

: Global Governance Spotlight

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Transparency in Beneficial Ownership. How the G20 Can Support African Countries

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One of the most notable commitments of the G20 countries in recent times has been that of formulating coherent principles on transparency in beneficial ownership. These principles, characterised as G20 High-Level Principles on Beneficial Ownership Transparency, were agreed upon during the G20 Summit held in Brisbane, Australia, in 2014. They establish new global norms regarding transparency measures that seek to cut the veil of secrecy in corporate vehicles and trusts. African countries (with the exception of South Africa) may not be members of the G20 and therefore have no obligation to implement these high-level principles. However, the relevance of this agenda for African countries lies in curbing illicit financial flows and creating greater transparency and predictability in regulation – key factors that shape investment decisions. Supporting nascent efforts in these countries could therefore be an important contribution of the G20 countries to economic development in Africa.

The real test of G20's commitment to providing support to African countries – and the touchstone for the success of the proposed Compact for Africa – should be the extent to which an investment climate is improved in these countries. As an important step, regulatory reforms need to be deepened to curb illicit financial flows (IFFs) such as money laundering, tax evasion or corruption, which rob these countries of much needed resources for development. Engaging African countries meaningfully around the High-Level Principles on Beneficial Ownership Transparency is one of the powerful ways to internationalise

these norms and use them as positive policy tools to achieve sustained economic development. This is particularly urgent in the wake of the threat by President Donald Trump's administration to sink the Dodd-Frank Act that was promulgated in the wake of the global financial crisis between 2007 and 2009. Already, the Trump administration has wasted no time in tearing up the aspects of the Dodd-Frank Act that forced companies to disclose payments made to foreign governments in order to secure lucrative contracts in mining, oil and gas sectors, deeming such restrictions as creating competitive disadvantage for American firms.

Yet these regulations were instrumental in the fight against corruption globally, created a climate of transparency in commercial conduct, and encouraged resource-rich African countries to clean up their act, put in place credible regulatory standards, and discipline corruption. In the wake of the repeal of this measure, a race to the bottom in lax regulation is imminent.

All the more important, the Finance Track of the G20 under Germany's presidency has set out a commitment to advance the transparency agenda (Federal Ministry of Finance, 2017). The base erosion and profit shifting agenda (BEPS), as well as particular emphasis on beneficial ownership transparency, are at the core of the G20 agenda. These themes could help reinforce the G20 Compact for Africa, which is aimed at supporting Africa's development by encouraging private sector investment in African countries.

Rationale for Beneficial Ownership Transparency

African countries have expressed a commitment to implementing the G20 High-Level Principles on Beneficial Ownership Transparency to curb illicit financial flows, which has a damaging effect on economic development. It is suggested that a staggering amount of between US-\$ 1.2tn and US-\$ 1.4tn in illicit financial flows has left Africa between 1980 and 2009 (Tafirenyika 2013). The solution lies in fostering interdependence and global coordination of policy measures in this area. In addition, there is a need to shore up the integrity of independent institutions at the domestic level and replenish their resources so that they can do their work effectively.

As important as this agenda is, it confronts major challenges. First, at the global level, there is often a difficulty in imposing a uniform standard across diverse countries without considering issues such as differential institutional capabilities and available resources to implement a complex regulatory agenda. In other words, a certain degree of policy flexibility will be necessary for full implementation. Second, the implementation of these global norms by African countries would require institutional support to create a climate propitious for sustained economic development.

The G20 High-Level Principles

The G20 High-Level Principles on Beneficial Ownership set out concrete actions that G20 countries should take to ensure that legal entities are transparent and not being misused for illicit purposes. They are guided by recommendations of the Financial Action Task Force (FATF), an intergovernmental body with 35 member states. The Principles focus mainly on risks posed by legal persons and legal arrangements that act as a cover for individuals or groups that launder money, finance terrorists, or are involved in various corrupt activities. Corporate vehicles, trusts and foundations are therefore the focus in the renewed G20 effort to establish system-wide norms. In most instances shell companies registered by trusts and foundations in tax havens act as conduits for illicit financial flows.

The framing of the agenda straddles both the global and the domestic domains. It has wider implications for global standard setting and for the work of domestic institutions tasked with company registration, financial intelligence, taxation, and public service governance, as well as law enforcement authorities. It imposes new regulatory requirements on banks and non-designated financial bodies and professionals. Its success depends on political will,

institutional design, and frameworks for inter-agency co-ordination domestically and information sharing globally. Information sharing is a key transparency measure, and something that is often difficult to do for political and legal reasons.

Africa's Challenges and Responsibilities

Several African countries have undertaken to institute policy processes that will lead to transparency in beneficial ownership. In this Spotlight, I will highlight three cases to show the institutional and regulatory complexities of this agenda. The three countries are Nigeria, Ghana, and South Africa. Nigeria and Ghana are not member of the G20. But they participate in various bodies that promote transparency in governance, such as the Open Government Partnership, the Intergovernmental Working Group Against Money Laundering in West Africa (GIABA), and the Extractive Industries Transparency Initiative (EITI). All cases offer important lessons regarding the challenges connected to weak institutions.

Lessons from Nigeria's EITI experience

Nigeria voluntarily submitted itself as a pilot country for the assessment of transparency in beneficial ownership under the EITI in 2013. This covered the oil and gas, and solid minerals sectors. Until this point, there were no requirements under Nigerian law for companies to provide beneficial ownership information. During the pilot process, Nigeria focused on creating awareness around beneficial ownership disclosure, targeting mainly civil society and the media through training workshops on EITI standards.

This process encountered institutional, regulatory and political challenges. The companies in the sector were not transparent, and there were unseemly relationships between these companies and public figures. This made it difficult to execute a beneficial ownership disclosure process, let alone reach an agreement across various institutions on a new institutional and regulatory framework that could be embedded in law.

Yet, although on the surface the pilot process seemed to be a failure, its success lies in the lessons that it yields on how best to undertake this process across various sectors of the economy. The pilot scheme generated various recommendations on improving the process such as the need for technical support towards building a credible institutional mechanism. Areas requiring support include legislative processes for defining transparency in beneficial ownership, the establishment of a public register, and building capacity to undertake national risk assessment. This is where the G20 could be of relevance.

Ghana: A national anti-corruption system in the making?

Against the backdrop of the Anti-Corruption Summit in London 2016, Ghana has expressed its commitment to prevent the misuse of companies and legal arrangements to hide the proceeds of corruption. It has also committed to strengthening the Companies Bill and the Petroleum (Exploration and Production) Bill that are currently before Parliament. Accordingly, there will be requirements for beneficial ownership information and a central register for all sectors, including oil and gas. Ghana has stated that it will ensure that accurate and timely company beneficial ownership information, including in the extractives sector, is available and accessible to the public.

Furthermore, Ghana has an overarching National Anti-Corruption Action Plan (2015–2024). Supporting this plan, with a particular focus on curbing illicit financial flows and improving the credibility of the financial system, could be an important contribution of Germany's G20 presidency.

Ghana has moved ahead with domestic reform processes. They have proceeded conterminously with stakeholder consultative processes. Like Nigeria, Ghana has committed under the EITI to establish a roadmap for beneficial ownership disclosure by 2017 or risk losing its compliance status. There is, however, a commitment to take this process beyond the EITI to cover other sectors of the economy, and to have beneficial ownership included in the Companies Act of 1963 as part of its current review. These processes need support. Areas of support could be with respect to improving capacity in the tax authorities, supporting institutional coordination, and helping Ghana with readiness for the next FATF review, especially in view of the fact that it failed the 2009 FATF/GIABA review.

South Africa: A failed role model?

There is recognition within South Africa that the transparency in beneficial ownership agenda is very important, and that there is a need to maintain ongoing participation in the G20 anti-corruption working group processes. In comparison to other African countries, South Africa is quite advanced in its financial sector regulation, and in institutional capacities to curb illicit financial flows. Since the onset of democratic government in 1994, it has implemented a slew of provisions to curb money laundering, terrorist financing, and corruption.

One of the provisions adopted was the Prevention of Organised Crime Act of 1998. In 1999, it established the Asset Forfeiture Unit within the National Prosecution Authority to fight organised crime. Another institution that was created by the South African government was the Directorate of Special Operations

(the “Scorpions”) to prosecute organised crime and corruption, which was disbanded in 2009. In 2001, South Africa established the Financial Intelligence Centre (FIC), showing its commitment to protect constitutional democracy from organised criminality, and in 2004, it passed the Prevention and Combating of Corrupt Activities Act. Furthermore, South Africa reports annually to the G20 Anti-Corruption Working Group on fulfilling its commitments.

But despite these institutions and regulations, South African law enforcement agencies and tax authorities have lost credibility as a result of politicisation. In some instances these are headed by individuals who are perceived to be close with President Jacob Zuma. He is reported to have unseemly relations to business elites that have been accused by the major banks of either been involved in money laundering or having suspicious activities in their accounts. The amendments to the Financial Intelligence Centre Act have been in limbo for over two years with President Zuma delaying to sign these into law despite the fact that parliament had adopted them. Some of the contentious clauses are those aimed at politically exposed persons. There is a view that the president fears these measures could be targeted at his friends and those politically close to him.

Further, South Africa has vulnerabilities in respect of measures aimed at ensuring that there is adequate, accurate and timely access to information on beneficial ownership, as highlighted by the last Mutual Evaluation by the FATF/Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in 2009.

Apart from cleaning up corruption in its law enforcement agencies and tax authorities, South Africa has a daunting task of accurately understanding risks in its economic sectors through a national assessment process, developing a legally robust and enforceable definition of beneficial ownership, and establishing a public register ownership. The partnership between South Africa, the G20 and the German government, in particular, could best be forged around support to undertake a credible national risk assessment, at least to understand the extent of risks in its economy and the financial sector.

Conclusion and Recommendations

There is a need for a clear intent to implement transparency in beneficial ownership by all countries. This is a very important agenda in strengthening global stability. The G20 and its member states can play a positive role by exploring innovative ways of supporting development through strengthening governance mechanisms, especially in this emerging area of transparency in beneficial ownership.

For example, in African countries, they can provide technical support to financial intelligence units, national risk assessments, law enforcement authorities and bank supervisors, focusing mainly on money laundering counter-measures. This kind of support needs to be systematised and built into the undertakings made at the G20.

An emerging Compact for Africa should insist on transparency standards. Fighting money laundering, terrorist financing, and corruption offer an important basis for creating strong measures that could throttle illicit financial flows and help African countries mobilise resources for economic development. In addition, and more importantly, for such measures to have sustained effect, institutional and regulatory processes should be improved to ensure that they are both credible and effective.

In a climate where a normative global leadership is in decline, with the US showing disinterest in leading by example on enforcing global norms against corruption, other G20 countries (as well as African countries) should step to the breach. There is a need to raise the profile of these issues, and for some of the leading countries within the G20 to show leadership in pushing the transparency agenda. This is important since some of the African countries discussed in this Spotlight are experimenting with beneficial ownership transparency on the resources sector. Dismantling the Dodd-Frank Act is setting their efforts back, and undermining global processes to secure the integrity of the financial system. These measures should form the cornerstone of a G20 Compact for Africa, aiming at reinforcing initiatives that are already under way in various African countries.

South Africa has always claimed to represent African voices. In the context of the G20, this is an opportunity for South Africa to act as a norm-bridge between the G20 and its African counterparts.

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Further reading

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