar.<sup>90</sup> The 2018 amendment to the Foundations Act of 2012 in Mauritius includes the collection and registration of beneficial owners, however, the definition of which parties are included is not clear since it refers to Companies Act and indicates modifications and adaptations can be made for foundations based on the Companies Act.<sup>91</sup> In Liberia, only the founders and beneficiaries must be

<sup>88</sup> Tax Justice Network, *Financial Secrecy Index 2020: Gambia: Private Foundations - Is Formal Registration Required?*, February 2020  
<[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=GM&InfoID=236&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=GM&InfoID=236&Per=20)> [accessed 27 May 2020].

<sup>89</sup> Tax Justice Network, *Financial Secrecy Index 2020: Cameroon: Private Foundations - Is Formal Registration Required?*, February 2020  
<[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=CM&InfoID=236&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=CM&InfoID=236&Per=20)> [accessed 27 May 2020].

<sup>90</sup> Tax Justice Network, *Financial Secrecy Index 2020: Mauritius: Private Foundations - Is Formal Registration Required?*, February 2020  
<[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=MU&InfoID=236&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=MU&InfoID=236&Per=20)> [accessed 27 May 2020].

<sup>91</sup> ""In this section – "beneficial owner" or "ultimate beneficial owner" has the same meaning as in section 91 (8) of the Companies Act with such modifications and adaptations as may be necessary; Republic of Mauritius, *Amended Act, 2018 (Foundations Act 2012)*, 2018, sec. 36(6)

registered with the Registrar and this information must be kept up to date.<sup>92</sup> In the Seychelles,<sup>93</sup> only the founder or settlor must be named, and it is not clear if this refers to the beneficial owner. The new Beneficial Ownership Act includes foundations, but the definition of beneficial owner does not mention the parties to a foundation.<sup>94</sup>

Table 7. Effective registration of ownership information and online access for private foundations

Are private foundations available?	Do parties to a private foundation have to be registered?	Are all parties registered?	Does the information have to be updated?	Is the information online?
Yes (5): Cameroon, Gambia, Liberia, Mauritius, Seychelles	Yes (5): Cameroon, Gambia, Liberia, Mauritius, Seychelles	Yes (0)	Yes (3) but only for some parties: Cameroon, Liberia, Mauritius	Full disclosure (0)
		Only some parties (4): Cameroon, Liberia, Mauritius, Seychelles	Unknown (1): Seychelles	Partial disclosure (0)
		No parties (1): Gambia		No Disclosure (3): Cameroon, Liberia, Mauritius
Unknown (0)	No (0)			
No (12): Algeria, Angola, Botswana, Egypt, Ghana, Kenya, Morocco, Nigeria, Rwanda, South Africa, Tanzania, Tunisia				

## 5.4 Trusts

Like all the legal vehicles included in this paper, trusts can be used for legitimate reasons. Trusts may be set up for commercial purposes or to protect vulnerable people, but they can also be abused to reduce tax liabilities, to hide the real owners of assets and other entities, to launder money or to defraud personal creditors. For example, according to the International Consortium of Investigative Journalists, the Luanda Leaks show how the former Angolan

<[http://companies.govmu.org/English/Legislation/Documents/amended%20acts%20101018/Foundation\\_%20Act%20-29.07.15%20Amended%202018.pdf](http://companies.govmu.org/English/Legislation/Documents/amended%20acts%20101018/Foundation_%20Act%20-29.07.15%20Amended%202018.pdf)> [accessed 27 May 2020].

<sup>92</sup> Tax Justice Network, *Financial Secrecy Index 2020: Liberia: Private Foundations - Is Formal Registration Required?*, February 2020

<[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=LR&InfoID=236&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=LR&InfoID=236&Per=20)> [accessed 27 May 2020].

<sup>93</sup> See notes listed under '02 Trust and Foundations Register', Tax Justice Network, *Financial Secrecy Index 2020: Seychelles: Database Report*, February 2020

<[https://fsi.taxjustice.net/database/dbr\\_Jurisdiction.php?Juris=SC&Per=20](https://fsi.taxjustice.net/database/dbr_Jurisdiction.php?Juris=SC&Per=20)> [accessed 27 May 2020].

<sup>94</sup> Government of Seychelles, *Beneficial Ownership Act, 2020*.

president's daughter made use of trust company services in the Netherlands to set up "legal, accounting and tax arrangements that would draw less attention from authorities".<sup>95</sup>

The reason trusts are a risk in most cases is that they often do not need to be registered in order to exist. They also generally enjoy a greater degree of privacy and autonomy than other legal vehicles since they are essentially a contractual agreement between two private persons. Typically, registration, where required, is with the tax authorities when the trust is subject to tax, and even then not all parties to a trust may have to register.

Trusts are legal arrangements that on paper separate ownership and control rights over assets.<sup>96</sup> They are not then legal persons which would require incorporation to legally exist. Domestic law trusts<sup>97</sup> are trusts created and governed according to the local laws of a jurisdiction. Not all African jurisdictions included in the Financial Secrecy Index 2020 allow domestic trusts to be created according to their laws; domestic trusts are not available in Angola, Cameroon, Egypt, Morocco, Tunisia.

For the 11 African jurisdictions where domestic law trusts are available, effective ownership registration is assessed as being in place where 1) trusts have to register in all circumstances or at least when the trustee is a resident, 2) all parties to the trust (the settlor, trustee, protector and beneficiaries) have to register their legal and beneficial ownership information and keep this up to date, and 3) the information is

#### How do trusts work?

Trusts are usually set up to deal with private family matters, such as caring for sick or vulnerable family members or arranging family assets for tax and inheritance purposes.

Trusts are a legal arrangement usually governed by a trust deed. A simple trust includes at least three parties:

1. The **settlor** or grantor, such as a parent, transfers assets to a trustee.
2. The **trustee**, such as a trusted lawyer, holds and administer assets in favour of beneficiaries appointed by the settlor
3. The **beneficiaries**, such as the parent's sick child, receive the benefits of the assets on the instructions of the settlor to the trustee

In addition,

4. Sometimes a **protector** may be appointed by the settlor to ensure the trustee follows the settlor's wishes (especially where the trustee is given discretion on beneficiaries, at least on paper, in the case of discretionary trusts)

In most jurisdictions, the settlor does not transfer assets to the trust but rather the trustee since the trust is not a legal person and cannot hold its own assets. But, in practice, it is as if the settlor has transferred assets to the trust because these assets held by the trustee do not belong to the trustee, are a separate distinct property, cannot be used for the trustee's benefit and are used in accordance with the settlor's instructions for specified beneficiaries.

Adapted from Knobel, Andres, *Trusts: Weapons of Mass Injustice?*, 2017  
<[www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf](http://www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf)>  
[accessed 21 January 2020]

Figure 11. How do trusts work?

<sup>95</sup> Will Fitzgibbon, 'Luanda Leaks Dutch Newspaper Wins against Dos Santos Advisers', *ICIJ*, 2 March 2020 <<https://www.icij.org/investigations/luanda-leaks/luanda-leaks-dutch-newspaper-wins-against-dos-santos-advisers/>> [accessed 4 June 2020].

<sup>96</sup> For more information on trusts and the potential for abuse, see Knobel, 'Trusts'.

<sup>97</sup> These may include trusts, *fideicomisos*, *fiducie*, *Treuhand* or *Waqf*.

available online. As Table 8 shows, only the Seychelles<sup>98</sup> and South Africa<sup>99</sup> require some form of registration, but not all parties have to register and no information is available online. Worldwide, just under one-third of jurisdictions with domestic law trusts require the registration of trusts and parties to a trust and only Ecuador and the Dominican Republic require ownership information from domestic law trusts to be available online.<sup>100</sup>

No country assessed in the 2020 edition of the Financial Secrecy Index prohibit residents from managing foreign law trusts.<sup>101</sup> This means for 16 African countries, a resident within their territory is able to be a trustee for a trust in another country, ie a foreign law trust can be administered by a trustee in these African jurisdictions.<sup>102</sup> Effective ownership registration for foreign law trusts is assessed as being in place where 1) foreign law trusts have to register when they have at least one local trustee, and 2) the information is available online.

Table 8. Registration of domestic and foreign trusts and online access to information

Domestic Law Trusts			Foreign Law Trusts	
Domestic trusts cannot be created	Do parties to a trust have to be registered?	Is the information online?	Do parties to a trust have to be registered?	Is the information online?
Yes (5): Angola, Cameroon, Egypt, Morocco, Tunisia	Yes (2): Seychelles, South Africa	Yes (0)	Yes (0)	Yes (0)
		No (2): Seychelles, South Africa		No (0)
	No (9): Botswana, Gambia, Ghana, Kenya, Liberia, Mauritius, Nigeria, Rwanda, Tanzania		Unknown (1): Egypt	
Unknown (1): Algeria			No (16): Algeria, Angola, Botswana, Cameroon, Gambia, Ghana, Kenya, Liberia, Mauritius, Morocco, Nigeria, Rwanda, Seychelles, South Africa, Tanzania, Tunisia	
No (11): Botswana, Gambia, Ghana, Kenya, Liberia, Mauritius, Nigeria, Rwanda, Seychelles, South Africa, Tanzania				

<sup>98</sup> Tax Justice Network, *Financial Secrecy Index 2020: Seychelles: Trusts - Is Any Formal Registration Required at All?*, February 2020  
 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=SC&InfoID=206&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=SC&InfoID=206&Per=20)> [accessed 27 May 2020].

<sup>99</sup> Tax Justice Network, *Financial Secrecy Index 2020: South Africa: Trusts - Is Any Formal Registration Required at All?*, February 2020  
 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=ZA&InfoID=206&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=ZA&InfoID=206&Per=20)> [accessed 27 May 2020].

<sup>100</sup> Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 58.

<sup>101</sup> Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 56.

<sup>102</sup> Information was not available for Egypt and thus this was assessed as unknown in the Financial Secrecy Index 2020.

Only 27 of the 133 countries assessed in the Financial Secrecy Index 2020 require the registration of foreign law trusts and as Table 8 shows, no African country requires registration and therefore information is not available online. Globally, only Germany and Liechtenstein require information on foreign law trusts to be available online.<sup>103</sup>

## 6. Conclusion & recommendations

African citizens do not need another leak to confirm what is already known: the powerful and wealthy hide behind corporate and other legal vehicles to loot state resources through corruption and drain public revenues by avoiding and evading taxes. The impact of lost public revenue is profound. It leaves governments to fail in their human rights obligations and unable to address fundamental social, economic and intersectional inequalities. Such disparity in human development is unsustainable. African countries are taking action to address ownership secrecy domestically. Of the 17 assessed countries, 7 have introduced beneficial ownership legislation for at least companies. This year will also see the introduction of further public beneficial ownership registries specifically for the extractive industries for countries participating in the voluntary Extractive Industries Transparency Initiative, including over 20 African countries.

Nevertheless, in line with the recommendations of the High Level Panel on Illicit Financial Flows, chaired by former South African president Thabo Mbeki, more needs to be done to ensure beneficial ownership transparency is effective and covers all sectors. This includes governments improving legislation and implementation in the following ways:

- **Beneficial ownership provisions should apply to all legal vehicles in all sectors.** All legal structures which are separate from a natural person and allowed to operate in a country's economy by owning assets, such as real estate, or providing or acquiring goods or services should be required to register their beneficial owners. This includes companies, partnerships with limited liability, private foundations and trusts. Further, any foreign legal structure with a resident participant should be required to register domestically, such as foreign law trusts with a resident trustee.
- **All bearer shares should be prohibited or at least immobilised by a government authority.** The existence of unregistered bearer shares puts any efforts for beneficial and legal ownership transparency at risk so existing ones should be immobilised and registered and no further bearer shares should be allowed to be issued.
- **The definition of beneficial owner should not have a minimum threshold.** All owners or parties (in the case of a trust or foundation) for

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<sup>103</sup> Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 58.

all legal vehicles whether domestic or foreign should be required to register, as is the case for companies in Botswana.

- **Legal and beneficial ownership information provided should be comprehensive, accurate and up to date.** For owners, this should include the names, addresses, national identification numbers, date of birth and tax identification numbers, how the individual controls the legal vehicle (for example, ownership, voting rights, the right to appoint majority of the board of directors), the percentage of their ownership or control, the date from when they became a legal and/or beneficial owner, and if applicable, the legal chain or nominees through which the beneficial owner exercises control.
- **Beneficial ownership registration information should be verified** by a government authority, such as the Registrar, and sanctions applied for non-compliance and wilful misreporting including criminal sanctions and the inability for the legal vehicle to operate.
- **Registries housing legal and beneficial ownership information should be made publicly available.** This includes ensuring the information is available for free, in open data format and is kept up to date.

Domestic action is critical for African countries. Yet the main providers of financial secrecy lie outside the continent.<sup>104</sup> Thus furthering the global movement towards greater public beneficial ownership disclosure is required. Making information public across jurisdictions will provide African governmental regulatory authorities and watchdogs, financial institutions, investors, journalists and civil society groups with access to information for investigations, asset recovery, contracting, improving tax compliance, and more. The continent must continue to stand united in requiring those most complicit, especially former colonial powers, to make this information publicly available.

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<sup>104</sup> Abugre and others, *Vulnerability and Exposure to Illicit Financial Flows Risk in Africa*; Rachel Etter-Phoya, Markus Meinzer and Shanna Lima, 'Tax Base Erosion and Corporate Profit Shifting: Africa in International Comparative Perspective', *Journal on Financing for Development*, Forthcoming <<http://uonjournals.uonbi.ac.ke/ojs/index.php/ffd>> [accessed 22 June 2020].

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## Annexes

### Annex 1. A note on methodology

This paper is based on the 2020 edition of the Financial Secrecy Index, however, there are some caveats that should be considered.<sup>105</sup>

**Not all types of legal vehicles are covered.** The Financial Secrecy Index's Secrecy Indicators 2 (trusts and foundations register), 3 (recorded company ownership), 5 (limited partnership transparency) and 6 (public company ownership)<sup>106</sup> assess legal and beneficial ownership registration in 133 jurisdictions for domestic companies, domestic partnerships with limited liability, domestic law trusts, foreign law trusts with a local trustee, and private foundations. Foreign entities, general and foreign partnerships and welfare foundations are not considered.

**Beneficial ownership information covered is limited.** The paper considers scope, triggers, definitions of beneficial ownership and whether legal or beneficial ownership information is available online and if this is available for free or at a cost, or in open data format or not. This paper does not cover details of beneficial ownership information that have to be registered (eg name and address), verification processes or sanctions for non-compliance.

**Results are not necessarily the same as the Financial Secrecy Index:** This paper's data is based on the 2020 edition of the index, but it does not necessarily include the same results. This is because there may be updates that were not considered in the index, and the index's methodology considers issues that are not necessarily included here (eg details of the beneficial owner subject to registration, whether a country is party to the Hague Convention on Trust Recognition, etc). This means the secrecy score system may have different results from this paper's conclusions. This paper includes a preliminary assessment of new beneficial ownership registration laws approved by Egypt and the Seychelles (in Africa) and Argentina, Colombia, Malaysia and Panama after the research cut-off date or publication of the 2020 index. This assessment may change in the next edition because these countries' laws have not yet been thoroughly assessed.

**For ownership registration to be considered effective, the relationship between legal and beneficial ownership, and bearer shares is considered and is the same in the paper as in the index.** This paper, in the same way as the Financial Secrecy Index, deems either legal or beneficial ownership registration to be effective when the following conditions are met:

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<sup>105</sup> These are drawn from Chapter 3.1 of Harari and others, *State of Play of Beneficial Ownership - Update 2020*, 15–17.

<sup>106</sup> Tax Justice Network, 'Secrecy Indicators', *Financial Secrecy Index*, 2020 <<https://fsi.taxjustice.net/en/methodology/secrecy-indicators>> [accessed 11 May 2020].

- All types of legal vehicles within a category (ie companies, partnerships with limited liability, private foundations and trusts) should be obliged to register with a government authority. So, for example, in the category of companies, registration requirements must be applicable for all companies available within a jurisdiction, which may include joint-stock companies, limited liability companies and companies limited by guarantee.
- Registered (legal or beneficial ownership) information must be updated at least annually, and
- Bearer shares should not be available, or they should be immobilised (held) by a government authority. In other words, a private custodian holding bearer shares or an unclear status regarding bearer shares would result in ownership registration being considered ineffective. In addition, the only acceptable sanction for failing to immobilise bearer shares by a government authority should be the cancellation of those bearer shares. Where sanctions involve only a suspension of rights or monetary penalties, or sanctions are unknown, bearer shares are considered to pose risks that prevent ownership registration from being effective.

**Beneficial ownership registration is not considered effective when there are certain loopholes and exceptions.** There should be no loopholes or exceptions, except for state-owned companies and companies listed on a stock exchange that are generally excluded. Beneficial ownership registration is not considered effective if, for example, the obligation to identify the beneficial owners of an entity is waived because the entities in the ownership chain are foreign (eg legal situation in Germany until January 2020<sup>107</sup>) or if entities are given too much leeway or ambiguous conditions to determine that they are unable to identify their beneficial owners (eg legal situation in Denmark until December 2019<sup>108</sup>).

<sup>107</sup> Tax Justice Network, *Financial Secrecy Index 2020: Germany: Beneficial Ownership Record*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=DE&InfoID=471&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=DE&InfoID=471&Per=20)> [accessed 11 May 2020].

<sup>108</sup> Tax Justice Network, *Financial Secrecy Index 2020: Denmark: Beneficial Ownership Record*, February 2020 <[https://fsi.taxjustice.net/database/dbr\\_Comments.php?Juris=DK&InfoID=471&Per=20](https://fsi.taxjustice.net/database/dbr_Comments.php?Juris=DK&InfoID=471&Per=20)> [accessed 11 May 2020].

## Annex 2. Glossary

**Automatic exchange of information:** the systematic and periodic transmission of “bulk” taxpayer information by the source country to the residence country concerning various categories of income (eg dividends, interest, etc.).

**Bearer shares:** shares that are made out to and considered to be owned by an unnamed bearer or person who has it in their possession rather than by a named person. The shares are not listed on any share register but ownership rests with the person who has physical possession of the share certificate at a particular point in time. In contrast to registered shares, companies with bearer shares do not know their shareholders and bearer shares can be transferred on delivery instead of by instrument of transfer and the owner still acquires membership and proprietary rights on buying the shares.

**Corporate tax planning:** Arranging one’s financial affairs to reduce one’s tax liabilities. Aggressive tax planning or tax avoidance can involve looking to exploit loopholes or making favourable interpretations of the uncertainty in tax law.

**FATF:** Financial Action Task Force

**LLCs:** limited liability companies

**LLPs:** limited liability partnerships

**LPs:** limited partnerships

**Nominee:** the trustee or custodian (but not the owner) of assets (including stocks, bonds, companies) under whose name the assets are registered

**OECD:** Organisation for Economic Cooperation and Development



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