Table of Contents

1. B20 Coalition: Consultation on IMF Natural Resource Fiscal Transparency Code
2. GIFT Coordination Team Submission on the IMF's revised draft Natural Resource Fiscal Transparency Code
3. International Tax and Investment Center- Comments on Draft Natural Resources Fiscal Transparency Code
4. Oxfam Comments on IMF Fiscal Transparency Code Draft of May 9, 2016
5. Natural Resource Governance Institute Submission on the Revised Draft of the IMF's Natural Resource Fiscal Transparency Code
6. UNEP Comments on Draft Natural Resource Fiscal Transparency Code

Paris, September 09, 2016

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

SUBJECT: CONSULTATION ON IMF NATURAL RESOURCE FISCAL TRANSPARENCY CODE

To whom it may concern,

The members of the B20 Coalition have taken note of the process of the IMF Natural Resource Fiscal Transparency Code with deep interest.

The B20 Coalition acknowledges that in principle the revised draft of the Natural Resource Fiscal Transparency Code released in May 2016, gives investors and the general public a better sense of the worth of natural resource endowments; that the Code now includes augmented versions of Pillars I, II and III, covering: reporting, budgeting, and risk management of natural resources; that the consolidation of Pillar IV, now emphasizes specific transparency issues associated with the legal and fiscal regime governing the extraction of natural resources, the allocation of resource rights holdings, reporting by companies engaged in resource extraction activity, and the governance and operation of natural resource funds; and, that the draft has been calibrated to be relevant in a range of institutional and legal settings and applicable to resource-rich countries at various levels of economic development.

However, an area of concern for the B20 Coalition is the proposal to impose an obligation, on companies from the extractive industry, to report project-level information on all exploration, extraction and trade activities and fully disclose all the pricing mechanisms. This could result in politicization of projects and increasing external interventions.

On the recommendation to governments to publish forecasts of the volume and value of natural resource assets under different price and extraction scenarios, the B20 Coalition would welcome further clarity. Projections by governments could have a major impact on company share prices, with no clear benefit to anyone.

The Code calls on governments to quantify and manage fiscal risks from future natural disasters and other major environmental risks. The B20 Coalition recognizes the importance to plan for the unforeseen; however, members of the Coalition would be keen to consult the positive and credible experiences of governments in the domain, if any.

The B20 Coalition would like to emphasize that, if the IMF invites governments to add a substantial and somewhat arbitrary cost factor on a project under the auspices of anticipated costs of environmental risks to the fiscal authority, it would not help increase the financial sustainability of the project and therefore one could question whether fiscal mechanisms represent the most relevant approach in this context.

The B20 Coalition has recently decided to make Resource Efficiency *vs.* Circular Economy its priority for the year to come, and is keen to deepen its assessment of the IMF Natural Resource Fiscal Transparency Code.

While the B20 Coalition is in the process of further consulting the members of its broad-based representation, on the revised draft of the Code, we would like to convey that it is of utmost importance for businesses that initiatives taken-up by any organization, regional or international, should be coordinated with already existing ones, in order to ensure a legally secure and economically viable environment. In this respect, we would draw attention to the fact that businesses are already subjected to international obligations (*e.g. "Country-by-country reporting requirement for all industries" in the BEPS plan*) and regional ones (*e.g. in Europe, the "Country-by-country reporting requirement for extractive industries in the Accounting and Transparency Directives")*. Synchronization between the different international organisations involved - the UN, OECD, WB, etc. - is therefore of primary importance.

Members of the B20 Coalition welcome international guidelines that take into account business realities and enable simple/practical implementation by stakeholders. In this regard, it would be helpful to comprehend further the objective, scope, and practicality of the Code, in order to optimize feasibility and results at the time of implementation.

The B20 Coalition looks forward to contributing to the IMF effort to keep improving the Natural Resource Fiscal Transparency Code before the publication of its final version, in April 2017, and will study with great interest the feedback from the IMF on the points raised above.

B20 Coalition Presidency: C/o Federation of German Industries, Breite Straße 29, 11053 Berlin, Germany
B20 Coalition Secretariat: 55 Avenue Bosquet, 75007 Paris, France. Email: secretariat@b20coalition.org

We thank you for providing us the opportunity to comment on the Natural Resource Fiscal Transparency Code.

The B20 Coalition

Presidency: C/o Federation of German Industries, Breite Straße 29, 11053 Berlin, Germany
Secretariat: 55 Avenue Bosquet, 75007 Paris, France. Email: secretariat@b20coalition.org

Members: Ai Group, Australia; BDI, Germany; BUSA, South Africa; BUSINESSEUROPE, Europe; CBI, United Kingdom; CCC, Canada; CEOE, Spain; CII, India; CNI, Brazil; Confindustria, Italy; FKI, South Korea; MEDEF, France; TÜSİAD, Turkey; UIA, Argentina; US Chamber, USA

About: Website: www.b20coalition.org
The B20 Coalition brings together leading independent business associations from G20 economies and advocates on behalf of more than 6.8 million small, medium and large companies and operates as a worldwide platform of exchanges between national business communities, aiming at building consensus and developing common positions on issues critical for enterprises. Through its broad-based representation, the Coalition engages policy-makers at a global scale and advocates policies that contribute to growth and job creation at regional and international levels.

Note: In order to fit with the evolution of its strategic objectives, the B20 Coalition is in the process of rebranding itself under the new name of 'Global Business Coalition', hence communication in the future will transition under the auspices of this new name.

GIFT
GLOBAL INITIATIVE FOR
FISCAL TRANSPARENCY

GIFT Coordination Team Submission on the IMF's revised draft Natural Resource Fiscal Transparency Code

The Global Initiative for Fiscal Transparency Coordination Team welcomes the opportunity to comment on the revised Pillar IV on resource revenue transparency. We also welcome the large number of changes made to the initial 2014 draft of Pillar IV of the Fiscal Transparency Code in response to the public consultation exercise and the extent to which those changes are consistent with recommendations in our submission. We note that changes have been made both to the draft of Pillar IV, and to a number of principles and practices in Pillars I-III that are relevant to resource revenues. This addresses the concern that the GIFT Coordination Team we and others pointed out with the 2014 draft of Pillar IV, namely how to interpret Pillar IV when many of the resource revenue issues were at that time intended to be covered – but without specific reference - also by Pillars I-III.

In fact, 17 of the 36 principles (and associated practices) in Pillars I-III of the Code have been amended, although many of the changes are relatively minor additions of a phrase referring to resource revenue issues. The content of Pillar IV has also substantially changed. The four sections have been renamed, some principles have been combined, while others have been split into two.

One of GIFT's two main concerns with respect to the 2014 draft was that, given their sheer size and significance, state-owned natural resource companies (NRCs) were not covered. We suggested that a new principle be added to Pillar IV. In the event, a reference to NRCs has been added to two principles in Pillars I-III: principle 1.1.1 on coverage of institutions; and principle 3.3.2 on public corporations. This should cover some of the key areas of concern, such as reporting of all direct and indirect transfers between an NRC and government, and any NRC quasi-fiscal activities; but will not pick up some other important areas that GIFT had included in its suggested additional practice on NRCs in Pillar IV - such as publication of details of the NRC's resource sales, audited financial statements compiled according to international accounting and auditing standards with an unqualified audit opinion, key details of governance and senior management arrangements in the Annual Report, and the existence of low-cost mechanisms for redress available to members of the public with respect to the NRC's operational activities.

In our view it is worth considering again the addition of a new separate principle on NRCs in Pillar IV, which would ensure that all these important elements of transparency, participation and accountability are addressed. Such an addition would remove the need for two of the proposed changes to Pillars I-III (the addition of phrases referring to NRCs in 1.1.1 and 3.3.2).

Our second main concern with the 2014 draft was the inadequate provision for public participation in fiscal policy design and implementation in resource rich countries. Our submission made a lengthy case on practical, political economy, and citizens' rights grounds about the critical importance of greater public participation to help reduce the 'resource curse.' We noted that principle 2.3.3, in Pillar II requires that governments should provide citizens with an opportunity to take part in budget deliberations, and that in resource rich economies this would apply to opportunities for public engagement over natural resource revenues.

We were concerned however that, while Pillar II contained the principle on public participation in budget preparation, there is nothing in Pillars I-III, then or now, that provides for any form of direct public participation during budget implementation – as specifically called for in GIFT High Level Principle 10. We therefore suggested that public participation should be added to two other

principles in Pillar IV: to the practice on environmental and social impact analysis; and with respect to the annual report of a Natural Resource Fund (NRF), that reference be added to public hearings in the legislature, and at the local level where resource extraction takes place.

In the event, the following has been inserted in principle 2.3.3 on public participation in Pillar II: '…including regarding the raising and utilization of resource revenues'. This makes explicit what was previously only implicit, thereby helpfully raising its visibility.

However, a reference has not been added to public participation in social and environmental risk analysis - a practice that is well established globally in law and practice as a right of those directly affected by a public infrastructure project - nor to public hearings on the annual report of an NRF.

We consider it is worth reflecting further on this important issue, and suggest considering one of two approaches:

1) Insert in Pillar IV the two proposals on public participation from our previous submission;
or
2) Consider whether it might be possible to add a general requirement for public participation during budget implementation, to Pillars I-III (we recognize there may be no obvious place for this to be done).

We would welcome the opportunity to discuss this issue with the Fund.

On more detailed issues, areas where GIFT recommendations or suggestions were not picked up (or not fully picked up) in the revisions include:

i. We noted that in the draft on the legal framework (4.1.1), publication of laws was a basic practice, but that publication of regulations was a requirement only of good practices, and observed that it is difficult to see why publication of regulations is other than basic to the rule of law. In the event, the requirement for publication of regulations has been aligned with publication of laws, but at the level of good practice. Again, it seems to us that the public availability of both laws and regulations is fundamental to the rule of law, and recommend that they be made a basic practice.
ii. In 4.3.1 governments were required to report performance against their fiscal policy objectives only for advanced practices. We suggested this should be basic practice. In the event, there is now no reference to reporting against objectives in the revised principle (4.4.1). It is presumably covered by principle 2.3.1 in Pillar II, which requires that governments state and report on fiscal policy objectives.
iii. We noted that the importance of the ownership and stewardship of geological data seemed to be missing from 4.1 in general and suggested that consideration should be given to either the addition of a new principle or inclusion of new material within 4.1 on this issue. This was not picked up. This seems like a potentially important practical consideration, although perhaps it could be picked up in the accompanying Manual.
iv. In 4.4.2 (now 4.3.3) our suggestion to add '…conducts audits of the development strategies and extraction rates of major projects', was not picked up. It may be addressed as an issue of detail in the Manual.
v. We suggested that a requirement for a summary of key contract terms in resource rights holdings be added to 4.2.1. This has been done (the principle has been renumbered 4.2.2), although our suggested addition of '…as well as a full history of any changes or variations made to the resource right since it was first awarded' has not been added. This additional element of transparency would seem to be potentially important.

vi. On company reporting (old principle 4.2.2, new principles 4.3.1 and 4.3.2), our suggestion to add reference to reporting of social expenditures by companies to the description of good or advanced practice was not picked up. Such quasi-fiscal expenditures by resource companies can be large, especially in the locality where resources are being extracted. They will not be picked up by the reference to quasi-fiscal activities in Pillar III, as principle 3.3.2 applies only to QFAs of public corporations.

The GIFT Coordination Team, Washington D.C., September 9, 2016

9 September 2016

International Monetary Fund
Washington, D.C.

Re: Comments on Draft Natural Resources Fiscal Transparency Code

Thank you for the opportunity to comment on the revised draft of the Fiscal Transparency Code, now entitled the Natural Resources Fiscal Transparency Code.

Comment: We understand that comments on the prior draft suggested incorporating some specific references to natural resources in the original first three pillars of the code, to clarify that those pillars are also applicable to natural resources, and we note that has been done. But our understanding is that the IMF Fiscal Transparency Code was always intended to have broader coverage and application beyond just natural resources activities. This was the basis for having the first three pillars more general in scope and application, followed by a fourth pillar with more specific application to natural resources. Thus, our interpretation of the original structure was that the first three pillars were intended to apply to governmental activities regarding all industries, including natural resource industries, but that the fourth pillar was to provide additional specific natural resource related principles. Identifying the new code as the "Natural Resources Fiscal Transparency Code" creates an impression that it is entirely focused on natural resources, while a reading of the items in the first three pillars clearly indicates otherwise. For example, it suggests reporting on "tax expenditures" in general, and provides for government disclosure of exposures well beyond natural resources (such as financial sector and natural disaster exposures).

Recommendation: We recommend that it be made clear that the Code is not limited to natural resource industries and activities, but applies more broadly and thus the principles in the first three pillars have wider application than simply to countries with natural resources.

Comment: As noted in our letter of March 14, 2015 commenting on the previous draft of Pillar IV, we continue to believe that Paragraph 4.3 (formerly 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 4.3 and its subparts be rephrased by changing it from a requirement imposed directly on companies to a requirement on countries. For example, the provisions could read: "Governments should also require all resource companies doing business within their countries to ….."

Note: We would expect that a country that adopted a natural resource reporting approach similar to the EITI would satisfy the requirements of Paragraph 4.3 and its subparts at the advanced level of compliance.

Comment: Paragraphs 4.3.1 and 4.3.2 require 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 any trading company reporting be clearly limited to the government sales activities with respect to its take in kind production. Specifically, we recommend that language in paragraph 4.3.1 be changed to delete the words "trading activities" and replace them with "and purchases of government "take in kind" production." We further recommend deleting the reference to worldwide reporting of trading activities in Paragraph 4.3.2. (If that reference remains, it likewise should be limited to purchases of government "take in kind" production). Note, however, our comment directly below on worldwide reporting, which we do not believe is appropriate. Finally, any requirement imposed on a trading company should instead be imposed on, or by, the government, not directly on the company under the Pillar IV.

Comment: Pillar IV as re-drafted continues to require 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.

As previously noted, 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. If this pillar is intended to be more narrowly limited, then that should be made clear.

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 (or in some cases, country level detail), as the draft descriptions of "Basic, Good, and Advanced Practices by Principle" under Paragraph 4.3.2 suggest, raises even more troublesome issues of international law upon which we have previously commented. In particular, 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. If it remains in, significant narrowing of its scope, and clarifications that it should not be interpreted to require one country to be in conflict with another, should be made.

Comment: Prior Paragraph 4.4 required governments to disclose, analyze and manage social, environmental and operational risks associated with natural resource exploitation. New Paragraph 4.3 now directly shifts this obligation to the companies by requiring resource companies to "regularly report on the status of domestic natural resource projects, and their social and environmental impact". We understand that the intent underlying this requirement is in fact not to require additional information from companies beyond that which they 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 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. Again, this requirement also should not be directly imposed on companies under the Pillars, but instead imposed on countries.

General Comments:

A. Given the large amount of reporting already done by companies, and already required by other bodies, a broad point is that the IMF should allow countries to take maximum advantage of such reporting. Additional reporting on top of this large base raises

questions as to the added value versus the added costs. This is particularly true when one considers not only the first level costs of developing and reporting data to meet a new reporting requirement, but also the costs and efforts (of both companies and governments) in reconciling various reports.

Where standards (or reporting periods) are different from other reports already required, confusion is created and unfortunately companies and governments will undoubtedly be faced with questions as to why various reports are different. The time, effort, and costs (monetary and manpower deployment) of providing and explaining reconciliations will be extensive; the value of such efforts likely will be minimal.

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.

Specifically, as previously noted, we recommend that wherever a country has successfully implemented EITI, this should satisfy the highest level of IMF suggested transparency for that issue.

B. With respect to the format of the basic, good, and advanced practices levels, we suggest the following:

   1. Providing specific country examples of compliance with each advanced standard would be most helpful, as it will provide a concrete illustration of what it takes to meet standards that, by definition, will have some level of uncertainty when defined generically, as they must be done in the general descriptions.

   2. In some cases, there may be a question as to whether there really is a three tier level in satisfying a standard. The IMF should not feel compelled in each case to develop a three level approach. Where it truly makes sense, and each additional level of reporting meets a value versus cost threshold, then that would be appropriate. Where it does not, there should be no need on the IMF's part to provide different levels simply to fit the matrix. Thus, we recommend that each standard be thought through to ensure that what is incrementally required to meet a higher compliance level is significantly more valuable and useful in comparison to the all in costs of such additional reporting.

C. There are several areas where public disclosure is envisioned under the Pillars. 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. We recommend this be taken into account in the implementation standards.

Thank you again for the opportunity to comment on the Draft Natural Resources Fiscal Transparency Code. We look forward to further discussions as you work to finalize the Code. We are also available, and would welcome the opportunity, to provide input into the explanatory and implementing guidance that will be developed.

Submitted by Daniel A. Witt and Karl B. Schmalz; International Tax and Investment Center; USA; +1 202 530 9799; dwitt@iticnet.org; kbschmalz@gmail.com

Oxfam Comments on IMF Fiscal Transparency Code Draft of May 9, 2016

September 2016

Thank you for the opportunity to comment on the revised draft of the Pillar IV of the Fiscal Transparency Code on Natural Resource Revenue Management. We appreciate the effort of the IMF staff and the open nature of these consultations. We also welcome the sharing of an edited draft so the public can view changes made to previous versions. This is very constructive.

We welcome the reorganization of Section 4.1, and believe that this is clearer. There are additional areas that need strengthening, however.

1. Section 4.2.2: As noted by Publish What You Pay (PWYP) and as we noted in a consultation call earlier this year, project payment disclosure referenced in Section 4.2.2 should be referred to as a "basic", rather than a "good" practice. This year, the US finalized its payment disclosure regulations in line with the EU, Norway and Canada. This complements the EITI project payment disclosure requirement. We therefore believe that a majority of oil, gas and mining companies will in fact be reporting in this manner thanks to the existence of disclosure rules in major markets, as well as the EITI requirements which apply to a large number of resource rich countries in which they operate. Also worth noting is the existence of IFC's project payment disclosure requirement for extractives companies it finances. It follows that the IMF's basis for evaluating resource revenue management practices should assume that this type of reporting is "basic" rather than "good".

2. Section 4.3.3: As we noted in our consultation call earlier this year, "basic" performance on operational, social and environmental reporting requires that all impact assessments as well as regular reports be disclosed to the public. The current structure of this section is not appropriate, as it suggests that performance is "good" if, for example, an EIA and project status report are disclosed, but not a social impact assessment. Environmental and social impact assessments are both extremely important to disclose to the public to ensure public understanding of project impacts and risks. (See the World Bank's Guidance Note for details on the use of EIAs). It is critical that where they exist, EIAs and

SIAs are both disclosed, and that stakeholders, including affected communities, are engaged in the preparation of these as well as any major changes to these. The Las Bambas project in Peru is an important case to consider – public protest centered on inadequate public consultation around changes to the project EIA resulted in violence and four deaths in September 2015. In addition, since many SIAs fail to report specifically on human rights impacts, the principle should state that companies must report on social, environmental, *and human rights* impact.

Many thanks for the opportunity to comment. We hope the IMF will continue to actively encourage member countries to conduct Fiscal Transparency Evaluations using the new Code. Please do not hesitate to contact us for more information.

With best regards,

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Natural Resource Governance Institute
Oil, gas and mining for development

September 9, 2016

RE: NATURAL RESOURCE GOVERNANCE INSTITUTE SUBMISSION ON THE REVISED DRAFT OF THE IMF'S NATURAL RESOURCE FISCAL TRANSPARENCY CODE

Summary:

We congratulate the IMF on a strong revised draft of the IMF's Natural Resource Fiscal Transparency Code, and offer the following key recommendations for further improvement:

- ***General***
    - If the current draft Natural Resource Transparency Code is meant to serve as a separate and stand-alone code applicable to resource-rich countries, expand and revise the glossary to include definition of terms used in Pillars I through III
    - Include further transparency requirements for national resource companies in the Natural Resource Fiscal Transparency Code or include these requirements in later guide(s) to the Natural Resource Fiscal Transparency Code
    - Include open data requirements in later guide(s) to the Fiscal Transparency Code
- ***2.1 Comprehensiveness***
    - Revise to include "natural resource funds" as a type of extra-budgetary fund that should be included in budget documentation as "good" and "advanced" practice
- ***3.1 Risk Disclosure and Analysis***
    - Consider better tailoring the language of 3.1.3 to resource-rich countries by including reference to other sources of long-term fiscal liabilities and distinguishing between stocks and flows
- ***4.1 Legal and Fiscal Regime***
    - Require publication of laws and regulations as "basic"
- ***4.2 Allocation of Rights and Collection of Revenue***
    - Require publication of predefined qualification and evaluation criteria at all levels of practice
    - Clarify that "publication of rights" should include type of right granted and recipient of that right
    - Align the beneficial owner disclosure requirements with those of the EITI Standard 2016 to facilitate harmonization of approach

- Revise structure of section 4.2.4 on "Resource Revenue Audit and Verification", to require project-level government disclosures as "basic" or "good"

- ***4.3 Company Reporting***
  - Collapse disclosure of environmental and social impact assessments into one requirement and include disclosure of associated management plans and periodic reports as an additional disclosure requirement
- ***Glossary***
  - Align the definition for "beneficial owner" with that of the EITI Standard 2016, in order to facilitate harmonization of such disclosures
  - Expand the definition of "project" to include circumstances under which multiple agreements may be treated as a single project, in keeping with EU Accounting and Transparency Directives of 2013, the Technical Reporting Specifications for Canada's Extractive Sector Transparency Measures Act of 2014 and the final rule implementing Section 1504 of the Dodd Frank Act.

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

[1] The Natural Resource Charter is a set of principles to guide governments' and societies' use of natural resources. See more here: http://resourcegovernance.org/approach/natural-resource-charter

forthcoming. Please find more information on NRGI at: www.resourcegovernance.org.

I. Introduction:

We are grateful once again for the opportunity to comment on a revised draft of the IMF's Natural Resource Fiscal Transparency Code (the "Revised Draft"), having had the opportunity to comment on the initial December 2014 draft of the Resource Revenue Management Pillar ("Pillar IV") of the Fiscal Transparency Code. We commend the IMF for releasing this Revised Draft for further discussion and comment.

We note that the Revised Draft contains a number of significant improvements, which address many of the comments we submitted during the last round of consultation. Notably, among other revisions, the Revised Draft includes an improved definition of beneficial owner, which now requires disclosure of natural person or publicly-listed company owners and ensures that the definition does not allow for disclosure of private companies as owners. The Revised Draft also now requires disclosure of beneficial ownership as "basic", in keeping with requirements of the 2016 EITI Standard.[2] Such disclosure of ultimate owners can help deter and detect corruption, conflicts of interest, and tax evasion. The Revised Draft now includes project-level disclosure of company payments as "good" and specifies that payments must be disclosed by government payee and payment type at all levels of practice, in keeping with the mandatory disclosure laws passed in recent years[3] and the 2016 EITI Standard.[4] Inclusion of a definition for "project", which is mostly aligned with the EU Accounting and Transparency Directives of 2013, the Technical Reporting Specifications for Canada's Extractive Sector Transparency Measures Act of 2014 and the final rule implementing Section 1504 of the Dodd Frank Act will promote consistency in global project-level reporting. We welcome the publication of environmental and social impact assessments, which can enhance stakeholders' ability to understand the full costs of extraction. We also welcome an expanded definition of resource revenue to include revenues raised not just from extraction, but exploration, transportation, processing and trading activities. The Revised Draft

[2] EITI Requirement 2.5.
[3] The U.S. Dodd-Frank Act Section 1504, 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.
[4] See EITI Requirement 4.7.

mainstreams natural resource elements throughout Pillars I through III, which is a helpful addition.

We do not seek to repeat our previously submitted comments. Instead, we suggest a few key ways the IMF can build on improvements made to the Revised Draft in the section that follows and refer to our previous comments as applicable.

We look forward to ongoing discussion and consideration of how improved transparency can translate to increased accountability and better governance of countries' natural resources for the public good, including through the Fiscal Transparency Evaluation process.

II. Key Recommendations:

General

Relationship between the Natural Resource Fiscal Transparency Code and the Fiscal Transparency Code

We would suggest that the IMF provide clarity on the relationship between the Fiscal Transparency Code and the Natural Resource Fiscal Transparency Code. We are under the impression that the Revised Draft, which mainstreams natural resource elements in Pillars I through III, as well as including a resource revenue management pillar (Pillar IV), is meant to serve in its entirety as a separate version of the Fiscal Transparency Code tailored to resource-rich countries.

If our assumption is correct, then the Revised Draft as it stands is incomplete. For example, the Revised Draft includes a limited glossary that covers only terms used in Pillar IV. Further, the glossaries for Pillars I through III and for Pillar IV are not harmonized: both glossaries contain different definitions for "international standards." The latter definition refers only to standards for revenue transparency such as the EITI. The definition included in the issued Pillars I through III references standards for government finance statistics and government financial statements, which are applicable to the broader fiscal transparency issues addressed in Pillars I through III. The full glossary from the already issued Pillars I through III should be included in the Revised Draft, and revised or adapted as appropriate.

National Resource Companies

In our previously submitted comments we noted that while 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 enterprises operating in the extractive sector. We noted that national resource companies received special treatment under the previous Guide on Resource Revenue Transparency (the "Guide") and the importance of these companies[5] merits their continued separate treatment under the Fiscal Transparency Code.

We note the specific reference to national resource companies in section *3.3.2* of the Revised Draft on public corporations. Nevertheless, in our comments we noted that there are a number of other transparency requirements covered by the EITI Standard, which should be included in the Fiscal Transparency Code as "basic" practice, and offered suggestions for "good" and "advanced" transparency mechanisms that existing research have demonstrated make for effective governance of national resource companies.

We encourage the IMF to consider including these in further revisions to the Revised Draft. Alternatively, we hope the Guide will provide more detail on transparency mechanisms for national resource companies. In particular, the publication of annual audited financial statements including, at a minimum, a balance sheet, cash flow statement and income statement is critical for citizens to understand how national resource companies are managing what are often huge flows of public revenues.

Open Data

We noted in our previous comments that the IMF has the opportunity 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. We are of the understanding that inclusion of open data in the Revised Draft was not appropriate, given the format, but that the intention is to instead mainstream and elaborate upon open data principles in the forthcoming guide(s) to the Fiscal Transparency Code. We would certainly encourage this inclusion and look forward to further discussion on this point.

[5] In several countries, national resource companies control larger shares of public revenues than any other public entity. 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.

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2.1 Comprehensiveness

<u>*2.1.1 Budget Unity*</u>

We note that natural resource funds are actually extra-budgetary funds. As currently drafted, this provision unnecessarily distinguishes inclusion of natural resource funds in budget documentation as "advanced" practice, while budget documentation incorporating other extra-budgetary funds is designated "good" practice. **We would therefore suggest revising the language for "good" and "advanced" to read: "extra-budgetary funds, including natural resource funds…."**

3.1 Risk Disclosure and Analysis

<u>3.1.3 Long-Term Fiscal Sustainability Analysis</u>

We note that Pillars I through III have already been issued and the IMF may seek to make only limited additions to these pillars for the Revised Draft. However, we do note that the singling out of health and social security funds is more relevant to European, North American and other advanced economies than most middle- and low-income resource-rich countries. In addition to social security and health funds, there are a number of other sources of long-term fiscal liabilities in those countries, including development banks, natural resource companies, and other extra-budgetary funds that take on debt[6] and should perhaps be included. Further, the references to resource revenue "flows, reserves, and savings" combine flows and stocks, whereas fiscal sustainability is mostly concerned with net flows.

The IMF might consider tailoring *<u>3.1.3</u>* to resource-rich countries and more clearly distinguishing stocks from flows. We would suggest for "basic": **"The government regularly publishes fiscal sustainability projections, which take into account long-term assets such as reserves and fiscal savings, depletion of subsoil natural resource assets, as well as liabilities including public debt and liabilities of extra-budgetary funds and natural resource companies."** "Good" practice could then include reference to "macroeconomic assumptions, including prices of relevant commodities," while "advanced" includes reference to "other assumptions, including prices and production of relevant commodities."

[6] For example, Ghana Infrastructure Investment Fund.

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4.1 Legal and Fiscal Regime

4.1.1 Legal Framework for Resource Rights

In our previous comments we noted that publication of regulations should be considered "basic" practice and that model licenses or contracts should be considered "basic" or "good" practice, given that publication of the full text of terms and conditions associated with resource rights was designated "good" practice.[7] We note that publication of model licenses and contracts has been moved from "advanced" to "good" practice, but that publication of regulations is still designated "good" and publication of laws has now moved from "basic" to "good."

We strongly believe that a transparent legal framework requires at the very least the publication of laws which define the rights, obligations and responsibilities of all those involved in exploration, development, production and sale of natural resources. Without such publication, the legal framework cannot be deemed transparent and all stakeholders will be unable to have a full understanding of what the rules governing the extractive sector actually are. We also would like to again point out that the rules governing the extractive sector may be spelled out in only general terms in the law, so that publication of the associated regulations, where they exist, is necessary for full clarity and transparency of the law. Such publication has been shown to be well within the means of countries currently facing capacity constraints. [8] **We would suggest revising to make publication of laws and regulations basic practice.**

4.2 Allocation of Rights and Collection of Revenue

For the heading of *4.2*, **we note that that the language specifies open and transparent procedures for granting of "rights for resource extraction" instead of transparent procedures for granting "resource rights"** more broadly. The principle for *4.2.1* addresses an open process for allocation of "resource rights", which

[7] In keeping with the increasingly widespread practice of contract disclosure. 25 countries now disclose their natural resource contracts systematically and more than 1,000 such contracts and associated documents are now publicly available. See www.resourcecontracts.org
[8] For example, Myanmar's Ministry of Natural Resources and Environmental Conservation publishes the current Mines Law and Mines Rules on the ministry's website: http://www.mining.gov.mm/LAWS/Default.asp and the Democratic Republic of Congo's Ministry of Mines publishes the current Mining Code and Mining Regulations on the ministry's website: https://www.mines-rdc.cd/fr/index.php/legislation

per the Glossary covers exploration, extraction, transportation, processing and trade. **We believe the heading should be revised to correspond to *4.2.1*.**[9]

4.2.1 Allocation of Resource Rights

We note the Revised Draft now includes a definition for an "open process," providing welcome clarity on the need for the process to be sufficiently advertised and accessible to all qualified potential applicants in order to qualify as "open." **We would, however, repeat our recommendation that at all levels of practice the word "published" be inserted before "predefined qualification and evaluation criteria"** in order to provide full transparency and assurance to all stakeholders that results of tenders are in keeping with the predefined criteria. Publication of prequalification and evaluation criteria has already been recognized as a good governance practice that can help deter corruption and ensure that licenses go to companies who have the capacity to carry out the work program.[10] At a minimum, publication of "predefined qualification and evaluation criteria" should be a "good" and "advanced" practice.

We note the Revised Draft now clarifies that "publication of all rights granted" is a requirement for all levels. The content of such publication still remains unclear,

[9] The previous Pillar IV also included reference to a broader set of rights than just extraction in the equivalent of the Revised Draft's 4.1.2, referring to "rights to explore for, extract and trade natural resources."

[10] See, e.g., Chatham House Guidelines for Good Governance in Emerging Oil and Gas Producers 2016, p. 19: "General terms for prequalification should be laid out in the petroleum law, with more detailed rules to be included in regulations.
…
A pre-qualification process that is transparent (publishing the criteria, candidates and winners) or is conducted by an independent entity is more likely to result in the more qualified bidder being selected."

See also, Norway's Oil for Development program's check-list for the state of petroleum-related governance in OfD-countries, which includes the item "Criteria for awarding licenses are published well in advance of the actual awarding, and licensing decisions are justified according to the criteria and made publicly available." Available at: https://www.norad.no/globalassets/import-2162015-80434-am/www.norad.no-ny/filarkiv/ofd/petroleum-sector-governance-check-list.pdf

See also World Bank, "Mineral Rights Cadastre: Promoting Transparent Access to Mineral Resources", p. 14, referring to the need to have "predefined eligibility conditions", "simple and objective critieria" and that any "interested individual or corporation must be able to access detailed information about the
requirements and conditions of applying for mineral rights". Available at: https://openknowledge.worldbank.org/bitstream/handle/10986/18399/486090NWP0extr10Box338915B01PUBLIC1.pdf?sequence=1&isAllowed=y

however. We would recommend that the wording be modified to specifically provide for publication of the type of right granted and the recipient in each case.

4.2.2 Disclosure of Resource Rights Holdings

We are heartened to see that disclosure of beneficial ownership has been included as "basic" practice. **We would recommend aligning the language with the more explicit requirements of the EITI Standard 2016**.[11] This would both ensure that sufficiently detailed information is disclosed by countries seeking to adhere to the IMF's Fiscal Transparency Code and help to facilitate harmonization of disclosures on beneficial ownership. To this end, **"details of the beneficial owner of the rights" should be replaced with "the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted."**

4.2.4 Resource Revenue Audit and Verification

Sections *4.3.1* and *4.3.2* contain a number of improvements, including designating project-level disclosure "good" practice rather than "advanced". In our previous comments we recommended that project-level disclosure be designated "basic" or at least "good", in line with the growing global movement toward project-level disclosure.[12] However, section *4.2.4* is out of alignment with these sections and the previous draft of Pillar IV, which designated project-level government reports as "good" practice. **As currently drafted, the format "one of the following applies…" and so on, would only require project-level disclosure for "advanced" practice.** A country could meet the "good" practice standard by having an annual report reconciling resource revenue collected with audited company reports that is "(i) independently validated in line with international standards" and "(ii) containing only minor unexplained discrepancies" but that is not disaggregated by project.

We recommend revising the format to require "(i) disaggregated by project" at the basic level, both "(i) disaggregated by project, (ii) independently validated…" at the good level and all of "disaggregated by project, (ii) independently validated… (iii) containing only minor unexplained discrepancies" at the advanced level. If the desire is to keep project-level disclosure as "good" throughout the Revised Draft, both with respect to government disclosures and independent company disclosures, then basic practice could require independent validation only, while good practice would require both independent validation and project level disclosure.

[11] See EITI Requirement 2.5.
[12] For example, recent mandatory disclosure laws in the EU, U.S., Norway and Canada.

4.3 Company Reporting

<u>*4.3.2* Reporting on Worldwide Payments</u>

The word **"exploration" seems to be missing** from the language of the principle.

<u>*4.3.3* Operational, Social, and Environmental Reporting</u>

We commend the IMF for including publication of environmental and social assessments in the Revised Draft, in recognition of the fact that requirements for such disclosure are increasing[13] and can provide important transparency for all stakeholders as to the overall impacts of extractive activities and how such impacts will be managed. However, **we recommend combining (i) and (ii) to read "project environmental and social impact assessments are published." Assessments of environmental *and* social impacts together are now common practice**[14], so disclosure of environmental impact assessments is likely to be synonymous with disclosure of social impact assessments.

We also note that publication of management plans and periodic reports associated with environmental and social impact assessments is missing. Disclosure of the management plans and associated reports on implementation of these plans is key to ensuring transparency and accountability for management of the environmental and social risks that were identified in the impact assessments. Further, disclosure of management plans and reports is often included in the requirement for disclosure of the impact assessments, where such requirements exist.[15] We would therefore recommend replacing the current (ii) with: **"(ii) management plans and periodic reports associated with environmental and social impact assessments are published."**

Glossary

<u>*Beneficial Owner*</u>: The definition of beneficial owner in the Revised Draft has been greatly improved. However, we suggest the following revision both in order to align the definition with the EITI Standard 2016, which will allow for greater harmonization of disclosure, and also to ensure those who ultimately *control* the

[13] For example, see IFC Environmental and Social Performance Standard 1 and Guidance Note, and laws or regulations in Myanmar, Sierra Leone and Zambia requiring such disclosure.
[14] Ibid.
[15] Ibid.

resource right holder, whether or not they have an economic interest in the holder, are disclosed: **"the natural person(s) or publicly-listed legal entity(ies) which directly or indirectly ultimately own or control the holder of a natural resource right within the country, usually through a chain of related parties which may be held in different jurisdictions."**

Project: We agree with the IMF approach to align the definition with that used by the EU Accounting and Transparency Directives of 2013. However, while the European Union, Canada and United States all define "project" on the basis of a single legal agreement, these jurisdictions also allow for multiple agreements to be considered a single project in certain circumstances where those agreements are operationally and geographically interconnected or integrated. We would therefore suggest expanding the project definition to include such language. We propose the following wording, which combines the wording of the EU Accounting and Transparency Directives of 2013 and the final rule implementing Section 1504 of the Dodd Frank Act:

"**Agreements with substantially similar terms that are both operationally and geographically integrated may be treated by the company as a single project."**[16]

Contact Information:

We are grateful for this second 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.

[16] Rule 13q-1 and an amendment to Form SD to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act relating to the disclosure of payments by resource extraction issuers provides: "Agreements that are both operationally and geographically interconnected may be treated by the resource extraction issuer as a single project."

Directive 2013/34/EU of the European Parliament and Council provides: "Nonetheless, if multiple … agreements are substantially interconnected, this should be considered a project." A recital to the Directive goes on to explain: "'Substantially interconnected' legal agreements should be understood as a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with a government, giving rise to payment liabilities. Such agreements can be governed by a single contract, joint venture, production sharing agreement, or other overarching legal agreement."

The Technical Reporting Specifications for Canada's Extractive Sector Transparency Measures Act of 2014 largely correspond to the European project definition.

UNEP Comments on Draft Natural Resource Fiscal Transparency Code

Suggested additions IN CAPS.

General:

- Is there any particular reason why the draft talks about *exhaustible* NR and not *non-renewable* NR (is there any difference between the two?)

Part A:

- 3.2.7 Environmental Risks: How well does the term work in this particular context, as it refers to economic losses caused *by* the environment, rather than harm caused *to* the environment. Would *Risks caused by environment* be too long?
- 4.2.1 Allocation of resource rights: There is an open AND COMPETITIVE process for the allocation of resource rights.
- 4.3.3 Is there a specific reason why the requirement to report the status and env./soc. impacts only concerns domestic projects and not international?

Part B:

- For the ease of reading, it would be good to highlight the difference in text between categories Basic/Good/Advanced in the tables.
- 2.1.4 Investment projects: (in "Advanced" category) ...(ii) subjects all major projects to a published cost-benefit analysis INCORPORATING ENVIRONMENTAL FACTORS before approval…
- 3.1.1 Macroeconomic risks: (in "Advanced" category) ...fiscal outcomes including on a range of relevant commodity price AND ENVIRONMENTAL RISKS, project costs..
- 3.1.3 Long-term fiscal sustainability analysis: (in "Advanced" category) ...sustainability of the main fiscal aggregates and any health AND NATURAL RESOURCE FUNDS and social security funds...
- 3.2.7 Environmental risks:
    - The potential fiscal exposure to natural disasters and other major environmental risks INCLUDING STRANDED ASSETS are analyzed...
    - (in "Advanced" category): The government identifies and discusses the main fiscal risks INCLUDING POTENTIAL EFFECTS ON LONG-TERM FISCAL SUSTAINABILITY from natural disasters...
- 3.3.2 Public corporations: The government regularly publishes comprehensive information SUBJECT TO INDEPENDENT EVALUATION on the financial performance...
- 4.1.1 Legal framework for resource rights: The legal framework defines rights, obligations, and responsibilities of all participants AND BENEFICIARIES at all stages of resource development.
- 4.1.2 Fiscal regime for natural resources: (in "Advanced" category) ...(iii) scope for variation in fiscal terms. Does this capture tax incentives/expenditures?
- 4.2.1 Allocation of resource rights: There is an open AND COMPETITIVE process for the allocation of resource rights.
- 4.2.4 Resource Revenue Audit and Verification: ...(iii) containing only minor unexplained discrepancies. How is the threshold for "minor" defined so that is does not create any space for misinterpretation and abuse?
- 4.3.3 Operational, Social and Environmental Reporting: ...(iii) project development plans, SOCIAL AGREEMENTS and annual project status reports are published (HOW OFTEN in the advanced category?).

Part C:

- Term "Open": Perhaps this alone does not sufficiently capture the competitiveness aspect (see comment on 4.2.1)