

Zimbabwe Report

Analysis of the beneficial ownership legislative and regulatory framework in the mining sector

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Executive Summary

In February 2020, the Companies and Other Business Entities (Chapter 24:31) came into effect. It repealed the Companies Act and the Private Business Corporations Act. The act aims to elevate the legislative environment regulating business enterprises to conform to the global regulatory standards by introducing new and modified applications of existing concepts within the corporate law framework. One of the new concepts introduced by the act is beneficial ownership - the true owner of a legal entity.

While corporate entities have been credited for their immense contribution to rising prosperity in market-based economies, there has been growing concern that these vehicles are being misused for illicit purposes, such as money laundering, bribery and corruption, shielding assets from creditors, illicit tax practices, market fraud, and other illicit activities. Perhaps more worrisome is the risk that the misuse of corporate entities may threaten financial stability from a market integrity perspective.

The mining sector in Zimbabwe is coupled with high expectations and hopes for solving the protracted economic crisis. Government has an ambitious plan to transform the mining industry into a US\$12 billion industry by 2023. However, corruption remains a political, economic and social problem in Zimbabwe, from petty to grand corruption. The presence of cartels and monopolies operating in the mining sector is syphoning billions of dollars that should be channelled towards the delivery of public services. It is one of the main contributing factors to the decline of service delivery and the poor progress of human development indicators at local and national levels. The Zimbabwe Finance and Economic Development Minister Professor Mthuli Ncube highlighted in his 2019 budget speech that the Government was aware of the existence of cartels and monopolies in business involved in corrupt activities.¹ A 2017 report by Global Witness revealed how politically exposed persons (PEP) had some hidden interests in the country's multi-billion-dollar diamond industry, notably the security services.² A 2018 parliamentary enquiry into allegations of billions of dollars missing in the diamond industry confirmed the report's findings.

This research aims to foster a deeper and more critical debate on beneficial ownership disclosure in Zimbabwe's mining sector. Such a debate will enable a better understanding of how beneficial ownership disclosure in the mining sector can be achieved in Zimbabwe's context. The report thus examines the legal and regulatory landscape that governs the disclosure of beneficial ownership, the governance of the mining sector and

¹ 2019 Budget Speech: <https://www.parlzim.gov.zw/component/k2/2019-budget-speech>

² See, <https://www.globalwitness.org/en/campaigns/conflict-diamonds/inside-job/>

how this landscape limits the flow of information to the public and the levels of transparency and social accountability to the public.

In assessing beneficial ownership disclosure, there is a need to analyze the information disclosure regime in Zimbabwe. The regime underpins and guides any disclosures in Zimbabwe, and there are three matters to consider, which are examined in the research report:

1. The inadequacy of Freedom of Information in promoting the disclosure of information;
2. The resistance to a culture of openness and social accountability; and
3. The prevalence of secrecy in the mining sector is due to the influence of the security sector.

Abbreviations

AIPPA	Access to Information and Protection of Privacy Act
AMV	Africa Mining Vision
BOT	Beneficial ownership
ESAAMLG	Eastern and Southern African Anti Money Laundering Group
EITI	Extractive Industries Transparency Initiative
FATF	Financial Action Task Force
FOI	Freedom of Information
IFFs	Illicit financial flows
MSG	Multi-stakeholder group
PACRA	Patents and Companies Registration Agency
PEP	Politically exposed persons
ZACC	Zimbabwe Anti-Corruption Commission
ZIMRA	Zimbabwe Revenue Authority
ZRP	Zimbabwe Republic Police

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PART 1: Background and Context

Transparency in beneficial ownership falls under the broad umbrella of illicit financial flows (IFFs). It is cross-cutting in its scope and potential coverage and encompasses a broad range of policy concerns relating to base erosion and profit shifting (essentially aggressive tax avoidance strategies using legal persons and arrangements), terrorist financing, money laundering and corruption. This agenda has a very strong domestic governance rationale. This section of the report analyses the Zimbabwe political, economic context and gives an overview of the importance of beneficial ownership disclosure.

1.1 Zimbabwe Context

Zimbabwe is going through its worst socio-economic and political crisis in two decades, further exacerbated by the Covid-19 pandemic. The vulnerability of communities to the Covid-19 pandemic is made worse by crippling daily power outages, erratic supply of clean water, a fragile health system and an inflation rate of over 850 percent that has put the prices of basic goods beyond the reach of citizens. Zimbabwe's emergency stimulus package announced by the Government to respond to the pandemic accounts for about 12 percent of GDP, which is meant to cushion citizens and SMEs in the mining sector.

Zimbabwe's mining sector plays a critical role in the socio-economic spheres of both government and citizens. Globally it is one of the most opaque sectors in the private sector, which has seen an increase in calls for more transparency. The calls for transparency in the mining sector are also largely because the ownership of natural resources is vested in the citizens. At the same time, the government is the custodian of the resources, especially in Zimbabwe. These resources are limited and non-renewable, as a result, there is a legitimate expectation that they are managed sustainably and that the revenues derived from their exploitation should compensate for the loss in natural capital.

When he rose to power in 2018, President ED Mnangagwa announced Zimbabwe to be "open for business" and presented his vision for a US\$12 billion mining industry by 2023.³ The Strategic Roadmap to the achievement of a 12 billion USD mining industry, launched on October 14, 2019, expects that the mining industry would become the main driver of Zimbabwe's economy, moving the country towards an upper-middle-income country by 2030.⁴ The growth of the mining sector, particularly with foreign investment, is only possible if Zimbabwe provides a stable and transparent economic environment.

³<https://www.bloomberg.com/news/articles/2019-10-14/zimbabwe-unveils-plan-for-12-billion-in-mineral-revenue-by-2023>

⁴ <https://spiked.co.zw/government-expects-a-us12-billion-mining-industry-by-2030/>

Transparency, accountability and community participation are necessary for a thriving natural resource sector that effectively contributes to the country's economy and transforms the lives of citizens.

In the 2019 budget speech, the Finance Minister announced the government's plan to join the Extractive Industries Transparency Initiative (EITI) and allocate 15.4 million USD to the Ministry of Mines and Mining Development for that purpose.⁵ However, a cabinet decision in 2020 reversed this plan due to a lack of trust in the international initiative. This is at a time when the security sector and international players dominate Zimbabwe's mining sector.⁶

Nevertheless, Global Witness reports have highlighted the security sector's heavy involvement in diamond mining, which has seen off-budget funds due to corruption and structural weaknesses, resulting in state capture in the sector.⁷ In 2019, it was revealed that gold worth US\$60 million had been smuggled to Dubai.⁸ A study by AFRODAD estimated that Zimbabwe lost US\$2.83 billion between 2009 and 2013 due to illicit financial flows (IFFs) siphoning profits outside of the country. This is over US\$570 million annually, and 98% of this amount is attributed to the mining sector. More concretely, this was due to "corruption, dysfunctional regulations, weak enforcement of rules, tax evasion, tax avoidance, smuggling, lack of transparency and accountability in the collection and management of natural resource revenues."⁹

In the end, little is known about who really benefits from the mining industry. Who are the real owners of mining companies, and who is generating profit from Zimbabwe's natural resource wealth? Identifying real owners – the 'beneficial owners' – will unveil the perpetrators contributing to IFFs through corrupt practices, money laundering, and tax evasion. Knowing the real owners of companies involved in the mining sector is crucial to a transparent and stable economy.

⁵ 2019 Budget Speech: <https://www.parlzim.gov.zw/component/k2/2019-budget-speech>

⁶ Saunders, Richard, Alexander Caramento. 2018. An extractive developmental state in Southern Africa? The cases of Zambia and Zimbabwe, *Third World Quarterly*, 39:6, 1166–1190.

⁷ <https://www.globalwitness.org/en/campaigns/conflict-diamonds/leave-no-stone-unturned/>

⁸ <https://business.times.co.zw/the-gold-syndicate-and-the-machete-wielding-miners-should-be-dealt-with-firmly/>

⁹ AFRODAD 2014. *Illicit Financial Flows: Towards a more Integrated Approach for Curbing Illicit Flows from Zimbabwe*.

1.2 Overview of Beneficial Ownership Transparency: Considerations for Zimbabwe

The OECD defines a 'beneficial owner' as a natural person who ultimately owns or controls a legal entity or arrangement. A legal vehicle can be companies, corporate bodies, foundations, partnerships, associations, and other relevantly similar entities. Effective control can be exercised in various ways, including through family ties or agreements amongst shareholders.¹⁰ It is important to note that the beneficial owner can only be a natural person, not a company, trust, or other organization.

The legal shareholder on the share certificate is not necessarily the ultimate beneficial owner. It is common that a nominee person or company is registered as a shareholder without actually having the right to the benefits. Nominees serve to protect the identity of a beneficial owner for personal or commercial reasons. Together with the complex and opaque structures of corporations, it is easy to hide the real owners of a company. Anonymity and secrecy enable illicit financial flows (IFFs), for example, in the form of tax evasion and profit shifting. Africa loses 100 USD annually and has been illegally transferred through IFFs.¹¹ In 2014, it was revealed that "US\$1 trillion is being taken out of developing countries each year through a web of corrupt activity that involves shady deals for natural resources, the use of anonymous shell companies, money laundering and illegal tax evasion".¹² The developing countries' citizens pay the cost of the lost revenue.

Leaks such as the [Panama Papers](#), the [Paradise Papers](#), or the [Luanda Leaks](#) have shown how corrupt public officials have used anonymous companies for tax evasion and money laundering purposes or bribery. Anonymity protects illegal practices such as **money laundering, corruption** or the **financing of terrorism**.

They revealed how easy it has become for a person or a company to **evade taxes** in one country by setting up sophisticated corporate structures with 'shadow', 'shell', and 'letterbox' companies. These are often located in well-known offshore destinations like Panama, Cayman Islands, Mauritius or Switzerland, where transparency and regulatory standards are weak. This makes it extremely difficult to determine the beneficial owner and link illicit practices to individuals.

Beneficial ownership transparency (BOT) makes it easier to trace IFFs and make it harder for people to benefit from corruption, money laundering, and crime. The risk for illicit practices is particularly high in the mining sector resulting in leakages and government

¹⁰ <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>

¹¹ <https://www.uneca.org/stories/illicit-financial-flows-continue-impede-africa%E2%80%99s-development-says-eca%E2%80%99s-boko-hlpd-2018>

¹² <https://www.one.org/international/policy/trillion-dollar-scandal/>

revenue losses. Therefore, for a government, a BOT Register is a key element in any effort to "follow the money" and supports investigations on criminal activities. It moreover helps to identify financial risks, enhance revenue collection, and increase public oversight and accountability. Transparency improves an investment climate for a country's economy and reduces its reputational risk.

At the same time, a public BOT register ensures a level playing field for companies and businesses within the country. Companies need to know who they are dealing with to build trust, ensure compliance with existing laws and fulfil due diligence obligations. Identifying politically exposed persons (PEPs) is particularly important to prevent corruption.

BOT information must be accessible to civil society, media and the public, especially in oil, gas and mining industries where ordinary citizens are often left without benefiting from their natural resource wealth. A BOT register would shed light on mining activities, commodity value chains, and the persons involved and help hold companies accountable.

PART 2 Legislative and Regulatory Provisions Governing Beneficial Ownership Transparency

2.1 National Level

2.1.1 Freedom of Information Act [Chapter 10:33]

The Freedom of Information Act (FOIA) was enacted in 2020 to replace the much-criticized Access to Information and Protection of Privacy Act [AIPPA]. The act aims to give effect to section 62 of the Constitution, which states that every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, insofar as the information is required in the interests of public accountability. In relation to beneficial ownership transparency, the act provides the right to access any information held by any person, including the State, insofar as the information is required to exercise or protect a right. However, the act also protects information regarding defence interests, public security or professional confidentiality to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.

This clause, however, can be abused in instances where the defence arm of the government is involved in mining activities. Subject to this act, every public entity, public, commercial entity or holder of a statutory office shall have a written information disclosure policy through which it discloses information in the interests of public accountability or that is required for the exercise or protection of a right.

The FOIA's advocacy for beneficial ownership transparency cannot be fully realized because it presents a challenge of setting limitations and minimum standards for access to information. It gives limitations on the information that entities can publicly, proactively disclose, and it sets limitations on the type and how much information companies can disclose upon request. The FOIA can work well if information from government and related agencies is being requested but, the framework is incapable of breaking the mould of secrecy in the private sector owing to the various conditions that must be met, such as: showing that the information requested by the public is necessary for the protection of a right, submission of a form and its inability to protect the individuals who seek the information.

2.1.2 Companies and Other Business Entities Act [Chapter 24:31]

The Companies and other Business Entities Act [Chapter 24:31], also known as the new Companies Act, came into effect in February 2020. It repeals the former Companies Act [Chapter 24:30] and introduces a number of changes to the company law in Zimbabwe. The new Companies Act includes an "obligation to maintain and file beneficial

ownership information" (section 72) and the prohibition of concealment of beneficial ownership (section 73). This is the first time such an obligation is included in Zimbabwe's company law.

According to the new Companies Act, a "beneficial owner" is a natural person who ultimately owns, controls or benefits from a property or exercises ultimate effective control over a company. This includes a person who

- Directly or indirectly holds more than 20% of the company's shares; or
- Directly or indirectly holds more than 20% of the company's voting rights; or
- Directly or indirectly holds the right to appoint or remove a majority of the company's directors; or
- Otherwise exercises or has the right to exercise significant influence or control.

The definition used is close to the widely accepted definition by the [OECD](#) or the [Financial Action Task Force \(FATF\)](#). Since the exercise of control or influence does not necessarily equate with the percentage of shareholding or voting rights, it was important to include the last definition aspect.

Section 72 of the new Companies Act demands each company to "maintain an accurate and up-to-date register of the beneficial owner or owners of the company" (register of beneficial owners), the records on the beneficial owner and the extent of his or her ownership. The register of beneficial owners is kept by each company, filed with the Registrar of Companies, and an appointed person resident in Zimbabwe is responsible for keeping custody and authorized to make information available. Even after the liquidation of a company, the records are to be kept for at least 5 years. In case of non-compliance, the company or the persons shall be guilty of an offence and held liable.

Section 73 prohibits companies from registering or issuing shares to persons other than the beneficial owners, so-called nominees, who act or own shares on behalf of the beneficial owners. Section 152 moreover prohibits companies from issuing "bearer shares".

In practice, every company holds an up-to-date register of its beneficial owners. The Registrar has to demand frequent updates and files a register as well. The register of beneficial owners is an additional register to the register of companies.

In section 72, subsection (6), it is noted that the beneficial ownership information shall be public information and available for inspection by members of the public or financial institutions. Section 73 (10) also states that the name and relevant particulars of the

beneficial owners referred to in subsection (9) shall not be disclosed except with the consent of the nominee or by virtue of an order of a court of competent jurisdiction.

This would mean that only with the consent of the nominee or with a court order, the members of the public can, in reality, access the register of beneficial owners. Section (10), however, only refers to those beneficial owners in subsection (9). Looking at subsection (9), it seems to only apply to beneficial owners owning less than 20% of the company's share because it again refers to those in subsection (2)(a). Subsection (9) requests companies to have a separate register for beneficial owners owning less than 20% of the company's shares.

The question of whether the beneficial ownership register is public information is, according to this law, not fully clarified but assures the anonymity of beneficial owners owning less than 20%. In the end, section (6)(a) clearly states that it is public information and only refers to the right to anonymity in case of the beneficial owner owning less than 20%.

However, the Registrar of Companies publicly announced on February 26 2020, that the register of beneficial owners is not public and remains confidential. It is only accessible to members of the public if they have a court order. The accessibility of the beneficial ownership register is the most important question surrounding beneficial ownership transparency. Moreover, it is not fully clear under what terms financial institutions, designated non-financial business or professions defined in sections 2 and 13 of the Money Laundering and Proceeds of Crime Act can access the BO register. As explained by the Registrar of Companies and mentioned in the new Companies Act, the BO information shall be made available for inspection by the Financial Intelligence Unit and the Police Force (See subsection (3) of section 72). Again, the circumstances or conditions for these institutions to access the BO register are not elaborated on. The Registrar's understanding of the register not being public shows that the new Companies Act has loopholes and is not sufficiently clear on the accessibility.

2.1.3 Mines and Minerals Act [Chapter 21:05]

The Mines and Minerals Act seek to indigenously all foreign ownership of mining companies. It states that any person can own reconnaissance, exploration and mining rights and 'person' in this instance refers to:

- Any company incorporated or registered as such under an enactment
- Anybody of persons, corporate or incorporated;
- Any local or other similar authorities.

The amendment to the Indigenization and Economic Empowerment Act in 2018 allowed foreign entities to own 100% mining rights except for platinum and diamond mining. Later,

the government authorized foreign investors to own more than 49% of diamond mining companies. However, no legislation speaks to this change. The act also relates to control restrictions, and it states that when any registered mining location or any interest therein is sold or otherwise alienated, the seller or person who so alienates shall notify the Commissioner of the transaction within 60 days of the date of transaction. In essence, while the Mines and Minerals Act address issues related to ownership, it does not explicitly touch on the subject of beneficial ownership at all.

2.1.4 Money Laundering and Proceeds of Crime Act [Chapter 9:24]

This act was put in place to suppress the abuse of the financial system and enable the unlawful proceeds of all serious crime and terrorist acts to be identified, traced, frozen, seized and eventually confiscated. An amendment bill is underway, which will see the Money Laundering and Proceeds of Crime Act being strengthened. To combat money laundering, terrorist financing, tax evasion and corruption, it has become necessary to give powers to Zimbabwe Anti-Corruption Commission (ZACC), Zimbabwe Revenue Authority (ZIMRA) and the Zimbabwe Republic Police (ZRP) to elicit explanations from persons who exhibit great wealth without having any apparent lawful means of obtaining such wealth. Accordingly, in the proposed amendment, a new part will be inserted in the Money Laundering and Proceeds of Crime Act, providing for unexplained wealth orders issued by the High Court at the instance of ZACC, ZIMRA or ZRP. These orders will require the addressee to explain his or her wealth and provide supporting documentation thereof.

The Money Laundering and Proceeds of Crime Act can be adequately utilized if the law also allows for beneficial ownership transparency. In that regard, this piece of legislation can be used alongside the Companies and Other Businesses Act.

2.2 Regional Level

2.2.1 Role and Relevance of Africa Mining Vision

The Africa Mining Vision (AMV) was adopted by the heads of state of the African Union (AU) in 2009. Its main goal is to promote transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development. It encourages integrating mining into local, national and regional development policy so that local communities benefit from mining and protect the environment.

The AMV promotes a governance regime that involves the ongoing auditing, monitoring, regulation and improvement of resource-exploitation regimes and the development of

resource-sector linkages in the domestic economy. In particular, it advocates that governance and oversight could be enhanced through accession to regimes such as the Extractive Industries Transparency Initiative (EITI) that could, alongside other bodies, act as oversight bodies to improve governance, address problems such as corruption and illicit financial flows.

In addition, AMV highlights the need to redefine policies, legal and regulatory frameworks to facilitate equitable participation by local businesses, communities and other stakeholders in mining activities, as well as tools to improve revenue (derived from royalties, income taxes, land taxes, lease rents, etc.) distribution at the local level. For the objectives of the AMV to be met, Zimbabwe will need to undertake a review and amendment of the regulatory frameworks applicable to the mining industry with regard to transparency and efficiency in the management resources among that beneficial ownership.

2.2.2 Role and Relevance of SADC

In 2006 SADC signed the Protocol on Finance and Investment, and it was enforced in 2010. One of the objectives of the Protocol under Article 2 (2) is to achieve sustainable economic development, growth, and eradication of poverty. The protocol has other sub-articles, but for the purpose of this study, the focus is on (Article 2(2)), which speaks to cooperation in respect of anti-money laundering.

Annexe 12 on Anti-Money Laundering was added to the protocol in 2012. The preamble to Annex 12 states that "harmonization of key aspects of relevant laws and policies will increase the effectiveness of the measures taken by the State Parties to address money laundering and financing of terrorism in the region and support finance and investment." It also states that "harmonization of key aspects of the relevant laws and policies will create an enabling environment for increased access to financial services in the region, minimize compliance costs for affected Regulated Institutions that operate cross-border in the region and lessen the danger that criminal acts will be displaced from one State Party to another."

Article 3 of Annex 12 to the FIP states explicitly that "each State Party agrees that it will adopt and maintain, in accordance with the FATF Recommendations, measures that are effective and proportionate to combat money laundering and the financing of terrorism and that it will do so cognizant of the impact that such measures may have, at national and regional levels on crime, financial regulation and the regulation of affected businesses and professions as well as the management by Regulated Institutions of their duties to comply. States should also ensure they have institutional frameworks for implementing the measures, including law enforcement, policy-makers and supervisory authorities.

2.2.3 Role and Relevance of Financial Action Task Force (FATF)

Several international bodies and organisations promote beneficial ownership disclosure. The *Global Forum on Transparency and Exchange of Information for Tax Purposes* (Global Forum) and the *Financial Action Task Force* (FATF) are the two most important standards. The G20 has urged these different bodies to align their goals and cooperate. The Global Forum demands from its member state make beneficial ownership information available in the exchange of information on request (EOIR).

The FATF is an inter-governmental body setting standards for measures combating money laundering and the financing of terrorism. The [FATF recommendations](#) include beneficial ownership requirements on legal persons and legal arrangements, namely, recommendations 24 and 25. The FATF Recommendations do not require the registers to be public information, although some jurisdictions are heading towards that, like South Africa, Kenya and Nigeria. .

While Zimbabwe is not a member of the Global Forum and thus not directly affected, it has to comply with the FATF standards, as acknowledged by the Money Laundering and Proceeds of Crime Act [Chapter 9:24].

Since 1999, Zimbabwe has been a member of the Eastern and Southern African Anti Money Laundering Group (ESAAMLG). The ESAAMLG's objective is to adopt and implement anti-money laundering measures and to combat the financing of terrorism. As a member of the ESAAMLG, Zimbabwe has pledged to implement the FATF recommendations, including beneficial ownership disclosure. Moreover, Zimbabwe has to fulfil the obligations under the [International Convention for the Suppression of the Financing of Terrorism](#) which included "measures to ensure that institutions verify the identity of real owners".

In this context, Zimbabwe had to amend its Companies Act and its Deeds Registries Act and include beneficial ownership provisions to comply with the FATF recommendations 24 and 25. As in the [assessment of September 2019](#), Zimbabwe is now "largely compliant" with the requirements of FATF Recommendation 25 on transparency and beneficial ownership of legal arrangements. The compliance with recommendation 24 on transparency and beneficial ownership of legal persons is yet to be evaluated.

PART 3: Comparative Analysis of Beneficial Ownership Transparency Practices in the Mining Industry

The most prominent standard-setting global initiative for the mining sector is the Extractive Industry Transparency Initiative (EITI), of which Zimbabwe is not a member. The global initiative puts a requirement for all EITI countries to ensure that companies that apply for or hold a participating interest in an oil, gas or mining license or contract in their country disclose their beneficial owners by 2020.¹³ To date, joining EITI has not received considerable political support from the government and has been seen as 'an unnecessary addition to Zimbabwe's regulatory environment'. This part provides the 'nuts-and-bolts' of the EITI requirements for beneficial ownership disclosure.

It further evaluates EITI-compliant countries, including Nigeria and Zambia, particularly assessing the compliance with the requirement of EITI for a beneficial ownership register. These analyses are done to determine lessons Zimbabwe can take from peer countries implementing BOT in the mining sector, how such a measure has been achieved and the main obstacles. Nigeria's EITI process has been thriving given the fact that this has enabled Nigeria to be the first African country to launch a beneficial ownership register for the extractives industry.

3.1 Overview of Extractives Industry Transparency Initiative BOT Requirements

The EITI was established to ensure good governance and accountability within the extractives industry, coordinated and overseen by a multi-stakeholder group (MSG) within each member country. Member countries of the EITI implement the EITI Standard, which requires, among other things, full disclosure of beneficial ownership information by 2020. This is done through a public register, or at a minimum, the information must be published in the country's EITI Report. There has been a consistent call globally for disclosure of beneficial ownership information of all oil, gas and mining companies that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract – which regional institutions like the Africa Development, the United Nations Economic Commission for Africa and global coalitions like the Open Government Partners and Open Ownership support. Requirement 2.5 of the EITI Standard (2016) specifies what countries will do to uncover beneficial owners, and here are some:

1. It is recommended that implementing countries establish a publicly available register of beneficial ownership information;
2. It is required that the EITI Report documents the government's policy and multi-stakeholder group's discussion on disclosure of beneficial ownership;

¹³ <https://eiti.org/beneficial-ownership>

3. Information about the beneficial owner's identity should include the beneficial owner's name, nationality, country of residence, and identifying any politically exposed persons.
4. Definition of beneficial ownership: A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.

3.1.1 Nigeria Extractive Industry Initiative

In Nigeria, the government passed the Nigeria Extractives Industries Transparency Initiative (NEITI) Act of 2007 to implement the EITI while being the first country to do so. Nigeria proved its desire to implement beneficial ownership when NEITI participated in the beneficial ownership pilot in 2015. All oil, gas, and mining audits provide legal ownership for the companies, which in some cases are natural persons. The objective of BOT in Nigeria is:

- Anti-corruption agenda and the ongoing oil sector reforms;
- Government's commitment to implementing Open Contracting Data Standard, and the establishment of a publicly accessible registry of the licensed owners of all companies operating in Nigeria;
- Elimination of all forms of corruption through transparency and accountability in the extractive industry;

To meet the requirement of EITI of establishing a BOT register by January 1 2020, NEITI has developed a [BOT Register](#) for the extractive sector, the register is searchable by companies, assets and individual names. Significantly, the BOT data is available for bulk download, allowing for systematic analysis of all companies on the register. It will be continuously updated as more information becomes available. Eventually, this register will feed into the more expansive beneficial ownership registers for the oil and gas sector, the mining sector, and for all companies in Nigeria being spearheaded respectively by the Department for Petroleum Resource (DPR), the Mining Cadaster Office (MCO) and the Corporate Affairs Commission (CAC).

For Nigeria to get to this point between 2015 and 2020, several steps were taken:

1. Establish a link between BOT and national reform priorities such as anti-corruption, security, anti-terrorism as well as transparency and accountability;
2. Building political will, support and ownership of the BOT, especially from the DPR and CAC. ;
3. Putting in place policy, legislative and regulatory instruments to advance BOT, for instance, the passing of the Companies and Allied Matters Act, 2020 (CAMA).
4. Defining BOT with threshold and Politically Exposed Persons (PEPs);
5. Data collection and establishing means of verification for data accuracy;

Adopting a BOT register in Nigeria by way of statutory backing has been argued to be a result of external and internal factors. The external factors include 'global actors and discourses that pushed transparency issues to the forefront of global policy response to the resource curse by highlighting the negative impact of corruption on social, economic and political development. Internally, what can be described as a populist disenchantment with mismanagement of public resources necessitated the need for the BOT register.

A lesson to learn for Zimbabwe based on the Nigerian experience – apart from the institutionalization of the EITI process through enabling legislation – is the need to build political leadership for BOT and build government capacity, the alignment of BOT in line with other regulatory structures that monitor the expenditure of government revenue, and the involvement of a holistic multi-stakeholder group (MSG) that ensures capable civil society organisations are represented. The Zimbabwe government also needs to recognize its own structural and systemic problems, such as ineffective bureaucratic systems, ineffective oversight systems, and the need for cooperative governmental agencies so that concerns about the potential susceptibility of being captured by the elite who have a vested interest in sustaining corruption, is addressed.

For BOT in the mining industry to succeed in Zimbabwe, it is necessary to be linked to other anti-corruption and transparency initiatives, including environmental sustainability, corporate social responsibility and investment, tax reform, and the development of mining areas by the government. This has to be part of a broader anti-corruption drive by the government.

3.1.2 Zambia Extractives Industry Transparency Initiative

The Government launched the Zambia Extractives Initiative Transparency Initiative (ZEITI) in 2018. As part of the EITI requirement, ZEITI has set objectives for BOT, which include:

- Promoting good governance and accountability in the extractive sector;
- Deterring corruption in the allocation of extractive rights;
- Preventing abuse of Zambia's tax and incorporation rules;
- Support of efforts to address money laundering and other financial crimes in the economy;
- Promoting Zambian citizens' participation in the monitoring of extractive activities, including local content provisions;
- Promoting citizens getting the full economic benefit of the nation's natural resources, especially in communities where extraction occurs.

In November 2017, the Government of Zambia amended the Companies legislation to include beneficial ownership disclosure. The Companies Act No. 10 of 2017 provides for

the disclosure of beneficial owners and creating a register of beneficial owners that will be kept at the Patents and Companies Registration Agency (PACRA). The government developed regulations for the implementation of the legislation in March 2019. The regulations highlight:

1. The company information that will be included in the BOT register; registration number, date of incorporation, type of incorporation, list of directors, list of company secretaries and list of beneficial owners;
2. The information of directors, legal persons and beneficial owners that will be included: full names, date of birth, nationality, gender, country of residence, the ID number for Zambian residence, number and class of shares;
3. The registrar might determine remuneration for individuals who seek to access the register;

However, there are still significant challenges for Zambia in terms of transparency in the extractives industry, such as accountability on the part of companies and government to communities in relation to the distribution of revenue and other social and environmental challenges. There is still a low political will to disclose beneficial ownership information, as some elite have vested interests in the extractives industry. The development of the EITI Report itself has also been met with challenges, such as a delay in producing audit reporting data used in the report's compilation.

A lesson to learn for Zimbabwe based on the Zambia experience. The beneficial ownership transparency EITI process has empowered civil society, state authorities and the media through information-dissemination sessions and capacity-building activities.

PART 4: Towards Beneficial Ownership Disclosure Regime

Having evaluated the applicable laws and policies governing beneficial ownership transparency and having analyzed selected practices in Nigeria and Zambia. We can now make several findings that highlight the existing regulatory gaps and the regulatory changes necessary if an approach of governance by disclosure of beneficial ownership information in the mining sector is to be pursued in Zimbabwe.

The review of laws and policies reveals that transparency practices can easily be frustrated by provisions allowing for certain information to remain confidential at the discretion of the information officers, mining companies, keeping the industry opaque. Such confidentiality provisions are often couched in the guise of protecting commercially sensitive information to cover a whole range of information, including beneficial ownership information. This provision remains a key obstacle to promoting wholesale transparency practices in Zimbabwe.

4.1 Inadequacy of Access to Information by Default

The Freedom of Information (FOI) governs Zimbabwe's overall disclosure of information. While the FIO is more progressive compared to its predecessor AIPPA because it gives effect to the constitutional rights on freedom of expression, media freedom and access to information held by entities, both government and private, in the interest of public accountability or for the exercise of a right, it still places limitations on access to information that hinders disclosure of beneficial ownership by default.

The framework of FOI is incapable of breaking the mould of secrecy owing to the keeping request of information on public entities only and not including private entities. This act is restrictive to transparency when it comes to private companies when private companies hold beneficial ownership information. More importantly, FOI provides a wide range of exemptions that serve as loopholes to circumvent the spirit of FOI, which is to promote a proactive approach to transparency. It further sets limitations and exemptions for access to information held by both public and private entities. It gives limitations on the information that companies can publicly, proactively disclose, and it sets limitations on the type and how much information companies can disclose upon request.

Paradoxically, FOI has made it harder to obtain access to information by providing private institutions with various loopholes to avoid, rather than enabling, public access to records. It further sets multiple conditions that must be met, such as: showing that the information requested by the public is necessary for public accountability, complying with various procedures, such as submitting a form and seeking recourse only through the courts.

4.2 Resistance to the Culture of Openness

Beneficial ownership transparency requires proactive disclosure of information and increased citizen participation in scrutiny of information disclosed. In order to fully realize the potential of beneficial ownership transparency, the objectives that must be met include a public register, improved quality of publicly available information; enhanced accessibility of data; and increased opportunities and mechanisms for participation. Beneficial ownership objectives are achievable through proactive disclosure, and various international principles can be used for this purpose.

What is implied within the framework of FOI objectives is the protection of the private sector. Openness remains a distant phenomenon in Zimbabwe's government and politics. Evidenced by Zimbabwe's low scores on transparency and accountability governance scores. The 2018 Mo Ibrahim Index scores Zimbabwe 26 out of 100 on transparency and accountability, ranking 38 out of 54 countries; specifically, on accountability of government & public employees Zimbabwe scores 37.5 out of 100 and 29,9 out of 100 on civil society participation. The 2019 Economist Intelligence Unit Democracy Index scores Zimbabwe a low score of 3.16 out of 10, ranking 129 out of 167 countries.¹⁴

Generally, the legislative environment that governs the mining sector in Zimbabwe does not encourage transparency and proactive disclosure of information. Some of the laws also allow corporations to assert confidentiality outside the framework of FIO, which further illustrates how the legislative environment enables companies in the mining sector to control the public outflow of information while claiming adherence to transparency practices. An example of this is the Mines and Minerals Act, which makes plans and returns of mines confidential and does not have any language that encourages the transparency and accountable governance of minerals for public accountability, which is the bedrock of the AMV.

4.3 Glimpse of hope:

Notwithstanding these concerning trends, Zimbabwe has considerable legislative frameworks that encourage transparency in the mining sector in general and beneficial ownership in particular. Used together for advocacy and litigation, the companies act, and the money laundering and proceeds of crime act advance beneficial ownership disclosure in the mining sector. Supported by FIO, which allows the request of public information for public accountability purposes. While these laws are not encouraging publicly available disclosures, they constitute a solid foundation for regulatory amendments concerning public access to beneficial ownership information to be collected and submitted through the companies act.

¹⁴ NewThinking Development, http://ntdevelopment.org/blog/wp-content/uploads/2020/04/citizen_participation_and_democracy.pdf

The provision in the Companies Act prescribes each company to collect and maintain accurate information of their beneficial owner, which is submitted to the Registrar of Companies places all information in one central register. This could facilitate the public disclosure of beneficial ownership information of mining companies by the Registrar of Companies working with the Mining Affairs Board.

4.4 Conclusion: Way forward for Beneficial Ownership Transparency Zimbabwe's Mining Industry

Zimbabwe's mining sector plays a critical role in the socio-economic spheres of both government and citizens. Globally it is one of the most opaque sectors in the private sector, which has seen an increase in calls for more transparency. The calls for transparency in the mining sector are also largely because the ownership of natural resources is vested in the citizens, while the government is the custodian of the resources, especially in Zimbabwe. These resources are limited and non-renewable, and, as a result, there is a legitimate expectation that they are managed sustainably and that the revenues derived from their exploitation should compensate for the loss in natural capital.

Beneficial ownership transparency is an important policy tool for combating corruption, stemming illicit financial flows, and fighting tax evasion. It enables citizens to hold companies accountable. Journalists in South Africa and elsewhere have used access to beneficial ownership information laws to flag suspected wrongdoing. More so, transparency in company ownership levels the playing field tackles elite capture and attracts private sector investment. A growing body of [evidence](#) shows that more transparent countries have higher foreign direct investment inflows and lower borrowing costs. A more transparent business environment makes it easier for responsible businesses to operate.

A more transparent mining regime, especially on beneficial ownership, would allow effective economic management of the revenue streams derived from the mining sector. Fully disaggregated disclosures would provide the tax authorities with data on mining-industry companies in a standardized form, reducing the cost of data collection and ensuring improved communication between tax authorities and companies.

Minerals are non-renewable and finite, and, as a result, the trade in minerals must benefit countries and their citizens through an emphasis on sustainability and long-term growth that leads to development for the benefit of all. Because the extraction of resources requires significant financial capital and expertise, two things that the state does not possess in relation to such activity, the need for private corporations and investors to provide these resources, arises, which results in the state placing custodianship in respect of mineral resources in private hands. To ensure proper management of these

resources and guarantee that the state obtains what is rightfully due to it on behalf of the people, transparency is necessary to build trust. Trust implies a firm reliance on the integrity, ability and commitment to honour an obligation, but trust cannot be claimed. It must be earned through beneficial ownership information of a company.

The report noted the particular benefits of beneficial ownership and limitations in the current legislative environment in Zimbabwe for the mining sector. It also contains significant findings and recommendations, findings and recommendations that are supported in this report and are considered below alongside additional recommendations for the advancement of beneficial ownership transparency in the mining sector in Zimbabwe.

1. **There is a need to link BOT and national reform priorities** such as anti-corruption, security, anti-terrorism, and transparency and accountability. BOT in the mining sector needs to link with the government's vision 2030 and the US\$12 billion plan by 2023;
2. **The Money Laundering and Proceeds of Crime Act [Chapter 9:24]** provides an entry point to engage with the Financial Intelligence Centre (FIC) to advance beneficial ownership transparency to address money laundering and crimes committed using mining companies.
3. **BOT Policy Framework:** The absence of a beneficial ownership policy framework in Zimbabwe creates a loophole in making it a priority in addressing corruption, tax crimes and money laundering. A broad-based policy framework spearheaded by the mining industry will help advance BOT and ensure the effective implementation of the Companies Act.
4. **Building political will across political elites** to support BOT is critical. For Zimbabwe to join EITI, implement BOT standards and effectively implement the Companies will require the political will of the Executive, Parliament, Security Sector and Tax Authorities. This will overcome technical and political barriers.
5. **Programmatic Technical Capacity:** A lack of understanding at a technical level may cause potential supporters to oppose reforms. There is a need to develop adaptive programmes and work with national (Government, Parliament, Communities, Security Sector) stakeholders to develop activities that respond to their contexts and needs. The programme should respond to the need to understand better beneficial ownership transparency and clear explanations about the benefits of reform.
6. **Zimbabwe will need to prioritize joining EITI.** Joining the EITI will encourage the prioritization of BOT in the mining sector for Zimbabwe to implement the standards and requirements expected for each country. However, political support

for this process is vital in the short-term. This provides an opportunity for the mining sector to springboard BOT for wider disclosures.

In conclusion, Zimbabwe needs to align itself to the international disclosure standards of the mining sector to ensure the development of a global oversight mechanism that holds mining companies accountable for their revenues and interests to ensure government and citizens also benefit from the natural resources.