

Submission on Increasing Transparency of the Beneficial Ownership of Companies

ActionAid Australia | March 2017

1. Introduction

ActionAid Australia welcomes the opportunity to give feedback on the *Increasing Transparency of the Beneficial Ownership of Companies* consultation paper.

ActionAid Australia is part of a global federation that works in more than 45 countries around the world to advance social justice, gender equality and poverty eradication. ActionAid supports women living in poverty to claim their human rights by collectively confronting the injustices they face. This work is supported by the Australian Department of Foreign Affairs and Trade through funding to advance women's empowerment and rights in more than 10 countries under the Australian Aid Program.

ActionAid is an active member of the global movement for tax justice and gender-responsive public services both in Australia and internationally. Our organisation believes that increasing transparency of beneficial ownership is essential to combat tax evasion and other activities that reduce public revenue, and that this will allow lower-income countries to finance essential public services such as education and health care. Access to these services is critical in advancing women's empowerment and gender equality.

2. Beneficial ownership transparency and lower-income countries

There is significant evidence that anonymous ownership leads to unrealised public revenue in lower-income countries due to tax evasion and illegal activities such as fraud and corruption. A 2014 report by global advocacy organisation ONE found that lower-income countries lose US \$1 trillion annually due to illegal deals and activities, many of which are facilitated by anonymous company ownership.¹

The impact on lower-income country revenue is significant. For example, in Nigeria in 2011 anonymous company ownership enabled a US \$1.1 billion oil rights payment from Shell and Eni to be channeled to the former oil minister, rather than the Nigerian Government.² This amount represented 80% of the nation's proposed 2015 health budget.³ Similarly, a 2013 report by the Africa Progress Panel found that the Democratic Republic of Congo lost US \$1.36 billion due to anonymous company ownership structures used in five mining deals between 2010 and 2012 – the equivalent of the entire public revenue from extractive industries during this time.⁴ This represents a significant loss of revenue for a country that is struggling to recover from decades of war, including providing access to justice to survivors of sexual and gender based violence.

This unrealised public revenue has a direct economic impact on public expenditure, often resulting in inadequate public services, which is felt most by vulnerable groups. In lower-income countries, it also results in governments and communities not fully benefiting from foreign ownership and control of their resources or privatised assets, and fuels poverty and inequality.

¹ One, "[Trillion Dollar Scandal: The biggest heist you've never heard of](#)," 2014.

² Global Witness, "[Shell and Eni's Misadventures in Nigeria](#)," 2015.

³ Global Witness, "[Shell and Eni's Misadventures in Nigeria](#)," 2015.

⁴ Extractive Industries Transparency Initiative, <https://eiti.org/beneficial-ownership>

Government budget cuts and lower spending on public services have a disproportionate impact on women. This is most profound for women living in poverty who are less able to replace inadequate public services by paying for better services provided privately, for example in the case of water or basic medical services. This not only increases women's vulnerability to violence and exploitation (e.g. having to walk long distances for water or firewood), but also increases their unpaid burden of care due to gender roles that posit care for children, the sick and elderly in their hands. This in turn impacts on women's ability to participate in paid work and public life, and the contribution that women make to the formal economy.

In DFAT's Gender Equality and Women's Empowerment Strategy, the Australian Government has committed to advancing equality and economic empowerment for women across all aspects of Australia's foreign policy, trade, and aid programs. It is important that Australia's laws on beneficial ownership transparency are aligned with this strategy to ensure that governments can raise the public revenue needed to support women's empowerment in lower-income countries.

3. Recommendations on implementation of beneficial ownership transparency in Australia

As discussed above, transparency of beneficial ownership has significant benefits not just for Australia, but also for lower-income countries where increased public revenue will allow governments to better meet their development objectives. However these benefits will only be realised if Australia ensures beneficial ownership information is centrally maintained and publicly accessible, automatically exchanged between authorities, and collected from trusts as well as companies.

Public accessibility of registers is essential to ensure that civil society, citizens, and journalists are able to keep not just companies but also public officials accountable. As the Nigerian case above demonstrates, lost public revenue often occurs due to corruption of government officials. It is therefore critical that this information is not kept hidden within law enforcement agencies, but is instead accessible to scrutiny by non-government stakeholders.

Adequate accessibility by non-government stakeholders requires that information is easily available to the public and access to this information is not prohibitively expensive. ActionAid therefore recommends that a central register is maintained by the government, and information held on the register can be accessed free of charge.

Recommendation 1: The Australian Government should maintain a central register of beneficial ownership, and information held in the register should be publicly accessible free of charge.

It is important that beneficial ownership information is automatically exchanged with relevant authorities internationally. Recognising the significant disparities in country capacity to collect and maintain beneficial ownership information, sharing of information should not be based on reciprocal obligations. Instead, it should be based on the prioritisation of support to lower-income countries to improve their tax administration and ability to combat tax evasion and other illegal activities within their own jurisdictions. This would also be in line with the Australian Government's strategy on effective governance as one of the central pillars of its aid program.

Recommendation 2: Information collected as part of a register of beneficial ownership should be automatically exchanged with other jurisdictions, without requiring reciprocity agreements.

Recommendation 3: In addition to automatic exchange of information, Australian Government should provide bilateral support to lower-income countries to assist them to improve their tax administration.

Finally, it is essential that beneficial ownership transparency laws include trusts as well as companies. As shown by Global Witness in February 2017, trusts are often used alongside anonymously-owned companies as the final layer of secrecy to conceal corruption, fraud, tax evasion and other illegal activities.⁵ Document leaks including the Panama Papers have revealed examples of trusts being used for these purposes. For example, trusts allowed Prince Jefri Bolkiah of Brunei to hide US \$14.8 billion that he siphoned from the Brunei sovereign wealth fund to his personal bank accounts.⁶

ActionAid therefore strongly urges the Australian Government to include trusts as part of laws to increase transparency of beneficial ownership. Without this inclusion, the capacity of transparency laws to combat tax avoidance and illegal activities that impact on lower-income countries will be severely limited.

Recommendation 4: The central register of beneficial ownership should include information on trusts as well as companies.

4. Global precedents and obligations on beneficial ownership transparency

As noted in the consultation paper, Australia has been a global leader on greater transparency of beneficial ownership. The adoption of the G20 High-Level Principles on Beneficial Ownership Transparency was a key achievement of Australia's 2014 presidency of the G20. It is encouraging to see that the Government is now looking at options for applying these commitments domestically. It is also an opportunity to continue to show leadership by taking strong steps in line with global precedents and obligations under Australia's international commitments. This requires introducing a register that is maintained centrally, covers all companies including corporations and trusts, and is accessible by the public free of charge. It also requires the Australian Government to ensure lower-income countries are part of decision-making in defining global taxation rules, that these rules benefit women and those living in poverty and exclusion, and that there is consistency between tax policy and foreign policy commitments.

As noted in the consultation paper, the UK has recently introduced a register of Persons with Significant Control. This register is centrally maintained, covers both trusts and corporations, and the public is able to access the register free of charge. Similarly, in February 2017 the EU Anti-Money Laundering Directive was amended by the European Parliament to include trusts and make registers publicly available.

In addition, Australia has obligations to establish a public register of beneficial ownership as part of its commitment to implement the EITI. The EITI is clear in its recommendation that registers are made public, and 45 EITI countries have now published roadmaps to introducing public registers of beneficial ownership.⁷ ActionAid Australia supports the timely implementation of the EITI in Australia, including the establishment of a public register of beneficial ownership.

⁵ Global Witness, [“Don't Take it on Trust,”](#) 2017.

⁶ Global Witness, [“Don't Take it on Trust,”](#) 2017.

⁷ Extractive Industries Transparency Initiative, <https://eiti.org/beneficial-ownership>

5. Summary of recommendations

1. The Australian Government should maintain a central register of beneficial ownership, and information held in the register should be publicly accessible free of charge.
2. Information collected as part of a register of beneficial ownership should be automatically exchanged with other jurisdictions, without requiring reciprocity agreements.
3. In addition to automatic exchange of information, Australian Government should provide bilateral support to lower-income countries to assist them to improve their tax administration.
4. The central register of beneficial ownership should include information on trusts as well as companies.

Submitted by:

Lucy Manne

Head of Campaigns

ActionAid Australia

lucy.manne@actonaid.org

(02) 9565 9111