

Precept 11: Role of Extractive Companies

Companies should commit to the highest environmental, social and human rights standards, and to sustainable development.

–Precept 11, Natural Resource Charter

Extractive companies can make important contributions to the governance of their host countries by meeting recognized international standards in the execution of their projects, even when these are not legally required of them. Often acting as pioneer investors, extractive companies can play an important role in shaping the general investment climate of the countries in which they operate. Where they contribute positively, extractive companies can support the development of good governance practices in a country. Where they contribute negatively, they can entrench mismanagement and corruption.

Corporate social responsibility is a broad and detailed topic that has produced a wealth of information and guidelines. With this in mind, this assessment framework aims only to provide an overview of the basic issues, which include: building trust (Q11.1), maximizing the benefits of resource projects and mitigating their environmental and social costs (Q11.2), and measures to ensure that companies act with honesty and integrity (Q11.3). Questions in this section can be answered for companies in general or can be used for in-depth analysis of a specific company's operations. If carrying out a general analysis, particularly in countries where there are dozens or hundreds of extractive companies, it may be helpful to consider a sample of companies operating in the country. Important considerations for selecting a sample that is representative of the full diversity of companies includes: scale of operations, resource type, length of time working in country, home country and reputation.

PRIMARY QUESTIONS

11.1 | Trust

Does the company work transparently and seek to build trust with all stakeholders related to its activities?

11.2 | Sustainable development

Does the company work to maximize the potential benefits and minimize the social and environmental costs associated with resource extraction?

11.3 | Corporate integrity

Does the company act with honesty and integrity?

11.1 | Trust

Does the company work transparently and seek to build trust with all stakeholders related to its activities?

Active public engagement is an important prerequisite for building trust among citizens, businesses and the government. It is important to build relationships at the earliest stages of a company’s activities. As part of their engagement strategies, companies should interact meaningfully with stakeholders on important project activities that will affect them. Effective and proactive communication is essential in order to manage public expectations and allow citizens to understand how resource extraction will affect them. Companies should ensure that security arrangements do not undermine these communication efforts, and that vulnerable groups, including indigenous peoples and women, are not overlooked. Many of these issues are dealt with from a government perspective in Q5.1.

Secondary question	Guidance
<p>11.1.1 Meaningful participation</p> <p>Does the company support the meaningful participation of affected communities in decision-making on projects?</p>	<p>Companies should support the meaningful participation of affected communities in key project decisions. This participation helps communities understand how they will be affected by upcoming projects, plan for pending changes, and contribute to project design. It also helps the company get a better idea of the range of environmental and social impacts associated with the project.</p> <p>Meaningful participation requires the involvement of communities and that the decision-making process reflects the range of factors mentioned in the questions below. Its fulfilment may require special efforts by companies working with the government to ensure the participation of marginalized groups. International standards for participation are outlined further in Principle 5 of the Equator Principles and IFC Performance Standards 1 and 7.</p> <p><i>Researchers should consider:</i></p> <p>Revisit the answer to Q5.1.1. If the government’s policy on meaningful participation of affected communities is of a high standard, does the company follow it? If the policy falls short, does the company instead take the necessary extra steps to meet a strong international standard? Specifically:</p> <ul style="list-style-type: none"> • Does the company support the participation of affected communities in decision-making at each project stage (exploration, development, operation and closure)? • Does the company ensure that decision-making processes are free from manipulation and coercion? • Does the company ensure that affected communities are given adequate time to make decisions? • Does the company ensure that affected communities are given objective, accurate and easily understandable information on which to base decisions? • Does the company ensure that the end result of community engagement demonstrably takes into account the perspective of consulted parties? • Is special attention made to ensure that marginalized groups are able to participate in decision-making on an equal footing with other groups? • Has the end result of the decision-making process demonstrably taken into account the perspective of the consulted parties?

<p>11.1.2 Managing expectations</p> <p>Does the company ensure that stakeholder expectations are realistic?</p>	<p>Companies should aim to establish effective and honest communications with citizens to ensure that they have a realistic understanding of the effects of resource extraction. Where expectations are unrealistically high, or where affected populations are unaware of the costs and benefits of resource projects, there is a danger that grievances and conflicts risks can arise. Furthermore, poor understanding of resource projects limits the ability of citizens and companies to work together on activities that may be mutually beneficial. Where possible, the company’s management of expectations should be aligned with government communication plans.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Revisit the answers to Q2.3.1 and Q5.1.2. If the government’s policy on management of expectations is of a high standard, does the company follow it? If the policy is not of a high standard, does the company instead take the necessary extra steps to meet a strong international standard? • Does the company clearly communicate and set reasonable expectations concerning the costs and benefits of a project? Communications should be backed up by comprehensive information disclosure. (See Q11.1.3.) • Does the company provide comprehensive and timely information when something goes wrong, such as an environmental incident, and provide regular updates on remediation measures? • Does the company ensure that announcements surrounding resource discoveries are coordinated with government communications on extractives where possible?
<p>11.1.3 Comprehensive disclosure</p> <p>Does the company proactively disclose key information?</p>	<p>Companies should proactively disclose key information about their activities to ensure that citizens have a realistic understanding of the progress and effects of resource extraction. (See annex 11 below for key information that should be disclosed.) These disclosures should be an integral part of company communications. (See Q11.1.2.)</p> <p>The transparency table in annex 11 has been designed to assist with this question. Along with completing the table, researchers should consider:</p> <ul style="list-style-type: none"> • What are the host government, home government, and listing disclosure requirements that apply to the company? Does the company meet these standards or does it work to exceed them? Q2.1.5 considers the general host country approach towards information disclosure, while Q12.1.1 considers the home government requirements for information disclosure. The annexes in the following precepts consider specific parts of the disclosure regime that could be useful to consider: precept 3 (licensing and geological information); precept 4 (taxation); precept 5 (local impacts); and precept 6 (SOE governance). • Does the company disclose on a proactive or reactive basis? Most information should be released proactively, for example, through an annual sustainability report in the local language, as well as timely news releases. Request systems can be a useful complement to the proactive release of data, but they should not be the primary method by which citizens receive information, since request processes can present barriers to access.

<p>11.1.4 Security safeguards</p> <p>Does the company ensure that security arrangements relating to resource projects do not use excessive force?</p>	<p>Companies should respect core international human rights standards in line with their “responsibility to respect” under the UN Guiding Principles on Business and Human Rights. Some resource projects have historically been associated with security responses that have violated human rights. Companies can mitigate these risks by following the Voluntary Principles on Security and Human Rights.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Revisit the answer to Q5.1.4. If the government’s policy on security safeguards is of a high standard, does the company follow it? If the policy is not of a high standard, does the company instead take the necessary extra steps to meet a strong international standard? • Does the company adhere to the Voluntary Principles on Security and Human Rights or standards/requirements similar to those set forth in the Voluntary Principles? • How are security situations handled in general? Are there trends in which security situations are handled inappropriately? How companies will respond to a security situation is usually very hard to predict until an event has actually occurred. Where there are few examples of security situations to examine surrounding a specific company or project, researchers should consider broader security considerations around resource projects to discern whether there are systemic risks to take into consideration.
<p>11.1.5 Indigenous peoples</p> <p>Does the company respect the rights of indigenous people?</p>	<p>While there is no single definition of indigenous peoples, definitions exist under the United Nations Permanent Forum on Indigenous Issues, and the International Labour Organization. International human rights law established the rights of indigenous peoples to give or withhold free, prior, and informed consent concerning projects that impact upon them. This is further elucidated in IFC Performance Standard 7 and the United Nations Declaration on the Rights of Indigenous Peoples.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Are there any indigenous peoples present in the country/project area? If so, does the company seek to obtain their free, prior and informed consent relating to resource projects? • Revisit the answer to Q5.1.5. If the government’s policy on indigenous peoples is of a high standard, does the company follow it? If the policy is not of a high standard, does the company instead take the necessary extra steps to meet a strong international standard?

11.2 | Sustainable development

Does the company work to maximize the potential benefits and minimize the social and environmental costs associated with resource extraction?

Companies should support the host state’s efforts to maximize potential benefits and minimize the costs associated with extractive activities, and supplement them when they are inadequately robust. This should include work at the national and local level to identify and respond to local priorities and concerns surrounding a particular resource project. At the same time, companies should work to minimize the environmental and social costs and negative human rights impacts associated with their activities.

Secondary question	Guidance
<p>11.2.1 Cost mitigation</p> <p>Does the company effectively mitigate the environmental, social and health impacts of resource projects?</p>	<p>Companies should employ the “mitigation hierarchy” to manage the environmental, social and health costs of their activities. The mitigation hierarchy is a schema which lists a sequence of approaches to mitigation—prevention, minimisation and compensation—in order of preference. Under this approach, solutions that prevent costs should be preferred to those that minimize them, and approaches that are so costly that they require compensation or resettlement should be avoided if at all possible.</p> <p>Companies should allow the government and civil society to hold them to account for cost mitigation strategies. To do this, they should ensure that all impact assessments, monitoring plans, disaster response plans, compensation and/or resettlement plans, and project closure plans are well-prepared, timely, and publicly available. Furthermore, companies should ensure that funds are available for these commitments throughout the life of the project, planning ahead for periods of low or no revenue.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Revisit the answers to Q5.3.1. If the government’s policy on impact mitigation is of a high standard, does the company follow it? If the policy is not of a high standard, does the company instead take the necessary extra steps to meet a strong international standard? • Are all impact assessments, monitoring plans, disaster response plans, compensation and/or resettlement plans, and project closure plans well-prepared, timely and publicly available? • Does the company allow the government and civil society to hold them to account for their impact mitigation strategies?
<p>11.2.2 Understanding priorities and concerns</p> <p>Does the company work to identify national and local development priorities and concerns, and measure its progress against them?</p>	<p>Companies should seek to understand national and local development priorities and identify win-win opportunities where project activities can be harnessed to support sustainable development at reasonable or no extra cost to the company. There are a wide range of reporting frameworks that companies can use to help them identify sustainable development opportunities including the Global Reporting Initiative, the Dow Jones Sustainability Index, FTSE4Good, and ICMM toolkits, such as the Community Development Toolkit and the Mining Partnerships for Development Toolkit. Once companies have identified relevant national and local opportunities, companies should track and publicly report their progress against them.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Does the company work with the national government to identify areas of the national development strategy it can contribute towards at reasonable or no extra cost? (See Q1.2.4 for consideration of how inclusive the national resource strategy is.) <ul style="list-style-type: none"> ◦ Does the company work to help develop human capital and build local supply chains? This might include supporting vocational training programs, building capacity of local suppliers, downstream processing or through labor market job matching. (See Q10.2 for details about government policy and practice on local content, and Q5.4.2 for local impact considerations of these issues.)

<p>11.2.2 Understanding priorities and concerns <i>(continued)</i></p>	<ul style="list-style-type: none"> ◦ Does the company attempt to create broader social benefits from infrastructure investments? Does the company ensure responsible handover of project infrastructure beyond the life cycle of the project? (See Q10.3 for details about government policy and practice on resource project related infrastructure, and Q5.4.3 for local impact considerations of these issues.) • Does the company work with affected communities to identify local priorities that it can contribute towards at little or no extra cost? Does the company carry out its identification of mutually beneficial activities in a way that ensures meaningful participation of beneficiaries? (See Q11.1.1 for more information about what meaningful participation requires.) • Does the company establish benefit sharing agreements at the national and local level that identify who the government, companies and communities can work with on win-win activities? What is government policy and practice on benefit sharing agreements in general? Does the company comply or exceed these standards? Does the company publicly support these standards? (Q5.4.1 considers government policy and practice towards benefit sharing agreements in more detail.) • Does the company track and publicly report progress against agreed win-win opportunities?
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11.3 | Corporate integrity

Does the company act with honesty and integrity?

Integrity standards are required of almost every industry. The purpose of these standards is to ensure a level of behavior consistent across the industry regardless of particular company strategies and values. Companies should work to curb corruption and meet their fiscal obligations in full, and should not seek or expect preferential treatment. Further, they should ensure that partner organizations, contractors and subcontractors work to the same high standards.

Secondary question	Guidance
<p>11.3.1 Corruption</p> <p>Does the company have clear internal policies relating to corruption?</p>	<p>Companies should act in accordance with international laws, agreements and norms, which increasingly recognize bribery of foreign government officials as a crime. Companies should have clear internal policies relating to corruption, including procedures and controls that prevent and punish corrupt practices by employees and other company agents.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Revisit the answers to Q2.2.3. If the government’s policy on corruption is of a high standard, does the company follow it? If the policy is not of a high standard, does the company instead take the necessary extra steps to meet a strong international standard? • What are the main risk areas for corruption in the sector? Given corruption risk levels, does the company have useful preventative measures in place, including whistleblower protection? Does the company have strong mechanisms to punish corrupt practices by employees and other company agents? • Does the company leadership (senior member of management or board) demonstrate support for anti-corruption? • Does the company’s code of conduct/anti-corruption policy explicitly apply to all employees and directors? • Does the company have an anti-corruption training program in place for its employees and directors, does it report on its implementation? • Does the company have a policy on gifts, hospitality and expenses? • Is there a policy that explicitly prohibits facilitation payments? • Does the company carry out regular monitoring of its anti-corruption program to review the program’s suitability, adequacy and effectiveness, and does it implement improvements as appropriate? • Does the company have a policy on political contributions that either prohibits such contributions or requires that such contributions be publicly disclosed?
<p>11.3.2 Fiscal contribution</p> <p>Does the company meet its fiscal obligations?</p>	<p>Companies should meet all tax, royalty and equity obligations agreed with the government. Payments should be made in a timely manner, and companies should provide tax authorities and government regulators with adequate information to scrutinize company payments. Companies should carefully consider their tax planning strategies to ensure that those strategies do not erode the tax base in the countries where they operate. They should not inhibit the ability of governments to tax profits where economic activities occur and where value is created. Companies should also disclose their corporate structure, including a list of all related entities and beneficial ownership information and publish an annual country-by-country report showing each tax jurisdiction in which they do business.</p>

<p>11.3.2 Fiscal contribution <i>(continued)</i></p>	<p><i>The report should include:</i></p> <ul style="list-style-type: none"> • the amount of revenue, profit before income tax and income tax paid and accrued • their total employment, capital, retained earnings and tangible assets <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Does the company meet all tax, royalty and equity obligations agreed with the government? • Are payments made in a timely manner? • Does the company disclose relevant project data required for the government to adequately scrutinize company payments? • Does the company disclose their beneficial owners and corporate structure? • Does the company publish an annual country-by-country report in line with OECD BEPS? Does this include: <ul style="list-style-type: none"> ◦ revenues/sales by country? ◦ capital expenditure by country? ◦ pre-tax income by country? ◦ income tax by country? ◦ community contribution by country?
<p>11.3.3 Exemptions</p> <p>Does the company avoid seeking exemptions from its legal and regulatory obligations?</p>	<p>Companies should actively support the principle of a level playing field backed up by the rule of law. Among other things, this enhances their competitive advantage over underqualified or unscrupulous companies that can only achieve profitability by bending the rules. Companies should not seek, expect or accept provisions for exemptions—or compensation for changes—to the statutory or regulatory framework on universally applicable issues, including human rights, environmental controls, health and safety, and labor rights. Similarly, companies should not seek tax exemptions, or preferential access to valuable assets including exploration and production rights. With respect to contractual stability, companies should not seek government assurances that go beyond non-discriminatory treatment clauses.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Does the company avoid seeking exemptions to the legal framework on universally applicable issues including human rights, environmental controls, health and safety, and labor rights? • Where contracts are available, are contracted terms in line with terms stated in law? • Are there instances (e.g., legal cases) in which the company has sought favorable treatment?
<p>11.3.4 Company subcontractors</p> <p>Does the company ensure that corporate integrity applies to partners, contractors and subcontractors?</p>	<p>Companies should require their partners, contractors and subcontractors to abide by the same standards they do.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Does the company hold its contractors and subcontractors to its own high standards by following each of the issues dealt with in Q11.1 - Q11.3? • Does the company’s anti-corruption policy explicitly apply to persons who are not employees, but are authorized to act on behalf of the company or represent it (e.g., agents, advisors, representatives or intermediaries)? • Does the company disclose all of its fully consolidated subsidiaries (including percentages owned, countries of incorporation and countries of operation)? • Does the company disclose all of its non-fully consolidated holdings (associates, joint ventures) (including percentages owned, countries of incorporation and countries of operation)?

ANNEX 11. PRECEPT 11: ROLE OF EXTRACTIVE COMPANIES

This transparency table has been designed to assist with Q11.1.3 and Q12.1. It summarizes the specific disclosures that extractive companies should be making to contribute to the general accountability environment. In contrast to the other transparency tables, disclosure items in this table should be made by extractive companies. As with the previous tables they should be made in line with the standards of open data outlined in Q2.1.4.

For each disclosure, researchers should consider the following questions:

- Is *all* latest information available? If not, what are the exceptions?
- Is *all* historical information available? If not, what are the exceptions?
- Is information provided in sufficient time to enable effective monitoring and scrutiny of activity?
- Is information available in a machine-readable format? Are there any other barriers to access to information? (See Q2.1.4 for background.)

Disclosure item	Guidance
Contracts and/or licenses signed with governments	Documents/text outlining agreements made between extractive companies and government over exploration, production and commodity sales. Publication should include any annexes, amendments, or riders to the agreements. Related standards: EITI 2016, 2.4
Names of partners, contractors and sub-contractors working on projects in country	Documents/text listing partners, contractors and subcontractors working in country. Should name specific projects and role for each company. See Q11.3.4 for background.
Names of beneficial owners including those of partners, contractors and sub-contractors	A table disclosing details about those who own extractive companies in country and those who ultimately benefit from their activities. See Q11.3.1 and Q11.3.4 for background. Related standards: EITI 2016, 2.5
Environmental impact assessments (EIAs)	Documents/text. See Q11.2 for background. Related standards: IFC Performance Standard 1.
Environmental mitigation management plans	Documents/text. See Q11.2 for background. Related standards: IFC Performance Standard 1.
Monitoring reports for environmental mitigation management plans	Documents/text. See Q11.2 for background. Related standards: IFC Performance Standard 1.
Payments to governments	A table or set of tables detailing country-by-country reporting of payments made to all governments of countries where the company works. Payment information should be disaggregated by project. It should include the amount of revenue, profit before income tax and income tax paid and accrued, their total employment, capital, retained earnings and tangible assets. Related standards: Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1504), European Accounting and Transparency Directives, and similar legislation in Canada, Norway and elsewhere.
Assets held by the company in subsidiaries and joint ventures	A table or document providing details about fully consolidated subsidiaries and non-fully consolidated holdings (associates, joint ventures). Should include percentages owned, countries of incorporation and countries of operation.
Anti-corruption policy	Document/text outlining the company anti-corruption policy.

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