

Precept 12: Role of International Community

Governments and international organizations should promote an upward harmonization of standards to support sustainable development.

–Precept 12, Natural Resource Charter

A wide range of governments and international organizations influence global policies that affect resource extraction. These bodies include: the governments and regulators of the home countries in which extractive companies are registered and/or listed; international financial institutions (IFIs) and their financing arms including the World Bank and the International Monetary Fund (IMF); regional development banks; multilateral and bilateral donors; supranational institutions including the United Nations and regional bodies such as the European Union and the African Union; governmental forums such as the G7 and G20; and financial institutions including banks and investors.

Key areas where the international community can promote higher standards include transparency (Q12.1), human rights and environmental and social protection (Q12.2), and corruption and illicit financial flows (Q12.3). Rather than assessing the international community at large, researchers should be selective. They could focus on the standards promoted by the particular home country governments of those companies that play the largest role in their extractive sector, as well as on the international organizations that have influence (e.g., the IMF, if their country has an active lending program).

PRIMARY QUESTIONS

12.1 | Transparency

Does the international community advance public disclosure requirements for the extractive industries?

12.2 | Environmental, social and health protection

Does the international community ensure that resource projects comply with internationally recognized standards of human rights, and environmental, social and health protection?

12.3 | Corruption and illicit financial flows.

Does the international community tackle corruption and illicit financial flows?

12.1 | Transparency

Does the international community advance public disclosure requirements for the extractive industries?

The international community can improve transparency by advancing the development of comprehensive disclosure standards for resource companies. A full list of documentation that resource companies should disclose is included in the precept 11 transparency table in annex 11. Particularly through the Extractive Industries Transparency Initiative (EITI), the international community has also put forward standards of transparency for host country governments.

Secondary question	Guidance
<p>12.1.1 Home government transparency requirements</p> <p>Do home governments require companies to disclose comprehensive information relating to resource projects?</p>	<p>Requirements set by the countries where companies are registered and/or listed (note that these may be different) are a powerful channel to compel corporate disclosure. Disclosure requirements can be set through securities legislation and rules associated with stock exchanges, company law and anti-corruption laws.</p> <p>When considering what kinds of transparency should be promoted, researchers should refer to the transparency table in annex 11 of precept 11.</p> <p><i>Researchers should then consider:</i></p> <ul style="list-style-type: none"> • Where are the oil or mining companies working in your country headquartered and registered? Some companies will be locally-registered subsidiaries, but information should be sought for their headquarters location. Registration details for many companies can be found at https://opencorporates.com/. What are the disclosure requirements associated with resource companies registered in this jurisdiction? • For publicly listed companies, where are they listed? Are there specific disclosure requirements associated with specific stock exchanges? Listings information is usually provided in company reports and on company websites. Are companies compliant with home government transparency requirements? • Specifically, do any of the above jurisdictions currently require disclosure of payments on a project-by-project basis? Several European Union states have begun to require such reporting; other countries, like the United States, have passed laws to that effect but have yet to implement the law. • Do the relevant home countries proactively promote and participate in the EITI? • Have the most influential international organizations in the country spoken out explicitly and taken action on the importance of extractive sector transparency?
<p>12.1.2 Lender transparency requirements</p> <p>Do lenders require companies to disclose comprehensive information about the resource projects they finance?</p>	<p>Some lenders, particularly public sector overseas lending agencies and international financial institutions, require companies to disclose specific pieces of information concerning the resource projects they finance. Lenders can also scrutinize contract agreements to ensure that confidentiality clauses are tailored to the narrow needs of resource projects. All too often egregious confidentiality agreements, which go far beyond the commercially sensitive information resource companies genuinely need to protect, are included in final agreements. These can thwart efforts to improve transparency in the long run.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Who are the main lenders financing resource projects? Do any of these lenders require the companies they finance to disclose information relating to resource projects? • Do lenders scrutinize confidentiality agreements to ensure that they do not preclude efforts to improve transparency in the long run?

12.2 | Human rights and environmental, social and health protection

Does the international community ensure that resource projects comply with internationally recognized standards of human rights, and environmental, social and health protection?

The minimum human rights standards that resource projects should comply with are those contained in the International Bill of Human Rights, the [International Labour Organization’s Fundamental Principles and Rights at Work](#), and the [UN Guiding Principles for Business and Human Rights](#). Minimum standards for environmental, social and health protection include the [Equator Principles](#), the [Safety and Health in Mines Convention](#) and the [IFC Performance Standards](#), which include important provisions to protect the rights of indigenous peoples.

Secondary question	Guidance
<p>12.2.1 Home government human rights and environmental, social and health protection</p> <p>Do home governments expect companies to respect human rights and the highest standards of environmental, social and health protection?</p>	<p>The home governments of resource companies should clearly set the expectation that all companies under their jurisdiction respect human rights and the highest standards of environmental, social and health protection. This can be achieved by carrying out enquiries in response to allegations of wrongdoing, by setting up national ombudsman offices that facilitate the reporting of violations, and by allowing prosecution of companies for abuses that are carried out abroad.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Do home countries act on findings from NGOs, the media and host governments about the behavior of companies registered or listed in their country? • Are there cases where home countries have taken punitive measures against companies that have violated human rights or environmental, social and health protection?
<p>12.2.2 Supporting host states on human rights and environmental, social and health protection</p> <p>Do donors support host states to fulfil their duty to protect human rights and environmental, social and health standards, and ensure company compliance with human rights standards?</p>	<p>Under the UN Guiding Principles for Business and Human Rights, international organizations, including donors, should support host states and companies in fulfilling their duty to protect human rights in the context of resource projects. Similar efforts should be taken to protect affected communities from negative environmental, social and health impacts.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Where assistance is required, do international organizations support host states to protect human rights and environmental, social and health concerns related to extraction? • Is this assistance well-coordinated?
<p>12.2.3 Lender human rights and environmental, social and health protection</p> <p>Do lenders require the companies they finance to respect human rights and the highest standards of environmental, social and health protection?</p>	<p>Lenders that finance resource projects should require due diligence procedures consistent with the UN Guiding Principles for Business and Human Rights to prevent human rights abuses from happening. Furthermore, they should require due diligence, as well as regular monitoring and reporting on compliance with a range of international environmental, social and health standards.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • Do lenders operate due diligence procedures that prevent human rights abuses and ensure protection of international environmental, social and health standards? • Do lenders carry out regular monitoring and reporting on compliance of the companies that they finance?

12.3 | Corruption and illicit financial flows

Does the international community tackle corruption and illicit financial flows?

The international community should actively work to reduce bribery and corruption, as well as illicit financial flows linked to resource extraction, all of which can severely erode the financial benefits of resource projects for host countries. These challenges require the collaboration of the host country, home countries, supranational bodies, IFIs and the financial community.

Secondary question	Guidance
<p>12.3.1 Corruption</p> <p>Do home governments maintain effective anti-corruption measures to reduce and prevent bribery and corruption?</p>	<p>Home governments should work to prevent corruption. This levels the playing field to ensure fair competition, gives corporate officials a protective measure when working in markets where there is a high prevalence of corruption, and can help companies detect potentially corrupt partner organizations.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • What major anti-corruption measures of the home countries apply to the resource companies operating in the country? <ul style="list-style-type: none"> ◦ Does the home country have strong anti-bribery legislation, and is it actively enforced? The OECD Anti-Bribery Convention establishes legally binding standards to criminalize bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. ◦ Does the home country require the public disclosure of the company’s beneficial owners? ◦ Does law enforcement in the home country collaborate with local authorities to pursue corruption cases? • How effectively do these home government anti-corruption measures identify and prosecute corruption? Have they led to convictions with significant penalties? • Do these mechanisms impact on company behavior?
<p>12.3.2 Illicit financial flows</p> <p>Do international organizations work to reduce illicit financial transactions?</p>	<p>International organizations, including home governments, IFIs and supranational bodies, should work to reduce illicit financial transactions and to curtail transfer-pricing abuse, use of tax havens and other tax avoidance and evasion techniques.</p> <p><i>Researchers should consider:</i></p> <ul style="list-style-type: none"> • What are the home country governments of resource companies doing to reduce illicit financial flows? Important considerations include: <ul style="list-style-type: none"> ◦ Are home country governments part of the BEPS project or implementation? BEPS, which stands for base erosion and profit shifting, is an OECD program under which over 100 countries and jurisdictions are collaborating to implement measures to combat strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. ◦ Have home country governments committed to the Standard on automatic exchange of information? Have they implemented it? ◦ Are host countries members of the Financial Action Task Force also known as FATF? Have they been the subject of a mutual evaluation mechanism? Are they one of the high-risk and non-cooperative jurisdictions? ◦ What is the host country’s score on the Financial Secrecy Index? • Do home country governments have public registers of beneficial ownership in order to deter the concealment of state assets? • How many tax treaties has the host country signed with other jurisdictions? How many tax treaties have been signed with home country governments of resource companies? How many tax treaties have been signed with low tax jurisdictions or tax havens? Are these tax treaties facilitating tax evasion and illicit financial flows?

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.

REFERENCES AND FURTHER READING:

Equator Principles. 2013. Accessed 25 April 2016. http://www.equator-principles.com/resources/equator_principles_III.pdf

Financial Action Task Force. Accessed 14 July 2016. <http://www.fatf-gafi.org/countries/#FATF>

International Finance Corporation. *IFC Performance Standards on Environmental and Social Sustainability*. 2012. Accessed on 25 April 2016. http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

International Labour Organization. *ILO's Fundamental Principles and Rights at Work*. 1998. Accessed 25 April 2016. <http://www.ilo.org/declaration/lang--en/index.htm>

International Labour Organization. *Safety and Health in Mines Convention*. 1995. Accessed 25 April 2016. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C176

Kar, Dev, and Joseph Spanjers, *Illicit Financial Flows from Developing Countries: 2004-2013*. Global Financial Integrity, 2015. Accessed on 14 July 2016. http://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update_2015-Final-1.pdf

Lagoutte, Stefanie, "The State Duty to Protect Against Business-Related Human Rights Abuses", *Matters of concern Human rights' research papers Series No. 2014/1*. 2014. Accessed 14 July 2016. http://www.humanrights.dk/files/media/dokumenter/udgivelses/research/matters_of_concern_series/matters_of_concern_state_duties.pdf

OECD, *Automatic Exchange Portal*. Accessed on 14 July 2016. <http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/>

OECD, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. 1997. Accessed on 14 July 2016. <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

OECD, *Developing Countries and BEPS*. Accessed on 14 July 2016. <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>

Tax Justice Network, *Financial Secrecy Index*. 2015. Accessed on 14 July 2016. <http://www.financialsecrecyindex.com/>

Transparency International, *Transparency in Corporate Reporting: Assessing the World's Largest Companies*. 2014. Accessed on 25 April 2016. http://www.transparency.org/whatwedo/publication/transparency_in_corporate_reporting_assessing_worlds_largest_companies_2014

World Bank, *Brief: Illicit Financial Flows (IFFs)*. 2016. Accessed on 14 July 2016. <http://www.worldbank.org/en/topic/financialmarketintegrity/brief/illicit-financial-flows-iffs>

United Nations Economic Commission for Africa, *High Level Panel on Illicit Financial Flows*. Accessed on 14 July 2016. <http://www.uneca.org/iff>

United Nations. *UN Guiding Principles for Business and Human Rights*. 2011. Accessed on 25 April 2016. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

ACKNOWLEDGEMENTS

Written by Rob Pitman and David Manley. They wish to thank Joseph Bell, Alexandra Gillies, Rebecca Iwerks and Joseph Williams for their substantive edits.

Edition: 2016

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