

**Submission  
to the  
Committee on the Elimination of  
Discrimination against Women  
76th Session**

pertaining to the eighth periodic report  
submitted by

**Republic of Panama**

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### Suggested questions for the State party

- i) What steps has the Government taken to ensure that its domestic financial and professional services industries are not involved in transnational tax avoidance arrangements or the facilitation of other forms of international corrupt flows?
- ii) What steps is the Government planning to take to either end the issuance of **bearer shares** or, during the intervening period while they remain available within the jurisdiction, to ensure that they are registered with a government authority rather than with a private custodian as the current legislation allows.
- iii) What **sanctions** are in place, or planned, to address the failure to immobilise bearer shares by the government authority?
- iv) Has the State party established guidelines for complaints relating to the gender impact of the financial secrecy, tax laws, and tax rates applied to revenues arising from transnational operations of UK's multinational corporations as well as domestic and foreign trusts, and other entities as they affect women's rights in Panama and elsewhere, especially in low income regions?

### Context

- 1 The financial secrecy 'industry' and enlarged financial services sectors in certain jurisdictions present significant risk to the achievement of substantive gender equality and women's rights.<sup>1</sup> It is now widely accepted that those jurisdictions operating an 'offshore' financial sector and offering low tax or no tax rates and legal secrecy vehicles, facilitate tax evasion, avoidance and profit shifting which in turn impact both on the rights of women domestically and across borders.<sup>2</sup> Moreover these jurisdictions are regarded as providing little economic value.<sup>3</sup> In 2016 leading economists from around the world testified to this. Panama would reasonably fall under this definition. <sup>4</sup>
- 2 In February this year, and in advance of the Commission on the Status of Women 64<sup>th</sup> Session, the United Nations Secretary General set out his

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<sup>1</sup> Grondona, V. Bidegain Ponte, N and Rodriguez Enriguez, C, 2016. *Illicit Financial Flows Undermining Gender Justice*, [https://www.dawnnet.org/sites/default/files/articles/illicit\\_financial\\_flows\\_undermining\\_gender\\_justice.pdf](https://www.dawnnet.org/sites/default/files/articles/illicit_financial_flows_undermining_gender_justice.pdf). [Accessed: 08-06-20]

<sup>2</sup> Stubbs, R. 2018. *Bermuda: Inequality and poverty in the UK Overseas Territory*. Tax Justice Network, <https://www.taxjustice.net/2018/06/21/bermuda-inequality-and-poverty-in-uk-overseas-territory/> [Accessed: 08-06-20].

<sup>3</sup> Harrington, Brooke, 2016. *Why Tax Havens Are Political and Economic Disasters: Seeking Prosperity Through Lax Business and Tax Regulations Leaves Countries Worse Off*. <https://www.theatlantic.com/business/archive/2016/07/tax-haven-curse/491411/>. [Accessed: 07-06-20] The Atlantic

<sup>4</sup> Wintour, P. 2016, *Tax Havens Have No Economic Justification, Say Top Economists*. <https://www.theguardian.com/world/2016/may/09/tax-havens-have-no-economic-justification-say-top-economists> [Accessed: 11-06-20] The Guardian.

grave concerns on the impact illicit financial flows (IFFs) on women's rights. The General Secretary pointed to the ongoing 'major challenge' that IFFs pose in 'depriving public budgets' and exasperating governments' obligations to substantive gender equality, human rights and their commitments to the Sustainable Development Goals 2030 (SDGs). The challenges are both structural and systemic. The visionary agenda set out for substantive gender equality and women's rights in the Beijing Declaration and Platform for Action 1995 continues to be aggravated by financial opacity and political complicity.<sup>5</sup>

- 3 This report focuses on the extraterritorial threat to women's rights generated through the establishment of financial secrecy instruments by the State party. It sets out some of the key features of the financial secrecy framework operated by the State party. The report builds upon issues of financial secrecy previously addressed to the State party by the CEDAW committee in the **List of Issues and questions prior to the submission of the eighth periodic report of Panama** [CEDAW/C/PAN/QPR/8](#) - 2019, paragraph 20.a. It also reflects similar concerns raised during the 65<sup>th</sup> Session **Switzerland** [CEDAW/C/CHE/CO/4-5](#) – paragraph 41; the 69<sup>th</sup> Session **Luxembourg** [CEDAW/C/LUX/QPR/6-7](#) – paragraph 8; and the 72<sup>nd</sup> Session on **United Kingdom & Northern Ireland** [CEDAW/C/GBR/CO/8](#) paragraphs 19 and 20.
- 4 Panama ranks 15<sup>th</sup> in Tax Justice Network's [2020 Financial Secrecy Index](#) (FSI), with a high secrecy score of 72 but a small global scale weighting (0.22 per cent). This means that while the measure of volume of finance flowing through Panama is relatively low compared to similarly assessed countries like Switzerland<sup>6</sup> or Luxembourg<sup>7</sup>, it offers a very high level of financial secrecy to those private individuals and companies wishing to hide their wealth, and so poses a high risk of facilitating tax abuse and corrupt flows. As a country which features in the FSI's top twenty ranking, 'Panama remains a jurisdiction of concern.'<sup>8</sup> It is for this reason that we bring to the attention of the CEDAW Committee salient facts about the legal instruments and financial secrecy environment operated by the State party and their potential impact of women's rights.

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<sup>5</sup> United Nations, 1995, *Beijing Declaration and Platform for Action*, [https://www.un.org/en/events/pastevents/pdfs/Beijing\\_Declaration\\_and\\_Platform\\_for\\_Action.pdf](https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf), [Accessed 09-06-20]. UNdoc.pdf

<sup>6</sup> Tax Justice Network, 2020, *Financial Secrecy Index 2020 – Switzerland (CH) Reporting period 2020*, [https://fsi.taxjustice.net/database/dbr\\_Jurisdiction.php?Juris=CH&Per=20](https://fsi.taxjustice.net/database/dbr_Jurisdiction.php?Juris=CH&Per=20). [Accessed 10-06-20], Tax Justice Network.

<sup>7</sup> Tax Justice Network, 2020, *Financial Secrecy Index 2020 -Luxembourg (LU) Reporting period 2020*, [https://fsi.taxjustice.net/database/dbr\\_Jurisdiction.php?Juris=LU&Per=20](https://fsi.taxjustice.net/database/dbr_Jurisdiction.php?Juris=LU&Per=20). [Accessed 11-06-20] Tax Justice Network.

<sup>8</sup> Tax Justice Network, 2020, *Financial Secrecy Index 2020 Narrative Report on Panama*, <https://fsi.taxjustice.net/PDF/Panama.pdf>. [Accessed 11-06-20] Tax Justice Network.

- 5 The legal instruments which protect the identity of individuals, companies, trusts and foundations continue to operate in Panama despite damning evidence of an unprecedented level of illicit finance originating from multiple jurisdictions and from a high volume of private actors. The disclosure, in 2016, of hundreds and thousands of data files known as the [Panama Papers](#) scandal revealed the extent of tax abuse, involving many countries, banks, high net worth individuals and political elites.
- 6 This report elucidates the risks to women's rights inherent in these features of Panama's financial regime, in particular the continuing potential loopholes in their **beneficial and legal ownership registration**. It highlights the potential for generating social and economic policy environments in cross border territories which discriminate against and harm women's economic and social rights and impair development towards substantive gender equality. The report concludes by recommending normative policy measures which will mitigate against extraterritorial risks to women's rights.

### **Illicit Financial Flows – the Scale of Tax Injustice & Financial Opacity:**

- 7 It is well documented (Inter-agency Task Force on FfD, 2019; Cobham & Jansky) that illicit financial flows have a significant impact on domestic public resources and capacity building extra-jurisdictionally, and especially in low income countries (LIC). Estimates of the scale of illicit financial flows, due to the opaque nature of the problem, vary greatly in range. The nature of high levels of legalised secrecy made available by for instance Panama, facilitates profit shifting through shell companies, tax evasion, tax avoidance and laundering of money by individuals or organised crime.<sup>9</sup> Researchers from organisations as diverse as the International Monetary Fund and the Tax Justice Network assess the scale of global revenue losses as between \$500 to \$600 billion each year. The losses suffered by lower-income countries in particular – estimated at \$200 billion a year – are significant, and make up a larger share of current tax revenues than the losses suffered by high-income countries. Research to analyse financial data and produce credible and robust estimates include Cobham and Jansky, 2017 and 2018, Crivelli et al, 2016). See also [Tax Avoidance and Evasion: The Scale of the Problem](#).

### **Financing Women's Rights in Panama**

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<sup>9</sup> Young, M. 2020, *Nixon-era laws have shaped western racism and protected 'enablers' of financial crimes*. <https://www.taxjustice.net/2020/06/05/nixon-era-laws-have-shaped-western-racism-and-protected-enablers-of-financial-crimes/>, [Accessed: 08-0620] Tax Justice Network.

- 8 Some important initiatives by the State party to counter criticisms over the last decade have recently been established. In particular, these have focused on addressing rights of indigenous peoples. In 2018 the State party received a 'non-concessional loan with interest' from the World Bank.<sup>10</sup> The loan incorporates a commitment to women's rights within a gender strategy which aims to 'address the challenge of significant ethnic and gender-based access gaps and inequalities'.<sup>11</sup> Progress is being tracked using two Intermediate Indicators which measure women's participation in decision making bodies – the Indigenous Peoples Roundtable and in established Rural Water Committees (JAARs). A review of the Implementation and Results Status Report suggests marginal progress in moving women's representation forward, but other dependencies show no progress recorded at the end of 2019.<sup>12</sup>
- 9 A recent World Bank Country Review however notes significant and continued regional inequalities in poverty and greater poverty in those rural areas dominated by indigenous peoples. Indicators point to 'rights' failures for the most marginalised women, for instance maternal mortality rate is four times higher in Indigenous women who live in their territories versus the national average for all women.<sup>13</sup> Similar issues were raised comprehensively by the Independent Expert on the effects of foreign debt and other related international financial obligations during his mission to Panama in 2017.<sup>14</sup>
- 10 CEDAW expects that the State Party maximises all available resources to meet its human rights obligations. Tax revenue raised from individuals and companies is likely the most sustainable method of raising revenue for public services such as health, water and sanitation, for education, and for transport infrastructure for rural and urban regions. The failure to stem illicit finance exposes the State Party to a significant risk which can undermine efforts to establish both social and economic resilience and achieve substantive gender equality and ensure women of their human rights – as well as undermining efforts elsewhere.

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<sup>10</sup> World Bank, 2018, *Support for the National Indigenous Development Plan* .[https://projects.worldbank.org/en/projects-operations/project-detail/P157575?cid=EXT\\_WBEmailShare\\_EXT#finances](https://projects.worldbank.org/en/projects-operations/project-detail/P157575?cid=EXT_WBEmailShare_EXT#finances) [Accessed: 10-06-20] World Bank.

<sup>11</sup> World Bank, 2018, *Project Appraisal Document on a Proposed Loan In The Amount of USD 80 Million To The Republic Of Panama For A Support For The National Indigenous Development Plan Project 15 February 2018*, <http://documents.worldbank.org/curated/en/390951519910427593/pdf/Panama-PAD2503-02262018.pdf> [Accessed: 11-06-20] World Bank.

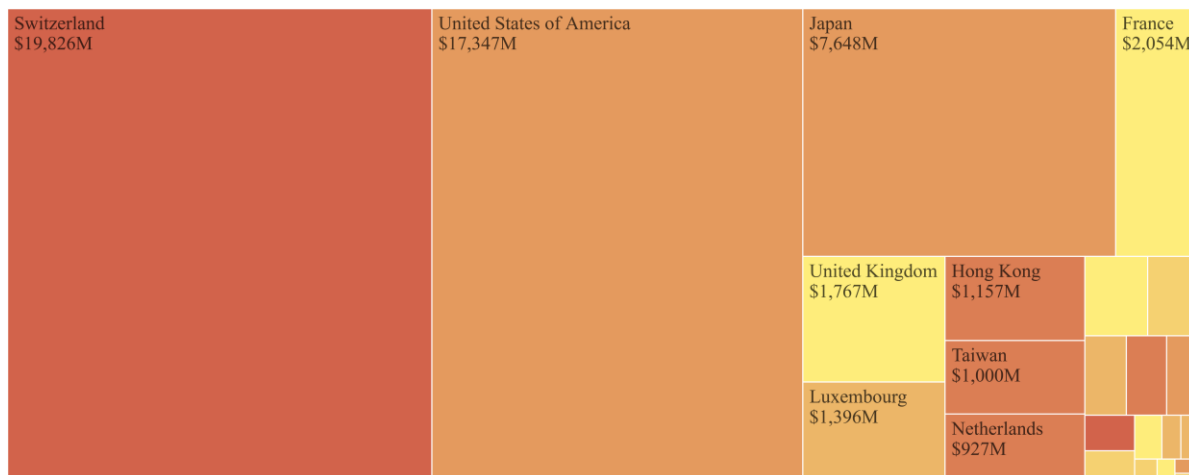
<sup>12</sup> World Bank, 2019, *Implementation and Result Status Report*, <http://documents.worldbank.org/curated/en/734791573607863384/pdf/Disclosable-Version-of-the-ISR-Support-for-the-National-Indigenous-Peoples-Development-Plan-P157575-Sequence-No-03.pdf>. [Accessed: 10-6-20] World Bank.

<sup>13</sup> World Bank, 2020, Panama Overview, <https://www.worldbank.org/en/country/panama/overview>. [Accessed: 10-06-20] World Bank.

<sup>14</sup> Bohoslavsky, Juan Pablo. 2017. *Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his mission to Panama*. [Accessed: 08-06-20]. UN Doc. A/HRC/37/54/Add.2.

- 11 New research published by the Tax Justice Network tracks vulnerability to illicit financial flows across eight channels: commodity trade (exports and imports), banking positions (claims and liabilities), foreign direct investment (outward and inward) and portfolio investment (outward and inward). Outward bank deposits, for instance, are visualised here using data from their Illicit Financial Flows Vulnerability portal. The ‘tree map’ below assesses the relative weight of outward Panamanian bank positions into other countries. It shows that in 2017 the largest recipient was Switzerland – then ranked as the biggest global threat on the Financial Secrecy Index. The weighted values of economic and financial transactions with highly secretive jurisdictions can be used to construct measures of the overall risk of illicit flows, which together pose the threat of tax revenue losses that can undermine the fulfilment of human rights. (And where a jurisdiction is itself highly secretive, such as Panama, there is the additional risk that it acts as a conduit to allow tax abuse and other corrupt flows from elsewhere – exactly as the Panama Papers revealed.)

Figure 1: Panama’s Bank Deposits (Outward), 2017<sup>15</sup>



### Panama’s Financial Sector:<sup>16</sup>

<sup>15</sup> Tax Justice Network, 2020, *Illicit Financial Flows Vulnerability Tracker– Panama*. <https://iff.taxjustice.net/#/profile/PAN>. [Accessed: 15-06-20]. Tax Justice Network

<sup>16</sup> Tax Justice Network, 2015, *FSI Panama Database*, <https://fsi.taxjustice.net/Archive2015/Database/Panama.xml> [Accessed: 05-0620] Tax Justice Network

- 12 Just over sixty five percent of the population live in cities in Panama and just over sixty percent of single households are headed by women.<sup>17</sup> In 2015 the financial services sector in Panama employed 27,200 people, which represents 2.94 % of the economically active population. The financial Sector-to-GDP Ratio is 7.2%. This illustrates that the financial sector holds little employment opportunity for many Panamanians, including women who are more likely to have low incomes or no income. This reflects a worldwide trend where women are under-represented in the financial services sector.<sup>18</sup> The country's reliance on this sector for economic health delivers little to poverty alleviation for women. Moreover, the sector creates further harm by exporting the 'risk' of illicit financial flows to countries across the world.

### How Secret is Panama?

- 13 Panama has over 350,000 secretive International Business Companies (IBCs) registered: the third largest number in the world after Hong Kong and the British Virgin Islands (BVI) (FSI 2020). While Panama's share of global investment by multinational corporations is considered 'small', the nature of Panama's secrecy policies and laws tells a different story. (FSI Narrative).

### Harmful Structures

- 14 The Tax Justice Network's work on financial secrecy has developed a methodology for assessing the availability of harmful financial and legal instruments. The Financial Secrecy Index (FSI) ranks jurisdictions based on a combination of a qualitative measure (a secrecy score, based on 20 secrecy indicators) with a quantitative measure (a global weighting to give a sense of how large the offshore financial centre is<sup>19</sup>). One of the twenty FSI indicators calibrates a measure of the potential harm created by a jurisdiction which allows one or more of the following harmful structures:
- High denomination cash bills (offering anonymity, leaving no audit trail)
  - Bearer shares
  - Series Limited Liability Companies [Series LLC], and
  - Trusts with 'flee clauses'.<sup>20</sup>

<sup>17</sup> Bohoslavsky, Juan Pablo. 2017. *Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his mission to Panama*. [Accessed: 08-06-20]. UN Doc. A/HRC/37/54/Add.2.

<sup>18</sup> IMF, 2018, *Women in Finance – An economic Case for Gender Equality*. <https://blogs.imf.org/2018/09/19/women-in-finance-an-economic-case-for-gender-equality/>. [Accessed: 11-06-20]. IMF

<sup>19</sup> Full details of the methodology are available [here](#).

<sup>20</sup> Tax Justice Network, 2020, *Key Financial Secrecy Indicator 15 – Harmful Structures*.: <https://fsi.taxjustice.net/PDF/15-Harmful-Structures.pdf>. [Accessed: 11-06-20]. Tax Justice Network

Any one or a combination of these demonstrate a potential 'risk' to other jurisdictions. This is because revenue which might be legitimately taxed by a resident revenue authority (extra-territorial) can be shielded and lost to the government if a private actor (individual or corporation) chooses to take advantage of the harmful structures operating in 'offshore' financial centres such as Panama. The loss to the public purse, more particularly, represents a failure to maximise available resources.

### **Extraterritorial State obligations – General Recommendation 28 (CEDAW)**

- 15 As the Committee is aware, the State party has obligations to protect women from discrimination, including from private actors, from 'national corporations operating extraterritorially' and moreover to be 'responsible for all actions affecting human rights, regardless of whether the affected persons are in their territory.'<sup>21</sup> Government revenue lost through illicit financial flows, stolen assets and money laundering presents both a domestic risk and an extraterritorial risk. Governments offering harmful structures (as described above) offer an attractive environment for wealthy individuals or corporates wishing to avoid or evade appropriate scrutiny from revenue authorities.

### **Beneficial Ownership Registers - Opportunities for illicit finance to flow undetected into Panama**

- 16 The establishment of a public Beneficial Ownership register, and the verification of the real beneficial owner of a company, trust or foundation is viewed as a key policy in tackling illicit financial flows. A recent evaluation of the effectiveness of global beneficial ownership registration by the Tax Justice Network identifies that 'the verification of beneficial ownership data in cross-border settings, and for successfully tackling investment and hedge fund opacity is not enough. Rather, registration of all legal owners (first layer, and ideally all intermediary entities in the ownership chain) is a prerequisite for the integrity of ownership data.'<sup>22</sup>
- 17 As part of the Financial Secrecy Index 2020, the Tax Justice Network analyses which of the 133 assessed jurisdictions allows for private

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<sup>21</sup> CEDAW, 2010, *General Recommendation No. 28 on the core obligations of State parties under article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*. UNDoc. CEDAW/C/GC/28

<sup>22</sup> Harari, M & A. Knobel 2020, *The State of Play of Beneficial Ownership Registration in 2020*, <https://www.taxjustice.net/2020/06/03/the-state-of-play-of-beneficial-ownership-registration-in-2020/> [Accessed: 08-06-20] Tax Justice Network.



foundations. Using available data on the number of private foundations recorded in a jurisdiction (i.e. not all countries publish this data), the Netherlands has the highest number of private foundations (ca. 200.000) out of the jurisdictions in which private foundations are available.

**Panama** has the second highest number of private foundations (ca 55,000). In the case of private foundations, effective registration of ownership is effectively guaranteed only when 'all parties to the foundation' are

registered and the data is annually updated. Tax Justice Network researchers found that **Panama** only records partial registry of ownership thereby leaving significant scope for the real beneficiaries of wealth held in foundations to be concealed.

**Private foundations** are a special case of legal entity. While they are considered legal persons (like companies), they have an ownership structure which is similar to that of trusts, and both are used for similar purposes. Just like trusts, private foundations can be used for wealth concentration, tax avoidance and to control other assets and entities. Unlike welfare foundations that can only have a public purpose (e.g. education, religion, health or other ends that benefit the general public), private foundations can benefit a single family, or some members of that family.

Source: Harari, M. & A. Knobel, The State of Play of Beneficial Ownership Registration in 2020

### Risk of Financial Opacity and Lost Revenue - Bearer Shares

- 18 Panama's Beneficial Ownership laws have specific and concerning 'secrecy' loopholes. These continue to present a risk of restricting the rights of women in jurisdictions other than Panama.
- 19 One of the ways in which beneficial owners shield their assets from regulatory and enforcement authorities is by locking assets into legal vehicles known as 'bearer shares.' The risks associated with bearer shares are extreme because the beneficial owner of the assets is undetectable. The potential harm for corruption associated with the use of bearer shares was already indicated in 2010 as part of the landmark joint report of the World Bank and United Nations Development Programme, 'The Puppet Masters'. The Financial Action Task Force (FATF)<sup>23</sup> has recommended that bearer shares should be converted into 'safer' registered shares. A preliminary assessment by Tax Justice Network's researchers into Panama's legal requirement for conversion of bearer shares into registered shares identifies loopholes which prevents full transparency. As a result, it appears possible that 'private actors' wishing to prevent full scrutiny of their assets held in Panama, can still do so.

<sup>23</sup> Financial Action Task Force 2012, *The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (Updated in October 2016)*, Pages 88-89, in [http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf) [Accessed: 03.06.20]. FAFT.

20 New laws on beneficial ownership registration have recently come into force in Panama, after the publication of the FSI 2020 rankings in February 2020 (see para. 11). A preliminary assessment has been undertaken by Tax Justice Network’s researchers which found that Panama has:

- Beneficial ownership registration laws that apply to any individual who owns or controls more than 10% of the company, and
- Bearer shares that still pose a risk in Panama because they are not cancelled and only required to be registered with a private custodian without reporting the shareholders and beneficial owners to a government registry.<sup>24</sup>

This finding may change in the full legal assessment of the next edition of the Financial Secrecy Index 2022.

21 Tax Justice Network advocates that to achieve full financial transparency, bearer shares should not be available in any jurisdiction. If they are, they should be registered with a government authority (in other words, registration with a private custodian is not sufficient because the risk and incentives for manipulation (such as backdating changes of the ownership remain far higher).<sup>25</sup> Tax Justice Network and many others working on tax transparency and human rights advocate for the cancellation of bearer shares. They propose the imposition of sanctions such as a suspension of rights or monetary penalties if bearer shares are not ‘converted’ to registered shares. A lack of effectiveness in this legal area perpetuates a worrying loophole and leaves open the possibility of illicit finance being moved out of a jurisdiction into Panama. The subsequent revenue loss created in an ‘other’ jurisdiction can force regressive tax policy measures – austerity to either restrict spending or fill the revenue gap. Both in different ways militate against women’s rights and substantive gender equality.

## Recommendations

22 In order for the State Party to move towards greater achievement of obligations under CEDAW, and specifically under CEDAW General Recommendation 28, a normative standard of legal ownership and beneficial ownership registration in all legal vehicles (companies, partnerships with limited liabilities, cooperative societies, associations,

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<sup>24</sup> Ibid. p.27

<sup>25</sup> Harari, M & A. Knobel 2020, *The State of Play of Beneficial Ownership Registration in 2020*, <https://www.taxjustice.net/2020/06/03/the-state-of-play-of-beneficial-ownership-registration-in-2020/>, [Accessed: 08-0620] Tax Justice Network. P.16

private foundations, domestic law trusts and foreign law trusts with a local trustee) should be established. The State Party should implement a framework for effective legal ownership and effective beneficial ownership registration, with online access, for all legal vehicles.

A normative standard for acceptable registration would require that:

- a) bearer shares are not available or pose no risk
- b) accessible online registration that covers all types of legal vehicles within each category (e.g. all corporations and LLCs within “companies”)
- c) registration covers all types of owners within a type of legal vehicle (e.g. both limited and general partners, within “partnerships with limited liability”), and
- d) registered information should be updated at least annually.

## Conclusion

- 23 Panama has been in the spotlight in recent years because of the Panama Papers data leak which had worldwide ramifications. Now, at a time when many countries throughout the world are preparing for economic hardship following the COVID 19 pandemic, the nature and continuation of financial secrecy should receive the most stringent scrutiny.
- 24 Panama has an obligation to examine and set in motion a review of its beneficial ownership registration laws and the continued opacity of its ‘bearer shares’. The existing loopholes provide a safe landing place for illicit finance. Moreover, they leave the State party complicit in ‘spilling’ financial risks to other territories and negatively affecting the rights of women and girls in those territories.

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