

# **Beneficial Ownership Transparency in Africa in 2022**

March 2023

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# **Executive Summary**

Beneficial ownership transparency is gaining ground in Africa. At the start of 2023, 23 of 54 African countries have laws and regulations requiring the real people—the beneficial owners—behind legal vehicles to disclose themselves to a government authority. More than half of the continent has committed to publicly disclose the beneficial owners in sectors prone to corruption and fraud: public procurement and the extractive industries.

Lifting the veil of secrecy that shrouds the owners of companies, partnerships, trusts and foundations is a central tool for African governments to tackle illicit financial flows. The case studies included in this report—from Cameroon, Kenya, Liberia, and Senegal—show the impacts of beneficial ownership transparency or the consequences of its absence. The absence of beneficial ownership transparency may have helped facilitate the capture of state resources and minerals by politically connected elite, and the theft of funds meant for responding to the Covid-19 pandemic.

In the wake of the scandals illustrated in the case studies, African nations introduced new laws for beneficial ownership transparency or sealed loopholes in existing legislation.

This report examines the commitments of all African countries to beneficial ownership transparency. It delves more deeply into the 18 African jurisdictions covered by the Tax Justice Network's Financial Secrecy Index 2022. This includes assessing who has to register, when they have to register, and if the public has access to information on the real owners of companies.

For effective beneficial ownership transparency, African countries can take further action, as outlined by the Tax Justice Network's Roadmap for Effective Beneficial Ownership Transparency. For beneficial ownership transparency to help in the fight against illicit financial flows, all owners of all legal vehicles need to register and keep their information up to date with a government authority. All information should be accessible to the public, and there should be rigorous verification mechanisms in place and sanctions that are strong enough to act as a deterrent.

# 1. Why beneficial ownership transparency matters in Africa

## African leadership in tackling illicit financial flows

African leaders have been taking on illicit financial flows for decades.<sup>1</sup> Illicit financial flows represent a continuation of the oppressive extractive model set up by imperial powers, a model that plunders African nations and enriches a few at the expense of people and the planet.<sup>2</sup>

The importance of beneficial ownership disclosure to stop illicit financial flows was highlighted almost a decade ago by the African Union and the United Nations Economic Commission for Africa in the report published by the High Level Panel on Illicit Financial Flows.<sup>3</sup> Beneficial ownership transparency is part of the broadscale changes that are crucial to usher in a new era. An era where African nations have access to information to understand which individuals are benefiting from the companies, partnerships, trusts and foundations operating in the continent. Beneficial ownership transparency supports tax administrations in assessing schemes that are set up to avoid and evade taxes.<sup>4</sup> It is an effective tool in combatting tax abuse, money laundering, corruption and the financing of terrorism.

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<sup>1</sup> Charles Abugre and others, *Vulnerability and Exposure to Illicit Financial Flows Risk in Africa*, 2019 <[https://www.taxjustice.net/wp-content/uploads/2019/08/Vulnerability-and-Exposure-to-Illicit-Financial-Flows-risk-in-Africa\\_August-2019\\_Tax-Justice-Network.pdf](https://www.taxjustice.net/wp-content/uploads/2019/08/Vulnerability-and-Exposure-to-Illicit-Financial-Flows-risk-in-Africa_August-2019_Tax-Justice-Network.pdf)> [accessed 20 August 2019].

<sup>2</sup> United Nations Conference on Trade and Development, *Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for Sustainable Development in Africa*, Economic Development in Africa Report (Geneva, 2020) <[https://unctad.org/system/files/official-document/aldcafrica2020\\_en.pdf](https://unctad.org/system/files/official-document/aldcafrica2020_en.pdf)> [accessed 22 February 2023].

<sup>3</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), 45–46, 60, 65, 69, 81, 86 <[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>4</sup> Reuters/AFP, 'Cum-Ex Tax Fraud Cost €55 Billion – DW – 10/18/2018', *Dw.Com*, 18 October 2018 <<https://www.dw.com/en/cum-ex-tax-scandal-cost-european-treasuries-55-billion/a-45935370>> [accessed 14 February 2023]; Marco Chown Oved and Calyn Shaw, 'He Owed Millions in Taxes. Instead of Paying up, He Enlisted an Offshore Company to Bankrupt His Business and Cheat the CRA', *Thestar.Com*, 14 October 2020, section Investigations <<https://www.thestar.com/news/investigations/2020/10/14/he-owed-millions-in-taxes-instead-of-paying-up-he-enlisted-an-offshore-company-to-bankrupt-his-business-and-cheat-the-cra.html>> [accessed 14 February 2023]; Juliette Garside, 'Inheritance Tax: Why the New Duke of Westminster Will Not Pay Billions', *The Guardian*, 11 August 2016, section Money <<https://www.theguardian.com/money/2016/aug/11/inheritance-tax-why-the-new-duke-of-westminster-will-not-pay-billions>> [accessed 14 February 2023]; Rachel Etter-Phoya and others, 'Global Financial Systems and Tax Avoidance', in *The Routledge Handbook of Global*

African nations are required to comply with global anti-money laundering standards—Financial Action Task Force Recommendations 24 and 25 on Anti-Money Laundering and Combating the Financing of Terrorism—and have robust beneficial ownership disclosure requirements, even though at present there are loopholes in these global standards.

Most recently, in November 2022, in a great display of Pan-African unity, the African Group at the United Nations presented a resolution to the General Assembly to commence negotiations on international tax at the United Nations. Despite sustained efforts to undermine the resolution, it was passed by consensus.<sup>5</sup> This signals the beginning of the end for the Organisation for Economic Co-operation and Development's (OECD) dominion in setting international tax rules. In this club of the rich, no African countries are represented, and only half of African countries are members of the so-called 'inclusive' framework set up by the OECD to address this failure in representation.<sup>6</sup> The African Tax Administration Forum raised concerns about developed countries putting "political pressure" on developing countries to sign up to new tax rules for the digital economy.<sup>7</sup> Assessments of recent OECD-led 'solutions' to reform international taxation of multinational companies in the digital economy suggest that developing countries gain far less than the richest, OECD member states.<sup>8</sup>

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*Development*, ed. by Kearrin Sims and others (New York, NY / Abingdon, Oxon, 2022), 326–40 <<https://www.taylorfrancis.com/chapters/edit/10.4324/9781003017653-32/global-financial-systems-tax-avoidance-rachel-etter-phoya-moran-harari-markus-meinzer-miroslav-palansk%C3%BD>>.

<sup>5</sup> Rachel Etter-Phoya, 'A Win for African Leadership on International Tax', *Tax Justice Network*, 2022 <<https://taxjustice.net/2022/12/07/a-win-for-african-leadership-on-international-tax-rules/>> [accessed 11 January 2023].

<sup>6</sup> Rasmus Corlin Christensen, Martin Hearson and Tovony Randriamanalina, *At the Table, Off the Menu? Assessing the Participation of Lower-Income Countries in Global Tax Negotiations* (December 2020) <<https://www.ictd.ac/publication/at-table-off-menu-assessing-participation-lower-income-countries-global-tax-negotiations/>> [accessed 11 January 2023].

<sup>7</sup> African Tax Administration Forum, *130 Inclusive Framework Countries and Jurisdictions Join a New Two-Pillar Plan to Reform International Taxation Rules – What Does This Mean for Africa?*, 1 July 2021 <<https://www.ataftax.org/130-inclusive-framework-countries-and-jurisdictions-join-a-new-two-pillar-plan-to-reform-international-taxation-rules-what-does-this-mean-for-africa>> [accessed 13 October 2022].

<sup>8</sup> Irene Ovonji-Odida, Veronica Grondona and Samuel Victor Makwe, *Assessment of the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalization of the Economy: An Outline of Positions Favourable to Developing Countries* (August 2020) <<https://www.southcentre.int/wp-content/uploads/2020/12/Assessment-of-the-Two-Pillar-Approach-to-Address-the-Tax-Challenges-Arising-from-the-Digitalization-of-the-Economy-reduced.pdf>> [accessed 11 January 2023]; Suranjali Tandon and Chetan Rao, *Evaluating the Impact of Pillars One and Two* (4 October 2022) <[https://www.southcentre.int/wp-content/uploads/2022/10/RP165\\_Evaluating-the-Impact-of-Pillars-One-and-Two\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2022/10/RP165_Evaluating-the-Impact-of-Pillars-One-and-Two_EN.pdf)> [accessed 11 January 2023].

On the table in the upcoming negotiations on bringing international tax under the remit of the UN is establishing a UN tax convention. A draft UN tax convention developed by the European Network on Debt and Development, supported by the Global Alliance for Tax Justice, includes the sharing of beneficial ownership information globally and a global registry holding this information, housed by the United Nations.<sup>9</sup>

Tax justice matters for tackling inequality within and between countries. Tax justice is compellingly defined by the 5Rs of tax justice: revenue, redistribution, repricing, representation and reparations<sup>10</sup>. This includes raising revenue domestically to fund universal public services, like hospitals and schools, and financing sustainable infrastructure, including accessible energy and transport systems, aligned with Africa's Agenda 2063 and the Sustainable Development Goals. Tax justice facilitates redistributing collected taxes to create more equal societies and repricing to change behaviour relating to specific goods and services, such as society-detrimental products like cigarettes and fossil fuels. Tax justice supports the social contract so that elected leaders represent citizens well and are held to account for they are responsible for the prudent use of revenue including taxes. Finally, tax justice supports reparations to address historical legacies of colonialism and environmental damage.

## **What is beneficial ownership transparency**

Beneficial ownership transparency reveals the living and breathing human beings—ie the natural persons—who own, control or benefit from a legal vehicle. Legal vehicles is an umbrella term used to refer to companies, partnerships, trusts and foundations. Legal vehicles operate in the economy, open bank accounts, hold real estate and provide goods and services.

Legal owners, in contrast to beneficial owners, are the direct or immediate owners of a legal vehicle on paper. These can be a natural person (such as a nominee shareholder) or another legal vehicle. For most businesses, the person who directly owns a legal vehicle on paper is also the person who genuinely owns the vehicle, who benefits from it and exerts some control over it. In other words, in most cases the legal and beneficial owner of a legal vehicle are the same natural

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<sup>9</sup> Tove Ryding, *Proposal for a United Nations Convention on Tax* (Brussels, Belgium, 1 March 2022) <[https://www.globaltaxjustice.org/sites/default/files/un-tax-convention-mar09-final\\_0.pdf](https://www.globaltaxjustice.org/sites/default/files/un-tax-convention-mar09-final_0.pdf)> [accessed 27 March 2022].

<sup>10</sup> Tax Justice Network [@TaxJusticeNet], 'Our Tax Systems Are Our Most Powerful Tools for Creating Just Societies That Give Equal Weight to the Needs of Everyone. Here's What Our Tax Systems Can Deliver If We Reprogramme Them to Work for Everybody, Instead of Just the Wealthy Few. #OurFutureIsPublic #OFIP22 <https://t.co/Ohh8TxSUo9>', *Twitter*, 2022 <<https://twitter.com/TaxJusticeNet/status/1597978603744292865>> [accessed 14 February 2023].

person. It's when this is not the case that the risk for illicit financial activity arises.

Beneficial owners—particularly those with the means to hire expensive lawyers, accountants and offshore service providers—can hide their ownership of a legal vehicle by putting down a nominee shareholder or another legal vehicle as the legal owner on paper of their vehicle, while continuing in practice to exert ownership or control of the vehicle, and reaping its rewards. By obscuring who truly owns, controls or benefits from the legal vehicle, it becomes difficult to almost impossible to make sure the legal vehicle is not being abused to facilitate illicit financial activity.

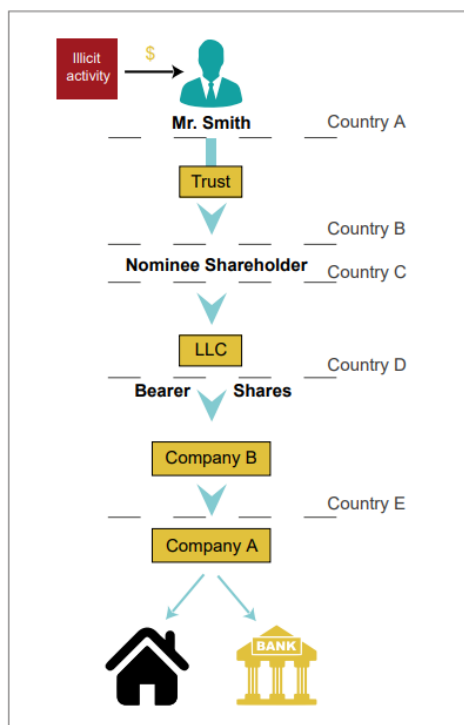
It's not uncommon for beneficial owners who wish to remain hidden to use long ownership chains, where one legal vehicle is owned by another which is owned by another, and to spread this chain across multiple jurisdictions, where each legal vehicle in the chain is located in a different jurisdiction, to make it even more difficult to detect their ownership. The longer the chain and the more jurisdictions it 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>11</sup>

A study of the UK company registry showed that 74 per cent of companies had 1 or no layers of legal vehicles between the company and a natural person. 5 per cent had 5 or more layers, and 0.5 per cent had 10 or more. The study found that wrong and contradictory information was often reported for companies on the register with more layers.<sup>12</sup>

A natural person can own or control a legal vehicle in a number of ways. This includes through shares, nominees, joint ownership arrangements, voting rights or other rights to make decisions or exert control.<sup>13</sup>

When individuals use nominees or bearer shares (ie paper certificates that bestow ownership to whoever physically holds the certificates), it

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



<sup>11</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes and Inter-American Development Bank, *A Beneficial Ownership Implementation Toolkit*, 5.

<sup>12</sup> Andres Knobel and Oliver Seabarron, 'Exploring UK Companies' Legal Ownership Chains to Detect Red Flags and Verify Beneficial Ownership Information: Part 1', *Tax Justice Network*, 2020 <<https://taxjustice.net/2020/07/06/exploring-uk-companies-legal-ownership-chains-to-detect-red-flags-and-verify-beneficial-ownership-information/>> [accessed 11 January 2023].

<sup>13</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].

becomes even more difficult to identify and verify beneficial owners. It is also very difficult to identify beneficial owners when their legal vehicles are registered in jurisdictions that do not have a public beneficial ownership register.

Beneficial ownership transparency measures are about requiring legal vehicles to disclose the natural persons who truly own, control or benefit from them, so that the onus is not on government authorities, banks, businesses and the public to attempt to investigate and identify a legal vehicle's beneficial owners. Effective measures make long and complex ownership chains, and other methods beneficial owners use to hide their traces of their ownership, redundant. By eliminating financial secrecy, beneficial ownership transparency restricts the manoeuvring space for illicit financial activity.

## **Structure of report**

This report examines the state of beneficial ownership transparency in Africa. The following chapter presents the commitments of all African countries to beneficial ownership transparency. It goes deeper in its analysis of the 18 African jurisdictions covered by the Tax Justice Network's Financial Secrecy Index 2022. This is followed by a more nuanced understanding of the importance of beneficial ownership transparency in the form of case studies in Cameroon, Kenya, Liberia, and Senegal.



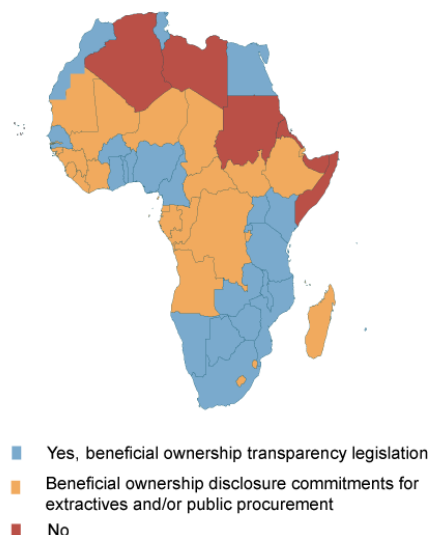
## 2. Beneficial ownership registration in Africa

Rules for the registration of the real owners of companies are gaining ground across Africa.<sup>14</sup> As of January 2023, 23 of 54 African jurisdictions have a law or regulation requiring the declaration or registration of beneficial owners with a government authority for at least one type of legal vehicle. For the vast majority, the declaration of beneficial owners is for companies.

More African governments have made commitments to beneficial ownership transparency in specific sectors. As part of the Extractive Industries Transparency Initiative (EITI), 28 African countries committed to disclose beneficial ownership information from 1 January 2020 for companies in the extractive industries, as per the EITI Standard requirement 2.5.<sup>15</sup>

In 2020, as part of accessing financing from the International Monetary Fund (through rapid credit facilities, or rapid financing instruments, or regular IMF-supported programmes) for Covid-19 pandemic-related spending, 34 African countries committed to publish the beneficial owners of companies awarded government contracts.

Figure 2. Beneficial ownership transparency in Africa in 2023



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<sup>14</sup> Rachel Etter-Phoya, Eva Danzi and Riva Jalipa, *Beneficial Ownership Transparency in Africa: The State of Play in 2020* (June 2020), 49 <<https://www.taxjustice.net/wp-content/uploads/2020/06/2020-Beneficial-Ownership-Transparency-in-Africa.pdf>> [accessed 7 March 2020].

<sup>15</sup> Extractive Industries Transparency Initiative, 'EITI Requirements', EITI, 2019 <<https://eiti.org/eiti-requirements>> [accessed 2 December 2022].

## The Financial Secrecy Index: challenging the narrative

Financial secrecy facilitates tax abuse, enables money laundering and undermines the human rights of all. All jurisdictions have a responsibility to reduce their contribution to financial secrecy.

The Financial Secrecy Index is a ranking of jurisdictions most complicit in helping individuals to hide their finances from the rule of law. It thoroughly evaluates each jurisdiction's financial and legal systems using objectively verifiable criteria to identify the world's biggest suppliers of financial secrecy.

The Financial Secrecy Index counters the inherent biases in so-called tax haven lists published by the richest nations. "Black" and "brown" jurisdictions often find themselves on these tax haven 'blacklists', betraying perceptions of racial bias in international tax, while "white" jurisdictions are given a free pass.<sup>16</sup> For example, the OECD's ranking of peer reviews or the European Union's list of non-cooperative jurisdictions typically turn a blind eye to the role of their members, many former imperial powers. In 2009, the biennial Financial Secrecy Index<sup>17</sup>, published by the Tax Justice Network, was born to challenge these lists and the narrative of the "fantastically corrupt" being every country but the richest nations—as former British Prime Minister David Cameron once famously described Nigeria and Afghanistan.<sup>18</sup>

Jurisdictions are ranked on the Financial Secrecy Index by their Financial Secrecy Index Value, which is a measure of how much financial secrecy the jurisdiction supplies to the world. A jurisdiction's Financial Secrecy Index Value is calculated by combining a qualitative and a quantitative measure: the Secrecy Score and the Global Scale Weight. A jurisdiction's Secrecy Score is a measure of how much financial secrecy its financial and legal systems may enable. A score of zero means the jurisdiction's laws allow no scope for financial secrecy and a score of 100 means the jurisdiction allows unrestrained scope. A jurisdiction's Global Scale Weight is a measure of how much financial services it provides to residents of other countries, like opening a bank account or trading in shares or debt instruments. This is presented as a percentage of all financial services globally provided by all jurisdictions to non-residents.

Whereas tax haven blacklists usually only take laws into consideration and are often susceptible to political lobbying, the Financial Secrecy Index more accurately identifies harmful jurisdictions by taking into account both a jurisdiction's laws and its provision of offshore financial

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<sup>16</sup> Steven Dean and Attiya Waris, 'Ten Truths about Tax Havens: Inclusion and the "Liberia" Problem', *Emory Law Journal*, 70/7 (2021), 1657–82.

<sup>17</sup> Tax Justice Network, 'Financial Secrecy Index 2022', *Tax Justice Network*, 2022 <<https://fsi.taxjustice.net/>> [accessed 21 September 2022].

<sup>18</sup> David Cameron Calls Nigeria and Afghanistan 'fantastically Corrupt' - BBC News, 2016 <[https://www.youtube.com/watch?v=yO\\_EekNnfjI](https://www.youtube.com/watch?v=yO_EekNnfjI)> [accessed 8 December 2022].

services, assessing how these intersect in the real world to create financial secrecy risks.

Of the 141 jurisdictions ranked on the Financial Secrecy Index 2022, 18 are African jurisdictions: Algeria, Angola, Botswana, Cameroon, Egypt, Gambia, Ghana, Kenya, Liberia, Mauritius, Morocco, Namibia, Nigeria, Rwanda, Seychelles, South Africa, Tanzania, and Tunisia. Only one-third of African countries are covered by the index because the index focuses on jurisdictions that account for a large share of international financial services exports. It also focuses on jurisdictions that are playing or seeking a role in the provision of financial secrecy, such as by setting up an international financial centre.

With only a few outliers, like Mauritius and the Seychelles, most African countries contribute very little to the problem of financial secrecy globally. Instead, jurisdictions including the United States, Switzerland, Singapore, Luxembourg, the United Arab Emirates and the United Kingdom with its spider's web of overseas territories and crown dependencies are the ones most responsible for financial secrecy.<sup>19</sup>

Some African jurisdictions have very high secrecy scores, like Angola with a secrecy score of 79 out of 100. Yet overall Angola contributes very little to the global problem of financial secrecy because it does not provide many financial services to residents in other countries. Angola's provision of financial services to non-residents (or its Global Scale Weight) is only 0.03 per cent of the global share and as a result it supplies less than 1 per cent of the world's financial secrecy, as Figure 3 shows.

That said, the secrecy score is indicative that a country has room to improve and reduce risks that may not hurt much globally but can hurt locally. Financial secrecy may be aiding and abetting in corrupt activities domestically, including where the beneficial owners of companies and trusts remain concealed, facilitating everything from public procurement fraud to the bribing of public officials.

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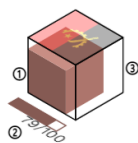
<sup>19</sup> Tax Justice Network, 'US Tops Financial Secrecy Ranking as G7 Countries Upend Global Progress on Transparency', *Tax Justice Network*, 2022 <<https://taxjustice.net/press/us-tops-financial-secrecy-ranking-as-g7-countries-upend-global-progress-on-transparency/>> [accessed 7 December 2022].

Figure 3. Angola in the Financial Secrecy Index 2022

### 33. Angola

#### ① FSI Value: 336

A measure of how much financial secrecy the jurisdiction supplies, resulting from the combination of the jurisdictions' Secrecy Score and Global Scale Weight.



#### ② Secrecy Score:

79 / 100

How much scope for financial secrecy the jurisdiction's legal and financial systems allow. 0 means no scope, 100 means unrestrained scope. See the full country profile of Angola for more details.

#### ③ Global Scale Weight:

0%

How much in financial services the jurisdiction provides to residents of other countries. This is presented as a percentage of all financial services globally provided by all jurisdictions to non-residents.

**FSI Share:** 0.99%

Angola supplies 0.987% of the world's financial secrecy.

A deeper analysis of the beneficial ownership frameworks in the 18 African countries covered by the Financial Secrecy Index 2022 follows below.

At the time of the data collection, 6 of the 18 jurisdictions (Angola, Cameroon, Algeria, Gambia, Liberia and South Africa) did not regulate the registration of beneficial owners for any legal entity with a government authority. The data cut off for the beneficial ownership transparency component of the Financial Secrecy Index was 17 May 2022.

Since the end of the cut-off date, Cameroon and South Africa— included in the Financial Secrecy Index 2022—have introduced legislation requiring the registration of beneficial owners with a government authority. This paper does not assess the nuances of these laws, but they will be included in the next edition of the Financial Secrecy Index.

- Cameroon: According to the Finance Law of the Republic of Cameroon for the Financial Year 2023: "Legal persons as well as administrators of legal entities under Cameroonian or foreign law established in Cameroon, whether or not they are subject to corporate tax or personal income tax, must identify their beneficial owners and keep an updated register to this effect". This information must be declared to the tax authority upon registration and each year as part of the tax return.<sup>20</sup>
- South Africa: According to Section 58 of the General Laws Amendment Act which amends the Companies Act 2008, companies must file a record with the Commission of Companies and Intellectual Property for the individuals who are the beneficial owners of the company, and must ensure that this information is

<sup>20</sup> Republic of Cameroon, *Finance Law of the Republic of Cameroon for the 2023 Financial Year*, 2023, sec. Division V, Section M, 8D-1-a.

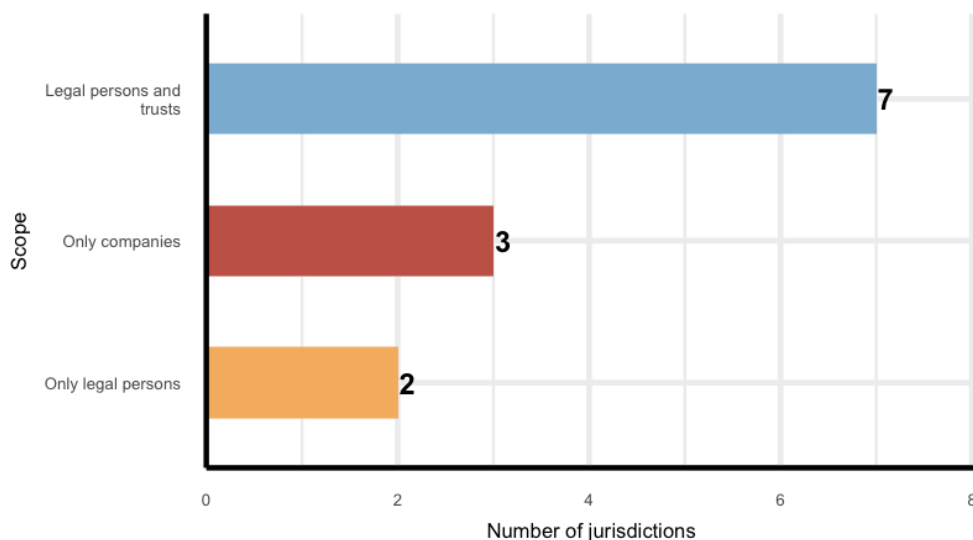
updated.<sup>21</sup> According to the National Treasury, most of the amendments will be implemented from 1 April 2023.<sup>22</sup>

## Which legal entities have to register?

In an ideal situation, every company, limited partnership, trust and foundation would be required to register all the beneficial owners upon incorporation and to update the information when any change occurs.

In 12 of the 18 African jurisdictions assessed in the Financial Secrecy Index, legal persons (companies, foundations and some partnerships) and/or legal arrangements (trusts) must register their beneficial owners, as Figure 4 shows. These jurisdictions are Nigeria and Mauritius, where only legal persons are required to register their beneficial owners; Egypt, Ghana and Kenya, where only companies are required to do so; and Botswana, Morocco, Namibia, Rwanda, Seychelles, Tanzania, and Tunisia, where both legal persons and trusts are required to do so.

Figure 4. Entities requiring beneficial ownership registration



<sup>21</sup> Republic of South Africa, *General Laws Amendment Act, 2022*, , sec. 58  
<[https://www.gov.za/sites/default/files/gcis\\_document/202212/47815anti-moneylaunderingact22of2022.pdf](https://www.gov.za/sites/default/files/gcis_document/202212/47815anti-moneylaunderingact22of2022.pdf)> [accessed 3 February 2023].

<sup>22</sup> National Treasury, Republic of South Africa, *Media Statement: Enactment of Key Anti-Money Laundering and Combating of Terror Financing Laws*, 6 January 2023  
<[https://www.treasury.gov.za/comm\\_media/press/2023/2023010601%20MEDIA%20STATEMENT-ENACTMENT%20OF%20KEY%20ANTI-MONEY%20LAUNDERING%20AND%20COMBATING%20OF%20TERROR%20FINANCING%20LAWS%20.pdf](https://www.treasury.gov.za/comm_media/press/2023/2023010601%20MEDIA%20STATEMENT-ENACTMENT%20OF%20KEY%20ANTI-MONEY%20LAUNDERING%20AND%20COMBATING%20OF%20TERROR%20FINANCING%20LAWS%20.pdf)> [accessed 3 February 2023].

## What triggers the registration of beneficial owners?

For greatest effectiveness, companies, partnerships, trusts and foundations should be required to register whenever they have some point of contact or connection with a jurisdiction. The triggers for registering beneficial owners of an entity should include:

1. Local incorporation or establishment according to local laws, or governed by local laws
2. Having assets or operations in the country
3. Having a participant who is resident in the country, like a director, legal owner, beneficial owner, or settlor

This best case scenario follows the recommendations included in the Tax Justice Network's [Roadmap to Effective Beneficial Ownership Transparency](#).<sup>23</sup> However, no country in the world has yet been able to achieve full transparency.<sup>24</sup>

In Africa, local incorporation is the trigger for registering beneficial owners in seven jurisdictions (Egypt, Kenya, Namibia, Nigeria, Rwanda, Seychelles, and Tanzania) of the twelve jurisdictions that regulate the registration of beneficial owners. This is an important measure, but it does not guarantee full transparency. Instead, it means many foreign entities may operate in the country, hold assets locally or earn income without needing to disclose to local authorities who is actually benefitting from the entities. The risks are high. It distorts economic competition for domestic actors, and it cloaks offshore entities without local subsidiaries in secrecy making it harder to collect tax, audit and investigate.

For a further five countries with beneficial ownership rules, there are multiple triggers. Botswana, Ghana, Mauritius, Morocco and Tunisia require companies to register beneficial owners upon incorporation domestically and require foreign companies to register if they have domestic presence.

## Who has to register as a beneficial owner?

Countries on the path to beneficial ownership transparency have to make a decision on how to define the beneficial owner in their legislation or regulations. In an ideal situation, the definition of a

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<sup>23</sup> Andres Knobel, *Roadmap to Effective Beneficial Ownership Transparency (REBOT)* (7 February 2023) <<https://taxjustice.net/2023/02/07/roadmap-to-effective-beneficial-ownership-transparency-rebot/>> [accessed 8 February 2023].

<sup>24</sup> Andres Knobel and Florencia Lorenzo, *Beneficial Ownership Registration around the World 2022* (December 2022) <<https://taxjustice.net/wp-content/uploads/2022/12/State-of-Play-of-Beneficial-Ownership-2022-Tax-Justice-Network.pdf>> [accessed 16 December 2022].

beneficial owner, at least for companies, should cover every individual who has at least:

1. Ownership
2. Control or
3. Benefit (such as the right to dividends)

While ownership of and benefit from a legal entity is more straightforward to identify, control can be more complex. A method often used to identify control of a legal entity is the residual test in the beneficial ownership definition, which requires ‘anyone with other means of control’ or ‘anyone with effective control’ to be covered. This may be defined based on voting rights or the right to appoint or remove the majority of the board of directors.

The most common elements in the beneficial ownership definition for legal persons similar to companies are the following in Africa:

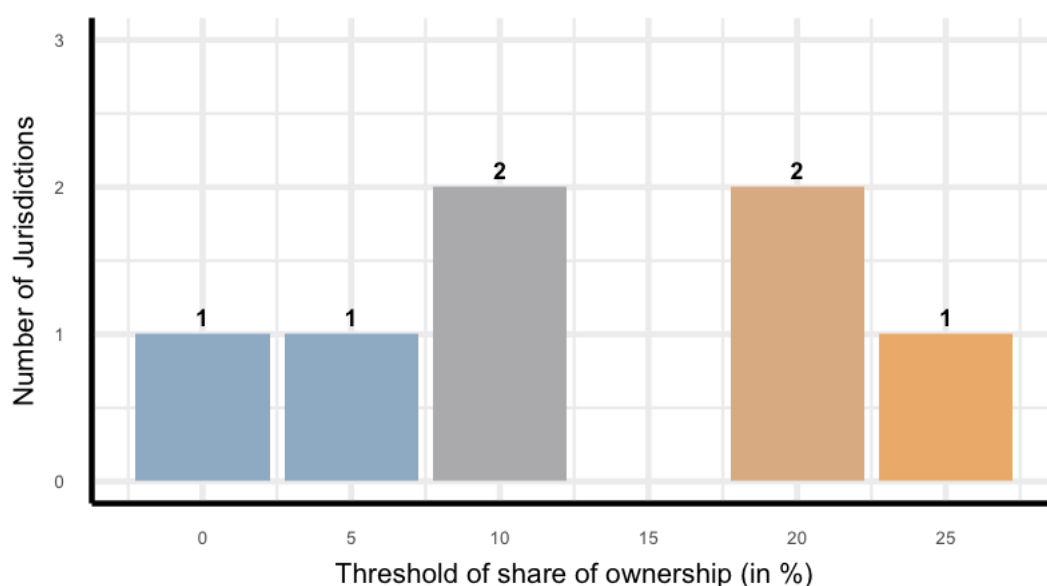
- Only ownership: Botswana
- Only voting rights: Mauritius
- Only rights to benefits: none
- Both ownership and voting rights: Kenya, Morocco, Namibia, Nigeria, Seychelles, and Tunisia
- All three (ownership, voting rights and rights to benefits): none

Four countries do not have a definition or do not have a threshold for the above elements so they are not included.

Beneficial ownership definitions often make use of thresholds to narrow the scope of who should be identified as a beneficial owner. For example, a “25 per cent or more” threshold which requires only individuals who own 25 per cent or more of a company’s shares. The best case is when no threshold is utilised, which means that anyone with at least one share would have to register as a beneficial owner.

The problem with having a threshold, no matter how low it may be, is that it inescapably creates room, no matter how small, to manoeuvre around requirements to register with a government authority. For example, if a threshold is set at 10 per cent, then by simply having 11 beneficial owners with equal shares, a company can avoid identifying and registering any of its beneficial owners as they would all fall below the 10 per cent threshold. That said, if a threshold is utilised, a lower threshold makes more information available than a higher one.

Figure 5. Frequency of thresholds for the registration of beneficial owners of companies



In Africa, based on the assessed countries, the threshold ranges from no threshold (meaning every individual who owns at least one share directly or indirectly has to register) to the highest possible threshold (at least 25 or more than 25 per cent). This data is based on the seven countries of the 18 Africans assessed by the Financial Secrecy Index that require all companies to register their beneficial owners. The countries and their thresholds are tallied in Figure 5 above and detailed below:

- No threshold: Botswana, which means every individual who owns at least one share directly or indirectly has to register
- 5 per cent threshold: Nigeria
- 10 per cent threshold: Kenya and Seychelles
- 20 per cent threshold: Namibia and Tunisia
- 25 per cent threshold: Morocco

### Can the public access beneficial ownership information?

In most African countries where beneficial ownership information is collected, the commercial register collects and houses the information. Ownership information should be considered a public good because it is essential for:

- Local and foreign authorities. Public access means one agency cannot withhold data domestically from another agency, whether wilfully or through inadequate data sharing systems. It also means that countries do not have to rely on agreements with another jurisdiction to access information. In exchanging financial



information, African countries have to date found themselves with great asymmetries in access.<sup>25</sup>

- Entities required to conduct customer due diligence (eg banks, corporate service providers, lawyers and casinos). Public access to ownership information means obliged entities can crosscheck information and report any discrepancies to improve accuracy.
- Businesses and investors. Beneficial ownership information is a critical part of intelligence to carry out risk-based assessments for business decision making, such as for potential mergers and joint ventures.
- Citizens, civil society organisations, journalists and researchers. Public access allows these groups to hold authorities to account, push for verification improvements, and assist authorities in detecting errors, commencing investigations and enforcing sanctions.

Among 18 African jurisdictions assessed by the Financial Secrecy Index, only Nigeria is currently providing public access to beneficial ownership information (irrespective of loopholes in the legal framework, implementation status, or access challenges). Ghana has committed to providing public access but not yet implemented it. More than half of the continent, however, has committed to guaranteeing public access to the beneficial ownership information of legal vehicles operating in specific sectors—in the extractive industries and in public procurement.

For many African jurisdictions, disclosing the beneficial owners of companies in mining, oil and gas is serving as an impetus for disclosure rules for all companies across all sectors—or at least for discussing it. Twenty-eight African countries are part of the Extractive Industries Transparency Initiative (EITI).<sup>26</sup> The EITI Standard required implementing countries to disclose extractive companies' beneficial ownership information from 1 January 2020.<sup>27</sup>

In 2020, more than half of Africa (34 countries) committed to publish the beneficial owners of companies awarded public contracts in response to the Covid-19 pandemic. Commitments were made as part of accessing financing from the International Monetary Fund for Covid-19 pandemic-related spending.<sup>28</sup>

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<sup>25</sup> African Union, African Tax Administration Forum, and Organisation for Economic Co-operation and Development, *Tax Transparency in Africa 2022: Africa Initiative Progress Report, 2022* <<https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2022.pdf>> [accessed 11 January 2023].

<sup>26</sup> Extractive Industries Transparency Initiative International Secretariat, 'Countries', *Extractive Industries Transparency Initiative* <<https://eiti.org/countries>> [accessed 4 May 2020].

<sup>27</sup> Requirement 2.5, Extractive Industries Transparency Initiative, 'EITI Requirements'.

<sup>28</sup> International Monetary Fund, 'Implementation of Governance Measures in Pandemic-Related Spending', 2022 <[https://www.imf.org/en/Topics/governance-and-anti-corruption/implementation-of-governance-measures-in-pandemic-related-spending-may-2022#\\_ftnref2](https://www.imf.org/en/Topics/governance-and-anti-corruption/implementation-of-governance-measures-in-pandemic-related-spending-may-2022#_ftnref2)> [accessed 23 September 2022].

## **How transparent is company ownership information in Africa?**

The registration of beneficial owners is most advanced for companies, compared to other legal persons (partnerships, foundations) and arrangements (trusts). Of the 18 jurisdictions assessed, only 7 jurisdictions have requirements for both legal persons and arrangements.

In this section, we take a deeper look at the status of registering the owners of companies in the 18 African countries included in the Financial Secrecy Index 2022.

### **What risk do bearer shares pose?**

A company's capital is usually divided into shares. Shareholders hold shares based on their investment in the company. These shareholders are liable to the creditors of the company up to the value of their original investment. This type of company is called a company limited by shares. Companies limited by shares can have different types of shares, including ones with economic rights where shareholders receive dividends, and political rights, where shareholders have the right to vote and appoint directors to the board.

How companies limited by shares chose to maintain shares affects transparency. A company can register shares, such as in a book entry. Or in an opaque process, a company may issue "shares to bearer", where the owner of the share is whoever holds the bearer share, ie the paper certificate, representing the share. These bearer shares pose a serious risk to transparency because the transfer of ownership of shares takes place simply by handing the document to another person.

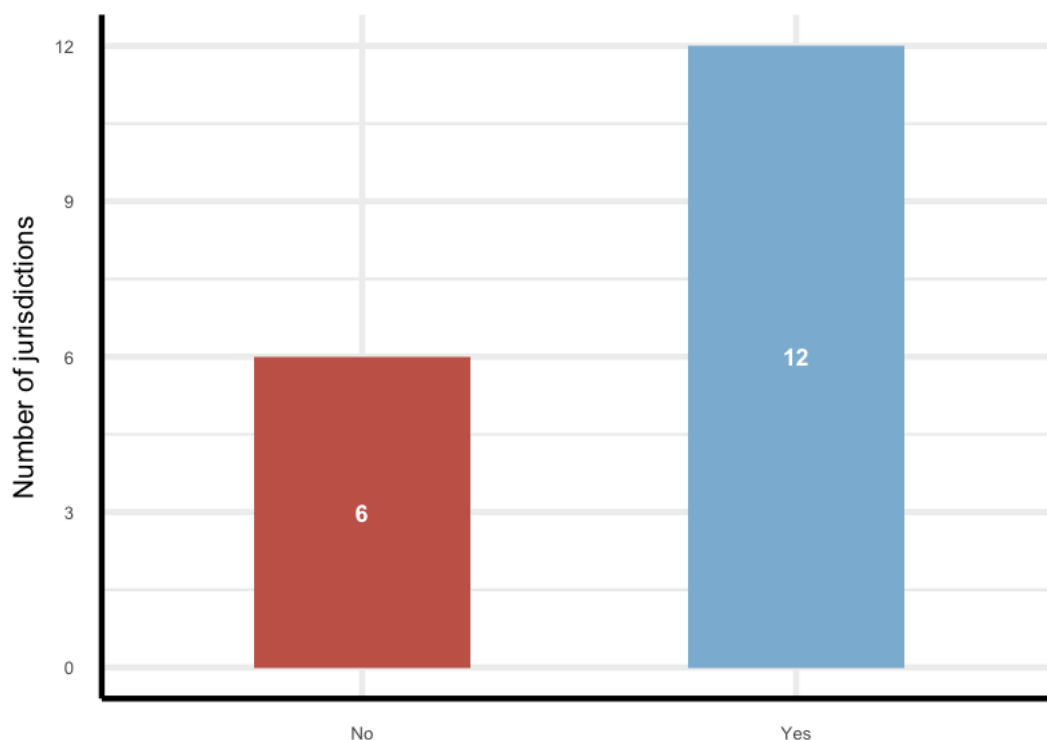
This is a problem because even if a country requires legal and beneficial owners to register, if shares can simply be handed from one person to another, it becomes impossible to know for sure who owns shares in the company and if the registered information is up to date. Therefore, effective legal and beneficial ownership registration is contingent on prohibiting or immobilising bearer shares (both new and old ones). Where they are still permitted, they should be immobilised by a government authority, and any bearer share not registered should be cancelled if it's not converted by a particular cut-off date.

Two-thirds of the assessed African countries effectively regulate bearer shares. However, bearer shares still pose a risk in Algeria, Angola, Liberia, Morocco, Namibia and the Seychelles.

A note of caution is also needed because no country appears to have established measures to prevent foreign entities with interests in any

local company from issuing bearer shares.<sup>29</sup> This means all countries may still suffer from secrecy created by foreign bearer shares that are part of the ownership chain that owns or controls local companies.

Figure 6. Does the country prohibit or effectively regulate bearer shares?



### How effective are requirements for legal and beneficial ownership registration?

Registration of legal owners is considered to be effective when:

- All domestic companies are required to register all of their legal owners
- Information is updated at least annually
- Legal ownership information is available online for free (no fee or charge) and the information is available in an easily copiable format
- The online information includes at least the name of the legal owners and either their address, date of birth or national identification number

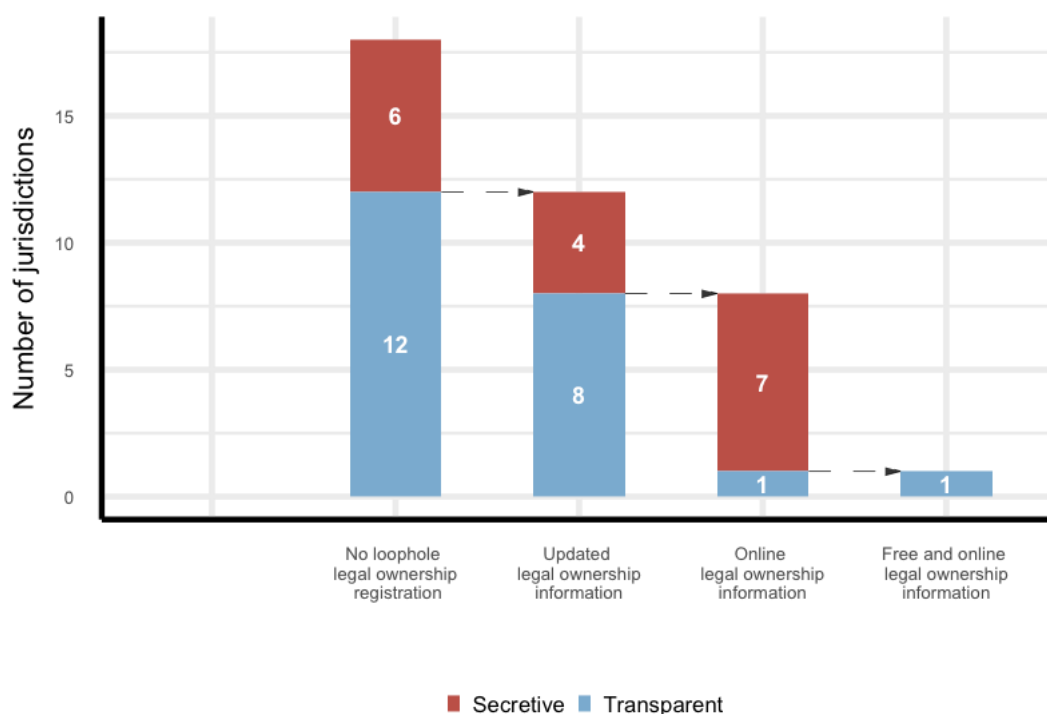
Registration of beneficial owners is considered to be effective when:

<sup>29</sup> Andres Knobel, *Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency*, February 2022 <<https://taxjustice.net/wp-content/uploads/2022/02/Complex-ownership-chains-Reduced-Andres-Knobel-MB-AK.pdf>> [accessed 9 November 2022].

- All domestic companies are required to register all of their beneficial owners
- Information is updated at least annually
- The definition of a beneficial owner covers at least one of the following three possible elements: ownership, control or benefits
- If thresholds are used in the definition, they are not higher than the 'more than 25 per cent' threshold.
- Beneficial ownership information is available online for free (no fee or charge) and the information is available in an easily copiable format
- The online information includes at least the name of the beneficial owners and either their address, date of birth or national identification number

Figure 7 and Figure 8 show the different steps we analyse to check effective registration of legal and beneficial owners, respectively.

Figure 7. Legal ownership transparency for companies



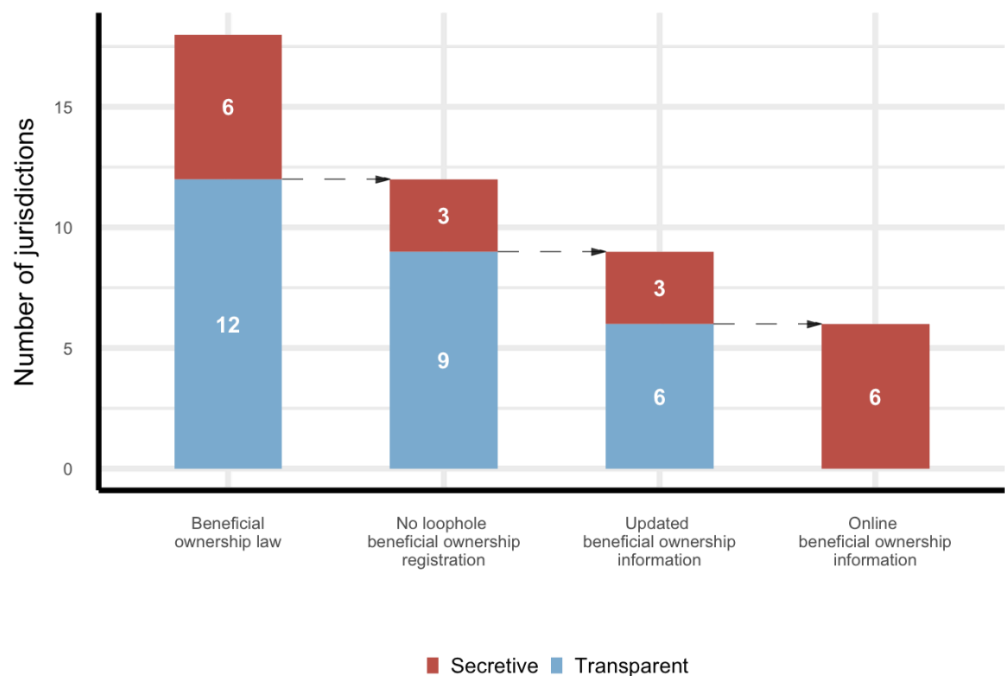
In Algeria, Cameroon, Gambia, Liberia, the Seychelles, and South Africa, not all legal owners have to register or there are loopholes that exempt registration. In two-thirds of the African countries assessed by the Financial Secrecy Index, all legal owners have to register (Angola, Botswana, Egypt, Ghana, Kenya, Mauritius, Morocco, Namibia, Nigeria, Rwanda, Tanzania, and Tunisia). Of these countries, another two-thirds require legal ownership information to be updated (Botswana, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania, and Tunisia). However, only

Botswana provides online access to legal ownership information, which it provides for free.<sup>30</sup>

Looking at beneficial owners, two-thirds, again, of African countries assessed by the Financial Secrecy Index have beneficial ownership legislation in place for companies. As of May 2022, the cut-off time for the Financial Secrecy Index’s research cycle, six countries did not have legislation in place, including five of the same countries with loopholes for legal ownership registration—Algeria, Cameroon, Gambia, Liberia, South Africa—as well as Angola.

Beneficial ownership information has to be updated in Botswana, Egypt, Ghana, Kenya, Mauritius, and Tunisia. No country provides online public access to the beneficial ownership information of all companies.

Figure 8. Beneficial ownership transparency for companies



Since the above data was collected in 2022, Cameroon and South Africa have introduced beneficial ownership legislation.

The only way a country can ensure effective transparency for company ownership is to make sure both legal and beneficial ownership information is registered, updated and online. For example, if a country required the registration of only beneficial owners and not legal owners then it would not be able to verify all information.

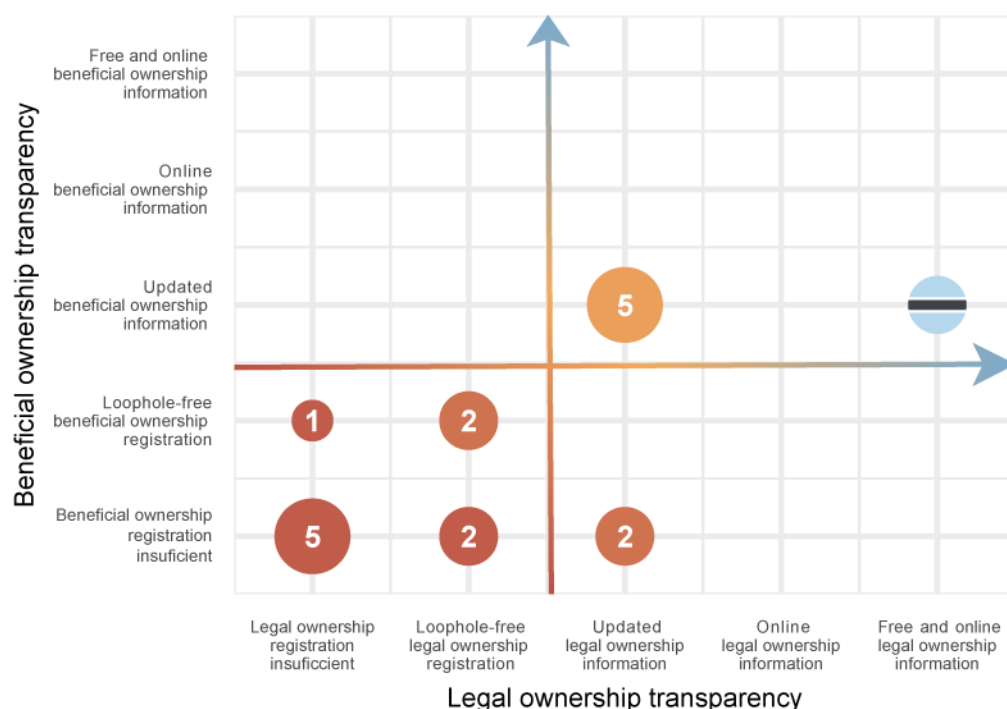
Figure 9 shows the interaction between registration requirements for legal and beneficial owners. Botswana is the best performer with some

<sup>30</sup> Botswana Companies and Intellectual Property Authority, ‘Online Business Registration System’ <[https://www.cipa.co.bw/ng-cipa-master/ui/XP-WZYTU8JgiIJudIUv75L50inxJeGM5QHnteXEr-ohS-d2ns9c\\_j6zMVyNb0mhUTeXxGnAwAlAh7d\\_sMLnDSbmg-SS](https://www.cipa.co.bw/ng-cipa-master/ui/XP-WZYTU8JgiIJudIUv75L50inxJeGM5QHnteXEr-ohS-d2ns9c_j6zMVyNb0mhUTeXxGnAwAlAh7d_sMLnDSbmg-SS)> [accessed 15 February 2023].

level of free online access to legal ownership information. Egypt, Ghana, Kenya, Mauritius and Tunisia require the registration and updating of both legal and beneficial ownership information but online public access this information is not yet provided.

In the Tax Justice Network's *Beneficial ownership registration around the world* report, Ecuador and Serbia are the star performers as they require registration and updating of legal and beneficial owners of companies and make this information publicly available online.<sup>31</sup>

Figure 9. Interaction between legal and beneficial ownership transparency



### What is the risk of company ownership opacity in practice?

A country with complete and effective company ownership transparency poses little to no risk of financial secrecy to the world, and of the illicit activity financial secrecy enables, regardless of the number of companies registered in the country. However, a country with low levels of transparency and a large number of incorporated companies poses serious risks the world over. The country would likely attract people seeking opacity, often for illicit activity. In practice, this country poses a greater risk than a country with similar levels of company ownership transparency but far fewer companies.

For 16 of the 18 African jurisdictions covered by the Financial Secrecy Index 2022, the number of registered companies is available online. It

<sup>31</sup> Knobel and Lorenzo, *Beneficial Ownership Registration around the World 2022*.

Figure 10. Risks created by countries based on their number of existing companies and their level of company ownership transparency



### 3. Case studies of beneficial ownership transparency in Africa

Beneficial ownership transparency and its absence has an impact on government finances and corrupt practices across the continent. The following case studies from Cameroon, Kenya, Liberia, and Senegal demonstrate the potential of effective beneficial ownership transparency. It is part of the arsenal law enforcement agencies can use to stop money laundering and illicit enrichment of public officials, it helps revenue authorities address tax abuse, and it contributes to better oil and mining contracts.

#### Covidgate in Cameroon

Cameroon allocated special budgetary resources in the fight against the Covid-19 pandemic, but allegations of fraud and mismanagement were rife. Issues with procurement came to the public's attention first through leaks on social media.<sup>32</sup> Then the press helped bring concerns to the fore and President Paul Biya called for an investigation.<sup>33</sup>

The Audit Bench of the Supreme Court of Cameroon investigated the Special National Solidarity Fund to fight the coronavirus, publishing a report in 2021.<sup>34</sup> In the absence of robust beneficial ownership regulations, the working group set up by the Ministry of Public Health awarded contracts to companies owned by their family members. Some companies with the same beneficial owners were awarded multiple contracts. These were among other irregularities that resulted in inflated prices for Covid-19 test kits and stocks of drugs disappearing.<sup>35</sup>

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<sup>32</sup> Investir au Cameroun, 'Gestion Des Fonds Covid-19 : La Chambre Des Comptes Confirme Les Surfacturations, Conflits d'intérêts, Détournements...', *Investir Au Cameroun*, 17 November 2021 <<https://www.investiraucameroun.com/economie/1711-17155-gestion-des-fonds-covid-19-la-chambre-des-comptes-confirme-les-surfacturations-conflits-d-interets-detournements>> [accessed 23 January 2023].

<sup>33</sup> CamerounWeb, 'URGENT : Paul Biya donne 72 heures pour clôturer les enquêtes "Covidgate"', *CamerounWeb*, 21 May 2021

<<https://www.camerounweb.com/CameroonHomePage/NewsArchive/URGENT-Paul-Biya-donne-72-heures-pour-cl-turer-les-enqu-tes-Covidgate-598039>> [accessed 24 January 2023].

<sup>34</sup> Audit Bench of the Supreme Court, Cameroon, *Audit of the Special National Solidarity Fund to Fight the Coronavirus and Its Economic and Social Impact*, June 2021

<[https://www.minfi.gov.cm/wp-content/uploads/2021/11/AUDIT\\_S\\_REPORT\\_ON\\_THE\\_USE\\_OF\\_THE\\_COVID\\_19\\_FUND.pdf](https://www.minfi.gov.cm/wp-content/uploads/2021/11/AUDIT_S_REPORT_ON_THE_USE_OF_THE_COVID_19_FUND.pdf)> [accessed 23 January 2023].

<sup>35</sup> RFI, 'Cameroun : Des Ministres Du Gouvernement Mis En Cause Dans Le «Covidgate»', *RFI*, 19 November 2021, section afrique <<https://www.rfi.fr/fr/afrique/20211119-cameroun-des-ministres-du-gouvernement-mis-en-cause-dans-le-covidgate>> [accessed 23 January 2023].



For example, the Audit Bench established that the declared shareholders for MG & Company were nominees and that the beneficial owners were the president of the very working group responsible for procurement to fight the pandemic, and his younger brother. The company received nearly US\$5 million, but there was very little work to show for it. While in this case, no sanctions have been taken to date, the Audit Bench concluded that “[t]his situation is likely to be classified as a criminal offence”.<sup>36</sup>

The working group also awarded six contracts to three companies managed by the older brother of the working group’s president. The Audit Bench stressed “the high risk of criminal liability associated with the award of these contracts”.<sup>37</sup>

During this period, the Government of Cameroon had committed to register and make public the names of the beneficial owners of companies that received contracts in this context. This commitment was made as part of receiving financing from the International Monetary Fund in 2020. Yet the Audit Bench’s investigation suggests this information was not always available or verifiable, and that a “significant sample of companies whose real ownership is uncertain”.<sup>38</sup> Consequently, the Audit Bench recommended that the information on contracted companies and the owners be published weekly.<sup>39</sup>

Without effective beneficial ownership transparency, public money intended to protect Cameroonians from Covid-19 was apparently misused. There were no laws yet in place requiring all legal entities in Cameroon to register their beneficial owners. Without a public beneficial ownership registry, there was little accountability to prevent public money from being misused. The transparency commitments the Cameroonian government made in order to access Covid-19 funds from the International Monetary Fund were a step in the right direction, yet appear not to have been put in practice in time or effectively, based on the Audit Bench’s findings.

Cameroon seems to have learned a lesson about financial secrecy the hard way and taken action accordingly. With the Finance Act of 2023, a provision was added requiring legal entities to register beneficial owners. To implement this provision, a special instrument currently needs to be adopted. According to the latest information from the government, public access to the beneficial ownership registry will not be granted and only beneficial owners with control over 20 per cent (through shares or voting rights) will be required to register. This high

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<sup>36</sup> Audit Bench of the Supreme Court, Cameroon, *Audit of the Special National Solidarity Fund to Fight the Coronavirus and Its Economic and Social Impact*, 100.

<sup>37</sup> Audit Bench of the Supreme Court, Cameroon, *Audit of the Special National Solidarity Fund to Fight the Coronavirus and Its Economic and Social Impact*, 99.

<sup>38</sup> Audit Bench of the Supreme Court, Cameroon, *Audit of the Special National Solidarity Fund to Fight the Coronavirus and Its Economic and Social Impact*, 102.

<sup>39</sup> Audit Bench of the Supreme Court, Cameroon, *Audit of the Special National Solidarity Fund to Fight the Coronavirus and Its Economic and Social Impact*, XVIII.

threshold leaves significant room for beneficial owners to circumvent the requirement to register. If a company is set up with six beneficial owners with equal share, then none of the owners will need to register.

## The Anglo Leasing scandal in Kenya

One of the most infamous events in Kenya's political history is known as the Anglo Leasing scandal, revealed in 2004. Many public contracts were awarded to ghost firms that no physical existence in the real world to which to deliver services.<sup>40</sup>

It involved a series of 18 contracts with inflated prices for the supply, installation, commissioning and support of security systems, including forensic laboratories, police surveillance systems and oceanographic vessels. Together these were worth US\$770 million.<sup>41</sup>

Anglo Leasing was a central fictitious company which received over US\$50 million,<sup>42</sup> and was the first company to be awarded a contract.<sup>43</sup> Most of the companies involved were shell companies registered through proxies and in secrecy jurisdictions, such as Switzerland and the British Virgin Islands. Despite causing much turmoil in government and leading to loss of public resources, many of the beneficial owners of these companies have remained in the shadows and evaded justice because they used proxies and nominees to hide their identities. Effective beneficial ownership registration laws could have prevented this scandal, or at least held the responsible individuals to account.

Kenya has attempted to recover property acquired through the proceeds presumed to be connected to this corruption scandal.

In March 2021, Patrick Ochieno Abachi, was found by the Kenyan High Court to have used his position to acquire unexplained assets around the same period the Anglo Leasing contracts were awarded.<sup>44</sup> Abachi had been a Chief Accountant in the Kenyan Treasury. There are still opportunities for Abachi to appeal, but the High Court already quashed

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<sup>40</sup> 'Kenyan Officials Charged over Anglo Leasing Scandal', *BBC News*, 4 March 2015, section Africa <<https://www.bbc.com/news/world-africa-31733052>> [accessed 15 February 2023].

<sup>41</sup> Katrina Manson, 'Kenya Targets Architects of Anglo Leasing Corruption Scandal', *Financial Times*, 15 March 2015.

<sup>42</sup> 'Anglo-Leasing Scandal', *Wikipedia*, 2022 <[https://en.wikipedia.org/w/index.php?title=Anglo-Leasing\\_scandal&oldid=1120459335](https://en.wikipedia.org/w/index.php?title=Anglo-Leasing_scandal&oldid=1120459335)> [accessed 15 February 2023]; Public Accounts Committee, *Report on Special Audit on Procurement of Passport Issuing Equipment by the Department of Immigration Office of the Vice-President and Ministry of Home Affairs* (2006) <[https://web.archive.org/web/20120208051649/http://www.marsgroupkenya.org/Reports/Government/PAC\\_Report\\_March\\_2006.pdf](https://web.archive.org/web/20120208051649/http://www.marsgroupkenya.org/Reports/Government/PAC_Report_March_2006.pdf)> [accessed 15 February 2023].

<sup>43</sup> Manson, 'Kenya Targets Architects of Anglo Leasing Corruption Scandal'.

<sup>44</sup> Mubmi Ngugi, *Ethics And Anti-Corruption Commission v Patrick Ochieno Abachi & 6 Others Civil Suit 15 of 2019*, 2021 <<http://kenyalaw.org/caselaw/cases/view/210192/>> [accessed 8 March 2023].

one appeal.<sup>45</sup> Through the unsuccessful appeal, Abachi had tried to stop his assets being seized, some registered in the names of family members and companies he was connected to.

The case has set a precedent: “that persons accused of illicit enrichment will no longer be able to hide their assets behind companies, relatives or friends. Assets that have been illicitly obtained remain illicit, no matter how many transactions or transfers of ownership they undergo”.<sup>46</sup> Since the scandal, Kenya has introduced provisions in the Companies Act<sup>47</sup> and subsidiary regulations<sup>48</sup> to require the disclosure of beneficial owners of companies with the Companies Registrar.

## Unmasking beneficial owners in Liberia

Sheik Bassirou Kante, the owner of Royal Gold Trading Company Inc, was accused in 2022 of conspiracy to commit money laundering including wire and computer fraud in the USA, where he was living.<sup>49</sup> He is accused of sending proceeds of crime to many accounts, including his company’s account in Liberia, from where money was later withdrawn. Kante, who also used the name Bass Kante and Ibrahim Dambeley, was found with fraudulent identification documents and a Liberian diplomatic passport, despite not being a diplomat.<sup>50</sup>

In the District Court of Maryland’s docket that includes the counts against Kante, the US Attorney charged that Kante committed computer and wire fraud, “knowing that the transactions were

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<sup>45</sup> James Wakiaga, *Ethics And Anti-Corruption Commission v Patrick Ochieno Abachi & 6 Others Civil Suit 15 of 2019, Appeal*, 2021 <<https://baselgovernance.org/sites/default/files/2021-08/Ruling%20Abachi%20Stay%20Dismissed.pdf>> [accessed 8 March 2023].

<sup>46</sup> Basel Institute on Governance, *Case Study: Upholding an Unexplained Wealth Judgement in Kenya’s Anglo Leasing Affair*, 12 August 2021 <<https://baselgovernance.org/news/case-study-upholding-unexplained-wealth-judgement-kenyas-anglo-leasing-affair>> [accessed 15 February 2023].

<sup>47</sup> Republic of Kenya, *The Companies Act, No. 17 of 2015, (Amended 2021)*, 2015, sec. 93A <<http://kenyalaw.org/8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/C/Companies%20Act%20-%20No.%2017%20of%202015/docs/CompaniesAct17of2015.pdf>> [accessed 9 March 2023].

<sup>48</sup> Republic of Kenya, *The Companies (Beneficial Ownership Information) Regulations, 2020*, 2020 <[http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN12\\_2020.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN12_2020.pdf)> [accessed 9 March 2023].

<sup>49</sup> Willie N. Topkah, ‘Liberia: Govt Freezes Assets of Royal Gold CEO’, *FrontPageAfrica*, 2022 <<https://frontpageafricaonline.com/news/liberia-govt-freezes-assets-of-royal-gold-ceo/>> [accessed 15 February 2023]; Affidavit in support of criminal complaint and arrest warrant, United States of America v. Sheikh Bassirou Kante, a/k/a ‘Bass Kante,’ a/k/a ‘Ibrahim Dambeley’, 2022.

<sup>50</sup> Josef Skrdlik, ‘Liberia Rocked with Another Diplomatic Passport Abuse Scandal’, *Organized Crime and Corruption Reporting Project*, 19 May 2022 <<https://www.occrp.org/en/daily/16344-liberia-rocked-with-another-diplomatic-passport-abuse-scandal>> [accessed 15 February 2023].

designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity”.<sup>51</sup> A special agent from the Office of Inspector General of the Federal Deposit Insurance Corporation’s wrote an affidavit in support of the criminal complaint and arrest of Kante. He explains that Kante likely used bank accounts, held in the names of Ibrahim Dambeley and various companies, credit cards and Western Union transfers to launder money.<sup>52</sup> Investigations into transactions connected Kante to the companies and accounts as the beneficial owner. The money laundering offences amount to more than US\$650,000 across one year.<sup>53</sup>

Kante is also being investigated by Liberian authorities. In fact, the Financial Intelligence Unit of Liberia released a statement in response to media reports on the “ongoing investigation of Sheik Bassirou Kante”. In May 2022, “[t]he Financial Intelligence Unit [FIU] wants to state in all unequivocal terms that at no time, the government or individuals in high places have lobbied or put the FIU under pressure to hide or withhold names. The FIU sees such media report as a distraction and calls on the public and the media to wait on the conclusion of FIU’s findings”.<sup>54</sup>

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Kante has been indicted in the USA, and Liberian authorities have frozen assets including companies and company accounts.<sup>56</sup> Recent

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<sup>51</sup> Information (count 1, count 2, forfeiture), *United States of America v. Sheikh Bassirou Kante, a/k/a ‘Bass Kante,’ a/k/a ‘Ibrahim Dambeley’*, 2022, 2.

<sup>52</sup> *Affidavit in Support of Criminal Complaint and Arrest Warrant, United States of America v. Sheikh Bassirou Kante, a/k/a ‘Bass Kante,’ a/k/a ‘Ibrahim Dambeley’*.

<sup>53</sup> *Information (Count 1, Count 2, Forfeiture), United States of America v. Sheikh Bassirou Kante, a/k/a ‘Bass Kante,’ a/k/a ‘Ibrahim Dambeley’*.

<sup>54</sup> Financial Intelligence Unit of Liberia, ‘FIU Clarifies Media Report on Sheik Bassirou Kante – Financial Intelligence Agency of Liberia’, 2022 <<https://www.fiuliberia.gov.lr/fiu-clarifies-media-report-on-sheik-bassirou-kante/>> [accessed 9 March 2023].

<sup>55</sup> Financial Intelligence Unit of Liberia, ‘FIU Clarifies Media Report on Sheik Bassirou Kante – Financial Intelligence Agency of Liberia’.

<sup>56</sup> Lennart Dodoo, ‘Liberia: Court Sheriffs Moves Sheikh Bassirou Kante’s Belongings from Leased Property to Unknown Warehouse’, *FrontPageAfrica*, 2023 <<https://frontpageafricaonline.com/news/liberia-court-sheriffs-moves-sheikh-bassirou-kantes-belongings-from-leased-property-to-unknown-warehouse/>> [accessed 15 February 2023]; Lennart Dodoo, ‘Liberia: Swift Transfer Document Shows Criminal Defendant Sheik Bassirou

reports suggest Kante may enter a plea bargain for a reduced sentence in exchange for cooperating with US investigations into other illegal activities believed to relate to nationals from Liberia and Sierra Leone.<sup>57</sup>

## Senegal's slippery oil contracts

In June 2019, the brother of Senegalese President Macky Sall was accused of corruption in relation to oil contracting. The President denied all allegations made by the British media house, the BBC, in its flagship investigative journalism program Panorama.<sup>58</sup>

Also investigating the matter, the Organized Crime and Corruption Reporting Project reported that the London-based Romanian-Australian businessman Vasile Frank Timis “gained access to the country’s oil reserves under extremely favorable conditions. Within a couple of years, he flipped the investments, selling the offshore blocks for hundreds of millions of dollars from 2014 onwards to U.K. oil giant BP and its U.S. partner, Kosmos Energy”.<sup>59</sup>

Aliou Sall, the younger brother of the president, was managing director of Timis Corp, Timis’ company, when the company entered a deal with Kosmos. Sall was reported to have received a salary of about US\$260,000. On 29 December 2020, a judge dismissed the case claiming that there was not enough evidence to indict.<sup>60</sup>

At the time, there was no effective transparency in place in Senegal for the awarding of oil concessions and no effective system to register ownership interest and control over companies. Since then, Senegal has passed legislation to improve the information collected and disclosed on beneficial owners. This would have required the

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Kante Paid US\$100k for P-Square Bicentennial Celebration’, *FrontPageAfrica*, 2022 <<https://frontpageafricaonline.com/news/liberia-swift-transfer-document-shows-criminal-defendant-sheik-bassirou-kante-paid-us100k-for-p-square-bicentennial-celebration/>> [accessed 1 March 2023].

<sup>57</sup> Lennart Doodoo, ‘Sheikh Bassirou Kante Exposes Liberian Officials in Diplomatic Passport Scandal; Becomes Informant for U.S.-Based Investigative Team’, *FrontPageAfrica*, 2023 <<https://frontpageafricaonline.com/news/sheikh-bassirou-kante-exposes-liberian-officials-in-diplomatic-passport-scandal-becomes-informant-for-u-s-based-investigative-team/>> [accessed 8 March 2023].

<sup>58</sup> ‘Senegal’s Macky Sall Denies BBC’s Corruption Report against Brother’, *BBC News*, 6 June 2019, section Africa <<https://www.bbc.com/news/world-africa-48540075>> [accessed 15 February 2023].

<sup>59</sup> Khadija Sharife and Momar Dieng, ‘Senegal’s Offshore Oil Reserves a Pricey Pawn in Covert Deal - OCCRP’, *OCCRP*, 19 July 2019 <<https://www.occrp.org/en/investigations/senegals-offshore-oil-reserves-a-pricey-pawn-in-covert-deal>> [accessed 15 February 2023].

<sup>60</sup> RFI, ‘Sénégal: le classement de l’affaire Petro-Tim fait réagir’, *RFI*, 2 January 2021, section Afrique <<https://www.rfi.fr/fr/afrique/20210102-s%C3%A9n%C3%A9gal-le-classement-de-l-affaire-petro-tim-fait-r%C3%A9agir>> [accessed 22 February 2023].

disclosure of Sall's control of the company involved in oil contracting had it been in place at the time.<sup>61</sup> The Finance Law of 2021 indicates a high threshold of 25 per cent for disclosure, while retaining a threshold of 2 per cent for entities in the extractive industries.<sup>62</sup> The law limits public access to beneficial ownership information. An application to access information must be made for a judge to rule there is legitimate interest.

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<sup>61</sup> Ministry of Justice, Republic of Senegal, Décret Relatif Au Registre Des Bénéficiaires Effectifs, 2020 <<https://faolex.fao.org/docs/pdf/sen197456.pdf>> [accessed 15 February 2023].

<sup>62</sup> Michael Barron and others, 'La Propriété Effective Au Sénégal : État Des Lieux', *Open Ownership*, 2022 <<https://www.openownership.org/fr/publications/senegal-orientation-et-evaluation/la-propri%C3%A9t%C3%A9-effective-au-s%C3%A9n%C3%A9gal-%C3%A9tat-des-lieux/>> [accessed 22 February 2023].

## 4. Recommendations

Africa continues to make strides towards beneficial ownership transparency. In the extractive industries and public procurement in response to the Covid-19 pandemic, African citizens, journalists and law enforcement agencies have the best access to data. But there remain loopholes that unscrupulous actors can exploit. More needs to be done as the case studies above showed.

The Roadmap to Effective Beneficial Ownership Transparency<sup>63</sup> is the Tax Justice Network's vision for effective beneficial ownership transparency. This may serve as a blueprint for policy makers as they seek to make changes, and for citizens seeking to make sure changes to legal frameworks are meaningful. The roadmap sets out 10 targets that countries beneficial ownership frameworks should meet.

1. Scope: all legal vehicles should be subject to beneficial ownership registration requirements, meaning any entity that is not a living and breathing person should be required to disclose the natural person who owns, controls or benefits from it.
2. Definition of legal owners: all legal owners should register, which includes all who have a title or any direct interest in the legal vehicle.
3. Definition of beneficial owners: all beneficial owners should register, which includes any natural person who in any way owns, controls, or benefits from a legal vehicle.
4. Triggers for registration: all legal vehicles should be required to register beneficial ownership information if they seek to incorporate domestically, possess domestic assets, conduct domestic operations or have a domestic participant (eg a domestic legal owner, beneficial owner, settlor, director, etc).
5. Identification information for all owners: legal vehicles should be required to provide all identification details about both legal and beneficial owners to ensure there is no confusion of identity. This includes full name, place and date of birth, address, national ID number, tax ID number, and nature of ownership. This also allows for special checks (eg status as politically exposed person). Legal vehicles should also be required to disclose the full ownership or control chain (all intermediate layers) that illustrates how each beneficial owner benefits or has ownership or control over the legal vehicle.
6. Keeping information up to date: legal and beneficial ownership registries should be updated annually, even if to confirm nil changes, as well as upon any change in the relevant information.
7. Access to information: legal and beneficial ownership data should be available to the public for free. Ownership registries should be available online in open data format.

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<sup>63</sup> Knobel, *Roadmap to Effective Beneficial Ownership Transparency (REBOT)*.

8. Verification of information: beneficial ownership registries should conduct automated analysis to check for consistency with other databases, such as to confirm that all registered beneficial owners are alive. The online registry should introduce red flagging based on outliers and suspicious characteristics, such as a single person as a beneficial owner of thousands of companies.
9. Sanctions for non-compliance: in addition to any criminal and/or monetary sanctions, administrative sanctions should be applied to remove non-complying legal vehicles from the registry and to revoke any rights from non-complying beneficial owners (eg votes or dividends).
10. Special considerations: countries should prohibit bearer shares, discretionary trusts and nominees, they should discourage complex ownership chains, they should cover state-owned companies as well as listed companies and investment funds by applying even lower thresholds, and interconnect beneficial ownership registries with each other and with asset registries.



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