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From: Sam Bartlett SBartlett@eiti.org
Subject: Comments from the EITI International Secretariat on the draft Resource Revenue Management pillar (Pillar IV) of the Fiscal Transparency Code
Date: March 15, 2015 at 10:35 AM
To: IMFConsultation@imf.org

Comments from the EITI International Secretariat on the draft Resource Revenue Management pillar (Pillar IV) of the Fiscal Transparency Code

1. The EITI International Secretariat welcomes the opportunity to comment on the draft Resource Revenue Management pillar (Pillar IV) of the Fiscal Transparency Code. The IMF has been a long-standing supporter of the EITI, and has played a key role in establishing the EITI as a global standard. There are currently [48 countries](#) implementing EITI. EITI Reports cover some 237 fiscal years of data, and over USD 1.5 trillion in revenues. The EITI and IMF have recently collaborated on a project to improve the quality and consistency of EITI revenue data by developing a summary data template ([here](#)) based on the IMF's Government Finance Statistics Manual 2014 (GFSM 2014). There is additional information [here](#). We greatly appreciate this support.

2. We welcome that the draft Resource Revenue Management pillar (Pillar IV) of the Fiscal Transparency Code references the EITI as an internationally recognized standard of revenue transparency. However we believe the current draft understates the EITI's potential and current contribution.

- a) The revised [EITI Standard](#) goes well beyond the EITI's original focus on reconciling company tax payments and government revenues. The EITI Standard includes a range of new disclosure requirements along the EI value chain. An overview of the changes is available here: <https://eiti.org/blog/charting-next-steps-transparency-extractives>. The EITI Standard has strengthened requirements on state owned enterprises, sub-national payments and transfers, social payments and barter agreements. It also addresses data quality, adopting a "diagnostic" approach that utilises the EITI reporting process to assess whether company and government audit and assurance process are in line with international best practice.
- b) The current focus on reconciliation also neglects a core facet of the EITI vis-à-vis stakeholder participation and collaboration. EITI multi-stakeholder groups can play a key role in promoting transparency, and in utilising this data to inform public debate. This is essential in translating greater transparency into greater accountability. We would welcome that the draft places a greater emphasis on stakeholder participation and engagement, referencing the EITI as international best practice.

3. We also welcome that prior to finalizing Pillar IV, the IMF will carry out several pilot evaluations in resource-rich countries. We suggest that these pilots include some EITI implementing countries, and consultations with EITI multi-stakeholder groups. We would be happy to support this work and provide contact points in the selected case study countries.

We would be happy to elaborate on any of the points above. We also look forward to commenting on the new Guide on Resource Revenue Transparency and Accountability.

Thanks again for the opportunity to comment

Sincerely,
Sam

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MAKING TRANSPARENCY MATTER

Forty-eight countries are using EITI to improve transparency and accountability of natural resources. Learn how in the **new EITI Progress Report 2014**: progrep.eiti.org

From: Salgado, Claudia [<mailto:CSalgado@imf.org>]

Sent: 13. januar 2015 17:07

Subject: Invitation to a Public Consultation: Resource Revenue Management Pillar of the new IMF Fiscal Transparency Code

On behalf of Philip Daniel:

Dear Colleagues,

We invite your comments on the draft Resource Revenue Management pillar (Pillar IV) of the Fiscal Transparency Code: <http://www.imf.org/external/np/exr/consult/2014/ftc/index.htm>.

The IMF published Pillars I to III of the IMF [Fiscal Transparency Code \(FTC\)](#) in August 2014 and now regularly applies the new Code in Fiscal Transparency Evaluations. The new Pillar IV will complete the FTC in setting out recommended principles and practices for fiscal transparency and accountability in the management of revenues from natural resources. Complementing Pillars I to III, Pillar IV starts from the legislative foundations governing resource rights allocations and fiscal regimes, and then addresses issues of reporting on resource revenue collection and allocation, and the analysis of sector-specific risks to government revenue. It emphasizes important sector-specific aspects of fiscal transparency, incorporating new issues raised by the changing structure of the extractive industries and advances in our understanding of the international fiscal architecture. Pillar IV also takes account of the development of new international standards for resource governance that have emerged since the IMF issued the 2007 edition of the Guide on Resource Revenue Transparency.

You can find a draft of Pillar IV, along with an explanation of its part in the Fiscal Transparency Code and its application at <http://www.imf.org/external/np/exr/consult/2014/ftc/index.htm>. We encourage comments from all with an interest in resource revenue management – government officials, parliamentarians, private sector entities, practitioners, civil society organizations, and individuals. The online consultation process will be open until February 15, 2015.

We look forward to hearing from you at IMFConsultation@imf.org.

Many thanks,

Philip Daniel

Global Initiative for Fiscal Transparency (GIFT) Coordination Team:

Comments on the draft Resource Revenue Management Pillar of the IMF's Fiscal Transparency Code¹

Summary

The Global Initiative for Fiscal Transparency (GIFT) is pleased to have the opportunity to comment on the IMF's draft of Pillar IV of the Fiscal Transparency Code covering transparency of natural resource management. Transparency, participation and accountability are particularly important in resource-rich economies, and the IMF's continued recognition of this is both important and welcome.²

The perspective in this submission reflects GIFT's role in promoting significant advances in practices around the world in major part by working to bring about more coherence and consistency across standards with respect to fiscal transparency, participation and accountability.³

The submission first maps the principles and practices in the draft Pillar IV against the GIFT High Level Principles. It then discusses the degree of alignment between the two instruments as well as some distinctive and welcome features of the draft Pillar IV. The submission then puts forward two significant areas for consideration for additions to the draft, as well as a number of other more detailed observations and drafting suggestions.

Transparency is a necessary condition for accountability, but not a sufficient condition. It is increasingly accepted that direct public participation in fiscal policy can help to translate disclosure of information into effective accountability. This is particularly important in resource rich countries due to the weaker link between governments and citizens (because resource revenues substitute for taxation) that is well documented.

Thus, the first significant suggested addition to Pillar IV is with respect to the need for the inclusion of specific practices on public participation in the implementation of fiscal policies. We specifically suggest additions to the principle on natural resource funds (Principle 4.3.3) and on social and environmental risks (Principle 4.4.1) to provide for mechanisms of civil

¹ This note has been prepared by Murray Petrie (GIFT Lead Technical Advisor), with inputs from Juan Pablo Guerrero (GIFT Network Director), Sanjeev Khagram (Senior Advisor and GIFT Co-Founder), Mario Abela (Leader – Research and Development, International Federation of Accountants), Sefton Darby (independent consultant), and Professor Brian Wampler (Boise University).

² It is recognized that resource-rich and resource-dependent are not the same thing. However, for ease of exposition the terms are used somewhat inter-changeably in this note.

³ For more information on GIFT see www.fiscaltransparency.net

society input and oversight. These additions reflect international conventions establishing public participation as a right, as well as the increasing recognition of the instrumental value of public participation in international fiscal transparency standards.

The second significant suggested addition to the draft is with respect to the need for a new principle covering the activities of National Resource Companies. Given their size, complexity and scope for rent-seeking, it may be difficult to adequately capture all the necessary transparency, participation and accountability elements through relying on the relevant provisions in Pillars I-III.

A. Introduction

GIFT is pleased to have the opportunity to comment on the draft of Pillar IV of the new Fiscal Transparency Code (FTC), covering transparency of management of revenues from natural resources. Transparency, participation and accountability are particularly important in resource-rich economies, and the IMF's continued recognition of this, building on the impressive and influential 2007 *Guide on Resource Revenue Transparency*, is both important and welcome.

The IMF is seeking comments on the draft by 15 March. The Fund has specifically requested feedback on:

- i.* Whether the most important aspects of resource revenue transparency are reflected and whether the new Pillar complements other resource revenue initiatives and standards.
- ii.* Whether the descriptions of basic/good/advanced practices are well sequenced, calibrated and differentiated.

In August 2014 the Fund released Pillars I to III of the revised FTC, covering fiscal reporting (Pillar I), fiscal forecasting and budgeting (Pillar II), and fiscal risk analysis and management (Pillar III). Pillar IV will complete the FTC. It is designed to complement Pillars I-III, rather than being a stand-alone instrument. That is, it sets out resource revenue elements and practices that are not already covered by the other pillars. In conducting Fiscal Transparency Evaluations in resource-rich countries the Fund has indicated that all four pillars will be used, with the relevant Pillar I-III principles also applied in the context of natural resources.

The resource revenue management pillar will be accompanied by a *Guide on Resource Revenue Transparency and Accountability* (which will comprise Volume 2 of a revised Fiscal Transparency Manual).

It is worth noting that commenting on the draft Principles is necessarily a high-level exercise because the consultation is at the principle stage and because the broader Fiscal Transparency Principles (i.e. Pillars I-III) have yet to be developed into a full fiscal transparency manual. Because of this it is difficult to know at this stage to what degree

principles and associated practices from Pillars I-III will be cross-referenced in Volume 2 of the Fiscal Transparency Manual on Resource Revenue Transparency or linkages established in some other way between the four Pillars.

It is also worth observing that the decision to design Pillar IV as a supplement to Pillars I-III, rather than as a stand-alone instrument, means it is less easy to obtain a comprehensive picture of requirements for resource rich countries – of the kind contained in the 2007 Guide.

This note first maps Pillar IV against the GIFT High Level Principles – which are reproduced in an Annex to this note - and discusses the overall alignment between the two instruments. It then discusses some distinctive features of the resource revenue management pillar and puts forward some suggested additions and amendments to the draft. The perspective reflects GIFT's role in promoting progressive strengthening in standards and practices with respect to fiscal transparency, participation and accountability, and working to bring about more coherence and consistency across standards.

B. Mapping the draft Resource Revenue Management practices against the GIFT High Level Principles

At the outset it must be noted that the GIFT High Level Principles (HLPs) were drafted to be a statement of principles, not of specific practices. The principles provide an umbrella framework for all the existing normative instruments. They are intended to help promote improvements in the coverage, consistency, and coherence of the existing standards and norms for fiscal transparency. There is therefore something of a mismatch, in the level of detail and specificity, between the GIFT HLPs and any specific normative instrument that specifies good practices.

It is, however, informative to compare the scope and coverage of the GIFT HLPs against the draft Resource Revenue Management principles and practices in order to discern and assess patterns of relative emphasis and to identify any potential gaps in Pillar IV.

There are a total of 12 discrete elements in the draft of Pillar IV. Of these:

- Four practices are in Part I on the Legal and Fiscal Regime.
- Three practices are in Part 2 on fiscal reporting.
- Three practices are in Part 3 on fiscal forecasting and budgeting.
- Two practices are in Part 4 on fiscal risk analysis and management.

Table 1 on page 4 shows the pattern of alignment between the 12 resource revenue management practices (together with their associated basic/good/advanced practices), and the GIFT HLPs.

**Table 1: Mapping the draft IMF Resource Revenue Management Pillar to the
GIFT High Level Principles on Fiscal Transparency, Participation and Accountability**

HLP 1: A Right to Information	HLP 2: Macro- fiscal policy	HLP 3: High quality data	HLP 4: Outputs and outcomes	HLP 5: Rule of law	HLP 6: Government and private sector	HLP 7: Clarity of roles and responsibilities	HLP 8: Legislative oversight	HLP 9: Supreme Audit Institution	HLP 10: Right to direct participation
No provisions	4.3.1	4.1.2 4.1.4 4.2.1 4.2.2 4.2.3 4.3.2 4.4.2 4.3.1 4.3.3 4.4.1	4.4.1	4.1.1 4.1.3 4.1.4 4.3.2	4.1.1 4.1.2 4.1.3 4.2.1 4.2.2 4.2.3 4.4.1	4.3.2 4.3.3	4.3.2	4.1.4 ⁴ 4.3.3 ⁵	No provisions

⁴ As discussed in paragraph F (ii) of this submission, principle 4.1.2 (in advanced practices) refers to ‘independent verification of the final awards’ of natural resource rights, but it is not clear whether this is referring to auditing by a Supreme Audit Institution or some other independent verification mechanism.

⁵ As discussed in paragraph F (ix) it is not clear that the reference in 4.3.3 to ‘independent auditing’ is a reference to the SAI or to some other form of independent audit.

Note that while a specific principle may not itself contain a reference to or appear to be relevant to a GIFT High Level Principle, one or more of the associated basic/good/advanced practices may be relevant.

C. Some observations on the draft Pillar IV compared to the GIFT High Level Principles

Pillar IV contains a large number of practices relating to the relationship between the government and the private sector. This is appropriate given the key role such relationships play in resource extraction – for example, contracting for resource extraction, taxing resource companies, taking equity positions in extraction projects, verifying company expenses under production sharing arrangements, and auditing and independently verifying company reports on payments to government. This level of coverage is also appropriate given the political economy of states dependent on natural resource revenues (discussed further in Section D).

Most of the provisions in Pillar IV fall within GIFT HLP 3 - ‘The public should be presented with high quality financial and non-financial information on past, present and forecast fiscal activities....’ This reflects the fact that GIFT HLP 3 covers a lot of core territory in fiscal transparency.

There is only limited reference in the draft of Pillar IV to the role legislatures and of Supreme Audit Institutions (SAIs). These are critically important accountability institutions with distinct but mutually reinforcing functions, particularly in resource-dependent economies where the executive branch is often dominant. While legislatures can be a source of rent-seeking as much as executives, they also provide a potential source of restraint and discipline – especially if legislative proceedings are open to the public and provide opportunities for testimony from the public (as suggested in Section D below).

With respect to the role of SAIs, it is important that their position is not compromised through promotion of alternative accountability mechanisms such as private sector audits. This issue is picked up in Section F (paragraphs F (ii) and F (ix)).

The draft of Pillar IV does not include any references that reflect the two ‘rights’ principles in the GIFT HLPs: the public right to fiscal information (HLP 1); and the public right to direct participation in fiscal policy-making and implementation (HLP 10). These two HLPs are based in extant international law on civil and political rights. They were viewed by the founding GIFT Lead Stewards as foundational, as they intended the HLPs to galvanise a renewed, reinvigorated and broader movement for fiscal transparency, participation and accountability. This is particularly relevant to transparency of natural resource revenue management, where political economy considerations will often outweigh narrower technical considerations. This issue is discussed further in section D.

There are some distinctive and welcome features of the draft of Pillar IV. For instance, the draft resource revenue principles and practices contain:

- i. A provision requiring the disclosure not just of all holders of natural resource rights but also of the beneficial owners of those rights (4.2.1, advanced practices). This is consistent with the 2013 Extractive Industries Transparency Initiative (EITI) standard where such disclosure is encouraged.
- ii. Provisions requiring reporting by domestically domiciled or listed resource companies on their worldwide natural resource and trading activity (4.2.2, basic/good/advanced practices), which is consistent with recent disclosure requirements in the USA and the EU.⁶
- iii. Provisions requiring transparency of the social and environmental impacts of natural resource exploitation (4.4.1, basic/good/advanced practices) – but see further discussion of this in the next section.

D. Public Participation in the Implementation of Fiscal Policy

Transparency is a necessary condition for accountability, but not a sufficient condition. It is increasingly accepted that direct public participation in fiscal policy can help to translate disclosure of information into effective accountability. More specifically, direct participation can strengthen the efficiency, equity, effectiveness, stability, legitimacy and sustainability of fiscal policies, thereby improving fiscal performance and enhancing the likelihood of positive economic, social and environmental outcomes.

This is reflected in the increasing incorporation of public participation principles and practices in international fiscal transparency standards and norms, including in Principle 2.3.3 in the IMF's 2014 Fiscal Transparency Code, the EITI, the Natural Resource Charter, the International Budget Partnership's Open Budget Survey⁷, and the 2014 OECD Principles of Budgetary Governance.

Direct public participation in fiscal policy is of course also established as a citizen right in the GIFT High Level Principles, which was endorsed by the United Nations General Assembly in 2012.⁸

⁶ For example, the U.S. Dodd-Frank Act Section 1054, and the amendment to the EU Accounting and Transparency Directives 2013.

⁷ From the 2012 Open Budget Survey the OBS includes questions on opportunities provided by the legislature and the Supreme Audit Institution for public presence and participation.

⁸ See <http://fiscaltransparency.net/2013/01/united-nations-adopts-transparency-resolution/>

Public participation elements in other standards and guides

EITI:

- Requirement 1: Effective oversight by the multi-stakeholder group.
- Requirement 6: EITI reports that are comprehensible, actively promoted, publicly accessible and contribute to public debate.
- Requirement 7: The multi-stakeholder group takes steps on lessons learned and reviews the outcomes and impact of EITI implementation.

Natural Resource Charter

- Precept 2: Resource governance requires decision makers to be accountable to an informed public.
- Precept 5: The government should pursue opportunities for local benefits and account for, mitigate and offset the environmental and social costs of resource extraction projects. The precept further defines this as involving local communities in decisions and in making assessments.

At the same time, developments in information and communications technology have dramatically lowered the cost of direct interaction between citizens, non-state actors and governments, while also creating entirely new spaces for citizen input and deliberation.

In considering the issue of public participation with respect to Pillar IV, it is recognized that principle 2.3.3, in Pillar II, provides that the government should provide citizens with an opportunity to take part in budget deliberations. In resource rich economies this would apply to opportunities for public engagement over the allocation of revenues from natural resources, the choice between saving and consumption, the role of Natural Resource Funds, and so on. These are critically important issues that we are sure the Fiscal Transparency Manual (Volume II) will discuss in detail.

However, public participation is also very pertinent to the implementation of fiscal policies, and is even more so in resource rich countries due to the weaker link between governments and citizens in many such states. This is because of the stylized features of the political economy of resource rich economies, which include:

- *Resource rich states are rentier states.* Natural resources generate economic rents that accrue to whoever controls them. Rentier states do not need to rely on taxing their own citizens, and this weakens domestic accountability and legitimacy.⁹
- *Resource dependent states are dominated by the executive branch of government.* Because in most countries ownership of natural resources is vested in the state, the majority of the financial returns to resource extraction typically flow to a State-Owned Enterprise (SOE) or the central government's coffers. This results in disproportionately large earnings (relative to the size of the economy) for those controlling the relevant assets, and an ability to 'loot' the state. It also creates an ability to distribute favours and patronage narrowly to shore up support. Accountability institutions may be co-opted. Political incumbents are favoured, although there are also strong incentives for political opposition to gain control of the state, which can contribute to instability and civil war.
- *Oil dependent states in particular tend to be enclave states.* Because oil revenues largely originate from outside the country, there are typically only limited linkages between the sector and the rest of the economy. There is reduced reliance on a national taxation system and less incentive to provide public goods e.g. mass education and health services to foster economic growth and therefore growth of the non-resource tax base.

⁹ Karl, T, *The Paradox of Plenty*, Berkeley: UC Press, 1997. Ross, M, *The Political Economy of The Resource Curse*, World Politics, 1999. Karl, T, 2007, *Ensuring Fairness: The Case for a Transparent Fiscal Social Contract*. Chapter 10 in Humphreys, M, J. Sachs, and J. Stiglitz, eds, 2007, *Escaping the Resource Curse*, Columbia University Press, New York, pp. 261-262.

- *Resource dependent states experience finite and highly volatile resource revenues*, creating difficult political economy choices over the rate of exploitation, and how much and where to invest the proceeds.
- *Natural resources can exacerbate conflict* because of their uneven regional location within a country, location-specific infrastructure needs and environmental and social impacts, and political pressures for revenues to be retained or spent in the regions in which they originate.
- *Resource dependent states have attracted unusually high levels of external intervention*. The competition amongst major economic powers for access to natural resources, and the need to seek foreign capital and technology for resource extraction, has historically resulted in a ‘marriage of convenience’ between international companies (backed by their governments) and the rulers of resource states.¹⁰ This has contributed to the centralisation of the state, and to an entrenched culture of non-transparency and corruption.

Recognition of these considerations was reflected in the EITI initiative, including the emphasis placed in the EITI Standard on direct public participation; specifically the requirement to establish a national multi-stakeholder group to oversee the process and to stimulate public debate about how natural resources should be managed. The strengthening of the EITI Standard in 2013 included an increased emphasis on the role of each country’s multi-stakeholder group, not only with regard to resource revenue transparency but also with respect to a wide range of important sector information including transparency of the resource allocation regime and permits/licenses/contracts awarded under that regime.

In principle 4.2.3 in Pillar IV on the integrity of resource revenue data, the reference to reconciliation of company payments and government receipts being ‘independently validated in line with international standards’, is presumably a reference to EITI. If so, then this is appropriate.

There are however two further principles in the draft of Pillar IV where incorporation of public participation should be considered.

The first is Principle 4.4.1 on social and environmental risks. At the moment one of the three draft practices covers obligations for resource rights holders to regularly analyse and report on environmental and social impacts. The practice does not refer to mechanisms for direct public input to environmental and social impact analysis. Given that resource extraction can have major environmental and social impacts in the localities in which it takes place, and the political economy factors discussed previously, provision for direct public engagement would seem to be important to attempt to introduce a potential additional element of

¹⁰ Karl, T, 2007, op. cit., pp. 262-263.

restraint and accountability. In addition to reflecting GIFT High Level Principle 10, it would also reflect a number of other international conventions and norms, including:

- The 1992 United Nations Conference on Environment and Development's 'Rio Declaration on Environment and Development,' Principle 10 of which declared that, 'Environmental issues are best handled with participation of all concerned citizens, at the relevant level.'¹¹
- The Aarhus Convention adopted by the United Nations Economic Commission for Europe, which contains core principles on the public's 'right to participate in environmental decision-making', and 'right to review procedures and to challenge public decisions.'¹²
- International Labor Organization (ILO) Convention Number 169 provides indigenous communities with the 'right of prior informed consent' regarding development in their territories.¹³ This right of prior informed consent was endorsed by the World Commission on Dams and the Mining, Minerals and Sustainable Development Initiative.

One amendment that should be considered, therefore, would be to introduce the following italicized addition to Principle 4.4.1:

'conditions of natural resource rights holdings include obligations for regular analysis and reporting on potential and actual environmental and social impacts, as well as obligations to seek, and mechanisms to provide for and respond to, direct inputs from the affected public and the general public.'

Mechanisms to provide direct input would include mechanisms for the general public to be consulted in natural resource decision-making, to engage in deliberations on social and environmental impact assessments, as well as judicial review of resource extraction planning and implementation decisions by the affected public, which are standard practices in these fields. Consideration should be given to specifying the above as a basic level of practice.¹⁴

Also with respect to the wording of 4.4.1, the drafting of practice (iii) appears to confine its scope to management of the fiscal risks from environmental and social impacts. There are two separate issues here – one is what impacts resource extraction is having on communities and the environment; the second is what impact this has on government finances (both central government and sub-national governments) and thus the country's

¹¹ <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

¹² The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.
<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

¹³ <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

¹⁴ This would require redesigning the structure of the practices for this principle, to one based on basic/good/advanced practices. When it comes to the detailed recommendations in the proposed guide it will be important, however, to differentiate participation practices for different stages of resource development – what is required at prospecting, exploration and mining/extraction stages will necessarily be quite different.

economic development more broadly. Of course, fiscal risks can be reduced by allocating or shifting the social and environmental costs associated with resource extraction to other parties. While it is likely to be appropriate for extractive companies to bear costs such as site remediation expenses at the end of a project, it will often be inappropriate to minimise the central government's fiscal costs by shifting or allowing other costs to rest with local communities or sub-national governments.

We therefore suggest a revision to the wording as follows:

‘the government reports annually on its management of environmental and social impacts and on fiscal risks from natural resource exploitation.’

The second principle in the draft of Pillar IV where incorporation of public participation should be considered is in Principle 4.3.3 on Natural Resource Funds (NRFs). Given the sheer size of many NRFs, there is a need for additional oversight mechanisms, as information on a Fund may not be incorporated in budget documents, and a Fund may not be covered by opportunities to participate in national government budget preparation. NRFs may operate at least somewhat in parallel to the government's budget, and may escape scrutiny.

In addition, NRFs play a key role in macro-fiscal policy, and are also in part designed to address intergenerational equity issues. It is therefore particularly important that their policies and activities are the subject of broad public debate. A further issue is that in countries at earlier stages of the resource cycle, wide public debate over the prospective or actual size of NRFs could help to manage excessive expectations over the volume of revenues and unrealistic pressures to ramp up spending unsustainably.

A number of observers have discussed the desirability of broader stakeholder representation on the Board of an NRF to provide an opportunity for public participation in setting and/or monitoring fiscal policies.¹⁵ Promoting and supporting the oversight role of the legislature, and of the wider civil society could help to reduce the concentration of power in the executive. This could in turn help to promote more sustainable fiscal policy, a more pro-poor and pro-growth allocation of spending, and less corruption. It could ‘help counterbalance conflicting political interests, by broadening society's participation in the decision-making process (e.g., by allowing for consultation of civil society, eminent citizens, etc.).’¹⁶ Humphreys and Sandbu suggest that governance of an NRF might be broadened beyond the government of the day by involving other actors in its decision-making such as

¹⁵ Humphreys and Sandbu, 2007, *The Political Economy of Natural Resource Funds*, in Humphreys, M, Sachs, J, and Stiglitz, J., eds. *Escaping the Resource Curse*, New York, Columbia University Press; Dabán and Hélix, A *Public Financial Management Framework for Resource-Producing Countries*, IMF Working Paper WP/10/72. See Bell, J. and Faria, T, 2007, *Critical Issues for a Revenue Management Law*, in Humphreys et al, op. cit., pp. 300-303 for a discussion of country practice with respect to oversight groups to monitor the executive's use of natural resource revenues.

¹⁶ Dabán and Hélix, p. 29.

the legislature (as is the case in Norway), members of opposition parties (as in Alaska), or new technical bodies that include civil society representatives (as in Sao Tome and Principe).

We therefore suggest that serious consideration be given to inserting words in practice 4.3.3 specifying, as a good practice, that public hearings in the legislature, and at the local level where resource extraction takes place, are held on the annual report of an NRF. Advanced practice could include the existence of special mechanisms for civil society engagement and oversight of the activities of an NRF. While no-one argues that broader participation in oversight will *ensure* better performance, and while some of those cited above also see risks in such approaches, there are so many observations of the resource curse in the absence of these mechanisms, and so few instances where these have been tried, that they should surely be part of a 21st century approach to natural resource governance.

Furthermore, as noted, public participation is established as a right, beyond its positive instrumental effects.

E. The Role of State-Owned Enterprises in the Natural Resources Sector

International experience has demonstrated that there are particular challenges to transparency and good governance from the operations of natural resource SOEs – referred to in this note as National Resource Companies (NRCs).

Many NRCs are very large in the context of the economies in which they operate, and indeed some are very large by any measure. The Natural Resource Governance Institute has observed that the sale of crude oil by national oil companies (NOCs) generates more than two-thirds of total government income in Angola, Azerbaijan, Congo-Brazzaville, Iraq, Saudi Arabia and Yemen. Globally a majority of oil production comes from NOCs.¹⁷ And while much attention has been paid to state ownership in the oil sector, it is also prevalent in the mining sector with global supplies of coal, aluminium and tin being dominated by state owned enterprises, and with high levels of state participation in other commodities.¹⁸

Because of their sheer size and complexity, NRCs are often surrounded by rent-seeking behaviour, and have often become alternative means of implementing fiscal policies in a non-transparent and unaccountable manner, or of being used for corruption or state capture. 'At this scale, suboptimal processes, small leakages or the unauthorized retention of funds by the NOC can reduce the resources available for public goods and services.'¹⁹

¹⁷ Energy Information Administration (EIA), Who are the major players supplying the world oil market?, Energy in Brief article, September 2012.

¹⁸ World Bank, Overview of State Ownership in the Global Minerals Industry, 2011.

¹⁹ Selling the Citizen's Oil: The Case for Transparency in National Oil Company Crude Sales.

Alexandra Gillies, Revenue Watch Institute, April 2012, p. 1.

<http://www.resourcegovernance.org/sites/default/files/OilSales-Transparency.pdf>

Experience also strongly suggests that transparency needs to be comprehensive if rent-seeking is not to shift to areas less open to scrutiny or control. If greater transparency and accountability are introduced with respect to government budgets and NRFs, rent-seeking may simply shift to NRCs. While Principle 3.3.2 covers the activities of SOEs, NRCs are arguably sufficiently complex and large to warrant coverage in a dedicated principle in Pillar IV (as was the case in the IMF's 2007 Guide).²⁰

For instance, NRCs can be used to borrow against future resource sales, sidestepping the usual legislative oversight of public borrowing; they can be used to finance state participation in resource extraction through non-transparent arrangements that may escape the scrutiny usually applied to public investment; they are often used to conduct quasi-fiscal activities on behalf of government outside the budget; they are often tasked with achieving multiple objectives (sometimes including conflicting functions such as regulating the industry in which they also operate), which makes it difficult to measure their performance and hold them accountable;²¹ there can be an unclear boundary between the NRC's revenues and government revenues, for example with respect to the taxes and royalties they may receive from private resource companies on behalf of government; and they often receive some taxes in-kind (e.g. in the form of oil or gas) which creates opportunities for abuse.

This unusually complex and large scale combination of activities suggests that consideration should be given to adding a principle to Pillar IV specifically on transparency of NRCs. It seems likely to be difficult to adequately capture the complexity of NRCs through application of Principle 3.3.2 together with the other principles in Pillars I-III of the Code that would also need to be applied.

Similar to the point in Section D above regarding public participation, the unique challenges posed by NRCs are specifically recognised in the EITI Standard and in the Natural Resource Charter. Under the EITI Standard,²² EITI reports should include:

- An explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises.
- Disclosures from SOEs on their quasi-fiscal expenditures.
- Disclosures on their level of beneficial ownership in companies participating in the sector.

²⁰ A similar argument could perhaps be made that sub-national governments also raise a complex range of issues that cut across Pillars I-III. For instance, SNGs sometimes act as resource allocator; commonly receive a portion of taxes and royalties; commonly act as a land use and environmental regulator; typically provide local infrastructure; and are the most vulnerable to environmental and social risks. Consideration could therefore be given to adding a new principle to Pillar IV devoted to sub-national government. However the need for a separate principle is perhaps less clear than with respect to NRCs, and might be dealt with through detailed discussion in Volume 2 of the Manual.

²¹ See for instance 'National Oil Companies and Value Creation', Silvana Tordo with Brandon Tracy and Noora Arfaa, World Bank Working Paper No. 218, 2011.

²² See EITI Standard requirements 3.6, 4.1(c), 4.2(c) and Guidance Note 18: SOE participation in EITI reporting.

- Details of the sale of the state's share of production or other revenue that is collected in-kind.

The Natural Resource Charter's Precept 6 is devoted to the role of NRCs – '[n]ationally owned companies should be accountable, with well-defined mandates and an objective of commercial efficiency. The Charter highlights in particular the need for:

- The operational roles (i.e. direct participation in prospecting, exploration and/or production) to be distinct from governance roles (i.e. management of the resource allocation regime);
- Clear checks and balances to be established (including selecting board members who are politically autonomous and have appropriate expertise);
- NRCs to be subject to the same disclosure arrangements as other companies; and
- Independent oversight of the company e.g. from the legislature or an appropriate oversight agency.

Drawing on and extending Principle 3.3.2 in the Code that covers public corporations, a new principle on NRCs could be as follows:

Basic practices: An NRC publishes an Annual Report disclosing details of all interests and holdings in the sector, resource sales (buyer, volume, resource grade, price and date of cargoes),²³ all payments to and from government including details of sales of the government's share of production collected in kind, and audited financial statements compiled according to international accounting and auditing standards with an unqualified audit opinion.

Good practices: Above, plus the Annual Report contains details of all direct and indirect support from government, quantification of any quasi-fiscal activities;²⁴ the government publishes an ownership policy; and the Report is discussed in a legislative committee at which testimony from the public is heard.

Advanced practices: Above, plus the Annual Report contains key details of governance and senior management arrangements, and there are low-cost mechanisms for redress available to members of the public with respect to the NRC's operational activities.²⁵

²³ Gillies, Revenue Watch Institute, op. cit, 2012, p. 1.

²⁴ In Pillar III, principle 3.3.2 specifies as an advanced practice that estimates of any quasi-fiscal activities undertaken is published on at least an annual basis. Given both the size of quasi-fiscal activities conducted by a number of NRCs, and their capacity for financial management and cost estimation relative to many other SOEs, it seems appropriate to specify quantification of quasi-fiscal activities as a good practice.

²⁵ For example, Petrobras in Brazil has established an office of Ombudsman.

F. Detailed comments on the specification of basic/good/advanced practices

- i. In 4.1.1, publication of regulations is not a requirement for basic practices, but only of good practices. It is difficult to see why publication of regulations is other than basic to the rule of law. Publication of regulations provides additional assurance to those subject to the regulations that they are promulgated under due process and that they will be applied equally to all. Elevating this to basic practice would better reflect GIFT HLP 5.
- ii. Principle 4.1.2 (in advanced practices) refers to ‘independent verification of the final awards’ of natural resource rights. It is not clear whether this is referring to auditing by a Supreme Audit Institution, or to some other independent verification mechanism. There should be a presumption that the SAI’s mandate allows it to audit any resource tenders it wishes to audit, and therefore it would seem more appropriate for independent verification of contract awards to be a requirement for basic practice. If the reference to ‘independent verification’ is to verification in addition to audit by the SAI, this should be made clear. Finally, a new requirement could usefully be added to ‘advanced practice’ that requires the independent audit of a random selection of all small licenses/contracts and any changes to those licenses/contracts awarded under a predetermined threshold for materiality.²⁶
- iii. The importance of the ownership and stewardship of geological data seems to be missing from 4.1 in general and consideration should be given to either the addition of a new principle or inclusion of new material within 4.1 on this issue. Properly managed geological data can be one of the more valuable assets that a government possesses.²⁷ The starting point for much exploration is the gathering, interpretation and reinterpretation of historic data in order to improve the likelihood of a commercially viable discovery. Effective government stewardship of this data can potentially speed up resource development as well as enable governments to demand higher minimum work programmes from exploration companies. It also assists with the management of environmental risks.

Basic practice could require the existence of legislation requiring regular reporting and surrendering of geological data to the government; good practice could add the

²⁶ In some countries there may be a substantial number of awards of resource rights that are small and not material on an individual basis. On the other hand, this issue might be covered in the Manual rather than in the Code.

²⁷ See Natural Resource Charter Precept 3 – governments should ‘build and maintain a good understanding of the resource base. This information is key to building the government’s geological understanding, which will serve to strengthen its negotiating position with investors and better enable it to optimize the licensing regime. To this end, the government should ensure that investors provide all technical information in an understandable format.’

construction of an online exploration database; advanced practice could include regulatory activities to ensure company compliance with data reporting requirements.

- iv. In 4.2.1, advanced practice is to publish ‘the full text of terms and conditions associated with their natural resource rights...’ While this is certainly appropriate, it would also be worth considering adding the words ‘together with an accessible summary of key terms’. In the absence of a summary it is likely to be difficult for many citizens, CSOs, journalists and others to make sense of long and complex legal documents, reducing the ability to translate transparency into public scrutiny, debate, and accountability.

4.2.1 also seems to omit the importance of including the disclosure of any variations or changes to permits/licenses/contracts. Disclosing only the original or most recent documentation can sometimes conceal a significant pattern of post-award changes to a resource right. For this reason the good practice definition for this section could be changed to read ‘...and the full text of terms and conditions associated with their natural resource rights, *as well as a full history of any changes or variations made to the resource right since it was first awarded.*’

- v. In 4.2.2 on reporting by resource companies, basic practice is to report ‘summary information’, good practice is to report ‘country-level information’ and advanced practice is to report ‘project-level information’. Summary level information is of limited value, as users are not able to discern which entities received payments, which projects they relate to, or what type of payment is involved. Project level reporting is increasingly the norm, with it being a requirement of the EITI Standard (requirement 5.2.e).

A recommendation for an alternative approach would be to specify country-level, project-level, and payment type and public entity recipient as basic/good/advanced practice respectively. Payment-type refers to whether payments are taxes, royalties or other types and which type of tax. This additional level of detail helps to match payments with specific individual recipient government institutions.

Consideration could also be given to adding reference to social expenditures by companies to the description of good or advanced practice. Such reporting is a new disclosure requirement in the revised 2013 EITI standard. Social expenditures by public corporations will be covered by principle 3.3.2 in Pillar III, which refers to quasi-fiscal activities by public corporations. However, principle 3.3.2 does not capture quasi-fiscal activities by private corporations, which in the field of resource extraction can be significant.

Finally, 4.2.2 refers to ‘payments to and from government’. It is not clear whether this would include payments to public corporations, which are not part of the ‘government sector’ as defined in international statistical standards. Some taxes, royalties or other government revenues are often paid by private companies in the first instance to NRCs, which then remit them to a government ministry. In order to clearly capture such payments, principle 4.2.2 could refer to ‘payments to government-owned or controlled entities’. ‘Payments’ would also need to cover payments in kind – for example, the transfer of oil or gas from an NRC to a separate state-owned refining or energy company.

- vi. In the definition of basic practices in 4.2.3, it would be worth considering adding the words ‘by company’, so that a single summary reconciliation of aggregate payments against aggregate receipts would clearly not meet basic practice (although it is also a necessary integrity check). The wording would therefore be: ‘Government reports annually on resource revenue collections *by company*’.
- vii. In 4.3.1 governments are required to report performance against their objectives only for advanced practices. In general, reporting performance against announced objectives is fundamental to accountability and from that perspective would be better incorporated in basic, or perhaps good practices.

If this is removed from advanced practices, the latter could be differentiated from good practices by confining the latter to a medium term numerical objective (as opposed to a medium-to-long term objective), or by adding to advanced practices a requirement to place the numerical objective for resource revenues in the context of fiscal sustainability analysis.

- viii. In 4.3.2, ‘public expenditure or saving of resource revenues *which itself is clearly defined in scope*’ is required only for advanced practices. A clear definition of what constitutes resource revenues is fundamental to much of Pillar IV, and should be a basic practice – especially as there is no internationally agreed definition of resource revenues at present.²⁸ The classification of resource revenues is therefore probably not covered in Pillar I of the Code. If there are laws requiring all resource revenues to be paid into an NRF, or if fiscal performance is defined in terms of a non-resource balance, there could be strong incentives on a government to misreport or redefine resource revenues as non-resource revenues or to otherwise game the definition.
- ix. In 4.3.3, reporting of investment performance is required only for good practices, and a statement of the government’s investment objectives and independent

²⁸ See Template To Collect Data On Government Revenues From Natural Resources, IMF, January 24, 2014.

auditing are only required for advanced practices. Given the size of NRFs, this is perhaps an understatement of expectations.

First, with respect to auditing, there should be a presumption that any NRF will be subject to audit by the SAI. International auditing standards (ISSAIs) require independence of the SAI. It is not clear if the reference to independent auditing as an advanced practice is a reference to audit by the SAI. If it is, then it is suggested this should be a basic practice.

If the reference is to some other form of independent audit – such as an audit by a private firm, *in addition to* audit by the SAI - then this should be specified in the principle so as not to risk detracting from the mandate of SAIs. This might be achieved by amending the wording from ‘independent auditing’ to ‘additional independent verification mechanisms.’

Secondly, reporting of investment performance would also seem to be a basic requirement of transparency, in order to provide the public with a basic level of assurance that there is accountability for this use of public funds, particularly given their size. If this change were made then a statement of investment objectives should perhaps be a good practice rather than an advanced practice.

Thirdly, the wording of the principle and practices can be read to imply that establishing an NRF is good or accepted practice. Whether setting up an NRF enhances transparency, participation and accountability in comparison to other approaches is context-dependent and country-specific, and is not necessarily desirable. An apparent endorsement of NRFs could be avoided by inserting the word ‘any’ in front of ‘natural resource funds’ in the description of the principle, and in the description of basic/good/advanced practices.

- x. Finally, we would recommend consideration be given to adding some detail under 4.4.2 ‘operational risks’. A significant risk to the overall resource endowment of a country is that particular fields or resources can be developed by a company in a way that maximises short-term production and profitability at the expense of overall resource recovery. Companies which are focusing on short to medium term generation of cash, which face uncertainty in their tenure over a resource, and/or which are facing a period of low commodity prices can be tempted to engage in this practice. At a minimum this can increase the costs of recovery of future resources, at worst it can sterilise (i.e. put beyond use) resources left in the ground, thus depriving a government of significant future revenues.

For this reason we would recommend an addition under ‘good’ practice of this

principle of further wording so that it reads ‘The government reports annually on natural resource project status and planned activity, *conducts audits of the development strategies and extraction rates of major projects*, quantifying the main risks to production...”

Annex

The Global Initiative on Fiscal Transparency: High-Level Principles on Fiscal Transparency, Participation, and Accountability

The Parties to these Principles,

Recognizing that fiscal policies – taxing, borrowing, spending, investing, and managing public resources – have critical impacts on economic, social and environmental outcomes in all countries at all levels of development,

Believing that access to high quality information, meaningful public participation, and effective accountability mechanisms:

- enhance the integrity, quality and implementation of fiscal policies,
- reduce corruption,
- increase the legitimacy of and trust in government,
- increase willingness to pay taxes and provide financing,
- strengthen the effectiveness of development assistance,
- and thereby strengthen the efficiency, equity, effectiveness, stability and sustainability of fiscal policies and enhance the likelihood that fiscal policies have positive economic, social and environmental impacts,

Recognizing that the public has the right to information on fiscal policies and effective opportunities to participate in the design and implementation of fiscal policies,

Recognizing also the critical contribution that greater fiscal transparency, participation and accountability can play in facilitating more effective international cooperation in the pursuit of financial stability, poverty reduction, equitable economic growth, and stewardship of the environment and the global commons,

Recognizing the important role in setting norms and standards played by initiatives such as the International Monetary Fund's *Code of Good Practices on Fiscal Transparency*, the Organisation for Economic Cooperation and Development's *Best Practices in Budget Transparency*, the International Budget Partnership's *Open Budget Index*, *International Public Sector Accounting Standards* promulgated by the International Public Sector Accounting Standards Board, *International Standards of Supreme Audit Institutions* promulgated by the International Organization of Supreme Audit Institutions, and the multi-agency *Public Expenditure and Financial Accountability* program,

Acknowledging that while the range of consensus has grown, there remain gaps and inconsistencies in the existing norms and standards,

Recalling that international instruments, both those that are universally applicable, such as *The Universal Declaration of Human Rights*, *The International Covenant on Civil and Political Rights*, and *The International Covenant on Economic, Social and Cultural Rights*, as well as regional instruments, address issues of free speech, access to information, independence of the Supreme Audit Institution, participation, and anti-corruption among others that are relevant to fiscal policy,

Affirming the reciprocal relationship between citizens and government, in which citizens provide resources to and entrust governments with stewardship over public resources, and, in turn, expect to receive information on public finances and fiscal policies and to have opportunities to participate in fiscal policy-making,

Recognizing that developments in information and communication technologies have greatly lowered the costs of compiling and disseminating information, and facilitate new forms of citizen – government interactions,

Recognizing that these Principles will need to be implemented in a manner that is consistent with diverse country circumstances while promoting progress in all countries towards the common goal of transparent, participatory and accountable management of fiscal policies,

Recognizing the need for cooperation and information sharing between all stakeholders to assist states to build capacity and learn from experience in the transparent, participatory and accountable management of fiscal policies,

Inviting all states and non-state actors, including individuals, civil society groups, non-governmental organizations, community-based organizations, professional associations and the private sector to work together to promote the progressive achievement of these Principles,

Recognizing also the desirability of transparency, participation and accountability in all branches of government and inviting legislative and judicial bodies to implement these Principles in their proceedings,

Declare these High-Level Principles to guide policy makers and all other stakeholders in fiscal policy in their efforts to improve fiscal transparency, participation and accountability and to help promote improvements in the coverage, consistency and coherence of the existing standards and norms for fiscal transparency:

Access to Fiscal Information

1. Everyone has the right to seek, receive and impart information on fiscal policies. To help guarantee this right, national legal systems should establish a clear presumption in favour of the public availability of fiscal information without discrimination. Exceptions should be limited in nature, clearly set out in the legal framework, and subject to challenge through low-cost, independent and timely review mechanisms.
2. Governments should publish clear and measurable objectives for aggregate fiscal policy, regularly report progress against them, and explain deviations from plans.
3. The public should be presented with high quality financial and non-financial information on past, present, and forecast fiscal activities, performance, fiscal risks, and public assets and liabilities. The presentation of fiscal information in budgets, fiscal reports, financial statements, and National Accounts should be an obligation of government, meet internationally-recognized standards, and should be consistent across the different types of reports or include an explanation and reconciliation of differences. Assurances are required of the integrity of fiscal data and information.
4. Governments should communicate the objectives they are pursuing and the outputs they are producing with the resources entrusted to them, and endeavor to assess and disclose the anticipated and actual social, economic and environmental outcomes.

The Governance of Fiscal Policy

5. All financial transactions of the public sector should have their basis in law. Laws, regulations and administrative procedures regulating public financial management should be available to the public, and their implementation should be subject to independent review.
6. The Government sector should be clearly defined and identified for the purposes of reporting, transparency, and accountability, and government financial relationships with the private sector should be disclosed, conducted in an open manner, and follow clear rules and procedures.
7. Roles and responsibilities for raising revenues, incurring liabilities, consuming resources, investing, and managing public resources should be clearly assigned in legislation between the three branches of government (the legislature, the executive and the judiciary), between national and each sub-national level of government, between the government sector and the rest of the public sector, and within the government sector itself.
8. The authority to raise taxes and incur expenditure on behalf of the public should be vested in the legislature. No government revenue should be raised or expenditure incurred or committed without the approval of the legislature through the budget or other legislation. The legislature should be provided with the authority, resources, and

information required to effectively hold the executive to account for the use of public resources.

9. The Supreme Audit Institution should have statutory independence from the executive, and the mandate, access to information, and appropriate resources to audit and report publicly on the raising and commitment of public funds. It should operate in an independent, accountable and transparent manner.

10. Citizens should have the right and they, and all non-state actors, should have effective opportunities to participate directly in public debate and discussion over the design and implementation of fiscal policies.



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May 14 2015

Re: Definitions of Project and Beneficial Owner in the Draft Resource Revenue Management Pillar of the International Monetary Fund's Fiscal Transparency Code

Dear Ms. Shah and Mr. Daniel:

We appreciate this opportunity to contribute our comments on certain aspects of the Draft Resource Revenue Management Pillar of the International Monetary Fund's Fiscal Transparency Code. We support the earlier submission of Publish What You Pay – United States (dated March 12, 2015) and we wish to focus our additional comments on how the Fund should define two key terms: project and beneficial owner. To avoid confusion and inconsistencies in global reporting, we urge the Fund to follow internationally accepted definitions for each of these terms, as described below.

About Global Witness

Global Witness is a non-profit organization dedicated to preventing natural resource-related corruption and conflict and associated environmental and human rights abuses. We have played a leading role in developing and implementing international transparency and natural resource governance mechanisms, including the Kimberley Process rough diamond certification scheme, the Extractive Industries Transparency Initiative ("EITI"), on which we serve as a board member, and the Publish What You Pay ("PWYP") campaign, which we conceived and co-launched in 2002.

In 2014, we won the TED Prize for our work to end anonymously owned companies. Our campaign on this issue helped to influence the UK government to create a publicly accessible register of beneficial ownership for UK companies, and the European Union to agree similar legislation. Global Witness is the only NGO to sit on the UK government's expert working group on the implementation of the new register.

Project definition

We support the recommendation of our colleagues at PWYP-United States that the Fund should designate project-level payment reporting as a "basic" practice, in view of its status as the globally accepted transparency standard for extractive industries.

If the Fund chooses to elaborate on how the term "project" should be defined, it must ensure that any definition of "project" is equivalent to that adopted by the EU: "the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government."¹ The EU definition provides that "multiple such agreements" that are "substantially interconnected" will also be

¹ Article 41(4) of Accounting Directive,
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:EN:PDF>



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considered a single project.² “Substantially interconnected” legal agreements can be reported as a single project if they are “a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with the government” and “give rise to payment liabilities.”³

Payments at the level of project as defined by the EU are required to be reported by all companies registered in the European Economic Area (pursuant to the EU Accounting Directive) and issuers of securities on regulated markets in the European Union (pursuant to the EU Transparency Directive).

At present this is the only definition of project that is mandated by law, and we anticipate that both Canadian and US authorities, as well as the EITI Board, will adopt an equivalent definition of project. It would be unnecessary and inappropriate for the Fund to look to other definitions of beneficial ownership from unrelated policy areas, such as international tax, which serve entirely different purposes. If the Fund departs from the EU definition of project, it would only create unnecessary confusion among companies and governments. Instead, we urge you to reinforce the consistent global standard of project-level payment reporting by adopting the EU definition of project.

Beneficial owner definition

Natural resources are crucial to the development and prosperity of resource rich countries. Citizens own these resources and have a right to know who controls the companies that extract them and who benefits from the revenues raised. Without this transparency there is a lack of trust between governments, citizens and companies. Revealing the ownership of extractive companies helps prevent conflicts of interest that enable corrupt officials to siphon off public monies that could support investment in human capital and development.

Regarding the Fund’s proposed definition of a beneficial owner we share the concerns of our colleagues at Natural Resource Governance Institute (in their comment dated February 18, 2015) about certain aspects of it, in particular that it would allow companies to be considered beneficial owners. This would become a means of continuing to facilitate corruption by enabling the people who ultimately own or control these companies to remain hidden, while creating the appearance of transparency. The proposed definition is in contradiction with all of the existing international approaches in the G20, G8 and EU all of which emphasize that a beneficial owner must be a natural person. In particular, we wish to draw your attention to the globally established definition of beneficial owner adopted by the Financial Action Task Force (“FATF”), of which the Fund is an observer organization: “the *natural* person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement” (emphasis added).⁴

² Id.

³ Recital 45 of Accounting Directive.

⁴ <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>



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This definition has been incorporated into EU law via the Anti-Money Laundering Directive, which requires member states to create central registers of beneficial ownership and uses the FATF definition of beneficial ownership.⁵ The definition is also used by the majority of other countries which implement the FATF standards.

More specific to the context of natural resource revenues, the EITI currently encourages reporting of beneficial owners through the 2013 Standard and beneficial ownership reporting is currently being piloted in 10 EITI countries: Burkina Faso, Democratic Republic of Congo, Honduras, Kyrgyz Republic, Liberia, Nigeria (mining only), Niger, Tanzania, Togo, and Zambia. It will be required for all EITI countries beginning in January 2016.

The EITI defines beneficial ownership as “the *natural* person(s) who directly or indirectly ultimately owns or controls the corporate entity” (emphasis added).⁶ The EITI guidance on this definition further states that the definition “may thus include the person(s) who own or control the shares or voting rights in a company limited by shares, the person on whose behalf shares in a company are held by somebody else, or the person(s) that by other means control the way the company is run regardless of whether they have any interest in the shares of the company. This also includes cases where the company is not limited by shares. An ultimate beneficial owner can never be a nominee or another company.”⁷ This definition was established to be in line with the FATF definition by focusing on the need to disclose the natural person at the end of the corporate chain and not a trust, legal entity, nominee or proxy.

In closing, we appreciate the Fund’s efforts to standardize and improve fiscal reporting globally. It is critical that the Fund’s reporting with respect to natural resources be consistent with other international efforts in this area. A harmonized global transparency standard is in the interest of all stakeholders: it will ensure that data is more easily comparable for citizens and investors, and it will also help both companies and governments by minimizing their costs of complying with relevant laws and global initiatives if they could all be harmonized.

We thank you for your consideration and would welcome the opportunity to meet with you to clarify any of our comments and recommendations.

/s/ Zorka Milin
Senior Legal Advisor
Global Witness

⁵ <http://www.europarl.europa.eu/news/en/news-room/content/20150126IPR14918/html/Money-laundering-company-owner-lists-to-fight-tax-crime-and-terrorist-financing>

⁶ EITI Standard (2013), 3.11 d) https://eiti.org/files/English_EITI_STANDARD.pdf

⁷ EITI Terms of Reference for Beneficial Ownership Pilot: 6
<https://eiti.org/files/TOR%20Beneficial%20ownership%20pilot.pdf>

Feedback on Pillar IV of the IMF Fiscal Transparency Code (March 2015)

Background

The Fiscal Affairs Department of the International Monetary Fund (IMF) has prepared and released for consultation a section of the IMF's new Fiscal Transparency Code devoted to Natural Resource Revenue Management – known for short as the “Fourth Pillar”. ICMM welcomes the opportunity created by the IMF to provide feedback, both in our face-to-face meeting in early February and in writing.

The IMF published Pillars I to III of the IMF Fiscal Transparency Code (FTC) in August 2014 and now regularly applies the new Code in Fiscal Transparency Evaluations. The new Pillar IV will complete the FTC in setting out recommended principles and practices for fiscal transparency and accountability in the management of revenues from natural resources.

Complementing Pillars I to III, Pillar IV starts from the legislative foundations governing resource rights allocations and fiscal regimes, and then addresses issues of reporting by governments on resource revenue collection and allocation, and the analysis of sector-specific risks to government revenue. It emphasizes important sector-specific aspects of fiscal transparency, incorporating new issues raised by the changing structure of the extractive industries and advances in understanding of the international fiscal architecture.

Pillar IV also takes account of the development of new international standards for resource governance that have emerged since the IMF issued the 2007 edition of the Guide on Resource Revenue Transparency.

On Monday 2 February 2015, Philip Daniel and Alpa Shah from the Fiscal Affairs Department of the IMF gave a short presentation on Pillar IV to a subset of ICMM members and staff from the ICMM Secretariat in London. This document reflects the feedback given both at that meeting and subsequently received from members of ICMM's Tax Network.

Overarching comments

1. The draft Resource Revenue Management pillar (Pillar IV) of the Fiscal Transparency Code does not include an upfront statement of intent. A statement of intent emphasizing that the principles do not favour any particular policy regime, and are solely concerned with evaluating the transparency and accountability of the legal and fiscal regime already in place, would be welcome.

For example, we understand that principle 4.3.3 on Natural Resource Funds is only applicable where a Fund is already in place, rather than the principle advocating for their use.

2. The Pillar IV draft is unclear on the timelines in which the principles are expected to be implemented.

For example, both point 4.1.1 “All relevant laws are published” and point 4.2.1 “The government maintains and publishes an up-to-date register...” would be improved by the addition of timelines.

3. In a number of places, the language in the Pillar IV draft seems more oriented towards oil and gas producing countries as opposed to minerals and metals producing countries. The final draft would be improved by greater clarity on this aspect.
4. The mining industry is subject to a significant number of reporting initiatives. Consequently, it is important that the Pillar IV draft is an effective fit, both in terms of content and resources needed to complete the reports. Given that the IMF aims to complete just five reports a year, one has to question whether at this level of “take up” there is actually much value in the initiative.

Specific points

1. **4.1.2 - Allocation of Resource Rights:** The reference to “an open and competitive process for the allocation of rights to explore for and extract and trade natural resources,” alongside reference to “evaluation criteria for competitive tenders” implies a multi-party competitive tender process (akin to bids and auctions) which is not the usual practice in mining. A re-wording of this point would help to clarify the expectation.
2. **4.2.1 – Disclosure of Natural Resource Rights Holdings:** The reference to the government maintaining and publishing an up-to-date register of all natural resource rights holders is unclear in terms of the form of published material. In practice, this information is not available in one place (instead via a number of different line ministries) and is not always in reconcilable formats (owing to template differences, for example).
3. **4.2.2 – Reporting by Resource Companies:** The reference to pricing schemes in the draft description is not immediately clear. We understand the reference as disclosure of principles upon which pricing is done (if not a spot market determination), not the actual price used per transaction, which would be problematic. A re-wording of this point would help to clarify the expectation.
4. **4.2.2 – Reporting by Resource Companies:** The suggested reporting on trading activity, especially at the country-level (good practice) and project-level (advanced practice), may not be feasible.
5. **4.4.1 – Social and Environmental Risk:** The reference to the government regularly evaluating, monitoring and managing the fiscal risks associated with the social and environmental impact of natural resource exploitation presents difficulties in terms of feasibility and objectivity. While this dimension is important, the principle is problematic given its subjectivity – i.e. who is judging this risk, from what perspective, and with what information.

If you would like clarification on any of the points made in this submission please do not hesitate to contact ICMM.

ICMM Secretariat, March 12 2015

February 15th, 2015

International Monetary Fund
Communications Department
700 19th Street NW
Washington, DC 20431
USA

By email to: IMFConsultation@imf.org

CONSULTATION: Draft Resource Revenue Management Pillar (Pillar IV)

Dear Sir/Madam:

The International Federation of Accountants® (IFAC®) values the opportunity to comment on the IMF's consultation, *Draft Resource Revenue Management Pillar*, which is Pillar IV of the Fiscal Transparency Code (2014).

Through its current membership of over 175 professional accountancy organizations in 130 countries and jurisdictions, IFAC represents approximately 2.5 million accountants in public practice, industry and commerce, government, and education.

For many years, IFAC has consistently promoted the need for enhanced transparency and accountability in the public sector, noting, in particular, the risk that a lack of transparency and accountability presents to the efficiency of capital markets, global financial stability, and long-term sustainability of public finances. Furthermore, poor transparency represents a failure by governments to be open to citizens making any effective accountability difficult. Specifically, despite some countries being rich in natural resources, it has had little impact on their economic development. Often a lack of transparency around how those resources have been exploited and how resource revenue has been utilized has meant that there has been little benefit accruing to citizens.

For those reasons, IFAC strongly supports the Fund's Fiscal Transparency Code, and we welcome the proposals in Pillar IV to strengthen obligations on governments to improve transparency for the natural resources they control and the rights and obligations that stem from their exploitation.

General Comments

The accountancy profession also has an important role to play in the preparation and reporting of financial information on natural resources. Without sound accounting systems and processes, founded on an acceptable accruals-based financial reporting framework and standards, the preparation of financial and other reports and key documents will potentially be based on ad hoc systems and processes. They will lack the essential discipline that exists and is available from the adoption and implementation of high-quality international standards, such as International Public Sector Accounting Standards™ (IPSAS™), and from important institutional measures that promote transparency and accountability. This position has been reinforced in IFAC's [Policy Position Paper 4, Public Sector Financial Management Transparency and Accountability: The Use of International Public Sector Accounting Standards](#) and in [submissions to the G20](#).



IFAC is concerned that there is not sufficient attention drawn to the importance of auditing and assurance and the role of Supreme Audit Institutions to assess the relevance and reliability of information reported by governments on the exploitation of a jurisdiction's natural resources. While it is identified in Pillar I (principle 1.4.2), in IFAC's view, the qualitative aspect of information is worth reinforcing in Pillar IV.

IFAC notes that there have been important developments in sustainability reporting, and there may be useful insights to draw on from those various standards and guidelines to inform and underpin Pillar IV.

Specific Comments

With the objective of improving transparency and accountability for natural resource revenues, we offer the following comments for your consideration.

- IFAC appreciates that Pillar IV principles complement and operate in conjunction with the principles in Pillars I to III. However, we are concerned that principle 3.3.2 (public corporations) is insufficient in capturing the breadth of activities that public corporations may undertake with respect to natural resources. That is, a "government's interest in exhaustible natural resource assets and the exploitation" is not just a matter of them being "valued, disclosed, and managed." It is important that citizens and other stakeholders can understand how those assets are being exploited in an efficient and effective manner—being transparent about any impairment of those assets and any environmental liabilities being incurred as a result of their exploitation.
- It is not clear from our reading of the draft whether principle 4.2.2 (reporting by resource companies) is intended to apply equally to public corporations—in our view it should. That is, regardless of whether a public sector entity is formally established as a "company" or not, all state-owned entities outside of the budget sector should be subject to principle 4.2.2. It would be helpful to clarify the interaction between the various principles so they are not applied narrowly.
- Proper disclosures of transfers to and from public corporations are also important to mitigate the risk of resource revenue leakage.
- IFAC supports principle 4.2.1 on the disclosure of natural resource rights holdings. While we agree that full disclosure as suggested under "good" and "advanced" practices would be helpful, citizens and those who represent them, along with other stakeholders are more likely to benefit from a summarized explanation of those arrangements in plain language. It is most likely that the terms and conditions for resource arrangement will be a set of complex legal documents that will require specialist knowledge to interpret. A "citizens friendly" version clearly explaining the arrangements and how they operate is likely to be much more helpful in promoting greater accountability. We appreciate that other parties, such as civil society organizations, may still find the disclosure of detailed documents useful, so we are not proposing that the summarized version be a substitute for full disclosure of relevant materials.
- IFAC believes that principle 4.2.3 (integrity of resource revenue data) is a critical aspect of achieving transparency.¹ However, as stated, we do not believe the principle goes far enough in only requiring governments to regularly report resource revenue collections. There is a preceding step that should

¹ See for example Prichard, W., Cobham, A & Goodall, A.'s "The ICTD Government Dataset" (2014), which highlights a range of deficiencies in revenue reporting by governments, particularly around natural resources (page 32).



be highlighted—the importance of robust data collection, credit control, and accounting systems and assurance by the Supreme Audit Institution.

- IFAC supports principle 4.2: “governments...should provide **comprehensive, timely and reliable** reports...on payments and collections of resource revenues,” and we would also add “relevance” as a quality, as reporting immaterial information is unlikely to be helpful to users. However, it is concerning that the qualitative aspects highlighted in the key principle are not reinforced in the subsidiary principles that follow (4.2.n)—in IFAC’s view, these are fundamental and should be clearly articulated. Information that is reported but lacks those qualities is unlikely to be particularly useful for decision making and accountability.
- It is also important that there is a complete picture of resource revenues in cases where they are collected across a number of government agencies. That is, there should be consolidation of resource revenues across government to satisfy the key principle 4.2.
- IFAC supports principle 4.3.3 (natural resource funds) that there should be clear mechanisms and rules for the establishment and operation of natural resource funds. In our view, this should be extended to ensure that there is full and transparent reporting of those funds. Without proper financial reporting of those funds, it is difficult to see how citizens and those who represent them, along with other stakeholders, will be able to assess the extent to which relevant rules have been observed. Perhaps, more importantly, it will also be difficult for any assessment to be made of whether the resources invested in those funds have been managed efficiently and effectively, and to the benefit of the jurisdiction as a whole.
- IFAC is concerned that principle 4.4 and the principles that follow (4.4.1 and 4.4.2) are too narrow. The leading text “fiscal risk analysis and management” does not seem to relate to the text that follows: “governments should disclose, analyze, and manage **social, environmental and operational risks associated with natural resource exploitation.**” In our view, the principle should be broadened to address social, environmental, and operational risk, which may, at some point, have a fiscal impact. Moreover, our reading of this principle is that “fiscal risk” is equated with a potential cash outflow. It appears to run counter to the other principles, which take a broad view of resources and the overall management of the natural environment in a sustainable manner. If significant environmental degradation results from exploiting natural resources there is a “cost” that diminishes the benefit of natural resource revenues. That overall effect needs to be clearly identified and reported in order to satisfy the spirit of principle 4.4. IFAC notes that in the supporting tables, there are no practices identified for what constitutes “basic,” “good,” or “advanced” practices for this principle. We would suggest that those expectations be developed to provide guidance for jurisdictions seeking to implement the principle.



Please do not hesitate to get in touch if you have any questions or require further clarification of the comments provided.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Faye Choudhury", is positioned above the printed name.

Faye Choudhury
Chief Executive Officer



United Nations Environment Programme

برنامج الأمم المتحدة للبيئة • 联合国环境规划署
PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT • PROGRAMA DE LAS NACIONES UNIDAS PARA EL MEDIO AMBIENTE
ПРОГРАММА ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ ПО ОКРУЖАЮЩЕЙ СРЕДЕ

IMF Draft Fiscal Transparency Principles

Pillar IV. Resource Revenue Management

i. Overall remarks

- a. UNEP is very positive to the new Pillar IV on Resource Revenue Management, which should provide a transparent framework for the establishment and use of public revenue from natural resources.
- b. UNEP will be interested to discuss participating in the pilot evaluations to field test and adapt as needed the design of the new pillar in resource-rich countries. This is especially relevant since the pillar includes key aspects of good natural resources governance and risk analysis and management of environmental risks. It is also relevant since UNEP has thematic and operational experience on this issues in resource rich fragile and conflict affected countries. Similarly UNEP is interested in contributing with this expertise to the forthcoming Guide on Resource Revenue Transparency and Accountability.
- c. The Pillar IV on Resource Revenue Management (and indeed the whole Fiscal Transparency Code) should adopt the term 'open data formats' throughout. To allow the potential of transparency policies to contribute to fast, near-real time and efficient analysis, tracking and monitoring, it is essential that the data published is accessible in open and standardised formats.
- d. The Pillar IV on Resource Revenue Management should include the term 'accountable' throughout. To ensure that the data collected, managed and disbursed is correct, verifiable and in adherence with legal frameworks, international standards and protocols it should be subject to independent auditing.
- e. In addition to ensuring that the risk analysis (4.4.1.) includes resource revenue driven conflict risks, the code should include stress testing the government's ability and capacity to undertake resource revenue management according to the Fiscal Code and to prevent and mitigate the social, environmental and operational risks from natural resource exploitation. This can be captured by including the term 'governance risks' in 4.4. and adding a new principle: *4.4.3 Governance risks: The government regularly reviews its ability and capacity to undertake resource revenue management*

according to the Fiscal Code and to prevent and mitigate the social, environmental and operational risks from natural resource exploitation.

- f. In fragile situations resource revenues can be key drivers or escalators of conflict and violence. The code should ensure that the potential for this is assessed in a capacity pre-assessment and that the resource revenue streams (governmental and importantly non-governmental) should be audited for linkages conflict financing or are clearly not serving the interests of the citizen.
- g. 4.2.2 'Reporting by Resource companies' should be aligned with the EU Accounting and Transparency Directives¹ new disclosure requirements for the extractive industry to report all material payments to governments broken down by country and by project, when these payments have been attributed to a specific project.
- h. Glossary: definition 'natural resources'. This should be broadened to include both *non-renewable* natural resources (such as coal, oil, gas, minerals and metals) as well as *renewable* natural resources (timber, fish, non-timber forest products, etc). The motivation to broaden it is two-fold: 1) renewable natural resources can also contribute to government revenue through taxes or non-tax instruments; 2) there is growing consensus to account not only for the non-renewable natural resources in a country's national accounts but also its renewable natural resources through the UN System of Environmental Economic Accounting (Experimental Ecosystem Accounting). This can include 'deriving an aggregate measure of economic activity, such as income and saving, adjusted for ecosystem degradation'.
- i. 4.4.1 "the government reports annually on its management of fiscal risks resulting from environmental and social impact of natural resource exploitation". Royalties and profit-based taxes could be adversely impacted if social or environmental risks lead to slowdown/temporary or permanent closure of natural resource extraction. In addition, more indirect but not less important way, is when natural resource extraction leads to environmental costs externalized to other actors in society that are consequently financially affected, which may affect government revenue generation.

II. Specific comments

- a. 4.1.1 The principle states that 'the legal framework defines rights, obligations and responsibilities at all stages of resource development'. This could be reflected in its entirety at all three level of practices.
- b. 4.1.5 Suggest a new article here "Social and environmental safeguards developed and implemented: Legal framework to avoid and minimise impacts on local communities and ecosystems",

- c. 4.3.1 The advanced practice includes that the governments also report on performance of fiscal policy against the objectives for resource revenue management. Yet, this is missing in the principle.
- d. 4.4.1 There is a clear distinction between 'evaluating and monitoring environmental and social impact of natural resource exploitation' and 'evaluating, monitoring and managing the fiscal risks associated with such impacts'. The distinction should be clearly reflected in the principle.
- e. 4.4.2 The good practice should identify the mains risks to production and fiscal revenues in both qualitative and quantitative terms.

Reviewers from UNEP:

Dag Seierstad/David Jensen, Environmental Cooperation for Peacebuilding

Joy Kim, DTIE, Economics and Trade Branch

Ivo Mulder/Aaron Vuola, DEPI, Ecosystem Services Economics Unit

Oli Brown, Disasters and Conflicts Coordinator

¹ http://europa.eu/rapid/press-release_MEMO-13-541_en.htm



14 March 2015

International Monetary Fund
Washington, D.C.

Re: Comments on Draft Fiscal Transparency Principles Pillar IV

Thank you for the opportunity to comment on the Draft Fiscal Transparency Principles Pillar IV: Resource Revenue Management. Our comments and recommendations follow.

Comment: We believe that Paragraph 4.2 represents a fundamental departure from the structure of all of the Fiscal Transparency Principles since it is the only one that directly imposes requirements on companies, rather than on governments. We believe this is inappropriate.

Recommendation: We suggest Paragraph 4.2 be rephrased by deleting "and resource companies" from the first sentence. Adding a second sentence to read as follows could be considered: "Governments should also require all resource companies doing business within their countries to provide similar reports on domestic resource extraction and trading activities."

Note: We would expect that a country that adopted an approach similar to the EITI would satisfy this requirement.

Comment: Paragraph 4.2 also requires reporting on trading company activities. We understand that this is intended to address the situation where a government takes domestic production in kind, and then sells it to a trading company. In this way, the monetary payment to the government for its share of the extracted product is covered.

Recommendation: We recommend that trading company reporting be clearly limited to the government take in kind and government resale activities. As currently written, the standard could be misconstrued as requiring company reporting on "downstream" supply chain activities outside a country of production that is irrelevant to the focus of the transparency pillars. Again, any requirement imposed on a trading company should be imposed by the government, not directly under the Pillar IV.

Comment: Under Paragraph 4.2, the draft description of "Basic, Good, and Advanced Practices by Principle" again requires specific resource company reporting. This dimension should be rephrased to impose a requirement on particular governments to seek information from companies. Further, in the "Advanced Practice" description, annual reporting on a project-level is required. The term "project" has not been defined universally but, rather, varies under different laws and standards and by different stakeholders. At a most granular level, in a country with numerous "projects" (e.g., if the term were defined as leases), "project-level reporting" would not be material to the overall objective of the Framework to promote effective management of natural resource revenues.

Recommendation: Because this is an evolving area, and there is no internationally accepted best practice of what "project-level" reporting entails, we recommend use of a different term to describe the requirements of "Advanced Practice" under 4.2.2. Further, we recommend avoiding a "one size fits all" rule to meet the objective of this principle. One way to express this is to require that: "Information be reported at a meaningful level of detail, which in many circumstances may be more discrete than on a country-level basis." This would distinguish "Advanced" from "Good" Practices. It would also contemplate that some countries may need greater detailed reporting to achieve IMF goals, while others could meet this "Advanced" standard with higher level reporting due to the overall transparency of its legal and regulatory structure. Thus, the incremental benefit of more detailed level reporting needs to be weighed before it is imposed universally, since overly detailed reporting in some circumstances could be counterproductive, and even unfeasible.

Comment: Pillar IV as drafted requires all resource companies to disclose information on their domestic natural resource extraction and trading activities (and our comments above cover this) but further requires that "domestically domiciled or listed resource companies" disclose the same information on their worldwide extraction and trading activities. This is inappropriate and overly broad.

We understand that this proposal is intended simply to reflect that many countries have begun to require this or similar reporting on activities beyond their borders, but such reporting is often limited to companies that are listed on exchanges or possibly companies domiciled within the country. If Pillar IV requires each country where natural resource activities are actually conducted to be subject to reporting on payments, etc., that should cover all relevant

payments. It does not seem appropriate that doing business in any one country should trigger an obligation to report on worldwide activities.

Recommendation: We recommend that this extension of reporting on activities outside a country of natural resource activities be eliminated. Further, combining worldwide reporting with project-level detail (and in some cases, country level detail), as the draft descriptions of “Basic, Good, and Advanced Practices by Principle” under Paragraph 4.2.2 suggest, raises even more troublesome issues of international law. Assume an investor “listed” in Country A has resource activities in Country B, and under Country B’s law it is illegal to disclose contract or other information. If Country A is required under the IMF transparency principles to impose world-wide, country or project-level reporting, while Country B makes such disclosure illegal, there is a clear conflict of laws. The IMF guidelines should not be structured such in a way that Country A can only attain “Good” or “Advanced” practice status under those guidelines by seeking to infringe on Country B’s rights as a sovereign. Again, the clear solution to this conflict is to remove the worldwide reporting requirement from the guidelines.

Comment: Paragraph 4.4 requires governments to disclose, analyze and manage social, environmental and operational risks associated with natural resource exploitation. We are concerned that in meeting this requirement, the IMF may be suggesting that governments duplicate or do not take full advantage of the vast amount of reporting in this area that many companies already provide. We understand that the intent underlying this requirement is in fact not to require additional information from companies (to allow governments to meet this requirement) beyond that which companies are already reporting under accounting rules, home country laws, stock exchange requirements, or similar rules.

Recommendation: We recommend that it be explicitly provided within Pillar IV, or in explanatory and implementing guidance that we understand will be forthcoming, that the level of information required is not intended to go beyond what companies generally provide in publicly available reporting that is generally required of them.

Note: The point of taking advantage of reporting already done by the companies, or required by other bodies, is a broad one. We would encourage the IMF, wherever it can, to point to current reporting practices of various bodies around the world as satisfactorily meeting requirements outlined in the Pillars. This will ensure that the costs and burdens on companies and governments alike are minimized wherever possible, and that the Pillars are complied with in the most efficient fashion. In fact, by doing this, we would suggest that a greater amount of compliance with, and wider adoption of, the IMF recommendations will be obtained, given that these are generally voluntary, not conditional.

Additional General Comments: There are several areas where public disclosure is envisioned. Where such disclosures are not applicable in a comprehensive manner and to all potential

investors, they create major competitive concerns. Thus, where countries are transitioning or have rules that do not apply to all investors, and therefore disclosure of only some contracts or payments by some taxpayers could result, the rules should permit disclosures that make the underlying information available, but in a manner that does not compromise—particularly on a selective basis—competitive positions or proprietary information. In these situations, the rules should embrace summarized reporting that does not disclose individual taxpayer or contract arrangements.

Finally, we understand that following finalization of this draft, there will be explanatory and implementing guidance, and we look forward to being able to provide input on that as it is developed.

Thank you again for the opportunity to comment on the Draft Pillar IV.

*Submitted by Daniel A. Witt and Karl B. Schmalz; International Tax and Investment Center; USA;
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18 February 2015

RE: NATURAL RESOURCE GOVERNANCE INSTITUTE SUBMISSION ON THE DRAFT RESOURCE REVENUE MANAGEMENT PILLAR (PILLAR IV) OF THE IMF'S FISCAL TRANSPARENCY CODE

Summary:

- I. Pillar IV should reflect recent developments emphasizing public accessibility of data in machine-readable, open format.** International initiatives such as the G8 Open Data Charter of 2013 and the EITI Standard reflect the growing recognition of the importance of accessibility of data in a machine-readable, open format, particularly in the extractive sector. Pillar IV should reflect these developments and the IMF should take the opportunity to itself contribute to these developments by making its Fiscal Transparency Evaluations regular, mandatory and public for resource-rich countries and publishing all Fiscal Transparency Evaluations in machine-readable, open data format.
- II. Pillar IV should reflect the current state of project-level disclosure by designating it “basic” or “good” practice.** Mandatory payment disclosure laws, EITI reporting and voluntary disclosure by investors all reflect the growing influence of project-level disclosure to the extent that such disclosure can no longer be deemed “advanced.”
- III. Pillar IV should maintain a separate section for national resource companies.** The key role that management of national resource companies plays in countries’ ability to translate potential wealth into sustainable development merits separate treatment. Further, disclosures related to public corporations under Pillar III of the Fiscal Transparency Code exclude several disclosures required under the EITI Standard and recommended by existing literature. Pillar IV should reflect these additional elements.

About the Natural Resource Governance Institute:

The Natural Resource Governance Institute (NRGI) is an international non-profit policy institute and grant-making organization whose focus and expertise is the responsible management of oil, gas and mineral resources for the public good. Our work promotes transparency and governance standards for the management of

natural resources and resource revenues by governments, as well as the associated activities of companies, lenders and investors active in the extractive industries. We work in resource-rich countries in Africa, the Middle East, Eurasia, Latin America, South East Asia and the Pacific.

We also work at the international level to inform and implement best practice standards for extractive industry governance, and have played a central role in the establishment of the Natural Resource Charter (NRC)¹, the Extractive Industries Transparency Initiative (EITI) and the Publish What You Pay (PWYP) coalition. NRGi additionally publishes the Resource Governance Index (RGI), which measures the quality of governance of oil, gas and mining sectors across 58 countries producing 85 percent of the world's petroleum, 90 percent of diamonds and 80 percent of copper, generating trillions of dollars in annual profits. A new edition of the RGI is forthcoming. Please find more information on NRGi at: www.resourcegovernance.org.

I. Introduction:

We are grateful once again for the opportunity to comment on the draft Resource Revenue Management Pillar ("Pillar IV") of the IMF's Fiscal Transparency Code.

We note that the previous Guide on Resource Revenue Transparency (the "Guide") was a pioneer document pushing the boundaries of transparency in the management of oil, gas and mining and inspiring efforts to increase transparency in resource rich countries by a wide range of other actors, including NRGi. The Guide has bolstered our efforts to improve the requirements of EITI, international accounting standards, lending standards at international financial institutions, and national laws and regulations and has served as a principal source in the design of the surveys underlying the RGI.

We are pleased to note that Pillar IV continues to advance the cause of transparency—so vital for good governance of the natural resource sector—incorporating some of the latest developments in the field. Pillar IV reflects the spread of mandatory payment disclosure—particularly disclosure at a project-by-project level—beginning with the U.S. Dodd-Frank Act Section 1504 and followed by the Amendments to the EU Accounting and Transparency Directives of 2013, regulations adopted in late 2013 in Norway pursuant to the Accounting Act and Securities Trading Act, the U.K.'s Reports on Payments to Governments Regulations

¹ The Natural Resource Charter is a set of principles to guide governments' and societies' use of natural resources. See more here: www.naturalresourcecharter.org

2014 implementing the EU Accounting Directive and Canada's Extractive Sector Transparency Measures Act of 2014. Similarly, Pillar IV captures advances in contract transparency and disclosure of beneficial ownership. We note the IMF has taken steps to address environmental and social impacts and cover competitive bidding in Pillar IV, and has explicitly included commodity trading in resource revenue reporting. We also think it a positive step that the IMF has sought to recognize differing levels of country capacity and has therefore differentiated between basic, good and advanced practice, providing a roadmap for improvements as country capacity develops. This is in line with our own attempts in the RGI to evaluate country practices.

We would like to flag, however, that the basic, good and advanced practice distinctions do run the risk of making artificial distinctions between the levels of practice and sometimes result in practices (such as project-by-project disclosure) being labelled "advanced" when they have arguably become sufficiently widespread to be labelled "good" or even "basic". We have noted some of those instances below. On those specific points, Pillar IV runs the risk of being regressive rather than reflecting and advancing the current state of transparency. Care will need to be taken going forward to ensure that Pillar IV does not fall behind the curve as good practice rapidly evolves. The IMF should also guard against these practice distinctions being used as an excuse for limiting transparency where the issue is political will rather than capacity constraints (for example, publication of regulations need not be reserved for countries with high institutional capacity and it has been demonstrated that contract transparency is well within the reach of countries with lower capacity²).

Further, while we laud the IMF for continuing to advance fiscal transparency, it is important to highlight that resource revenue transparency is a necessary but not sufficient condition for effective use of these revenues, so often lost through corruption or waste. Emphasis must be placed on accountability and governance reforms aimed at ensuring good public financial management.

There are a number of other points for which we recommend clarification or expansion, as set forth below. In section II we put forward recommendations for each of the four parts of Pillar IV, addressing issues in the order in which they appear. We provide a summary table listing all our recommendations in the attached Annex.

² For example, Guinea.

II. Key Recommendations:

General

On Regular, Mandatory, Public Fiscal Transparency Evaluations

We welcome the fact that Pillar IV will form part of the Fiscal Transparency Evaluations (FTEs) for resource-rich countries and will be used in conjunction with Pillars I through III to provide a complete picture of resource revenue transparency. **We believe the impact and effectiveness of the Fiscal Transparency Code in advancing resource revenue transparency would be greatly enhanced if FTEs for resource-rich countries were produced on a regular and mandatory basis and were published.**

On Open Data

Further, we encourage the IMF to take the lead in the growing movement to ensure that government information and data are not just available but also accessible and useable through dissemination in machine-readable, open data format (see our comments below under **4.2 Fiscal Reporting**). The IMF has a great opportunity to lead by example, by **publishing the valuable information contained in Fiscal Transparency Evaluations conducted under the new Fiscal Transparency Code in machine-readable, open data format.**³

On Consistent Use of Terms

Concerning the use of “published” versus “publicly disclosed” or “disclosed”, we suggest being consistent with terms to avoid any confusion. “Published” is used most throughout the document, so we recommend consistently using “published.” Further, as set forth below, we recommend including a definition of “published” that makes explicit reference to public accessibility of information. Information may be technically “available” but governments must ensure that the information is disseminated in location(s) and format(s) that allow the public to easily access and make use of the information.

³ More broadly, we highly encourage the IMF to show transparency leadership by publishing the FARI model, benchmarks and modelling assumptions and the Fiscal Affairs Department Technical Assistance reports (unless objections are raised by the relevant government/company).

4.1 Legal and Fiscal Regime

4.1.1 Legal Framework for Resource Rights

We **believe that publication of regulations should be considered a basic practice.** Regulations provide necessary detail for the interpretation and implementation of laws and should be published along with the laws to which they relate; a practice that is already commonplace. Further, **we disagree with the designation of publication of model licenses or contracts under 4.1.1 as “advanced” practice.** To begin with, model agreements or licenses may themselves be issued as regulations, in which case they should be published as basic practice along with the other regulations.⁴ Moreover, the characterization of the publication of model contracts or licenses as “advanced” practice is inconsistent with the rest of Pillar IV: 4.1.3 calls defining the fiscal regime in such models “good” practice and 4.2.1 labels publication of “full text of terms and conditions associated with ... natural resource rights” as “good” practice. We suggest that if publication of the full terms themselves is “good” practice, publication of a template or model should similarly be considered “basic” or “good” and not “advanced” practice.

4.1.2 Allocation of Resource Rights

We believe there is a lack of clarity in the various gradations for 4.1.2 Allocation of Resource Rights. It appears that the lack of reference to a competitive process under “basic” is meant to indicate that use of a competitive process would be a “good” to “advanced” practice. This would seem to acknowledge that the geological information and administrative capacity necessary to successfully carry out a competitive bidding process may not be present in the most low-capacity countries. However, the point that a competitive process *should* be used as “good” and “advanced” practice where there is potential to improve outcomes is not clearly captured. As written, the gradation only captures *how* competitive tenders should be carried out (for example, with “predefined qualification and evaluation criteria”) and not *if or when* competitive tenders should be conducted. **We suggest adding the following sentence to the “good” and “advanced” practice: “Competitive tenders are used where there is potential to improve outcomes due to factors such as sufficient geological knowledge or interest.”**

Further, even in cases of direct negotiations or a “first come, first served” process, countries should define qualification and evaluation criteria, which would enhance the transparency of the process and ensure that licenses are only awarded to those

⁴ See, for example, Uganda’s published Mining Regulations 2004, which provide forms of various license applications, licenses, reports and certificates.

that meet a basic level of competence. In addition, **the meaning of “open process” could be spelled out more clearly**, by including reference to published rules and qualification and evaluation criteria, an ability for all qualified companies to participate and mechanisms for ensuring sufficient publicity such as published invitations to apply or published announcement of direct negotiations. **Clarification of the language “granting of rights is publicly disclosed”** would also be beneficial. We were not sure whether this meant advanced announcement of the award process or publication of the identity of the awardee each time that a license is awarded, both of which we agree should be basic practice.

A number of elements might be included in both “good” and “advanced” practice that would make for a more transparent process. **While both “good” and “advanced” practice require “predefined qualification and evaluation criteria”, in neither case is there a requirement for these criteria to be published/publicly disclosed.** The fact that they exist and that the results of tenders are “publicly disclosed” may not provide a sufficient check to ensure that results of tenders are in keeping with the predefined criteria. **It is also unclear how the “results of tenders” differed from the “granting of rights is publicly disclosed.”** If both mean that the winner of the bid or the entity that is ultimately awarded the license is disclosed, then the terms would be redundant. In this case the language under “good” and “advanced” should be revised to indicate that the winner would be publicly disclosed. That said, **we would recommend including additional information to be publicly disclosed such as the list of bidders and a bid evaluation report that provides information on all submitted bids.**

In general, **allocations of all licenses and contracts throughout the sector should be based on an open and preferably competitive process.** For example, licenses to lift crude oil, as well as service contracts, should all be subject to an open competitive process, not simply upstream license allocations.

Concerning the use of “published” versus “publicly disclosed” in 4.1.2, we suggest being consistent with terms to avoid any confusion. “Published” is used most throughout the document, so we recommend consistently using “published.”

4.1.3 Fiscal Regime for Natural Resources

Reference under “advanced” practice to **“specifying the scope for variation of contractual terms” is currently unclear.** We believe this is meant to both limit the scope for variation of fiscal terms and require disclosure of how and when terms may deviate from the legal framework. **We suggest rewording as follows: “The legal framework defines the fiscal regime for each natural resource sector and includes model contracts for production sharing or other contractual systems,**

limits the scope for deviation from the defined fiscal regime and requires disclosure of any deviations within the scope.”

4.2 Fiscal Reporting

We applaud the IMF for advancing the cause of contract transparency, a growing trend⁵, as well as developments on disclosure of beneficial ownership, currently encouraged by the EITI⁶ and soon to be implemented in the U.K.⁷ and across EU countries under the fourth anti-money laundering directive.⁸ We are also pleased that advances on mandatory disclosure of payments made to governments have been reflected.

For the heading of 4.2, **we recommend highlighting that the reports to be provided by governments and resource countries will be “published” rather than “provided”** to be consistent with the subparts. **Further, we believe the language throughout 4.2 should also specifically cover activities that take place *before* extraction.** This would be consistent with section 4.1.2 Allocation of Resource Rights, consistent with the most recent mandatory payment disclosure laws⁹ and would ensure that payments for activities taking place before actual extraction (including signatures bonuses, which may be quite substantial) are included. **We recommend replacing “extraction and trading” with “exploration, extraction and trading”** to be consistent with 4.1.2.

The heading would therefore read:

⁵ For example, countries like the United States, Timor-Leste, Peru, Colombia, the Kurdistan Regional Government (Iraq), Niger, Sierra Leone, Sao Tome & Principe, Guinea, Nigeria, Ghana, the Democratic Republic of Congo and Liberia all share contracts publicly.

⁶ Eleven countries—Burkina Faso, Cameroon, the Democratic Republic of Congo, Honduras, Kyrgyz Republic, Liberia, Niger, Tajikistan, Tanzania, Togo and Zambia—are engaged in a pilot to assess the feasibility of requiring beneficial ownership disclosure through EITI, with a view to making such disclosure mandatory under EITI from 2016, subject to successful piloting. Beneficial ownership disclosure has already been attempted by the Democratic Republic of Congo in its EITI report published in December 2014, available at: <http://www.itierdc.com/formulaire/Rapport%20de%20Conciliation%20ITIE%20RDC%202012%20-%20Final%20.pdf>.

⁷ At the 2013 G8 Conference, the U.K. government committed to implementing a public central registry of company beneficial ownership information.

<https://www.gov.uk/government/news/public-register-to-boost-company-transparency>

⁸ <http://www.europarl.europa.eu/news/en/news-room/content/20150126IPR14918/html/Money-laundering-company-owner-lists-to-fight-tax-crime-and-terrorist-financing>

⁹ For example, the EU Accounting Directives cover “exploration, prospection, discovery, development, and extraction” (Article 41(1)) and Canada’s Extractive Sector Transparency Measures Act covers at least “exploration and extraction” with the possibility of inclusion of “other prescribed activities” (section 2).

“Governments and resource companies should *publish* comprehensive, timely, and reliable reports on holdings of natural resource rights, on *exploration*, extraction and trading activities, and on collections and payments of resource revenue.”

4.2.1 Disclosure of Natural Resource Rights

In 4.2.1 Disclosure of Natural Resource Rights, we recommend revising to read “...and their holdings, **including date of award, duration, type (e.g. prospecting, exploration, production), commodity and geographical coordinates of the awarded right.**”¹⁰ This will ensure that even “basic” registers contain key information on the resource rights that have been awarded by the government. **Transparency at the basic level can also be enhanced by including a requirement to disclose summaries of the key fiscal, environmental and social terms, in the absence of full contract disclosure.** We also recommend removing any doubt that the full text of *key terms only* may suffice for “good” and “advanced” practice by **revising to state “full text of all terms and conditions, including all contracts or licenses upon which these rights are predicated with their annexes and amendments.”**

This subpart is also probably better placed directly after 4.1.2, or even as part of 4.1.2, as it relates directly to transparency around allocation of resource rights.

4.2.2 Reporting by Resource Companies

Some clarification of wording in 4.2.2 Reporting by Resource Companies may be warranted. **Firstly, the use of “disclose” rather than “publicly disclose” or “publish” may create some ambiguity** as to whether the intent is that the information be available and accessible to the general public at even the “basic” level. Further, the use of “disclose” here is not consistent with the rest of 4.2, where “published” is the term used. **We recommend using “publish” consistently.**

While we welcome the capture of current mandatory payment disclosure laws, there seems to be **lack of clarity as to where “summary” information is required versus country- and project-level.**

¹⁰ Such key information is already required to be included in publicly available registers or cadaster systems under the EITI Requirement 3.9

Where companies are publishing information on their domestic resource extraction, the information would be necessarily country level. **“Basic” practice should therefore be revised to require country-level disclosure.**

Moreover, project-level disclosure is growing in influence around the world. It has been included in the mandatory disclosure laws passed in recent years from the U.S. Dodd-Frank Act Section 1504 to the Amendments to the EU Accounting and Transparency Directives of 2013, regulations adopted in late 2013 in Norway pursuant to the Accounting Act and Securities Trading Act, the U.K.’s Reports on Payments to Governments Regulations 2014 implementing the EU Accounting Directive and Canada’s Extractive Sector Transparency Measures Act of 2014. Several countries such as Indonesia, Zambia, Mali, Burkina Faso and Timor-Leste have effectively included project-by-project reporting in their EITI reports and the EITI Standard requires project-level reporting, provided it is consistent with the United States Securities and Exchange Commission rules and the European Union requirements.¹¹ Companies such as Tullow Oil have even chosen to voluntarily disclose project-level information.¹² It is also worth noting that 4.2.2 does not correspond to the level of disaggregation required under the “basic”, “good” and “advanced” gradations in 4.2.3 Integrity of Resource Revenue Data, which lists project-level disclosure under “good.” **Therefore project-level disclosure should at the very least be designated “good” practice, if not “basic”.**

Further, current mandatory payment disclosure laws, as well as the EITI Standard,¹³ require that payments be **specified by government entity and by type of payment**, a level of disaggregation not captured in Pillar IV.

Finally, Pillar IV does not address the format of data though the importance of public accessibility of data in a machine-readable, open format in extractives is gaining recognition. In 2013 the G8 member countries signed the Open Data Charter, committing to provision of government data in a machine-readable, open data format by default.¹⁴ The Charter highlights the importance of open data particularly in the extractive sector: “Open data also increase awareness about how countries’ natural resources are used, how extractives revenues are spent, and how land is transacted and managed. All of which promotes accountability and good governance, enhances public debate, and helps to combat corruption.”¹⁵ The EITI

¹¹ See EITI Requirement 5.2(e)

¹² http://www.tulloil.com/files/pdf/tulloil_ar_report_2013.pdf

¹³ Ibid.

¹⁴ Principle 5 of the Technical Annex provides that G8 governments will “ensure data are machine readable in bulk by providing data that are well structured to allow automated processing and access with the minimum number of file downloads....” The Annex states that the G8 agrees to implement this practice, and others, as quickly as possible and by 2015 at the latest.

¹⁵ Preamble, para. 4.

Standard also encourages the use of machine-readable format¹⁶ and the U.K. has committed to publishing reports provided under the Reports on Payments to Governments Regulations 2014 in machine-readable, open data format.¹⁷ **The “advanced” level of practice should reflect these recent developments.**

We therefore recommend revising “basic” to read: “[c]ountry-level information is annually *published* by resource companies on domestic natural resource *exploration, extraction* and trading activity, and by domestically domiciled or listed resource companies on their worldwide natural resource *exploration, extraction* and trading activity, including payments to and from governments, *by government entity payee and by type of payment*.”

Similarly, “good” should be revised to read: “[p]roject-level information is annually published... including payments to and from governments, *by government entity payee and by type of payment*, and the pricing schemes for commodities *bought and sold*.”

“Advanced” should be revised to read: “[p]roject-level information is annually published *in machine-readable, open data format*... including payments to and from governments, *by government entity payee and by type of payment*, and the pricing schemes for commodities *bought and sold*.”

4.2.3 Integrity of Resource Revenue Data

As written, 4.2.3 does not make explicit that the government must publish these reports. We suggest rewording “basic”, “good” and “advanced” to state **“Government publishes annual reports on resource revenue collections by project, which are reconciled against payments reported by companies....”** Further, as for 4.2.2, advanced practice should address availability in machine-readable, open data format: **“Government publishes annual reports *in machine-readable, open data format* on resource revenue collections by project....”**

National Resource Companies

While we recognize that Pillar III of the Fiscal Transparency Code currently covers disclosures related to public corporations—including transfers between the government and public corporations and quasi-fiscal activities undertaken by these corporations—we feel it is important to include a subpart devoted to state-owned

¹⁶ See Requirement 6.2

¹⁷ http://www.resourcegovernance.org/news/press_releases/strong-uk-rules-disclosure-oil-gas-and-mining-companies-come-force

enterprises operating in the extractive sector. National resource companies (as termed under the Guide) received special treatment under the previous Guide and the importance of these companies¹⁸ merits their continued separate treatment under the Fiscal Transparency Code.

The management of national resource companies has a major impact on how countries are able to translate potential wealth into sustainable development that benefits citizens, yet the RGI demonstrates that these companies are often opaque and unaccountable.¹⁹ Further, RGI findings demonstrated that companies that were weakest in economic and technical performance were also the least transparent and accountable.²⁰ By contrast, several strong performers exhibited high degrees of transparency.²¹

Recognizing the importance of transparency of national resource companies, the EITI Standard²² requires several disclosures that are not covered under 3.3.2, such as: the rules regarding the financial relationship between the government and national resource companies, disclosures from the government and national resource companies of their level of ownership in extractive companies operating within the country, reporting on sales of the government's share of production collected in-kind by the national resource company, including a list of buyers, volumes sold and revenues received. We suggest that given the growing influence of the EITI,²³ these EITI requirements, including those already captured under 3.3.2, should be considered "basic" practice. "Good" and "advanced" practice could cover additional transparency mechanisms that existing literature demonstrates make for improved effectiveness of national resource companies. We suggest the following:

		PRINCIPLE	BASIC	GOOD	ADVANCED
4.2.4	National Resource Companies	National resource companies are legally required to publish comprehensive information on their financial	National resource companies annually publish: (i) All transfers between the government and national resource companies, including an	National resource companies annually publish: (i) All transfers between the government and national resource companies, including an	National resource companies annually publish: (i) All transfers between the government and national resource companies, including an

¹⁸ For example, per the findings of the RGI, national resource companies bring in more than two thirds of total government revenue in such countries as Azerbaijan, Iraq and Yemen. Chile's Codelco is the world's largest producer of copper, while Botswana's partially state-owned Debswana is a leading producer of diamonds.

¹⁹ Out of 45 national resource companies assessed under the RGI, 33 were found to have unsatisfactory practices.

²⁰ For example, Nigerian National Petroleum Corporation and National Iranian oil Co.

²¹ For example, Petrobras and Statoil.

²² See EITI Requirements 3.6, 4.1(c) and 4.2(c)

²³ With 48 implementing countries.

		performance and activities, including any quasi-fiscal activity undertaken by them.	<p>explanation of the rules regarding the financial relationship between such companies and the government</p> <p>(ii) Their level of ownership in extractive companies operating within the country, including those held by their subsidiaries and joint ventures, along with any changes to level of ownership and the terms attached to such ownership</p> <p>(iii) Their expenditures on quasi-fiscal activities</p> <p>(iv) Their sales of any in-kind production collected on behalf of the government, including the list of buyers, volumes sold and revenues received.</p>	<p>explanation of the rules regarding the financial relationship between such companies and the government</p> <p>(ii) Their level of ownership in extractive companies operating within the country, including those held by their subsidiaries and joint ventures, along with any changes to level of ownership and the terms attached to such ownership</p> <p>(iii) Their expenditures on quasi-fiscal activities</p> <p>(iv) Their sales of any in-kind production collected on behalf of the government, including the list of buyers, volumes sold and revenues received</p> <p>(v) Information on their activities in exploration and production and revenues they collect from participation in exploration or production activities or as a regulator, including dividends received from partnerships</p>	<p>explanation of the rules regarding the financial relationship between such companies and the government</p> <p>(ii) Their level of ownership in extractive companies operating within the country, including those held by their subsidiaries and joint ventures, along with any changes to level of ownership and the terms attached to such ownership</p> <p>(iii) Detailed company expenditure, including their expenditures on quasi-fiscal activities</p> <p>(iv) Their sales of any in-kind production collected on behalf of the government, including the list of buyers, volumes sold and revenues received</p> <p>(v) Information on their activities in exploration and production and revenues they collect from participation in exploration or production activities or as a regulator, including</p>
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				(vi) Company budgets (vii) Company debts Natural resource companies are audited by both state and external, independent auditors and audit reports are published.	dividends received from partnerships (vi) Company budgets (vii) Company debts Natural resource companies are audited by both state and external, independent auditors and audit reports are published.
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4.3 Fiscal Forecasting and Budgeting

We support the inclusion of principles to guide the management of natural resource revenues. Resource-dependent countries face three separate but related challenges: First, year-to-year revenue volatility that, without a medium-term fiscal framework, can translate into expenditure volatility, which in turn leads to poor public investment choices. Second, some countries do not have the absorptive capacity to manage large capital inflows, leading to what is commonly termed ‘Dutch disease’. Third, spending all extractive revenues immediately may benefit current generations disproportionately compared to future generations in capital-rich countries where the social rate of return on domestic investments is less than the financial rate of return on foreign investments.

Given the above, we suggest that the title for the subpart go beyond a focus on public spending and saving to capture overall fiscal sustainability of the full government balance sheet. We suggest rephrasing: **“[b]udget documentation should provide a clear statement of the government’s resource revenue management objectives, and report on the allocation of *all* resource revenues to ensure fiscal sustainability, stability and efficient use.”**

4.3.1 Resource Revenue Management Objectives

It is noted that while the principle says that “[t]he government states and reports on ...”, only the advanced practice includes a requirement to report. We believe that **reporting on compliance with revenue management objectives and a fiscal**

framework is a *basic* requirement of any policy, otherwise the chance of compliance is unacceptably low.

Given that a reporting requirement should be included in each of the three levels of practice, **we would recommend that levels be differentiated by the enforceability of fiscal rules or numerical targets**. For instance, “basic” practice could be a simple policy statement, “good” practice would be a political agreement among all stakeholders and an executive decree overseen by an independent oversight committee annually, and “advanced” practice could be a legal or constitutionally approved target with an enforceable compliance mechanism.

4.3.1 calls for the government to “**define the scope of resource revenues.**” **The meaning of this term is unclear to us and should be clarified.**

4.3.2 Allocation of Resource Revenues

One of the most significant challenges many resource-rich countries face is off-budget spending. Often, resource revenues bypass the normal budget process and are diverted to special funds, local governments or national oil or mining companies. This issue is most naturally addressed under this important principle. **We recommend that the principle and levels of practice reflect, in particular, allocation to extra-budgetary funds, subnational jurisdictions, and national resource companies, in addition to the General Fund / Consolidated Fund.**

As such, we recommend the following edits:

Principle: Allocation of all resource revenues is legally authorized and is disclosed in the annual budget.

Basic practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions.

Good practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any borrowing against specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process.

Advanced practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any

borrowing against or pledging of specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process. Extra-budgetary funds' spending is approved through the budget process.

4.3.3 Natural Resource Funds

Most resource-dependent countries host at least one natural resource fund. While they have the potential to improve resource revenue management, many have complicated public financial management processes and, in the worst cases, some have become unaccountable vehicles for corruption and patronage. As such, we welcome the inclusion of this principle in Pillar IV to reflect this reality.

That said, we note that not all producers should create a natural resource fund; they should only be established where they will serve a macroeconomic purpose and improve the transparency and oversight of resource revenues. **We are concerned that this principle could be interpreted as an endorsement of fund establishment in every resource-rich country. We believe that the assertion that natural resource funds may not always be appropriate should be reflected here.**

With regard to specific edits, our own research and other well established standards such as the Santiago Principles and the SWF Scoreboard would indicate that **disclosure of specific assets held by the fund ought to be a “good” practice.**

Furthermore, it would be “advanced” practice to publish internal and external independent audit reports, as well as fund managers and investment strategy. The document can also include a requirement for performance and compliance audits (rather than just financial audits) by an independent external agency. A full list of suggested natural resource fund disclosures can be found on pages 6-7 of the following brief: http://www.resourcegovernance.org/sites/default/files/NRF_BP_Transp_EN.pdf.

4.4 Fiscal Risk Analysis and Management

The IMF is to be applauded for recognizing the fiscal risks that social and environmental impacts pose and the fact that disclosure, analysis and management of these risks are vital to overall fiscal risk management.

4.4.1 Social and Environmental Risk

We feel that the language of the principle for 4.4.1 Social and Environmental Risk falls short of the overall heading for this section by focusing on evaluation, monitoring and management of the fiscal risks associated with social and environmental impacts of natural resource exploitation, instead of the social and environmental impacts themselves, which in turn pose fiscal risks. In other words, to manage the fiscal risks a government must evaluate, monitor and manage the impacts themselves. We recommend rewording the principle to read: “[t]he **government regularly evaluates, monitors and manages the social and environmental impacts of natural resource exploitation, as well as their associated fiscal risks.**”

We believe that an essential component of the government’s ability to evaluate, monitor and manage social and environmental risks posed by natural resource exploitation is imposing a requirement for regular analysis, management and reporting of environmental and social impacts by those carrying out exploitation activities. And such analysis, management and reporting of these impacts is well-recognized by international financial institutions such as the International Finance Corporation (IFC) as indispensable for successful and sustainable project performance.²⁴

For this reason, we strongly recommend firstly that **item (i) be reworded to include the responsibility not merely to analyze and report on these impacts but to *manage* them**, thus it would read: “conditions of natural resource rights holdings include obligations for regular analysis, *management* and reporting of environmental and social impact.”

Secondly, as currently written, this indispensable component of a government’s ability to manage social and environmental impacts and the fiscal risks they pose is not even required under “good” practice. Currently, “good” practice requires any two of three possibilities. **We strongly recommend reworking 4.4.1 Social and Environmental Risk making item (i) as reworded the only requirement for “basic”. “Good” practice would go further, requiring items (i), (ii) and (iii).** We do not think government reporting on environmental and social impacts and associated fiscal risks should be artificially separated from reporting on management of these risks. If the government discloses the risks, it should also have considered and should disclose how it plans to manage those risks.

“Advanced” practice would include an additional requirement (iv) for the government to publish a register of the full text of resource companies’

²⁴ See IFC 2012 Environmental and Social Performance Standards and Guidance Notes, particularly Guidance Note 1.

environmental and social impact assessments and associated management plans and periodic reports. These documents provide the basis for the identification of social and environmental impacts, as well as strategies for management of such impacts, included in the government’s annual reports under “good” practice. They provide an important degree of transparency for stakeholders on the full costs of exploitation activities and how these costs are being managed. Such information is especially crucial for communities who will be directly affected by exploitation activities and who, in some countries, will be required to give their free, prior and informed consent for projects to proceed. Again, the IFC has recognized this importance in its Performance Standards, requiring its borrowers to disclose relevant information to affected communities, including, where appropriate, full environmental and social impact assessments and management plans. Further, resource-rich countries such as Colombia and Zambia have already adopted such measures.

Finally, it should be clarified that the government will “publish” these annual reports contemplated under (ii) and (iii). For example: “the government publishes annual reports on....”

Glossary

Beneficial Owner: We are concerned that the provided definition deviates from most internationally accepted beneficial ownership definitions, which emphasize the identification of natural person owners. The use of “[t]he legal entity, or if applicable, natural person” leaves open the possibility that a company can be identified as the beneficial owner, defeating the very transparency purposes that beneficial ownership provisions are meant to provide: identification of natural person owners. We suggest a revision that incorporates a carve-out for publicly traded companies, which have numerous individual owners and are already subject to extensive disclosure requirements, but that otherwise emphasizes disclosure of natural person ultimate owners. Our revised language is based on the United States’ G8 Action Plan for Transparency of Company Ownership and Control:

“a natural person, or publicly traded company who, directly or indirectly, exercises substantial control over a legal entity or has a substantial economic interest in, or receives substantial economic benefit from, such legal entity.”

Natural Resource Funds: This should be revised to read, “a state-owned investment vehicle for the management of revenues from natural resource extraction that invests at least partly in foreign assets (a subset of sovereign wealth funds).”

Resource Company: As previously discussed, activities should include exploration.

Resource Revenue: Similarly, activities should explicitly include exploration and revenues received through sale of the state's share of production in-kind should be included.

The following term should be added:

Publish: To disseminate information in location(s) and format(s) that ensure that it is widely available and accessible to the public.

<u>Contact Information:</u>

We are grateful for this opportunity to comment, and would be pleased to discuss these inputs in more detail at the IMF's request.

Contact: Nicola Woodroffe, Legal Analyst, Legal and Economic Programs at nwoodroffe@resourcegovernance.org, and Patrick Heller, Head of Legal and Economic Programs, at pheller@resourcegovernance.org

ANNEX: TABLE OF KEY RECOMMENDATIONS

		Key Recommendations
	General	<ul style="list-style-type: none"> • Make Fiscal Transparency Evaluations for resource-rich countries regular, mandatory and public • Publish Fiscal Transparency Evaluations in machine-readable, open data format • Consistently use “publish” and define publish to address availability and accessibility
4.1	Legal and Fiscal Regime	
4.1.1	Legal Framework and Resource Rights	<ul style="list-style-type: none"> • Publication of regulations should be “basic” • Publication of model licenses or contracts should be “basic” or “good”
4.1.2	Allocation of Resource Rights	<ul style="list-style-type: none"> • Include requirement for use of competitive tenders for “good” and “advanced” • Clarify meaning of “open process” to include reference to published rules and qualification and evaluation criteria, participation of all qualified companies, sufficient publicity of process • Clarify “granting of rights is publicly disclosed” • Include publication of “predefined qualification and evaluation criteria” for all levels • Clarify “results of tenders” to indicate identity of winner is published • Include publication of list of bidders and bid evaluation report for “good” and “advanced” • Specify allocation of all licenses and contracts throughout sector should be through an open and competitive process
4.1.3	Fiscal Regime for Natural Resources	<ul style="list-style-type: none"> • Revise “specifying the scope for variation” to read: “The legal framework defines the fiscal regime for each natural resource sector and includes model contracts for production sharing or other contractual systems, limits the scope for deviation from the defined fiscal regime and requires disclosure of any deviations within the scope.”
4.2	Fiscal Reporting	<ul style="list-style-type: none"> • Specify that government and resource company reports will be “published” not just “provided” • Expand covered activities to include “exploration”
4.2.1	Disclosure of Natural Resource Rights	<ul style="list-style-type: none"> • Expand information to be included in the license registry to include: date of award, duration, type (e.g. prospecting, exploration, production), commodity and geographical coordinates of the awarded right • Include requirement for summaries of key fiscal, environmental and social terms in contracts at the “basic” level • Clarify that full text of <i>all</i> terms and conditions should be published at the “good” and “advanced” level, including all contracts and licenses with their annexes and amendments • Move subpart to directly after 4.1.2
4.2.2	Reporting by Resource	<ul style="list-style-type: none"> • Use “publish” rather than “disclose”

	Companies	<ul style="list-style-type: none"> • Revise to require country-level disclosure as “basic” • Revise to require project-level disclosure as “good” • Specify disclosure of payments should be disaggregated by government entity and by type of payment • Include requirement for provision of data in “machine-readable, open data format” at the “advanced” level • Revise to include pricing schemes for commodities both <i>bought</i> and <i>sold</i>
4.2.3	Integrity of Resource Revenue Data	<ul style="list-style-type: none"> • Specify that government reports must be “published” at all levels of practice • Specify publishing of reports in machine-readable, open data format at “advanced” level
	Natural Resource Companies	<ul style="list-style-type: none"> • Include a section devoted to National Resource Companies, which includes additional disclosures required under the EITI Standard or demonstrated to be good practice in existing literature
4.3	<i>Fiscal Forecasting and Budgeting</i>	<ul style="list-style-type: none"> • Expand focus from spending and saving only to specify that budget documentation should provide a clear statement of resource revenue management objectives and report on allocation of <i>all</i> resource revenues “to ensure fiscal sustainability, stability and efficient use”
4.3.1	Resource Revenue Management Objectives	<ul style="list-style-type: none"> • Revise to require annual reporting on performance of fiscal policy against objectives at <i>all</i> levels • May differentiate among the levels by enforceability of fiscal rules or numerical targets based on their establishment in, for example, a policy statement, executive decree or constitution • Clarify the requirement for government to “define the scope of resource revenues”
4.3.2	Allocation of Resource Revenues	<ul style="list-style-type: none"> • Revise the principle and levels of practice to reflect allocation of resource revenues to extra-budgetary funds, subnational jurisdictions and national resource companies, in addition to the General Fund/Consolidated Fund • Principle: Allocation of all resource revenues is legally authorized and is disclosed in the annual budget. • Basic practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. • Good practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any borrowing against specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process. • Advanced practice: Budget documentation incorporates and reports on the allocation of all resource revenues and identifies their final destination, including to national resource companies, special funds or to subnational jurisdictions. Any borrowing against or pledging of specific resource revenue streams is reported and authorized by the legislature as part of the budget approval process. Extra-budgetary funds’ spending is approved through the budget process.

4.3.3	Natural Resource Funds	<ul style="list-style-type: none"> • Reflect in principle that natural resource revenue funds should only be established where they are appropriate: serve a macroeconomic purpose and improve transparency and oversight of resource revenues • Include publishing of specific assets held by the Fund as “good” practice • Include in “advanced” publishing of internal and external independent audit reports, as well as fund managers and investment strategy. Performance and compliance audits may also be included at the “advanced” level
4.4	<i>Fiscal Risk Analysis and Management</i>	
4.4.1	Social and Environmental Risk	<ul style="list-style-type: none"> • Reword to require government evaluation, monitoring and management of social and environmental impacts themselves rather than just the fiscal risks: “[t]he government regularly evaluates, monitors and manages the social and environmental impacts of natural resource exploitation, as well as their associated fiscal risks” • Reword (i) to include the responsibility not merely to analyze and report on social and environmental impacts but to manage them: “conditions of natural resource rights holdings include obligations for regular analysis, management and reporting of environmental and social impact” • Require (i) for “basic” practice • Require all of (i), (ii) and (iii) for “good” practice” • Require that government publish the full text of companies’ environmental and social impact assessments, management plans and periodic reports as “advanced” practice • Specify that the government reports required under (ii) and (iii) will be published
	Glossary	<ul style="list-style-type: none"> • Beneficial Owner: “a natural person, or publicly traded company who, directly or indirectly, exercises substantial control over a legal entity or has a substantial economic interest in, or receives substantial economic benefit from, such legal entity” • Natural Resource Funds: “a state-owned investment vehicle for the management of revenues from natural resource extraction that invests at least partly in foreign assets (a subset of sovereign wealth funds)” • Resource Company: include “exploration” • Resource Revenue: include “exploration” and revenues received through sale of the state’s share of production in-kind • Publish: To disseminate information in location(s) and format(s) that ensure that it is widely available and accessible to the public”



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March 12, 2015

Re: Publish What You Pay – United States’ comment on the Draft Resource Revenue Management Pillar (IV) of the International Monetary Fund’s Fiscal Transparency Code

Dear Colleagues:

Thank you for the opportunity to submit comments on the Resource Revenue Management Pillar of the International Monetary Fund’s Fiscal Transparency Code. We appreciate the careful work that has gone into developing the Fiscal Transparency Code and the draft Pillar IV.

The public disclosure of payments made to governments for access to natural resources is crucial in order to ensure that natural resource wealth is managed efficiently and responsibly. Payment transparency has the potential to decrease corruption and allow citizens of resource-rich countries to hold governments and companies accountable for how revenue generated by their finite natural resources is used. We are pleased that the IMF is taking a proactive role in pushing for responsible resource revenue management through the creation of Pillar IV.

Publish What You Pay – United States is a civil society coalition comprised of 39 anti-corruption, poverty-alleviation, tax-justice and human rights organizations, all working toward the common goal of making a more transparent and accountable extractives sector.

We write largely in support of the revisions to Section 4.2.2 (Reporting by Resource Companies) and Section 4.2.3 (Integrity of Resource Revenue Data) proposed by Natural Resource Governance Institute (NRGI) in its February 18, 2015 submission. However, we propose a slightly different classification of what should constitute “basic,” “good,” and “advanced” practices.

4.2.2 Reporting by Resource Companies

Publish What You Pay – United States joins NRGI in calling for clarification in the wording of Section 4.2.2. Namely, we join NRGI in recommending the consistent use of “publish” rather than “disclose.”

Moreover, we join NRGi in asking that payments be specified by government entity and by type of payment. We also support the call for data to be provided in an open, machine-readable format.¹

Finally, we join NRGi in recognizing the unique value of project-level payment data (generally defined by contract, license, and lease), and celebrating the rapid spread of project-level payment reporting mandates across the globe. However, we strongly recommend that the IMF designate project-level reporting as a “basic” (rather than “good”) practice.

The case for project-level payment transparency as a “basic practice”

As NRGi correctly notes on page 9 of its submission, “project-level disclosure is growing in influence around the world.” Indeed, we can go further and declare project-level reporting the new global standard of resource revenue transparency. As NRGi details in its submission, a project-level reporting requirement was included in the United States Securities and Exchange Commission’s 2012 implementing rule for Section 1504 of the Dodd-Frank Act, the European Union’s Accounting and Transparency Directives (to which 28 EU member countries are subject), 2013 regulations adopted in Norway, and Canada’s Extractive Sector Transparency Measures Act of 2014. Moreover, a host of governments and companies are required to report on payments by project due to their membership in the Extractive Industries Transparency Initiative. In all, project-level payment disclosures are now available or soon to be available in nearly three dozen countries.

The avalanche of project-level payment mandates going into effect across the globe is no coincidence; in country after country, a broad group of stakeholders, including extractive company executives, investors, and members of civil society, have weighed the benefits and pitfalls of numerous possible reporting standards, and in every case decided that a project-level mandate made the most sense. Simply put, payment information disclosed at a more aggregate level fails to provide citizens, civil society organizations, and governments of resource-rich countries with the information they need to ensure that natural resource wealth is properly accounted for, managed responsibly, and used to promote economic and human development. The myriad benefits of project-level reporting accrued to citizens,² governments, companies,³ and investors⁴ alike are spelled out in letters recently submitted to the U.S. Securities and Exchange Commission.

¹ The G8 has publicly recognized the importance that open, machine-readable data can play in improving governance in Principle 5 of the June 2013 Open Data Charter:

<https://www.gov.uk/government/publications/open-data-charter/g8-open-data-charter-and-technical-annex>

² See an April 2014 letter signed by 544 civil society organizations from 40 countries calling on the SEC to require granular, project-level reporting in its implementing rule for Section 1504 of the Dodd-Frank Act:

<http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-32.pdf>

³ See excerpts from Tullow Oil’s 2013 Annual Report here: <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-62.pdf>

⁴ See a letter from investors with over \$6.4 trillion in assets under management touting the value of project-level payment data: <http://www.sec.gov/comments/df-title-xv/resource-extraction-issuers/resourceextractionissuers-35.pdf>

It should also be noted that for nearly a decade, the World Bank's International Finance Corporation has required project-level payment reporting by the recipients of its extractives investments.⁵ In addition, the European Bank for Reconstruction and Development requires project-level disclosure of the highest standard available.⁶

4.2.3 Integrity of Resource Revenue Data

Publish What You Pay – United States echoes NRG's recommendation that the text of Section 4.2.3 be modified to make explicit that governments *must publish* an annual report reconciling their revenue collections against payments reported by companies.

Thank you for your consideration of the above suggestions. In seeking to make a more transparent and accountable extractives sector, project-level reporting has become the global standard. The IMF would place itself behind the curve if it were to designate project-level reporting as anything short of a "basic" practice. We strongly urge the adoption of the above suggested changes in order to ensure that the Resource Revenue Management Pillar (IV) of the Fiscal Transparency code is both robust and in line with international transparency standards.

Sincerely,



Jana Morgan
Director
Publish What You Pay – United States

⁵ 2004 World Bank Extractive Industries Review Final Report:
<http://siteresources.worldbank.org/INTOGMC/Resources/finaleirmanagementresponse.pdf>

⁶ European Bank for Reconstruction and Development – Energy Sector Strategy 2013:
<http://www.ebrd.com/downloads/policies/sector/energy-sector-strategy.pdf>

World Bank comments on the IMF Draft Fiscal Transparency Principles, Pillar IV Resource Revenue Management

We commend that IMF for producing a dedicated pillar on Natural Resource Management as part of its fiscal transparency pillars and welcome the opportunity to provide comment. The identification of basic, good and advanced practice in the matrix is welcomed as it recognises differences in implementation capacity and political will. That said, there are a lot of statements that start with “should”. What if a government does not do it? There is a spectrum of countries that do not follow all principles. It is interesting to consider how the IMF (and others) can encourage countries to signal that these principles are important and that they will implement them.

We understand the need for simplicity and synopsis since the intent is to agree on principles. However, we feel that the governance dimension could be strengthened in these principles, including around the management and operation of state owned enterprises.

In addition it would be helpful to provide greater consistency and precision in terminology so as to avoid ambiguity, particularly around “published” versus “disclosed”. Given growing recognition within open government contexts of the importance of providing information that is relevant, timely and truly accessible, our default preference would be towards use of “publicly accessible.” For example, “publicly disclosed” as in 4.1.2 has distinct implications and may not guarantee a competitive and transparent process followed in grant of rights if the information is not accessible. Terms should be defined in the glossary, such as clarifying “open” versus “transparent”.

Principle 4 Resource Revenue Management

Suggested edit: “Natural Resource Revenue should be **estimated**, collected, managed, disbursed **and published** in a **publicly accessible** open, transparent and sustainable manner.”

It is important to incorporate an estimate basis for effective resource revenue management, which can later be reconciled with the actual revenues produced and collected. This would incorporate a built-in accountability mechanism and would be consistent with subsections 4.1.1, 4.1.2 and especially subsection 4.3 (fiscal forecasting and budgeting) where actual extraction is preceded by forecast and exploration of the natural resource rights.

4.1.1 Legal and Fiscal Regime

- The publication of regulations should be considered basic rather than good practice as should the publication of model contracts and licences.
- In addition to the inclusion of certain aspects of sector information, good practice would also seek to remove legal impediments to the full disclosure of sector data.
- Open and transparent processes, if followed consistently, would also bring the code at par with the comments provided by the GIFT principles. These comments point to need for:
 - mandatory mechanisms to ensure the documents are publicly accessible / published

- Strengthened audit and accountability mechanism given that resource rich states tend to have weaker public service delivery, low taxation, and almost no participation or feedback from public.

4.1.2 Allocation of Resource Rights refers to an open and competitive process for the allocation of rights.

- We should make sure that this would not preclude unsolicited bids and restricted bidders lists when economically justified and transparently handled.
- “Open” may need to be defined, especially to distinguish it from “Competitive”.
- Independent evaluation of results is politically difficult to accept, and does not guarantee a fair process. Public opening of tenders has been tested and should suffice. The Government should also hold public consultation ahead of a bid rounds to ensure that social and environmental considerations have been adequately taken into account.
- It is unclear how trading rights would be covered by a law. Since ownership and title passes to the licensee/contractor at wellhead or delivery point depending on the regime, the same would have the right to sell its resource, including via affiliates. Open tender for trading of every cargo or batch of cargos is not necessarily value maximizing.
- The term 'open' - if is pre-defined, would clarify what it implies and the definition may be made inclusive of transparency requirements for conducting such processes.
- Under 'advanced' practice, it is suggested to incorporate post-award independent audit inclusive of the tenders which were rejected.
- For resource rights granted on discretionary basis, a reference to the most competitive tenders otherwise may also be included in the publicly accessible information - again to serve the function of in-built audit and accountability.

4.1.3 Fiscal Regime for Natural Resources:

- “The legal framework defines the fiscal regime for each natural resource sector and includes model contracts for production sharing or other contractual systems.” This would not be good practice. If all fiscal terms are set forth in legislation, exceptions and special cases must be too. Good and Advanced practice should be the same.

4.1.4. Assessment and Collection of Resource Revenues:

- Regular conduct of audits and publication of audit reports should be a basic standard.
- Resource companies must include state owned enterprises. Good practice should also include clear and published rules for the determination of compliance; publishing audits without clarity on compliance and enforcement actions would not be good practice.

Principle 4.2 Fiscal Reporting

- “Governments and resource companies should provide comprehensive, timely, and reliable reports on holdings of natural resource rights, on extraction and trading activities, and on collections and payments of resource revenue.” Suggest that "provide" be replaced with 'publicly accessible' for consistency purposes, and also suggested to include, forecasts or estimated basis as above.

4.2.1 Disclosure of Natural Resource Rights Holdings

- Suggestion to publish not just register of holdings, but also the duration of such holdings that may include the particulars or at least a summary of the fiscal and financial terms under which the awards was granted at the basic practice level.
- For good and advanced levels, good to make clear that “terms and conditions” associated with rights entails that contracts entered into or license issued to such companies should be publicly available.

4.2.2 Reporting by Resource Companies

- It is unclear whether this includes State Owned Enterprises. We also ask whether the drafter intended to include trading companies. The principle should apply to resource extraction and disposition independently of ownership, country of origin, and type of company.
- Since Principle 4.2.2 has to be complied with by Resource Companies, is the implication that Governments must make such reporting mandatory by law?
- Particularly given transfer pricing concerns, would be interesting to consider that material related party transactions also be disclosed.

4.2.3 Integrity of Resource Revenue Data

- Is Basic, Good and Advanced reporting by government based on aggregated or disaggregated revenue? This is unclear.
- The integrity of data reported by the Government and by the National Resource Company should also be required.
- If we assume that project-level reporting is likely to become a ‘required’ element of the EITI in the next few years (pending developments in the EU and US), is this section sufficiently ‘future proofed’?
- The reconciliation of payments versus revenues is not an end in itself and will not lead to governance improvements unless discrepancies are actively acted upon.
- It requires specific mention if these reports on resource revenue collections be publicly accessible.
- As regards to the results of independent validation, in instances of discrepancies, the procedure must define the audit route for such transactions. Negligible discrepancies (for example in financial terms up to under 1 percent of the total value of the project) could remain unexplained. Any discrepancy up and above that level needs to be addressed and rectified in line with international standards and best practices.

Principle 4.3 Fiscal Forecasting and Budgeting

- The title is Fiscal Forecasting and Budgeting, however, there is no principle applied to fiscal forecasting only to reporting and budgeting. If forecasting was intended, we would expect the principle of publicly stating the resource price assumptions on which fiscal forecasts are based.
- In alignment with the Resource Revenue Management objective of Pillar IV, fiscal forecasting is an integral part of the process and plays an undeniably vital role. The budget documentation therefore, needs to take into account the allocation of resource revenue forecasts for both public spending and saving. Practices would

demand accounting for any significant deviations in the actual and forecasted budget allocations at least at the advanced practice level. Going from Basic to Advanced, it should take into account the causes, if any, of significant deviations.

- It also needs to incorporate recommendations to rectify such deviations to bring consistency and stability in forecasted versus actual budget allocation. Identifying these factors causing significant mismatch would bring accountability and credibility to the revenue management processes.
- Suggestion, perhaps under 4.3.1, that best practice include that an independent agency determines the commodity price for national budgeting purposes.

4.3.1 Resource Revenue Management Objectives

- Reporting requirement must be included at the 'Basic' level to ensure compliance and bring accountability.
- At the 'Good' practice level, suggested to state the government may revise, amend or incorporate feedback/ inputs for enhanced sustainability and efficiency of resource revenue application.
- Advanced practice may provide legal guarantees in situations of weaker enforceability of such management objectives. This will provide an impetus to make the process more accountable, enforceable and self-evolving.
- The last section of the Advanced practice stating, ' ... It also reports at least annually on performance of fiscal policy against this objective' - needs to be made more meaningful by incorporating repercussions in instances of recurring under performance of fiscal policy and resource revenue management objectives. This could be stated as 'It also reports and brings into account the situations where performance of fiscal policy falls persistently low against the Resource Revenue Management objectives'.

4.3.2 Allocation of Resource Revenues

- Resource revenues are at times unequally distributed, especially to the sub-national jurisdictions in closer geographical proximity. In such situations, the disclosure requirements must extend to the sub-national level as well and the sub national units needs to comply with the documentation of spending and saving and borrowing or pledging, if any, and this must form part of the annual budget approval process.
- Disclosure of any borrowing against specific revenue streams should specify use of such borrowing/pledging.

4.3.3 Natural Resource Funds

- We note that NRFs that invest domestically are not discussed, which may be because there are currently no international principles for domestic investment. The Santiago principles are voluntary and apply to international investment only). Is domestic use of funds intended to be covered?
- Good practice should include a statement of policy objectives, and the investment policy should be published. Good practice should also refer to the governance structure of the fund.
- Why does Good and Advanced practice not suggest to legislate natural resource funds, rather than just specify rules publicly?

Principle 4.4 Fiscal Risk Analysis and Management

- The title description implies government disclosure of all social, environmental and operational risks of resource exploitation, though the two sub-principles make it clear that what is to be reported on is “fiscal risk” – the specific fiscal scope should be made clear in the title description. Is the justification of inclusion of these broader risks that they could disturb production, which in turn could affect resource revenues? Would be good to explicit.

4.4.1 Social and Environmental Risk:

- We recognise that the focus of this document is on fiscal matters, but given the references to social and environmental risks, we feel that some mention of safeguards/consultation is important and relevant to the long term financial viability of EI sector activity.
- There is no reference to the importance of environmental securities/bonds as part of risk management.
- Since most of the resource dependent countries happen to be rentier states with reduced dependence on taxation income, public service delivery tends to rank much lower on account of both weaker domestic accountability mechanisms and a centralized bureaucratic executive government. Therefore, a control mechanism and system of checks on compliance with social and environmental risk standards is all the more important. This could be done through the supreme audit institutions conducting audit on a continual basis and the advance level practice can incorporate mandatory audit inspection.
- Consider inclusion of cost of social and environmental risks to be disclosed and appropriated to the resource company who has been granted rights to extraction and development of such natural resource sites. Appropriate fiscal adjustments in terms of taxation effects need to be made to address undue tax credits and exemptions, if any.

4.4.2 Operational Risks

- The government regularly "reports" - this needs to be clarified by using consistent terminology whether the government is making these reports publicly accessible.

Glossary

- The terms “Natural resource extraction”, “natural resource development” and “resource/commodity trading” are all used at one point or another in the document but these terms are not themselves defined. Several of the defined terms in the glossary depend on which meaning of these terms is intended. Thus, for example, natural resources extraction should be defined to mean all stages from exploration to closing if this is the intention. In another case, is “fiscal regime” intended to include taxation of resource trading or not?