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The translucence of transparency: Extractive industry beneficial ownership disclosure as an emerging transparency regime☆

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ABSTRACT

This study explores the nature and limits of transparency in the context of the Extractive Industry Transparency Initiative's beneficial ownership regime. To do this, we draw on Ball's (2009) three transparency metaphors – public value or norm of behaviour, openness, and complexity – to frame our study and conceptualise transparency as an ambiguous and ambivalent concept connoting light and darkness, clarity and opacity. Empirically, we draw on diverse country-level data (supplemented by company-level data to highlight exemplars) from the period between 2013 and 2021. Our findings show how the beneficial ownership regime's intersection with the wider political culture provides a space wherein the nature of transparency and the resultant visibilities and invisibilities are negotiated and contested and eventually compromised. We conceptualise this space as a zone of in-betweenness, or translucence, and represent it as an opacity–-transparency continuum. As such, what is revealed is the social construction of translucence – a state in which there is neither full transparency nor complete opaqueness but, rather, something in-between. Our findings also highlight how resistance – in both subtle and confrontational forms –influences placement within this zone of in-betweenness (translucence).

1. Introduction

Natural resources extraction produces about half of the world's carbon emissions and contributes significantly to air, water, and land pollution as well as toxic waste (UNEP, 2017). To tackle this ecological crisis, a sustainable, responsible, accountable and transparent extractive industry is imperative. Unsurprisingly then, transparency is increasingly becoming a feature of global sustainability governance (Gardner et al., 2019; Gupta & Mason, 2014), especially regarding the extractive industry (EI). Indeed, within this industry, transparency has been presented as a means of opening communication channels; facilitating the scrutiny of revenues generated from natural resource extraction; promoting accountability for how resource rents are channelled into promoting sustainable development; and addressing the resource curse (Barma et al., 2012, p.4; Haufler, 2010). In promoting transparency and accountability in the governance of natural resources in the EI, specific initiatives, including country-by-country reporting and, in

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particular, the Extractive Industries Transparency Initiative (EITI), have been created. These initiatives have focused on transparency in relation to financial disclosures from both governments and companies participating in the EI (see Andrews, 2016; Andrews & Okpanachi, 2020; Chatzivgeri et al., 2020; Cortese & Andrew, 2020; Healy & Serafeim, 2020).

More recently, transparency efforts in the EI have started to focus on the ownership of companies operating in the EI as in a vast number of cases the beneficial owners (BOs)[1] of companies that have acquired rights to extract oil, gas and solid minerals are unknown (Haufler, 2010; Nwapi et al., 2021). Much like Russian dolls, these BOs' identities remain hidden behind veils set in a complex chain of corporate entities or shell corporations (Vermeulen, 2013). As a practical measure intended to address the abuse of shell companies' ownership structures and illicit financial flows (Etter-Phoya et al., 2020), the 2016 EITI Standard introduced a requirement for EITI-implementing countries to maintain a publicly available register of EI companies' BOs (EITI, 2020). The general assumption underpinning this is that increased disclosure equates to transparency. In turn, this is assumed to lead to accountability and to steer corporations, individuals, and civil societies towards collective and desirable behaviour, purportedly for the benefit of society at large (Andrews, 2016; Hansen et al., 2015).

However, transparency itself is a contested notion – one embedded in historic, cultural and political contexts (Birchall, 2011; Owetschkin et al., 2021; Weiskopf, 2023). Indeed, the literature points to the ambiguities and ambivalence of the transparency concept (Christensen & Cheney, 2015), as transparency is always a source of both clarity and opacity, light and darkness (Konovalova et al., 2023; Neu et al., 2015; Ringel, 2019). Accounting scholarship on the EI has also underlined how transparency in relation to financial disclosures of companies and governments has been problematic and beset by complications (Baudot & Cooper, 2022; Chatzivgeri et al., 2020; Ejiogu et al., 2019, 2021). Also, this literature highlights that extractive companies' disclosure of their financial flows to the governments represents only a subset of the multiplicity of financial flows between them and their array of financial beneficiaries (Andrews, 2016; Chatzivgeri et al., 2020).

While critical accounting scholars have shed light on the 'performativity' of transparency discourse – the way it reproduces the status quo, and its unintended consequences (Roberts, 2009) – as well as the transparency conundrum in the EI (see Chatzivgeri et al., 2020; Ejiogu et al., 2019, 2021), an in-depth examination of the limits of transparency in the context of the Extractive Industry Transparency Initiative's beneficial ownership (EITI BO) regime remains scarce (Konovalova et al., 2023). Konovalova et al. (2023), for example, underline how obscurity in ownership structure creates opportunities for illegal activities, including tax evasion, money laundering, and corruption. In seeking to contribute to this literature, this paper explores the construction and operationalisation of the EITI BOs transparency regime to better understand the limits of transparency.

To do this, we enlist a wide range of country-level data (supplemented by company-level data to highlight exemplars) from the period between 2013 and 2021. Theoretically, we draw on Ball's (2009) understanding of transparency as a metaphor, classified into public value or norm of behaviour, openness, and complexity. This framework enables us to gain insights into transparency in the context of the EITI BO transparency regime as an ambiguous and ambivalent concept connoting light and darkness, clarity and opacity. More specifically, this framework helps us conceptualise the limitations of transparency in the BO's disclosure regime by capturing and contributing to the extant accounting literature on the paradox of transparency within EI governance (*see* Andrews, 2016; Chatzivgeri et al., 2020; Ejiogu et al., 2019; Haufler, 2010; Konovalova et al., 2023). Our findings show that transparency inhabits a zone of in-betweenness, or translucence, between transparency and opacity, indicating that the self is made neither fully visible nor fully opaque. The findings equally show that transparency's in-betweenness, or translucence, derives from the role resistance (both confrontational and subtle) plays in constructing transparency.

Our findings make two main contributions. First, this paper extends the notion of transparency in the accounting literature as a problematic concept, especially within the EI (Chatzivgeri et al., 2020; Cortese & Andrew, 2020; Ejiogu et al., 2019, 2021; Konovalova et al., 2023; Roberts, 2009; Quattrone, 2022). It extends our understanding beyond the notion of transparency as information disclosure (Ejiogu et al., 2019; Quattrone, 2022) in which an entity is either transparent or opaque, to a more dynamic view of transparency as relative and indeterminate. It does this by developing the concept of a zone of in-betweenness, or translucence, between transparency and opaqueness in relation to the EITI BO regime and by illustrating the elusiveness of a pure form of transparency. This equally reflects the naivety of the binary/dichotomy in accounting practice that critical accounting scholarship has recognised in recent times (Cooper, 1992; Gallhofer & Haslam, 2003; Hines, 1992; Tweedie & Ronzani, 2024). Second, our study contributes to a more nuanced understanding of Ball's (2009) third metaphor of transparency (complexity) by explicating the construction of translucence and opacity. In this, we show how transparency is resisted both subtly and confrontationally, and how these forms of resistance to transparency lead to compromises that engender varying degrees of translucence in BO transparency disclosure practices, which then largely gravitated towards closure.

The paper is structured as follows. Next, we present a contextual overview of the EITI's BO initiative while in Section 3 we discuss our conceptual understanding of transparency. In Section 4, we explain our choice of research methods, and in Section 5 we present and analyse our empirical findings. In Section 6, we reflect on our findings and conclude in the final section.

2. Context: Beneficial ownership disclosure in the extractive industry

Globally, regulatory and public demand for transparency increased pressure to disclose who owns, controls, and derives substantial economic benefits from corporations (Baudot & Cooper, 2022; Westenberg, 2018). Beneficial ownership (BO) disclosure requirements

[1] 'Beneficial owner' here refers to a natural person who ultimately owns or controls a corporate entity and enjoys the benefits of ownership even though the legal ownership is not in their name.

have their roots in the global fight against money laundering and terrorist financing, which led to the formation of the Financial Action Task Force (FATF) in 1989. In 2003, the FATF set out 40 recommendations to national governments for combating money laundering and terrorist financing, two of which (recommendations 24 and 25) addressed the disclosure of company BOs (FATF, 2003). These 40 recommendations were formalised in the FATF's 2012 International Standard on Combating Money Laundering and The Financing of Terrorism & Proliferation (updated in 2021) (FATA, 2021) and its Guidance on Transparency and Beneficial Ownership (FATF, 2014). The FATF standards would later gain impetus from the European Union's enactment of the fourth (2017) and fifth (2020) Anti-Money Laundering Directives, which sought to bring EU regulations in this area in line with FATF guidelines.

This push for BO transparency found its way into the EI in 2013. When adopting the EITI Standard in 2013 the EITI Board recommended that the EITI in future would require the disclosure of BOs, subject to piloting of such a requirement. The BO disclosure pilot project ran from October 2013 to September 2015, with 11 participating countries (Burkina Faso, the Democratic Republic of Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Nigeria, Tajikistan, Tanzania, Togo, and Zambia) (EITI, 2015). However, within the EI the motivation for BO disclosure is more nuanced. That is, it is seen as a governance and transparency initiative to prevent and mitigate the resource curse linked to resource-rich developing countries which have been developing their EIs through foreign direct investments and are plagued by mismanagement of their natural resources (Radon & Achuthan, 2017; Sikka, 2011). These factors increasingly necessitated requirements to reveal the real owners of companies in efforts to expose or reduce prebendalism, cronyism, clientelism, anonymous shell companies or individuals, corruption, and financial misconduct. BO in the EI context thus became symbolically aligned with promoting transparency and enhancing a country's ability to curtail revenue leakage occurring via the exploitation of its natural resources (Nwapi et al., 2021; Radon & Achuthan, 2017).

In 2016, BO disclosure became a formal requirement for EITI signatories to implement by 1 January 2020. For this, implementing countries needed not only to maintain a register of BOs of companies operating in the EI but also to provide specific disclosures concerning these individuals, the latter involving detailing the level of ownership and how ownership and control are exerted, as well as identifying any politically exposed persons with influence in an extractive company (EITI, 2019a). This political dimension is especially important because politically connected people can own and control extractive companies by proxy, otherwise making it more complicated to identify the owners. In addition to requiring disclosure through BO registers, the EITI Standard also encourages companies to disclose BOs through existing filings to corporate regulators and stock exchanges. In September 2021, 68 EI companies pledged to support the EITI Standard and several signed a statement committing to the BO disclosure requirements. Although the companies supporting the initiative appear to be many and the standard provides certain protocol for companies to follow, how they interpret BO transparency can deviate in diverse ways and how they ultimately implement it in practice can thus be entirely different from EITI intentions, resulting in serious implications for real-world cases. Hence, there is a significant need to investigate this subject, especially given how problematic it has evidently become.

Although the EITI Standard has been clear as to its requirement for BO disclosure transparency, the implementation of this requirement has not been straightforward. In implementing BO, signatories have flexibility in determining how to legally, institutionally, and procedurally disclose BOs to prevent corruption or illegal financial transfers (Westenberg, 2018). Thus, BO disclosure has become a process of operationalising strategic governance and transparency on the elusive subject of 'ownership' to create a mutual mechanism of transparency and accountability or 'social legitimacy' (Pamment, 2019). Furthermore, as transparency contradictions and tensions exist despite the intention of shedding light and creating clarity proffered by its proponents (Birchall, 2011; Owetschkin et al., 2021), understanding transparency itself and its real-world implementation has significant implications for BO disclosure. Notably, Pamment (2019, p.658) says "transparency is not simply about revealing the realities or organisational activity, but also of the ritualised social construction and legitimization of a form of manageable reality". Instruments mobilised to demonstrate transparency always involve "an abstraction from context that masks as much as it reveals in the working of institutions" (Roberts, 2018, p.55), which may serve as a smokescreen that hides organisational practices as much as it reveals them (Harness et al., 2024), thereby possibly creating a form of blindness because how we see can also be ways of not seeing (Quattrone, 2022). We will explore the construction and operationalisation of the EITI BO regime in the empirical sections by drawing on the theoretical understanding of transparency we develop in the next section.

3. Theorising transparency and its limits

For many years, transparency has been widely promoted not only as integral to broader international agendas of good governance and public accountability but also as an efficient tool for eradicating the corruption directed towards resource-rich countries (*see* Bauhr & Grimes, 2014; Islam, 2006; Kosack & Fung, 2014). As Roberts (2009) stressed, "we seem to believe in transparency, and with every failure of governance, we have been prone to invest in yet further transparency as the assumed remedy for all failure" (pp.957–958). Indeed, despite years of academic debate transparency remains a contested concept, with no universally agreed definition. Weiskopf (2023, p.327) situates transparency as "a historically contingent practice that is negotiable and contested". After reviewing its historical development as well as its usage in literature and in practice, Ball (2009) identifies three main conceptualisations of transparency, which she characterises using three metaphors: transparency as a public value or norm of behaviour to counter corruption; transparency as open government and organisations; and transparency as complexity. We draw insights from these metaphors in framing our study.

3.1. Transparency as a public value or norm of behaviour to counter corruption

The first metaphor presents transparency as a public value or norm of behaviour aimed at countering corruption. Using this

metaphor, Ball (2009) characterises transparency as a way of conducting business which places information in the hands of the public, with the intent that the public uses this information to drive improved governance. This sort of transparency is indirect as it depends on support from the public, civil society actors, the media, and other stakeholders. It generally relies on the pressure of rules and laws to compel information disclosure and openness to public scrutiny. This transparency is also intertwined with accountability, as information disclosure to the public should improve governance.

The conception of transparency within the EI context draws heavily on this metaphor as transparency has been presented as a means of making visible the revenues gathered from natural resource extraction and, in so doing, facilitating scrutiny of EI actors and operations. Such scrutiny being facilitated by civil society and stakeholder participation in natural resource governance is presumed to lead to greater accountability for how resource rents are channelled into promoting sustainable development (Barma et al., 2012). Transparency in this context sheds some light on certain phenomena in EI governance and practices that had hitherto been kept hidden from public view – for example, companies' BOs.

However, the literature on transparency points to the limits of this type of transparency. Several authors (Christensen & Langer, 2009; Eisenberg, 2006; Strathern, 2000; Tsoukas, 1997) highlight the unintended consequences of transparency: which include creating zones of darkness by making particular objects visible; undermining trust; suspicion of institutions and people working for them; as well as the emergence of new types of closure, self-censorship, and anxiety. Within accounting literature, Roberts (2009) describes the outworkings of such transparency as 'performativity' and argues that beyond making visible, transparency changes its 'subject' and works back on them in ways that are often counterproductive. Indeed, Roberts warns that transparency may not lead to accountability but instead cause fear, panic, crisis, and moral hazards, as subjects who fail to meet ideal standards of this transparency resort to 'ethical violence' and 'moral narcissism', and this makes them present themselves as perfect, coherent, and as knowing what they are doing. Similarly, Ejiogu et al. (2019, 2021) show that the link between transparency and accountability is not so clear-cut as transparency itself can be co-opted into a corrupt system and, as such, become murky. Thus, when conceptualising transparency as a tool towards achieving accountability by diverse stakeholders, the culture, power struggles, and negotiations that occur in particular contexts delimit not only the boundaries within which light can be shone but also the intensity of the light shone (Konovalova et al., 2023; Ringel, 2019; Roberts, 2009).

At its core, this conception of transparency is premised on neoliberal ideals. It minimises the role of government, regulations and regulators while emphasising individuals' power by creating a 'right to know', which not only places information in the hands of individuals but also devolves oversight to them. It also assumes that people will watch and understand things which are made visible, discuss and debate these things (Ananny & Crawford, 2016), and take action to improve social outcomes (Schudson, 2015). Etzioni (2014) points at the practical limitations of this 'persistent fiction' (Ananny & Crawford, 2016) when noting:

> "*The problem with this theory is that most people are busy making a living and maintaining a family and a social life, and they have very limited time and energy to devote to following public affairs. And, …. people do not have the training necessary to evaluate the relevant data.*" (Etzioni, 2014, p.687)

Thus, what we are left with is an understanding of transparency as making things visible as a pathway to accountability (Benavides, 2006), albeit a very uncertain and precarious pathway because of its zones of unverifiable darkness. This absence of certainty poses enormous challenges in understanding the power of accountability and the roles of accountable others in the zone of translucence. It also points us towards an empirical focus on the visibilities and invisibilities which are created and the unintended consequences of transparency, as well as the resulting zones of darkness.

3.2. *Transparency as open government and organisations*

Ball's (2009) second metaphor sees transparency as open government and organisations. Rather than being concerned with accountability, here transparency is understood in terms of the process of governing or managing and connotes openness or the ease of public access to and use of information. While in the first metaphor the ease of access to and use of information are part of transparency, in this second metaphor they are synonymous with 'transparency'. That is, the easier it is for the public to access and use information from a system or organisation then the more transparent that system or organisation is deemed to be (Berger et al., 2021; Villeneuve, 2014). Ball (2009) also hints at the limits of this form of transparency when noting that it gives rise to concerns about privacy and secrecy, and thus the creation of barriers to accessing information easily. Adversarial behaviour towards transparency over disclosing BOs' identities is engendered by tensions between privacy protection and privacy intrusion, especially if no clear mechanisms exist for safeguarding BO information against potential abuse (Benavides, 2006; Gilmour, 2020; Huang et al., 2020). Underlying these concerns for privacy and secrecy is the question of how much of the 'self' should be on display, as Roberts (2009, p.958) argues that transparency contains dual and contrasting potentials in binary form because of its ability to make the self-visible as "good or bad, clothed or naked, beautiful or ugly".

Ball (2009) argues that while transparency in this sense could be considered 'intrusive' and give rise to attempts to ignore or circumvent transparency these attempts themselves could be problematic and give rise to increased regulation. Buttressing this, Etzioni (2014) argues that without government-mandated disclosure most corporations will have less motivation to disclose clear, reliable, and comprehensive information. However, Baudot and Cooper (2022) show that transparency-related EI regulation is not so easily done. They show how the interests of regulators, especially in the accounting field, play a significant role in the acceptance, modification, and operationalisation of EI-related transparency norms. Indeed, the authors highlight how regulators displace the focus of a particular regulation (*Country by Country Reporting*) from corporate accountability and tax governance to government accountability because they are uncomfortable with the nature of the transparency this entails and how it sits with their interests.

This understanding of transparency and its limits points us towards an empirical focus on the process by which information is accessed and used, as well as the barriers enacted to prevent users from accessing or using information. Although public access to and use of information are arguably important in transparency discourse, actors are not self-motivated to open themselves up to public glare (Roberts, 2009), which evokes some form of resistance and mediates transparency (Huang et al., 2020; Ruijer et al., 2020). Actors might perceive the release of more information in an open government to portend risk of greater accountability scrutiny and thus mobilise resistance (Huang et al., 2020). This leaves transparency to the vagaries of the politics of resistance, either subtle or confrontational. Whereas resistance behaviours that mediate transparency are profound, such behavioural practices are intangible and invisible (Huang et al., 2020). Hence, the transparency of transparency itself becomes contestable. For example, Villeneuve (2014) questioned the openness of the transparency process itself (Transparency of Transparency, or ToT), defining ToT as "…the pro-active, open and unobstructed communication of the concepts and tools set in place to promote or to achieve transparency, underscoring the inherent rights and obligation of administrations and citizens alike" (Villeneuve, 2014, p.557). When understood as a process, the extent of transparency cannot be isolated from factors facilitating it. For instance, law and other mechanisms are fundamental to achieving transparency, but Villeneuve (2014) argues that transparency law and transparency tools themselves may not be transparent. Law can be mobilised to entrench a culture of secrecy, resulting in the suppression of vital public information (van der Berg, 2017). In addition, this understanding of transparency is also about understanding the openness of the transparency process itself, how access to information and the use of information can drive accountability in the governance processes and in managing outcomes in the zone of translucence.

3.3. Transparency as complexity and in-betweenness: Beyond simple dichotomy

Reducing a fluid social phenomenon such as transparency to a transparency–opacity binary is problematic and inadequate, and critical accounting scholars have criticised the naivety of reducing accounting discourses and practices to a binary/dichotomy as accounting is situated within a complex and problematic social context (Cooper, 1992; Gallhofer & Haslam, 2003; Hines, 1992; Tweedie & Ronzani, 2024). Ball's (2009) third metaphor recognises transparency as being complex and on a continuum and thus outside dichotomous binaries such as corrupt or not corrupt, open or not open, and transparent or opaque. Transparency as a continuum of behaviour nevertheless has two extremes – one where everything is revealed to the public and the other granting no public access to relevant information (Florini, 2002). Rather than acceding to either transparency or secrecy, it is arguably recognised that both are irreconcilable, being pulled by constant tension because transparency is beyond binary (Birchall, 2011). This is essentially so, as transparency is embedded in cultures (Berger et al., 2021; Birchall, 2014), which Benavides (2006) bifurcates into culture of openness and culture of secrecy. According to Owetschkin et al., (2021, p.6),

> "*Cultures of transparency encompass the frameworks inherent to a given historical period and a given society, which express the range of possible action and interpretation, the norms and values, the orders of knowledge and meaning, the relationship and the demarcation between the sayable and the unspeakable, the visible and the invisible, the knowable and the secret.*"

While a culture of openness suggests values and norms that promote the making of things visible, a culture of secrecy makes things that should be visible invisible. As openness and secrecy are mediated by cultural and political values and norms, they arguably manifest in degrees rather than at extremes such that consigning transparency, which is a social phenomenon, to the binary of being either transparent (openness) or not transparent (opacity/secrecy) is problematic. Rather, transparency is viewed as a complex political game (Meijer, 2013) that emerges from external pressures and negotiations, which then produces a "strategically opaque transparency" (Ruijer et al., 2020, p.270). Strategically, opaque transparency indicates restricting information release, including in what form and domain, which equally indicates that transparency is in degrees. Degrees of transparency reflect a zone of in-betweenness between transparency and opaqueness, which Lamming et al. (2004) clearly articulate via their idea of translucence as an intermediate condition between transparency and opaqueness in which some light is allowed in but not enough to fully illuminate and some information is disclosed but not enough to fully clarify. This places transparency in degrees, varying from one policy to another and from one country to another (Ball, 2009). It also opens up the possibility of intermediate and indeterminate forms of transparency/opacity in which transparency works both for and against accountability and corruption. David-Barrett and Okamura (2016) illustrate such a position in their study of why corruption-prone countries join the EITI given its stance on increasing transparency and scrutiny. They show how reformers use increased transparency through the adoption of the EITI to signal good intentions while international actors do likewise to reward achievements. However, this use of EITI-related transparency as a reputational intermediary is fraught with complexity. As Ejiogu et al. (2019, 2021) show, corrupt systems within EITI adopter nations co-opt transparency norms and condition the nature of information disclosed, the access to information, and how information is used. It thus raises uncertainty as to what point of the continuum can (desirable) transparency be said to have been achieved.

Indeed, transparency's very nature as translucent at once constitutes its limits while at the same time making it impossible to delimit transparency. Transparency manifests as translucent, which reflects a zone of in-betweenness because transparency is mediated by cultural and political values and norms. Those intermediations influence transparency outcomes. Law, for example, mediates transparency in that it can facilitate the extent to which relevant information is disclosed to the public, but law can also control how much of such information should be released to the public (van der Berg, 2017). Moreover, the extent of the release of data to external stakeholders also emerges from a political process of negotiation (Ruijer et al., 2020). When this happens, transparency becomes a matter of degree, and indeed translucent. Given the foregoing, we focus our attention in the empirical work on the nature of the negotiations, compromises, and arrangements which eventuate in translucency.

Fig. 1 synthesises the three metaphors and presents our conceptual understanding of transparency.

In Fig. 1, the enclosed box draws on the second and third metaphors to highlight the nature of transparency, while the first metaphor is located outside the box as we are not concerned with how or whether the public use the disclosed information. In the second metaphor, transparency is equated to openness through access to information and the usefulness of such information, while in the third metaphor the complexity of transparency is highlighted through the zone of translucence which lies on the continuum from opacity (equated to closure) at one end to transparency (equated to openness) at the other. The first metaphor is drawn on to show transparency that depends on participation of the public and civil society actors to achieve accountability. Transparency here is understood in terms of a complete opening up of self to scrutiny, which entails full disclosure of information. This information can be, and is, inferred to be acted upon by the public and civil society to indirectly bring about accountability and good governance. It is this understanding of transparency which sensitises our empirical work as we seek to better understand the nature of translucence in BO disclosure practices within the EI.

4. Research methods

This qualitative study uses archival BO data to explore the Extractive Industry Transparency Initiative's beneficial ownership (EITI BO) regime and consequently enhance insight into this regime, the nature of transparency regimes, and the limits of transparency. Analysing how the EITI BO regime promotes transparency in unveiling the ultimate owners of corporations, this research conceptualises transparency as an ambiguous and ambivalent concept connoting both light and darkness, clarity and opacity, and it does so while drawing on three metaphors – namely, public value or norm of behaviour, openness, and complexity.

The data collected covers the period between 2013 and 2021 and derives from diverse data sources, including the EITI BO webpages; EITI countries' webpages; EITI reports for all 49 reporting countries (as of 30 June 2021); the BO pilot implementation report, which had 11 participating countries; BO reporting databases/portals for 15 EITI countries that maintain these systems; other publicly available statements recorded conversations on the BO involving the EITI and implementing countries; documents relating to EITI BO implementation; and media articles on BO implementation by reporting countries. Our country-level unit of analysis was supplemented by company-level data to highlight exemplars (*see* Appendix 1 for a list of data sources). These data sets enabled us to develop our understanding of the fluid conceptions and practices of transparency regarding the implementation of the BO initiative.

Our initial interest in approaching the data concerned developing an understanding of the practical limits of BO transparency – in other words, what was disclosed in terms of beneficial ownership in the various countries and how we could understand these disclosures with our theoretical ideas of transparency and its limits. A starting point for this involved establishing the ideal representation of absolute transparency or clarity with BO. We sought to find this in the EITI Standard. Indeed, Requirement 2.5 of the EITI Standard states:

> *a)It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity (ies) that apply for or hold a participating interest in an exploration or production* of *oil, gas or mining license or contract, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.* (EITI, 2019b, p.18)

The EITI Standard also defines a beneficial owner as "*natural person(s) who directly or indirectly ultimately owns or controls the corporate entity*" and requires "*publicly listed companies, including wholly owned subsidiaries, to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed*" (EITI, 2019b, p.19).

Having established a normative baseline of what EITI BO transparency should look like, we examined how reporting countries practised transparency. To do this, we read through the country page of each EITI reporting country to determine how they reported

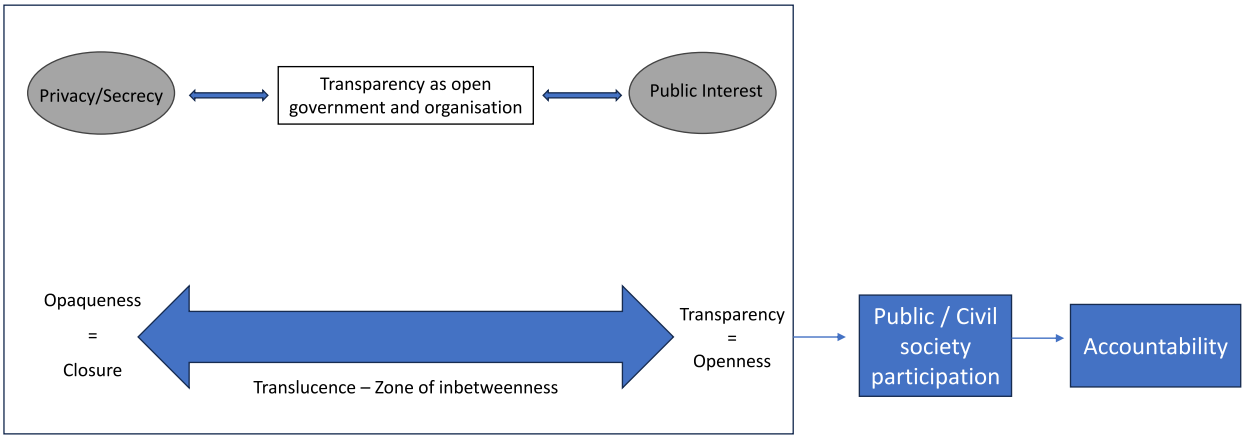


Fig. 1. Transparency Metaphors.

their BO data. We then read through the EITI reports for those countries disclosing BO information through EITI reports and accessed BO registries for those countries that maintained an accessible database. Information from the reports and registries were entered into a spreadsheet we then analysed to produce the summary tables in the empirical sections, which highlight the nature of BO disclosures and their practical limits.

Our attention then turned to the processes through which the BO disclosures and their practical limits emerged. Sensitised by our theoretical understanding of transparency in terms of Ball's (2009) metaphors, we read through/listened to our data, made notes, then undertook coding. As themes emerged, we went through an iterative process between data, emergent themes, and theory to develop an explanatory frame, which we discuss in the next section. Like Dhanani (2019), we also drew on texts and images from publicly available documents without explicit copyright (EITI reports in our case) to provide exemplars of practices as shown in our analysis. These exemplars are discussed in Section 5.1 and Section 5.2.1 and shown in Appendices 2 and 3 respectively.

5. Nature and limits of BO disclosure transparency

5.1. Understanding the limits of BO disclosure in practice

Although the EITI requirement stipulates maintaining a publicly available BO register with particular information, we found that BO disclosure in practice varies in this regard across countries. The data immediately demonstrated two types of variations. The first relates to how disclosures are made or, indeed, how mediating technologies are used to unveil identities and create visibilities (Birchall, 2015; Canning & O'Dwyer, 2001; Ejiogu et al., 2019; Hansen et al., 2015). We found two systems of such disclosure: a BO registry in compliance with the EITI requirement (15 countries) and EITI reports (24 countries). We also found that 10 countries were not yet reporting BO data. Table 1 below summarises the disclosures of countries reporting BO data through their EITI reports.

For each of the 24 countries disclosing BO data through EITI reports, Table 1 shows the total number of companies operating in the extractive industry, the number of companies reporting BO, the number of companies reporting legal ownership (LO), the number of companies not reporting, and the number of State-owned companies. For State-owned companies, beneficial ownership lies with the State, so the disclosure requirements are different (i.e., companies need to show only that they are State owned). Reviewing the data in Table 1, we find very significant levels of non-disclosure from companies across most countries. In addition, where disclosures are made, these tend to be on LO as opposed to BO. Similar disclosure trends are observed with countries that maintain publicly available registers.

The second variation observed concerns the nature of the disclosed information. Some companies reported fully on their beneficial owners, as the EITI BO regime requires. For example, Appendix 2 summarises a full BO disclosure made by Congo Dongfang International Mining (DCM), published in the 2013 EITI report of the Democratic Republic of Congo, which shows the natural persons who ultimately own significant holdings in the company. While this kind of disclosure is an exemplar, it is disappointingly rare within the current BO transparency regime despite the initiative's aim being to compel disclosures of BO in the public interest.

Having established what was being reported, we sought to explore how the metaphors of transparency could help us understand the fluidity of these BO disclosures. In doing this, we tried to make sense of our data by plotting the level of disclosures along an opacity–transparency continuum. In our analysis, we see full transparency as 100 % BO disclosure and full opacity as 0 % BO disclosure, or absolute non-disclosure. The disclosure level was calculated from Table 1 data by dividing the companies reporting BO by the total number of companies. Fig. 2 shows this continuum.

While our analysis of the data immediately revealed that no country achieved full BO transparency disclosure as per EITI requirements, some countries were entirely opaque (absolute non-disclosure). Most countries nevertheless lay somewhere in-between; in other words, they were translucent, with most of them being more opaque than transparent. This general trend of translucence highlights the ambiguous and indeterminate nature of what is created, as translucent disclosures represent both an incomplete closing and a limited opening up of the self to scrutiny, making visible some part of the self but not enough.

5.2. The emergence of translucence

Having understood the practical limits of BO transparency in terms of its creation of translucence, our focus then turned to establishing how translucence emerged or, in other words, how BO transparency was constrained within these practice boundaries. Sensitised by our theoretical understanding of transparency through Ball's (2009) metaphors, we focused on understanding the actors, interactions, power plays, negotiations, and compromises that influenced access to and use of BO transparency information and how disclosed information was or could be used to fight corruption. Our data analysis highlighted several areas and issues in which contestations and practice reveal the limits of transparency and the emergence of translucence.

5.2.1. Defining BO, a negotiated practice

Defining BO is key to achieving transparency with ownership and fund flows within the EI as it sets the boundaries of what can be made visible, or in terms of Ball's (2009) metaphors how open or accessible information on ownership is within the EI. In our case, although the EITI Standard defines 'Beneficial Owner', it also provides that each country should adopt its own definition of BO. To do

Table 1
Summary of BO data disclosed through EITI reports.

Country	Report Publication Year	Total Number of Companies (a)	Companies reporting BO (b)	BO Transparency Measure: % of companies reporting BO (b/a)x100	Number not reporting	Companies reporting LO	State Owned Companies
Burkina Faso	2020	16	2	12.50 %	5	8	1
Cameroon	2020	17	4	23.53 %	10	2	1
Chad	2020	33	0	0.00 %	13	13	7
Cote d Ivore	2020	29	0	0.00 %	19	10	0
Ethiopia	2019	7	3	42.86 %	4	0	0
Guniea	2020	25	9	36.00 %	14	0	2
Guyana	2021	59	7	11.86 %	45	7	0
Indonesia	2021	0	0	0.00 %	0	4	0
Kyrgyz	2019	14	0	0.00 %	0	13	1
Liberia	2020	19	0	0.00 %	9	10	0
Mali	2020	25	4	16.00 %	9	12	0
Madagascar	2019	16	4	25.00 %	0	12	0
Malawi	2021	17	0	0.00 %	6	11	0
Mauritania	2020	24	1	4.17 %	4	19	3
Paupa New Guinea	2020	145	1	0.69 %	23	119	2
Philippines	2020	64	28	43.75 %	36	0	0
Republic of Congo	2020	25	6	24.00 %	4	14	1
Senegal	2020	24	5	20.83 %	0	17	2
São Tomé and Príncipe	2019	6	1	16.67 %	0	5	0
Tanzania	2020	36	3	8.33 %	18	11	2
Timor0Leste	2020	7	0	0.00 %	0	6	1
Tajikistan	2014	Not available	3	–	Not available	2	Not available
Togo	2019	23	16	69.57 %	1	4	2
Zambia	2020	16	0	0.00 %	10	6	0

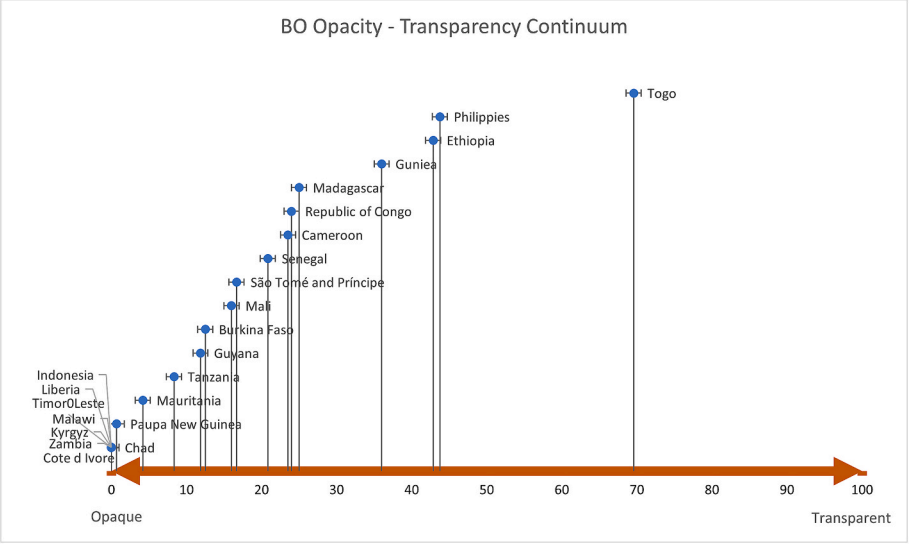


Fig. 2. The BO Opacity–Transparency continuum.

this, the Multi-Stakeholder Group (MSG)[2] in each country should:

> *"Agree an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons."* (EITI, 2019d, p.19)

[2] The MSG is the governing body of country-level EITI organisation.

Encouraging each country to define what a beneficial owner is and to set a threshold that takes its peculiarities into account means each country's definition of BO will be contextually situated. However, given that several EI countries are marred by endemic corruption, weak institutions and laws, and risk of corporate regulatory capture (Ejiogu et al., 2019, 2021; Lauwo et al., 2019), the very nature of BO transparency becomes contested, as the prevailing contexts apparently subjugate transparency. BO is then enmeshed into politics as it becomes "a field of multi-level negotiation and struggle among different stakeholders" (Pamment, 2019, p.659). As most countries do not have legal definitions of BO, the MSG's definition becomes quite important. Indeed, our analysis indicates that in several countries the definition adopted has become a key driver for legal reform. Given the importance attached to this definition, it is no surprise then that in several countries a struggle has emerged around the definition. For example, the EITI BO pilot evaluation report notes that:

> *"Several pilot countries have highlighted that agreeing on an appropriate definition of beneficial ownership was challenging."* (EITI, 2015, p.6)

Most such challenges, negotiations, and compromises centre around setting an appropriate threshold for disclosing BO and politically exposed persons (PEPs). For example, on Ghana's BO disclosure threshold the National Coordinator of the Ghana EITI (GEITI) comments:

> *"In the extractive sector, the threshold is very low because we think that nominal numbers in terms of the figures when you look at them, even 1 % is quite a lot of money or funds. So, countries that are looking at developing thresholds should be mindful of the fact that some of the stakeholders would definitely want to be pushing for the highest threshold but for you to be able to make meaningful impact in terms of your BO disclosure process you need to actually settle on a very low threshold."* (Video Recording 1)

What is at stake here is how much of the self should be made visible. We know that it is impossible to make the self fully visible as this will expose an 'ugliness' one would prefer to remain hidden from view (Roberts, 2009). At the same time, the ability of disclosure to eventuate in scrutiny and accountability (Ball, 2009) depends on how much of the self is opened up to view. Most countries have settled for thresholds between 5 % and 25 %. This aligns with Etter-Phoya et al. (2020), who reveal that most countries assessed under the Financial Secrecy Index apply a 25 % threshold, with thresholds tending to result from negotiations in the MSG. Indeed, Ejiogu et al. (2019, 2021) highlight the struggles over control of MSGs and the political nature of their decision-making.

Although the negotiations and struggles are hidden, their outworkings are evident in the visibilities and invisibilities created. For instance, in the Democratic Republic of Congo (DRC), where the threshold was set at above 25 %, the BO pilot evaluation report highlighted that in several companies a single legal owner was controlling slightly more than 25 % so BO data was thus required for such legal owners, while no BO data was required for several legal owners holding equal to or below 25 % equity because they fell below the reporting threshold, however marginal.

Implementing a high threshold reduces the transparency that supposedly promotes good governance and accountability, to a myth, creating an illusion of openness yet obfuscating visibility (Etzioni, 2014). For example, individuals can adopt schemes to hide their identities from public scrutiny by breaking their equity interests into smaller percentages below the BO threshold which would be held by different organisations/agencies or people. Appendix 3, drawn from the DRC BO pilot evaluation report, provides an example of this in which only one of seven shareholders – High Wind Properties – met the threshold established by the MSG. Thus, in this case, attention is focused on High Wind Properties which, although falling within the reporting threshold, only its legal owners rather than its beneficial owners were disclosed. However, the stipulated threshold shields the disclosure of the beneficial owners of the other six legal owners from public scrutiny (e.g., Gecamines and Simco are related companies with 25 % combined equity, but individually they hold 20 % and circa 5 % equity respectively), thus providing an incentive to hold equities below the BO threshold.

Evaluating EITI BO pilots across all participating countries, Global Witness (2015) provides several examples of higher thresholds creating invisibilities. For example,

> *"In Zimbabwe, a diamond mining concession was allocated to a company called Mbada. Just under 25 % of Mbada was passed to a third party, Transfrontier, which has an opaque company structure based in secrecy jurisdictions and tax havens. The beneficial owners of Transfrontier are unknown."* (Global Witness, 2015, p.7)
>
> *"A subsidiary of Swiss corporation Weatherford entered into a joint venture in Angola with two local entities. The joint venture was split 45/45/10, with the 10 % share held by 'the relative of an Angolan Minister'."* (Global Witness, 2015, p.7)

Variations in BO definitions and disclosure thresholds, when viewed through the lens of Ball's (2009) metaphors, highlight two main points. First, what it means to be fully transparent is highly ambiguous. Indeed, setting high disclosure thresholds allows EI companies to claim full transparency when, in reality, much remains hidden from view. Second, the contestations and negotiations about what threshold to set is really about how open EI companies should be or, put differently, how much they can get away with hiding. These findings point at BO transparency disclosures being unable to attain full transparency in the normative sense, thus only existing in the zone of translucence.

5.2.2. Embedding BO in legislation

Viewing transparency as openness (Ball, 2009) requires access to otherwise hidden information, but Etzioni (2014) and Roberts (2009) have argued that actors would rather not disclose information lest they reveal parts of themselves they would rather not put under scrutiny. Regulation is thus necessary to strengthen access to information (Etzioni, 2014). In the case of BO transparency, this is usually done through embedding BO disclosure requirements in legislation but, as previously noted, most EITI countries had no legal definitions of BO or indeed legislation that mandates BO reporting from companies. Consequently, the EITI BO regime introduction

had to be accompanied by legal reforms in several countries. These reforms, which seek to embed BO reporting into the countries' legal frameworks, are themselves subject to reshaping, contestation, obstruction, and negotiation, as different interests struggle to gain control over the nature of the information to be made (in)visible, which are to be imposed by law. For instance, in Nigeria, creating a BO register required new legislation introduced in parliament in 2017 and passed into law in 2020. Commenting on this process, the Open Government Partnership (2020) notes:

> *"Establishing the registry required legislative changes that, after stalling in 2019, passed in parliament, thanks to the hard work of a coalition of advocacy organizations."*

Also, the Nigerian Extractive Industry Transparency Initiative (NEITI) evaluation report of BO implementation notes a certain challenge in this:

> "[The] *lack of political will to ensure that BO disclosure is included in the economic agenda of the nation and the drive to ensure its implementation."* (NEITI, 2015, p.10)

Strong political will and intergovernmental interventions are imperative for BO disclosure to happen (Gilmour, 2020). Although the law is important in any governance regime, its enactment and implementation in different cultural settings are sometimes a product of stakeholder struggles to protect the interests of marginalised voices (*see* Denedo et al., 2017, 2019).

The stalling of legislation is evident in several countries. For example, in its commentary on Columbia's BO implementation status the EITI notes:

> *"Colombia published the roadmap for disclosing beneficial ownership information. Limited progress has been done in implementing the beneficial ownership roadmap. An initial part of the plan relied on the passing of a beneficial ownership bill that is stalled in Congress."* (Outcome of Validation of Columbia. EITI Board Decision 2018–38 / BM-40)

Similarly, the EITI evaluation of BO implementation in Asia notes how in Papua New Guinea, "*increased political commitment is needed to drive legislative and policy reforms on beneficial ownership*" (EITI, 2019c, p.5). Thus, the ability to give impetus to BO reporting by enshrining it in each country's legal framework depends on the level of political will and the strength of the civil society plus other anti-corruption reform actors, as they struggle with 'vested interests'. This is not a trivial issue, as embedding BO reporting in legislation makes it possible to sanction companies that do not meet the disclosure requirements, thus making the BO regime enforceable.

In terms of local context shaping the adoption and localisation of the EITI norm, unlike findings presented by Ejiogu et al. (2019, 2021), we see two movements. The more confrontational approach is exemplified by an outright rejection of the BO regime by vested interests as they try to stall and block the embedding of BO reporting in legislation. Indeed, what they attempt (successfully in some countries and unsuccessfully in others) is the perpetuation of opaqueness or, at best, the weakening of the BO transparency regime, such that it is riddled with closures and black spots. The more subtle approach involves legislation being allowed to pass but its effect being watered down by deliberately inserted gaps. For example, Liberia passed legislation to embed BO disclosure which made provisions for penalties against companies that make late filings or false declarations (LPRA, 2020). However, while the regulation stipulates a minimum of US$5,000 penalty for late filing it does not state a penalty charge for false declaration. The creation of gaps like this in the penalty regime provides avenues for deviance and leads to a translucent regime.

What our data shows is that the nature of the transparency enacted (i.e., the opening of avenues for deviant behaviour, the quantum of opaqueness, closures and black spots) depends on the political dynamic among the powerful actors. However, it also shows that the political dynamic among actors changes over time. This is particularly evident in the Nigerian case as our data shows successive governments taking different stances to embedding EITI and BO in legislation.

In essence, then, what we find when viewed through the lens of Ball's (2009) metaphors is transparency as openness being shaped by resistance in two ways. First is a confrontational resistance which obstructs transparency by blocking regulatory reform (i.e., a move towards opaqueness). Second is a subtle resistance whereby translucency is introduced in the form of gaps within transparency legislation.

5.2.3. The boundaries of what can be included

While transparency is often understood through the metaphor of openness (Ball, 2009), it also brings along with it concerns about privacy and secrecy (Benavides, 2006; Gilmour, 2020; Huang et al., 2020). When talking about the performativity of transparency, Roberts (2009) points out how disclosure has unintended consequences for and works back on its subjects in possibly counterproductive ways. Indeed, full disclosure of BO identities raises tensions regarding privacy protection versus privacy intrusion, especially if there are no clear mechanisms for storing beneficial ownership information, or for how sensitive data is safeguarded from potential abuse (Gilmour, 2020). While this might raise practical tensions such as likely risks (e.g., security concerns), the disclosure of BOs' personal identities might in fact cause them (Etzioni, 2014). Consequently, the potential loss the public might suffer when such information is withheld subjugates the public interest to private interest.

The EITI Standard sets out details of the information required to be collected on BOs' identities:

> *"Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons. It is also recommended that the national identity number, date of birth, residential or service address, and means of contact are disclosed."* (EITI, 2019d, p.19)

Some EITI countries have embedded these requirements in local regulations. In Liberia, for instance, Section 7 of the Liberia

Petroleum Regulatory Authority (LPRA) Regulation requires all companies applying for petroleum rights to register and file beneficial ownership information with LPRA. Section 8 requires companies to disclose the identities of persons who own a minimum of 5 % equity, and Section 9 requires disclosure of sufficient information for both natural and legal persons (LPRA, 2020). Consistent with EITI Standard, Sections 9.2.1 and 9.2.2 of the LPRA Regulation respectively require the minimum information inclusion for natural and legal persons as follows:

> *"For Natural Persons: Full name of shareholder; Functional title & role; Date & place of birth; Country of citizenship; Country of residence; Full Physical Address, and National Identification Number (Passport or National ID), percentage ownership in Company, and such other information as provided in the template found in the appendix of this Regulation.*
> *For Legal Person: Full company name; Nature of business; Date of incorporation or creation; Jurisdiction of incorporation; Full Physical Address, List of Stock Exchange of Company; Date registered on Stock Exchange, and such other information as provided in the template…"*

BO information is usually requested from EI companies using a standard EITI BO declaration form and published either in the EITI reports or through BO registers. However, in several countries EI companies have refused to provide this information on BOs and PEPs. In Myanmar, for example, EITI (2019b) notes:

> *"There are challenges in securing support from some companies due to the perception that disclosing beneficial information might pose threats against their security".* (EITI, 2019e, p.4)

The Honduras evaluation report of the BO pilot made a similar point:

> *"Among the main obstacles identified by the pilot, the concern expressed by companies regarding the publication of their real beneficiaries stands out, taking into account the climate of insecurity that prevails in Honduras. It was considered high risk to publish personal data of the owners of the companies belonging to the extractive sector since it can expose entrepreneurs to the attention of criminal organizations."* (Honduras EITI, 2015, p.9: Translated from Spanish using Microsoft Translator)

The individual's human rights, personal security, and privacy rights are pitched against the public good in terms of a drive for increased disclosure and visibility to tackle corruption and illicit financial flows (Etter-Phoya et al., 2020). What is considered intrusive should be an ethical norm so long as it serves the public interest. While transparency may be resisted by actors in pursuit of privacy, enabling regulations would push for its observance (Gilmour, 2020). In each country, a negotiation occurs as to what forms the disclosure will take, and a contributor at an EITI Debates event on the pushback against BO argued the following:

> *"Many of these issues around personal security and privacy can be addressed through the multi-stakeholder groups with the input from all three angles – from corporates, from government, and from civil society."* (EITI Debates: Why the pushback? Barriers to public disclosure of beneficial ownership in LAC held on 11 March 2021)

However, in its recent ruling on the validity of the BO disclosure requirement in the European anti-money-laundering directive the Court of Justice of the European Union (CJEU) held that the BO requirements were invalid as they breach personal privacy rights. As the Court's press release states:

> *"In the light of the Charter, the provision of the anti-money-laundering directive whereby Member States must ensure that the information on the beneficial ownership of corporate and other legal entities incorporated within their territory is accessible in all cases to any member of the general public is invalid. According to the Court, the general public's access to information on beneficial ownership constitutes a serious interference with the fundamental rights to respect for private life and to the protection of personal data, enshrined in Articles 7 and 8 of the Charter, respectively. Indeed, the information disclosed enables a potentially unlimited number of persons to find out about the material and financial situation of a beneficial owner. Furthermore, the potential consequences for the data subjects resulting from possible abuse of their personal data are exacerbated by the fact that, once those data have been made available to the general public, they can not only be freely consulted, but also retained and disseminated."* (CJEU Press Release No 188/22, 22 November 2022)

While the CJEU's ruling is specific to the EU and its fifth Anti-Money Laundering Directive, which it views as not balancing privacy and public access appropriately, the influence of this judgement will have significant implications for BO disclosure all over the world – especially given the EU's role in driving beneficial ownership transparency to date.

Overall, our analysis shows how, in several countries, personal data including national identity number, date of birth, residential or service address, and means of contact are collected but not publicly disclosed as a compromise to enable the collection of BO data and the publication of basic BO data. Thus, BO disclosures are conditioned by compromises on information sharing and individuals' privacy rights reached between EITI, governments, EI companies, and civil society.

How meaning is assigned to secrecy or privacy will influence how much information would be disclosed in the public domain, allowing information considered as personal/private to be framed as a legitimate secret (Ringel, 2019). Resisting the release of personal identities of EITI BOs will almost always be inevitable when corporations or investors perceive the information as a legitimate secret that the public might exploit to the detriment of those owners (Benavides, 2006; Gilmour, 2020; Huang et al., 2020). Not having assurances of data protection policies being in place can vary transparency behaviours, thus engendering the release of meaningless information (Huang et al., 2020), which thus may preserve privacy yet nevertheless prove detrimental to transparency and accountability endeavours. As such, resistance to the disclosure of the ultimate owners of extractive corporations again engenders translucency.

In some other countries, disclosure is more closely linked with the nature of the political terrain. For example, in Nigeria, where anti-corruption initiatives have been used to target political opponents (Adebanwi & Obadare, 2011), the request from NEITI to disclose BO information, including those of PEPs, was viewed as a means of settling political scores. Indeed, NEITI's BO evaluation report notes that companies outrightly refused to provide BO information, as it is *"…seen by some as witch-hunting of political opponents*." (NEITI, 2015, p.10).

This intersection of the BO regime with the individual's rights and the wider political culture provides a space in which the nature of transparency and the resultant visibilities and invisibilities are negotiated, contested, and eventually compromised on. Paradoxically, what we see is that rather than being focused on widening disclosures the negotiations are slanted towards how much disclosure is permissible and what can and should be left hidden.

Evidently, our analysis shows a conditioning of BO disclosure and transparency by resistance that is borne out of the desire of beneficial owners to protect their privacy for security and other reasons. This inevitably leads to compromises, and such compromises in turn limit transparency. Indeed, what we see happening is the social construction of translucence, as the result is neither full transparency nor complete opaqueness but, rather, something in-between, despite the legislations various countries have enacted in their endeavours to enforce such disclosure.

5.2.4. Information 'quality' and transparency

The EITI Standard expects reliable BO data but imposes no requirement for such. Companies are usually not motivated to disclose clear, reliable, and comprehensive information unless coerced by law to do so (Etzioni, 2014), but if BO data is to drive transparency and subsequently accountability by creating visibility then there must be means of assuring and verifying the accuracy of disclosed information. Within the BO regime "accuracy of information appeared to be side-lined, and even compromised" especially given "incongruence between the form and the ownership structures, and a lack of content verification mechanisms" (Konovalova et al., 2023, p.12). If no verification mechanisms exist, then EI companies can provide falsified information and the public would have no confidence that the true beneficial owners (not a substitute, nominee, or proxy) have been disclosed. This tends to confirm Ball's (2009) argument that transparency metaphorically connotes openness while equally generating secrecy, which according to Christensen and Cheney (2015) creates new forms of closure and manipulation. Such has been the case in various countries, as the Tanzania EITI noted when evaluating its implementation status:

> *"The experience learnt from countries which have already published BO data (Nigeria and Ghana) reflects that most of the data collected regarding BO are either false data or not accurately reported. Since EITI is at no position to verify the validity of data provided such inaccuracy poses a potential risk to the credibility of data reported within EITI reports."* (Tanzania EITI, 2015, p.5)

Also, the Open Government Partnership commented on Nigeria's BO register, which is held out as one of the EITI BO implementation successes, notes:

> *"Many of the names cited are not real owners. There is no mechanism to verify owners and no sanctions for falsifying information. The important information about the beneficial owner remains secret, unverified, or missing."* (Open Government Partnership, 2020)

The absence of mechanisms to verify BO disclosure data is also highlighted in the EITI International Secretariat's assessment of Germany's BO implementation:

> *"The Independent Administrator's preliminary assessment is that 'all companies are in the register with plausible information'. A comprehensive and definite verification was not practicable, especially given the existing assurance mechanisms."* (EITI International Secretariat, 2021, p.4)

The standard to which BO disclosures are held is that of being 'plausible' rather than being accurate. Hence, BO disclosure involves information that countries and companies consider reasonable disclosure and not necessarily comprehensive disclosure. This is borne out by the terms of reference set for the Independent Administrator appointed to work on Germany's EITI report, which outlines the scope of work for BO verification as follows:

> *"An overall analysis of whether all participating companies are listed in the register with plausible information."* (EITI International Secretariat, 2021, p.4)

Thus, the EITI BO regime itself has created the opportunity for its own co-option into corrupt and dysfunctional regulatory systems as allowing companies to declare only 'plausible' data tempts all kinds of issues and facilitates the creation of 'smokescreens' that obscure the ultimate beneficial owners. In this sense, transparency is distorted into a "ritualized social construction and legitimization of a form of manageable reality" (Pamment, 2019, p.658). Ultimately, transparency here becomes part of the problem – creating invisibilities rather than shining light on the EI's real beneficial owners. Indeed, what we arrive at is a form of transparency that at best leaves us uncertain about what it is we are viewing and so blurs the boundaries between clarity and opacity, light and darkness. Thus, this form of transparency ends up inhabiting a grey zone of indeterminacy and translucence.

5.2.5. To whom is transparency directed?

Ball's (2009) metaphor of transparency as a norm of behaviour to counter corruption presupposes that the public and civil society will act based on information disclosed in order to demand accountability. Indeed, stakeholders increasingly demand access to information to empower them to engage meaningfully in governance because information disclosure is imperative for governance (Christensen & Cheney, 2015; Pamment, 2019). It thus becomes important to consider those to whom transparency is directed to

understand if the information is directed towards the public and, if so, whether the information is in a form that can be used.

Answering the question '*to whom is transparency directed?*' within the EITI BO regime appears straightforward. The EITI webpage on BO notes:

> *"Once published, citizens can use beneficial ownership information to work with law enforcers, civil society and others to take action to hold those who misuse anonymous companies responsible."* (EITI Webpage)

The intention is for the public (citizens) and civil society to be the recipients of the disclosed information. When BO is disclosed through publicly available EITI reports, this intention is fulfilled; however, this is not the case with the BO registers, which all countries will eventually move towards. Commenting on this in relation to Latin American and Caribbean countries, Melgarejo (2021) notes:

> *"For citizens in the Latin America and the Caribbean region, the question of who profits from extractive resources still remains largely unanswered. To date, 18 countries have beneficial ownership regulations and eight have established registries. Yet hardly any of these registries have been made publicly accessible."* (Melgarejo, 2021)

Our analysis of the countries that have set up BO registers or have given details about the accessibility of the registers they intend to set up shows only five (5) out of fifteen (15) countries have their BO registers publicly available. However, of these five countries with publicly available registers four disclose only LO and only one discloses BO. Evidently, in most countries the public and civil society will have only limited or no access to BO disclosures. Thus, it seems that in most countries BO disclosures are directed at law enforcement or government agencies, which potentially limits the public's power to hold corporations to account. Again, the notion of transparency is reconditioned to nominal disclosure that conceals essential information from public scrutiny. Given the disparity with actual practice, idealised BO transparency tends to overestimate its transparency potential. Relating this to the International Aid Transparency Initiative (IATI), Pamment (2019, p.658) says the "publication of transparency data is an example of how neo-institutionalism promotes the 'illusion of control' over managerial decision-making to secure social legitimacy".

While the starting point for transparency is for citizens and civil society to have access to BO data so they can hold governments, EI companies, and BOs accountable, the BO regime has not produced this in most countries. While some light has been shone and visibilities created for a select group (law enforcement and government agencies), darkness and opacity remain for citizens. Keeping the public in the dark over who the actual beneficial owners and PEPs in the extractive corporations are, not only shields these beneficial owners from accountability but also inhibits citizens from being well-informed and able to engage with the relevant enforcement/government agencies to hold beneficial owners accountable and act in the public interest. This is not a trivial issue, especially in corrupt regimes where PEPs can, and do, have power and control over law enforcement and government agencies. These findings are evidenced in this Global Witness (2015) comment:

> *"PEPs are in positions of power and may abuse their position to benefit. There is also the great public interest of knowing whether any public officials or members of their families hold stakes in projects they have jurisdiction over."* (Global Witness, 2015)

Limiting the access of citizens and civil society to BO disclosure data not only enables PEPs and others to engage in corrupt practices but also challenges the very notion of transparency as a conduit communication model, as the citizens and civil society are no longer and can no longer be regarded as the 'recipients' of the transmitted message (disclosure). Transparency has thus been reconditioned to equate in meaning with opacity or at best the shining of a very dim light into a dark room – one that hides much more than it makes visible (Garsten & de Montoya, 2008; Zyglidopoulos & Fleming, 2011). What is clear, then, is that although the EITI BO transparency regime anticipates full BO disclosure being made available to the public the regime's actual operationalisation delivers only limited information to the public and hence achieves only a translucent outcome.

6. Discussion

We set out to explore the construction and operationalisation of the EITI BO transparency regime to better understand the limits of transparency. To do this, we conceptualised transparency in terms of three metaphors – public value or norm of behaviour, openness, and complexity. Drawing on Ball's (2009) metaphor of transparency as complexity and Lamming et al.'s (2004) characterisation of this complexity in terms of translucence, we represented BO disclosure in EI countries along an opacity–transparency continuum and showed that most of the disclosures fell into the translucent zone but clustered closer to opacity than transparency. In doing this, we have expanded the conceptualisation of transparency within the accounting literature. Indeed, while the accounting literature recognises the problematic nature of transparency, especially with EITI and the extractive industry (Baudot & Cooper, 2022; Chatzivgeri et al., 2020; Ejiogu et al., 2019, 2021; Konovalova et al., 2023; Roberts, 2009), it does not account for or articulate any other state outside transparent or opaque. Focusing on this intermediate and indeterminate state of translucency enabled us to develop some insights into its construction and limits of transparency, which we summarise in Fig. 3 below.

As transparency is mediated by cultural and political values and norms, it manifests as translucent, as depicted on our zone of in-betweenness. Such intermediations influence transparency outcomes, as the extent of data release to external stakeholder emerges from a political process of negotiation (Ruijer et al., 2020). When this happens, transparency thus becomes a matter of degree, and indeed translucent. Much like the literature on transparency does, we show that transparency is conditioned by context and results from negotiations, compromises, power plays, etc. (Ejiogu et al., 2019, 2021; Baudot & Cooper, 2022). Consistent with this positionality is Weiskopf's (2023, p.327) argument that any form of transparency is "selective, technological (mediated), performative and governed by a historically specific normative order". Our findings show that the BO transparency regime's operationalisation in the EITI countries involves resistance, which impacts the crafting and implementation of legislation and regulations. This is subject to

negotiations and leads to compromises, which impact on transparency in the sense of opening the self to scrutiny. However, our findings move a step further by showing that underlying the resistance are negotiations, which are confrontational or subtle in nature.

Roberts (2009; 2018) describes a similar type of resistance to making the self fully visible and holding it out to scrutiny when arguing that transparency works back on its subjects in counter-productive ways. Our findings build on this by showing that this resistance can be either confrontational or subtle. Confrontational resistance is directed at opposing the embedding or operationalisation of transparency. In our case, we saw this when legislation which embedded BO requirements was blocked and undermined and when BO disclosure requirements were challenged in courts on grounds of their breaching privacy rights, as well as putting the security of beneficial owners at risk. Essentially, this behaviour towards transparency or full disclosure of BO identities appears to be motivated by tensions between privacy protection and privacy intrusion, especially if no clear mechanisms exist by which beneficial ownership information is safeguarded against potential abuse (Benavides, 2006; Gilmour, 2020; Huang et al., 2020). What confrontational resistance seeks to do is to remove legal backing from the requirement to disclose BO information or to make the self visible. In essence, this creates a system of disclosure that tilts towards closure or opaqueness rather than openness or transparency, echoing the submission that "despite promising to lay bare, much of what is today described as transparency provides a selective, biased, and value-laden form of visibility on organisational phenomena" (Tweedie & Ronzani, 2024).

Subtle resistance conversely works through the negotiations around transparency. Building on the work of Ejiogu et al. (2019, 2012), we show that actors working through EITI BO implementation can nevertheless resist transparency by creating gaps in the regulatory framework for BO transparency. For example, in Liberia penalties for false declarations are omitted from legislation, and in other countries assurance and verification requirements for BO disclosures are watered down, allowing for plausible disclosures. Also, the effects of subtle resistance are seen when negotiations lead to definitions of complete transparency in such a way that transparency falls short of full disclosure or opening of the self completely to public scrutiny. We see this occurring in three ways. First, we see this in the setting of BO disclosure thresholds at high levels (Etter-Phoya et al., 2020), which creates the impression that full disclosure has been achieved despite much remaining invisible. Fixing the equity interest level for BO disclosure at above 25 % suggests that the identities of many owners below this threshold are veiled from public scrutiny even though investors with 20 – 50 % equity in a company constitute a significant influence from an accounting perspective. Second, we see this subtlety in the disclosure of majorly legal owners rather than persons who are the ultimate beneficial owners. When legal owners/persons are disclosed rather than beneficial owners, it becomes difficult to determine who owns what unless the veil of incorporations can be lifted, which is much more complicated and difficult to do if those legal owners are registered in secrecy jurisdictions and/or hidden in a long chain of legal vehicles (Etter-Phoya et al., 2020; Vermeulen, 2013). Third, we see it in the closure of BO registers to the public, whereby information is provided but is not open to public scrutiny. In all these cases of subtle resistance, what emerges is a compromise of BO information and, in turn, a regime of translucency rather than a regime of transparency.

Reflecting on our findings, what becomes apparent is that while Ball's (2009) metaphors provide us with an opening to understanding the complexity of transparency, especially in terms of the intermediate state of translucence, there is still much to learn. For instance, what else apart from resistance contributes to the construction of translucence or to what extent can this intermediate state of translucence be used to drive accountability? Future studies can help explore whether and/or how this intermediate state of translucence can be used by the public and civil society to drive accountability.

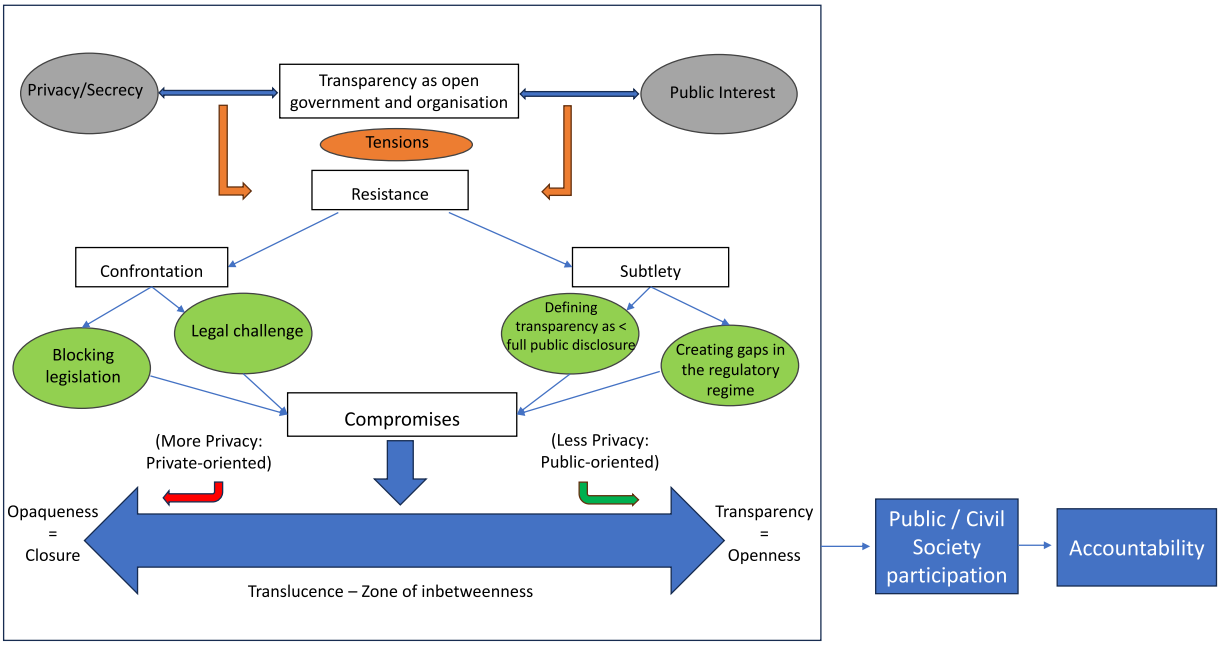


Fig. 3. Transparency Metaphors Revisited.

7. Concluding comments

We set out to explore how the EITI BO transparency regime was constructed and operationalised to better grasp the limits of transparency. Our findings highlight the nature of EITI BO disclosure as inhabiting a zone of in-betweenness or translucence between transparency (understood as making the self fully visible) and opacity. By focusing on the nature of this translucence, we highlighted the role of resistance in constructing both translucency and opaqueness. These findings lead to two main contributions to the literature.

First, our findings expand understanding of transparency within the accounting literature as a problematic concept, as they highlight the ambiguities inherent in the concept (i.e., it connotes both light and darkness, clarity and opacity). We propose instead the notion of a zone of in-betweenness or translucence between transparency and opaqueness. We do this by providing insights into how disclosures and disclosure regimes such as that of the EITI BO arrive at translucence. Regimes of visibility such as the EITI BO in reality "are social and technical arrangements that establish an order of observation and of being observed, governing gazes and directing attention, bringing certain things to light while obscuring others" (Weiskopf, 2023, p.327). Research recognises transparency as a complex political game (Meijer, 2013) that emerges from external pressures and negotiations, which then produces a "strategically opaque transparency" (Ruijer et al., 2020, p.270). Second, our findings contribute to a more nuanced understanding of Ball's (2009) metaphor of transparency as complexity by shedding light on the construction of translucence and opacity. Indeed, our findings highlight the different forms of resistance (confrontational and subtle) against the push of transparency to make the self more visible and open to scrutiny, and how these forms of resistance force compromises, which eventually lead to opacity or translucence. This situation is engendered because of inherent tensions that exist between openness and secrecy/opaqueness. Openness and opaqueness are arguably mediated by cultural and political values and norms, resulting in neither the binary extremes of 'transparent' (openness) and 'not transparent' (opaqueness). Instead, it manifests in degrees rather than these extremes, which are conceptually problematic anyway – as discussed in the theory section. More so, transparency (less opacity) and opacity (less transparency) are usually evoked in public discourses on transparency, which intuitively underscores how transparency and opacity are actually in degrees rather than at discrete extremes. What all this does, then, is indicate the translucence of transparency. Consistent with this argument, critical accounting research in recent times has criticised the binary orthodoxy in accounting practice and thinking (e.g., Cooper, 1992; Gallhofer & Haslam, 2003; Hines, 1992; Tweedie & Ronzani, 2024). Our research has responded to such criticisms, showing how it seems somewhat naïve to construct and fix the discourse of a fluid social phenomenon like transparency into a binary or dichotomous mould of reality.

Evident from our findings is that while the EITI BO transparency regime should represent progress towards bringing transparency (with the potential to trigger accountability) to the EI, what has actually been achieved is a form of translucence that can have only a limited impact in terms of emphasising the need for accountability. The translucent state of transparency in the extractive industries is riddled with adverse ecological impacts and becomes problematic because it inhibits the public/civil society or those directly affected by the extractive industries operations in their demands for BO accountability. Translucence thus shields natural persons behind extractive companies to varying degrees in the BO transparency regime, which undermines not only public interest but also the role reporting plays in addressing critical social concerns.

We hope that our study further opens up space within the literature for developing a more nuanced understanding of EITI, the transparency regime it enacts and how these are contextually linked with accountability. Such an exploration would benefit from a focus on a specific local or national context, as this would enable a more granular and focused analysis. This would provide an understanding of how a particular context influences translucence and thus a movement either towards transparency or opaqueness, as well as what impacts these might have on accountability or unaccountability. For example, focusing on countries in which corruption is endemic could highlight how corruption influences the creation of translucence.

Finally, more studies are required to further understand how civil society organisations campaigning for transparency in EI can contribute more proactively to the practice of BO transparency by recognising how struggles, resistance, and a subtle approach to activism can situate transparency in a zone of in-betweenness or translucence. This could empower and enable civil society to build stronger solidarity and develop more nuanced proactive approaches and mechanisms that can gravitate BO disclosure from more privacy-oriented disclosure to less privacy-oriented disclosure.

Declaration of competing interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Appendix 1. . List of data sources

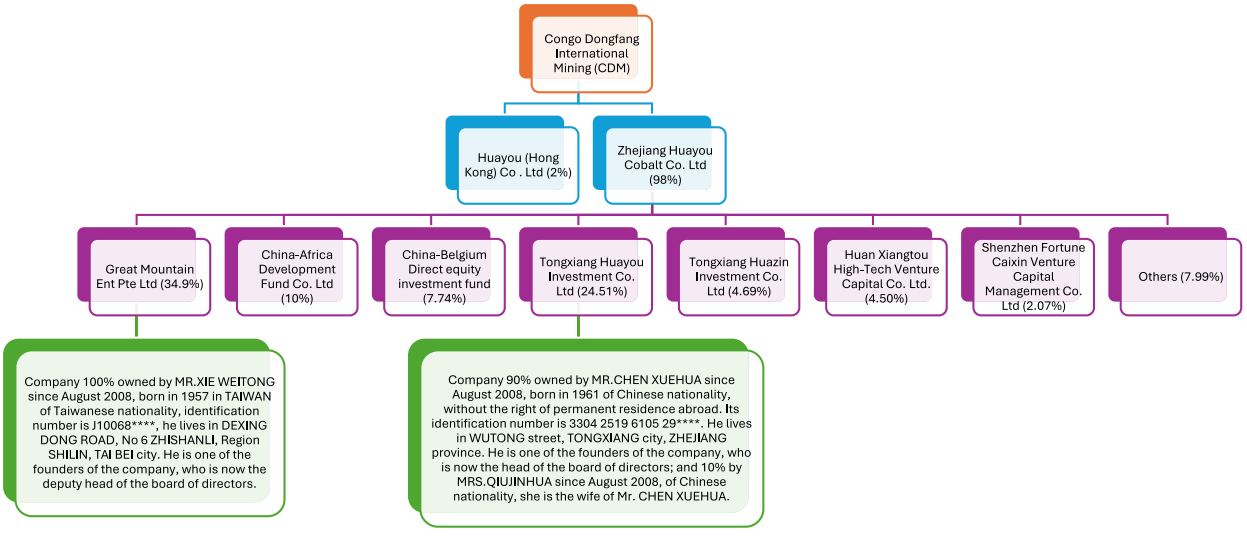
No	Data Source	Number	Details
1	EITI Reports of reporting countries as at 30 June 2021	49	Afghanistan, Albania, Argentina, Armenia, Burkina Faso, Cameroon, Chad, Columbia, Cote d Ivoire, Democratic Republic of Congo, Dominican Republic, Ethiopia, Germany, Ghana, Guatemala, Guinea, Guyana, Honduras, Indonesia, Iraq, Kazakhstan, Kyrgyz, Liberia, Madagascar, Malawi, Mali, Mauritania, Mexico, Mongolia, Myanmar, Netherlands, Nigeria, Norway, Papua New Guinea, Peru, Philippines, Republic of Congo, São Tomé and

(*continued on next page*)

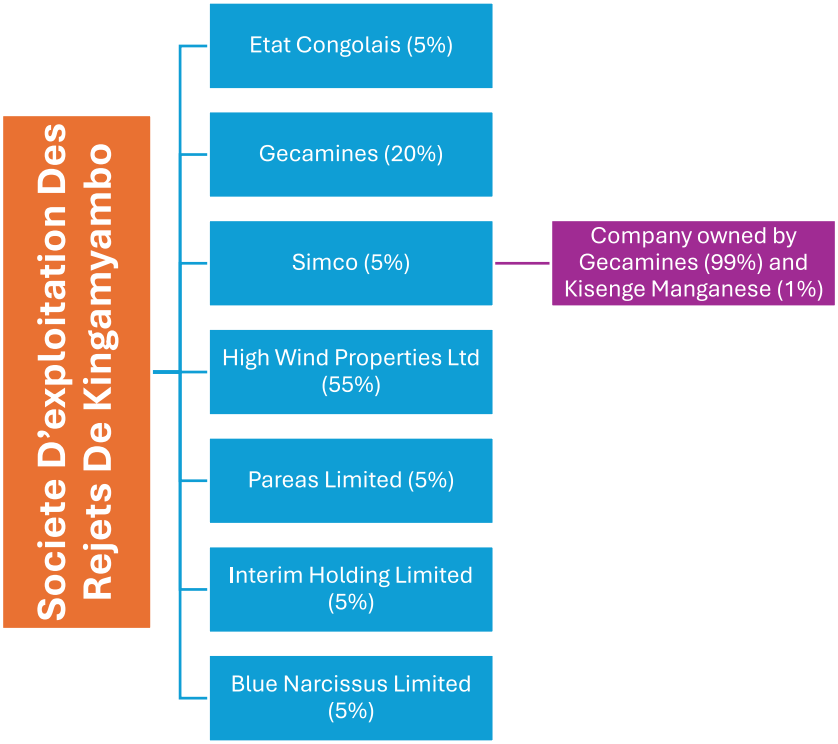
(*continued*)

No	Data Source	Number	Details
			Príncipe, Senegal, Seychelles, Sierra Leone, Tajikistan, Tanzania, Timor-Leste, Togo, Trinidad and Tobago, Ukraine, United Kingdom, Zambia.
2	EITI country webpages and BO webpages of reporting countries as at 30 June 2021	49	Countries same as above
3	BO Registers of countries with publicly accessible registers	5	Afghanistan, Nigeria, Trinidad and Tobago, Myanmar, Ukraine
4	EITI Validation of Requirement 2.5 Report for countries	4	Norway, Germany, Armenia, Nigeria,
5	Evaluation report on BO pilot	11	Burkina Faso, Democratic Republic of Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Nigeria, Tajikistan, Tanzania, Togo and Zambia
6	Annual Reports, Sustainability Reports and Websites of EITI partner companies	68	African Rainbow Minerals Limited (ARM), Alcoa, AMG Advanced Metallurgical Group, Anglo American, AngloGold Ashanti, Antofagasta Minerals, ArcelorMittal, Barrick Gold, Base Titanium, BHP, BHP Foundation, Boliden, BP, Cairn Energy, Centerra Gold, Chevron, Codelco, ConocoPhillips, Council on Ethics of the Swedish National Pension Funds, Dundee Precious Metals, Eni, Equinor, Eramet, ExxonMobil, FAR Limited, Freeport-McMoRan, Glencore, Gold Fields, Guvnor Group, Hess Corporation, Inpex, JX Nippon Mining & Metals Corporation, KAZ Minerals, KfW Group, Kinross Gold, Kosmos Energy, Lundin Foundation, Minera San Cristóbal SA, Minsur, MMG Limited, Newcrest Mining Limited, Mitsubishi Materials Corporation, Newmont, NNPC, Nordea Group, Norges Bank Investment Management, Norsk Hydro ASA, Oil Search Limited, Orano, PetroNor E&P Limited, Polyus, Qatar Petroleum, Repsol, Rio Tinto, Shell, Sherritt International, South32, Sibanye Stillwater, Southern Copper, St Barbara Limited, Staatsolie Maatschappij Suriname, Sumitomo Metal Mining, Teck Resources, Trafigura Group, Total, Tullow Oil, Vale, Woodside Petroleum.
7	Video recordings of EITI panel discussions on BO	4	Public panel: A new global norm of beneficial ownership transparency held on 7 Sept 2021Technical Roundtable: Advancing beneficial ownership transparency in Africa held on 20 May 2021Opening Extractives: Global Implementers Forum held on 8 September 2021EITI Debates: Why the pushback? Barriers to public disclosure of beneficial ownership in LAC held on 11 March 2021

Appendix 2. . BO disclose for Congo Dongfang International Mining



Appendix 3. . BO disclosure by Societe D'exploitation Des Rejets de Kingamyambo



Data availability

The authors do not have permission to share data.

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