English version

Responsible Extractives Trading

Draft Methodology For Public Consultation

June 2020

Deadline for comments: 17 July 2020

Acknowledgements

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The content of this document does not necessarily reflect the opinions or positions of these organisations.

The Responsible Mining Foundation

The Responsible Mining Foundation (RMF) is an independent research organisation that encourages continuous improvement in the management of economic, environmental, social and governance (EESG) issues by companies along the extractive supply chain. The Foundation develops research tools and frameworks, shares public-interest data as a free public good, and supports informed and constructive engagement between stakeholders across the extractive supply chain. The Foundation supports the principle that responsible production, extraction and trading should benefit the economies, improve the lives of peoples and respect the environments of producing countries. The Foundation's work and research reflect what society at large can reasonably expect from companies on EESG matters. As an independent foundation, RMF does not accept funding or other contributions from extractive or trading companies.

www.responsibleminingfoundation.org

Contents

Abbreviations and acronyms

EITI	Extractive Industries Transparency Initiative
OECD	Organisation for Economic Co-operation and Development
RET	Responsible Extractives Trading
RMF	Responsible Mining Foundation
SOE	State-owned enterprise
UNGPs	United Nations Guiding Principles on Business and Human Right

1. Introduction

Background to the Responsible Extractives Trading study

The extractives trading sector presents important risks of corruption and financial misconduct, particularly in light of the high economic stakes and opacity of transactions, the complex business structures and sometimes convoluted trading relationships.[1] Further, companies that trade extractive commodities are exposed to risks of human rights abuses through their supply chains, specifically when associated with extraction, trading, handling and export of minerals from conflict-affected and high-risk areas.[2] In some cases, companies may neglect responsible standards of business conduct in order to gain undue competitive advantage, particularly in environments of limited governance and regulatory oversight.

With the growing awareness of the importance of responsible supply chains, there is a growing recognition among governments, customers and consumers of the need for more transparency and traceability in this sector with respect to extractives trading.

Although some guidance applicable to trading companies has been emerging of late, (for example OECD, EITI and Swiss guidance on human rights due diligence) there is no formal measurement tool to assess the policies and practices of companies that trade extractive commodities, on issues such as human rights due diligence, business integrity and financial integrity.[3]

Objectives of the study

Against this background, the Responsible Mining Foundation is undertaking a Responsible Extractives Trading study with the aim to:

- Support awareness raising on responsible extractives supply chains;
- Support capacity building for companies, regulators and others;
- Expand the effectiveness of existing international guidance on responsible supply chains; and
- Increase understanding of how to support supply chain and downstream customers.

The study sets out to achieve these aims through:

- Development of a simple, evidence-based measurement tool for the purpose of assessing, at corporate-level and on the basis of publicly available information, policies and practices of companies that trade in extractives, with regards to human rights due diligence, business integrity and financial integrity; and
- Piloting the measurement tool by applying it to a selected portfolio of geographically dispersed companies.

Timeframe of the study

Following this public comment period, RMF will finalise the methodology of the study and commence initial public domain data-gathering of evidence related to the indicators and metric questions. Subsequently, there will be a company review and reporting period, followed by final analysis and scoring. The results of the study will be published along with the source documents and scoring framework, in early 2021.

Public comment process

This Draft Methodology of the Responsible Extractives Trading study is now published in five languages for a four-week period of public comment. The comments and recommendations received will be reviewed and carefully considered in the finalisation of the methodology. The outcome of this public consultation will be made public in due course through the RMF website: www.responsibleminingfoundation.org.

Summary versions of this report are available in French, Spanish, Russian and Chinese on the RMF website: https://www.responsibleminingfoundation.org/ret/

Please send your comments and recommendations to:
consultations@responsibleminingfoundation.org

by Friday 17 July 2020, together with the name of the individual or organisation/company, and contact information in the event of further clarification.

2. Framework of the Methodology

General methodological principles

An evidence-based measurement tool

The Responsible Extractives Trading (RET) study is an evidence-based assessment, meaning that responses to metric questions need to be backed up by documentary evidence. Evidence is primarily sourced from existing public domain sources, including, among others: company annual reports, sustainability reports, other information and data disclosed on company websites or reporting initiatives, as well as information on government and regulator websites. Companies will be invited to review the information sourced and, if they wish to do so, provide additional responses, which will need to be accompanied by evidence in order to be eligible for consideration in the assessment. Companies will be given general guidance on the kinds of evidence that would be relevant to the different sections of the study.

Operationalisation of the Open Data Principles

Open data is data that is provided in a format that makes it accessible, understandable and useful for others.[4] The study seeks to support operationalisation of the Open Data Principles by including some metric questions aligned with these principles. Within those indicators assessing the extent to which companies publicly disclose information, some metric questions address the quality of such disclosures, such as:

- Disaggregated data (not just data that is aggregated to the corporate or country level);
- Timely data (up-to-date);
- Data with context (to show sufficient detail to give meaning to the data);
- Time-series data (data over successive years that enables comparisons over time);
- Comparable data (on a common basis that allows comparison across companies); and
- Accessible data (e.g. available freely on a company website).

Further, the presentation and dissemination of the assessment results will be designed to support the Open Data Principles. Thus, for example:

- The assessment results, the evidence and the raw data behind them, the kinds of evidence and the scoring framework will be made available as free public goods.
- The RET report will be published in five languages (Chinese, English, French, Russian and Spanish).
- Public events will be held to disseminate the results and discuss the findings with different stakeholder groups.

For transparency purposes all information collected in the public domain and information provided to RMF by companies is considered as open data. For this reason, RMF does not sign non-disclosure agreements with companies. Companies will be required to confirm they read the following reminder each time they enter the company review and reporting platform: "For transparency purposes all information provided on the Platform is considered open data, and may be made public by RMF at the time of the report or at a later date. This includes responses to questions entered on the Platform, supporting documents uploaded, links provided to digital information, and any additional information or comments provided."

RMF recognises that in certain cases companies may have information they consider to be confidential which may nonetheless be useful information for the assessment process. In these cases, it will be the consideration of the company whether to share the information and hence effectively put it in the public domain. Where necessary, RMF will accept redacted documents as evidence so companies can show only the information relevant to a given metric question.

Analytical framework

The methodology is built around the following structure:

- **Thematic Areas**: The assessment covers three broad thematic areas, which provide the overarching structure for the content scope.
- **Topics**: Each thematic area includes several topics that are considered priority areas of focus for the study.
- **Measurement Areas**: Company efforts on each thematic area are examined through three measurement areas: commitment, action, and tracking and reporting. Each indicator is assigned to one of these measurement areas.
- **Indicators**: Each topic has one or more indicators – affirmative statements on company policies or practices. Each indicator will be assessed via three metric questions.

The thematic areas and topics are listed in Table 1. Narrative descriptions outlining the relevance of each thematic area and topic, along with the full list of indicators and associated measurement areas, are provided in Chapter 3. The metric questions, currently being tested, will be published in the final Methodology report.

A full scoring framework will be developed for the study and will be published together with the results of the assessment.

Measurement Areas

The study assesses company policies and practices using three different types of indicator (i.e. three Measurement Areas):

- **Commitment** indicators assess the extent to which companies have established formal commitments to guide their actions and their expectations of supply chain partners.
- **Action** indicators assess the extent to which companies have put in place responsible and transparent practices, including measures to identify, assess and manage the risks of human rights abuses and illicit financial flows in their supply chains.
- **Tracking and reporting** indicators assess the extent to which companies are tracking and reporting on their performance on managing human rights due diligence, business integrity and financial integrity issues.

Table 1. Thematic areas and topics of the study

A	Human Rights Due Diligence
A.1	Human rights policy commitment
A.2	Human rights risk identification
A.3	Human rights risk assessment, prevention and mitigation
A.4	Tracking performance on managing human rights issues
A.5	Remediation of human rights abuses
B	**Business Integrity**
B.1	Anti-Bribery and corruption
B.2	Board and senior management accountability
B.3	Lobbying practices
B.4	Transparency on corporate governance, ownership and activities
C	**Financial Integrity**
C.1	Tax planning and tax transparency
C.2	Payments to governments, SOEs and transparency in the 1st trade
C.3	Contracts disclosure
C.4	Due diligence on risks of illicit financial flows

3. Thematic areas, topics and indicators

A. Human Rights Due Diligence

It is now widely recognised that all businesses have a responsibility to respect human rights. The UN Guiding Principles on Business and Human Rights (UNGPs) is the authoritative global norm on business and human rights, providing companies with a framework for carrying out due diligence to manage their human rights risks and impacts for both individuals and communities.[5] The UNGPs recommend that companies assess the risks of adverse human rights impacts stemming from their own operations, products or services or from their business relationships with parties to ensure that they avoid infringing on the human rights of others and address negative impacts with which they are involved. Switzerland as an acknowledged commodity trading hub has published a 'Guidance on Implementing the UN Guiding Principles on Business and Human Rights' for the commodity trading sector, which is strongly aligned with a range of OECD standards on Responsible Business Conduct and Responsible Supply Chains.[6] According to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, companies' (including trading companies') human rights due diligence should primarily focus on human rights that are the most at risk from violations such as i) torture, cruel, inhuman and degrading treatment, ii) any forms of forced or compulsory labour, iii) the worst form of child labour, iv) sexual violence, v) war crimes and violations of international humanitarian law, crimes against humanity or genocide, and vi) the direct or indirect support to non-state armed groups or public or private security forces.[7] Extractives trading companies are exposed to such risks through their supply chains, specifically when associated with extraction, trading, handling and export of minerals from high-risk areas of origin and transit. Implementing respect for human rights across a company's activities and business relationships and embedding the UNGPs into company operations requires ongoing commitment, resources and engagement, including with external stakeholders. Companies that undertake comprehensive human rights due diligence can experience financial and reputational benefits, and are more likely to contribute positively to responsible sourcing. Moreover preventing, mitigating and remediating infringements on human rights by reinforcing safe and secure work environments; enhancing the health and wellbeing of communities; and strengthening government institutions and accountability will help build trustful relationships with stakeholders and financial partners.

A.1	**Human rights policy commitment** Extractives trading companies run the risk of contributing directly or indirectly to human rights abuses through their business activities and relationships. A sound due diligence process needs to be backed up by a public policy commitment that is in line with the UN Guiding Principles on Business and Human Rights and that is communicated to all relevant parties. For such a commitment to be meaningful it should be endorsed by senior management and should outline the systems and processes to identify, assess and address human rights risks. Furthermore, companies would need to assign authority and responsibility to staff with the necessary competence to oversee implementation of such a policy commitment and would need to define expectations for how their employees should put the policy into action.	
Commitment	A.1.1	The company commits to respect human rights, in line with the UN Guiding Principles on Business and Human Rights.

A.2		**Human rights risk identification** The mapping of business relationships and the identification of human rights risks are the first steps in conducting due diligence on actual or potential adverse impacts on human rights. Risk identification needs to be an ongoing process, given the dynamics of human rights situations, and needs to cover the full range of company activities. A key part of risk identification is the identification of any high-risk points along the supply chain. Companies can be expected to publicly disclose the outcomes of its country-level mapping of sourcing, transit and trading relationships and the basis on which they identify high-risk countries in their supply chain.
Action	A.2.1	The company publicly discloses the countries from where it sources or through which it transports or trades mineral resources.
Action	A.2.2	The company has a system in place to identify any producing or transit country in its supply chain that should be considered as high-risk.
A.3		**Human rights risk assessment, prevention and mitigation** Following the identification of human rights risks, the subsequent steps in human rights due diligence entail the assessment of these risks and risk management processes to prevent and mitigate such risks. As with risk identification, risk assessment and risk management should cover not only risks related to the company's own activities but also those related to the company's business relationships. An initial step for extractives trading companies is to set out clear expectations for its suppliers regarding the prevention of human rights abuses (including those related to the use of security forces, in line with the Voluntary Principles on Security and Human Rights). Assessment of supplier compliance with these expectations should then identify any high-risk suppliers and enable extractives trading companies to determine the appropriate actions to take with their supply chain counterparties. Where there is a supply chain risk of causing an adverse human rights impact, the UN Guiding Principles on Business and Human Rights (UNGPs) encourage companies to exert leverage on suppliers. Depending on the severity of the risk, companies may opt to: i) continue activities while conducting mitigation efforts; ii) suspend activities while conducting mitigation efforts; or iii) disengage where mitigation is not possible. The UNGPs emphasise the need for meaningful consultation with potentially affected groups and other relevant stakeholders in the assessment and management of human rights risks. While extractives trading companies often have no direct connections with affected stakeholders, they should use their leverage with their suppliers to ensure that these groups have been adequately consulted and engaged with by the producers involved. Adopting rigorous risk assessment and management processes will allow extractives trading companies to demonstrate their continuous efforts to effectively address real and potential risks.
Action	A.3.1	The company sets expectations for its suppliers regarding prevention of their involvement in human rights abuses.

Action	A.3.2	The company has systems in place to identify and assess the risks of human rights abuses in its supply chain.
Action	A.3.3	The company has a system in place to prevent and mitigate human rights abuses in its supply chain.
A.4		**Tracking performance on managing human rights issues** Tracking and reporting on human rights issues improves transparency with stakeholders and limits risk for the company. As part of tracking performance on human rights, extractives trading companies can publicly report and disclose how management systems have served to identify, assess, and mitigate human rights risks in the supply chain, particularly in high-risk areas. Companies are encouraged to track performance on an annual basis, incorporating the feedback of affected stakeholders. Tracking performance is not only an opportunity for extractives trading companies to demonstrate the effective management of human rights risks and greater transparency and accountability, but also provides a basis for continuous learning and improvement.
Tracking and Reporting	A.4.1	The company tracks its performance on supply chain human rights' risk assessment and mitigation.
A.5		**Remediation of human rights abuses** Remediation of impacts on human rights requires a credible process for the management of any human rights impacts that were not able to be avoided. Companies can establish an operational-level grievance mechanism in order to remediate impacts they have caused or contributed to through their own activities or business relationships. The UN Guiding Principles on Business and Human Rights provides eight criteria for a grievance mechanism to ensure effective remediation: they should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement with affected stakeholders. Accessibility and predictability of the grievance mechanism can be strengthened by ensuring that employees and external stakeholders are aware of the procedures by which the grievance mechanism can be used and the way in which complaints will be handled. Establishing a grievance mechanism allows extractives trading companies to show active engagement with stakeholder to remediate human rights abuses in the supply chain and constitutes a source of potential feedback to track due diligence performance and effectiveness.
Action	A.5.1	The company has a grievance mechanism in place to enable individuals or groups to raise concerns and seek remedy for negative human rights impacts associated with its activities.
Tracking and Reporting	A.5.2	The company tracks and reports on the functioning and uptake of its grievance mechanism.

B. Business Integrity

Business integrity is an essential part of an open and healthy business environment. Extractives trading often ranges across multiple national borders, involving complex business structures and sometimes convoluted transactions. Given the high economic stakes and opacity of extractives trading transactions, corruption remains a prevalent problem in the sector,[8] and in some cases, companies may neglect responsible standards of business conduct in order to gain undue competitive advantage, particularly in environments of limited governance and regulatory oversight. Transparent and responsible business practices address such societal concerns, create a level playing field, and enable companies to participate in the promotion of sustainable development and good governance. This entails for example ensuring the prevention of bribery and corruption, instituting accountability at the board and senior management levels, and being open and transparent about lobbying practices. The OECD has developed well recognised guidelines on Responsible Business Conduct, in particular the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the OECD Due Diligence Guidance for Responsible Business Conduct, and the OECD Guidelines for Multinational Enterprises.[9] The starting point for demonstrating business integrity is a formal policy commitment in line with OECD due diligence guidance and an effective system to prevent all direct and indirect forms of bribery and corruption, including through intermediaries. Regular continuous training is essential for such a system to be effective, and the expectations towards employees and business partners need to be clearly defined. By developing and implementing systems of control and transparency, companies can demonstrate their commitment to business integrity, reduce their reputational risks and foster increased trust in the extractives trading sector.

B.1		**Anti-bribery and corruption** An integral part of a trading company's approach to responsible business conduct is a robust system to prevent direct and indirect forms of bribery and corruption. Corrupt business transactions in the form of bribery and kickbacks, nepotism, money laundering, misappropriation of funds and embezzlement, collusion and abuse of power undermine good governance, impact national economic development, and distort international competitive conditions. The trading sector is one of the highest risk sectors for corruption especially in weak regulatory environments.[10] The risk of bribery and corruption can be prevented or greatly reduced through implementation of robust and transparent anti-corruption due diligence and compliance programmes. Anti-corruption due diligence helps companies fight corruption within their own businesses, and reduce the potential of being associated with corruption through the actions of third parties such as agents, consultants, or suppliers. Reduced levels of corruption in a society will lead to a more predictable and stable trading environment for companies and a more level playing field among business actors, and will help producing countries maximise the benefits from their natural resources.
Commitment	B.1.1	The company commits to prevent all forms of bribery and corruption.
Action	B.1.2	The company has systems in place to operationalise its commitment to prevent and address all forms of bribery and corruption.

Action	B.1.3	The company has a compliance officer/function with a formal mandate to address anti-bribery and corruption.
Tracking and Reporting	B.1.4	The company tracks and reports annually on its performance on anti-bribery and corruption.
B.2	**Board and senior management accountability** Many companies adopt policies that demonstrate a commitment to responsible business conduct on economic, environmental, social (including human rights) and governance issues. However, corporate policies alone do not translate into long-term positive changes or a sustained shift in corporate culture and values toward more responsible behaviour. Successful implementation of policies typically requires leadership and accountability (including but not limited to consequences regarding financial remuneration) from the board and senior managers (as well as other dedicated employees) to ensure that strategic decisions are applied throughout an extractive trading company's operations. Achievement of corporate goals on responsible business conduct on EESG issues can better be realised when businesses adopt internal accountability and incentive mechanisms for performance (such as integration of EESG criteria into compensation), which can be applied to corporate-level decision-makers as well as operational managers and employees. Such actions can help to improve performance and attitudes about the relevance of the EESG commitments, and help embed them into the company's culture and values.	
Action	B.2.1	The company has systems in place to hold individual board directors and senior managers accountable for responsible business conduct on ESG issues, including anti-bribery and corruption.
B.3	**Lobbying practices** Lobbying is a legitimate activity and an important part of the democratic process. Lobbying, however, is often highly unregulated, creating the potential for powerful interests to exert undue influence through corrupt or otherwise questionable practices. A lack of transparency and accountability around lobbying could create suspicion that extractives trading companies, either independently or through third-party lobbyists, are advocating for rules that are not in society's best interest. By taking proactive steps to be transparent about their lobbying practices, extractives trading companies can support transparency around resource governance, inform multi-stakeholder discourse on policy decisions and limit the risks of bribery and corruption.	
Action	B.3.1	The company publicly discloses its lobbying practices.

B.4	**Disclosure of corporate governance, ownership and activities** The complex and opaque ownership and governance structures of extractive trading companies can contribute to lack of accountability and risks of corruption and illicit financial flows within the sector.[11] Companies can be expected to publicly disclose information about the structure, governance and size of their businesses. Disclosure of basic, non-sensitive information on these issues will go some way towards providing a bottom-line level of transparency and shedding light on the firms and individuals involved.	
Action	B.4.1	The company discloses information on its corporate governance and ownership.
Action	B.4.2	The company discloses information on its corporate structure and jurisdictions.
Action	B.4.3	The company discloses basic information about the scale of its business.

C. Financial Integrity

Financial integrity is critical to maintaining respectful business relationships, ensuring stable trading environments, and limiting risk to the business and the economies of producing countries. Financial integrity is a particular priority for the extractives trading sector, given the high risk of illicit financial flows, the lack of financial transparency and the use of aggressive tax avoidance strategies.[12] In some cases companies are able to avoid paying taxes through questionable but nominally legal tactics, such as transfer pricing manipulation (by shifting profits to subsidiaries in low-tax or secrecy jurisdictions), trade mispricing (by under-declaring the value of products being exported) or through the use of complex ownership structures. Tax evasion may also occur through the inappropriate use of Special Purpose Vehicles. International initiatives, including the Extractive Industries Transparency Initiative (EITI) are driving stronger disclosure and accountability in the extractives sector. Key elements of financial integrity include transparency of payments to governments, tax transparency and responsible tax planning, contract transparency, disclosure of beneficial ownership, and due diligence on illicit financial flows including on the supply chains, business partners and entities to whom extractives trading companies provide finance. For example, contract disclosure is recognised as necessary to enable the responsible management and good governance of natural resources, while access to disaggregated revenue data allows for monitoring of compliance with contract obligations and supports stakeholders to hold their governments accountable if revenues are not being appropriately allocated. Stronger transparency on financial transactions, including the first sales of commodities by states (or state-owned enterprises) to extractive trading companies, can enhance good governance by removing conditions that enable corruption and misuse of revenues and creates a more stable economic environment for companies to operate in. Better management of mineral revenues, in turn, increases the potential to reduce poverty and foster sustainable economies in resource-rich countries.

C.1		**Tax planning and tax transparency** In certain cases, an extractives trading company can avoid paying taxes by employing tactics such as aggressive transfer pricing (e.g. by shifting profits to subsidiaries in low-tax jurisdictions, rather than following the arm's length principle for transactions between different entities of the company), trade mispricing (e.g. by under-declaring the value of products being exported and circumventing currency controls) or through the use of complex ownership structures. Responsible tax-related policy commitments, and proactive disclosure of taxes, tax strategies and practices, are critical to building and maintaining credibility and long-term relationships with producing countries and to fostering a level playing field.
Commitment	C.1.1	The company commits to avoid aggressive tax planning.
Action	C.1.2	The company discloses its tax transparency approach.
Action	C.1.3	The company discloses the taxes it pays.

<table>
<tr><td>C.2</td><td colspan="2">Commercial payments to governments, SOEs and transparency in the 1st trade

In addition to their payment of taxes, royalties, fees and other financial obligations to governments, commercial payments by extractives trading companies in ‘first trades’ with states or state-owned enterprises can be a significant source of revenue for producing countries’ economic growth and social development.[13] Payments transparency by extractives trading companies helps citizens of these countries to know if companies and governments are meeting their obligations, and can enhance good governance by removing conditions that enable corruption and misuse of national revenues. Transparency of other commercial transactions, such as swap agreements or resource-backed loans, is important for the same reasons.[14] Public disclosure of the terms of any transactions would more fully inform citizens about the governance of their countries’ extractive resources. Although some producing countries have implemented the EITI Standard governing the disclosure of commercial payments to, and agreements with, governments and SOEs, such disclosure is recommended as a good governance practice in all national jurisdictions.</td></tr>
<tr><td>Commitment</td><td>C.2.1</td><td>The company commits to disclose its payments to governments and SOEs.</td></tr>
<tr><td>Action</td><td>C.2.2</td><td>The company discloses all commercial monetary payments made to governments and SOEs in the 1st trades from EITI countries.</td></tr>
<tr><td>Action</td><td>C.2.3</td><td>The company discloses all commercial monetary payments to governments and SOEs in the 1st trades from non-EITI countries.</td></tr>
<tr><td>Action</td><td>C.2.4</td><td>The company discloses all swap and resource-backed loan agreements currently in place with governments and SOEs in EITI countries.</td></tr>
<tr><td>Action</td><td>C.2.5</td><td>The company discloses all swap and resource-backed loan agreements currently in place with governments and SOEs in non-EITI countries.</td></tr>
<tr><td>C.3</td><td colspan="2">Contract disclosure

Undisclosed contracts provide the opportunity for corruption and lack of oversight can lead to improper allocation of resources. Contract disclosure levels the playing field for companies and enables civil society to play a greater role in the debate over how developing countries manage their non-renewable resources to benefit their economies and improve the lives of peoples. Disclosure of contracts also gives government officials more incentive to negotiate contracts that ensure their countries receive an equitable share of the benefits from mineral development and trading.</td></tr>
<tr><td>Commitment</td><td>C.3.1</td><td>The company commits to disclose the contracts it has with SOEs and governments relating to the purchase of extractive commodities.</td></tr>
</table>

Action	C.3.2	The company publicly discloses the contracts it has with SOEs and governments relating to the purchase of extractive commodities.
C.4	**Due diligence on risks of illicit financial flows** Illicit financial flows (IFFs) are generated by practices aimed at transferring illegally acquired funds and resources out of a country in contravention of national or international laws. Money laundering, tax evasion, bribery and trade mispricing make up the bulk of IFFs but non-monetised flows (e.g. commodity smuggling) are also major sources. IFFs drive corruption and deprive both countries of tax revenue, reducing funding for public resources. In order to avoid any involvement in IFFs, extractives trading companies need to conduct due diligence on their supply chains and business partners (i.e. entities directly linked to the companies' operations, products or services) to ensure their activities meet international standards of probity. Publicly reporting on the implementation of these control systems provides transparency and accountability and enables companies to demonstrate their commitment to financial integrity.	
Action	C.4.1	The company sets expectations and requirements for its suppliers regarding preventing and addressing their involvement in illicit financial flows.
Action	C.4.2	The company assesses its suppliers' compliance on preventing and addressing their involvement in illicit financial flows and acts on the results of its assessments.
Action	C.4.3	The company reports annually on its performance in preventing and addressing illicit financial flows and illicit activities in its supply chain.

4. Scope of the study

Selection of companies to include in the study

The study will cover a limited number of companies that trade extractive commodities, and selection of these companies will take into account the following parameters:

- Inclusion of companies that trade hard commodities (i.e. minerals, metals, oil and gas) and excluding those trading primarily soft commodities (such as agricultural products and timber);
- Focus on companies that trade material from third-party suppliers (whether or not they also trade material they produce/extract themselves) and excluding those that trade only commodities from their own production/extraction;
- Broad geographic spread of countries of registration.

Scope of company responsibility and activities

The study will assess only those activities over which companies have a degree of control and issues which can reasonably be considered the responsibility of the companies. The study focuses on:

- Corporate-level statements of policy commitment;
- Corporate-level systems put in place by a company to ensure it:
    - Identifies and assesses actual and potential impacts along its supply chain;
    - implements actions to prevent, minimise and mitigate potential negative impacts along its supply chain.
- Corporate-level disclosure of data related to corporate structure and governance, business integrity, and the management of due diligence processes;
- Company-wide efforts to track and report on its performance on supply chain due diligence and related management of human rights, business integrity and financial integrity issues.

The assessment will consider relevant information relating to companies' trading activities within an approximately two-to-three-year period.

Boundaries of the study

The following constitute the boundaries of what the study aims to achieve and the main limitations of this initial study.

Focus on trading, not extraction

While some of the companies to be assessed are involved in the production or extraction of raw material as well as the trading of these commodities, the assessment will look solely at policies and practices relating to their trading activities. Issues such as human rights at production/extraction sites (whether owned by the companies themselves or by third parties) will be dealt with indirectly, by assessing their supply chain due diligence.

Assessment of due diligence, not direct impacts

The companies to be assessed are involved to different degrees in trading-related activities. Some, for example, operate their own shipping transportation while others do not. To enable a fair and comparable assessment, the study will focus largely on due diligence measures and will not include consideration of any direct impacts of the companies' activities (such as working conditions aboard ships).

Assessment of policies and practices

Given the need to limit the size of the study questionnaire (to ensure a robust and realistic methodology for this pilot study), the assessment of company policies and systems focuses largely on the existence and disclosure of such measures. Only in some cases does the study assess the scope or operationalisation of these measures. The intention is to provide basic information that will enable others to judge the adequacy of these measures.

Company systems will take different forms, depending on the size and geographic footprint of the company, and the commodities traded. Indicators have been selected to be broadly applicable in all cases and the assessment will not attempt to define what would constitute an 'effective' or 'meaningful' system. Nonetheless, the study will consider the extent to which company systems are formalised for consistent application.

Coverage of intra-company and cross-border transactions

The transaction pathways involved in extractive commodity trading are often convoluted and cross-border, while transactions with a corporate group are also common. Due to the limited size of the study and the aim to make it broadly accessible, the assessment does not cover the more technical aspects related to issues such as transfer pricing and base erosion and profit shifting.

Sources of information

The study will be based on publicly available information from a wide range of sources, supplemented by any additional relevant information that companies provide to the assessment. This implies a potential limitation on the availability and reliability of information used to produce company scores. To mitigate these risks, the study will involve a process of triangulation to help ensure accurate and reliable results. This includes the following measures:

- Requirement for evidence-based results: each score must be backed up by documentary evidence;
- Stipulation that any information that companies provide to the assessment will be considered to be in the public domain;
- Coverage of multiple languages in the public domain data search; and
- Identification and consultation of non-company sources of information, wherever possible.

5. Data collection and analysis process

The data collection and analysis process for the assessment will include:

Public domain data search: RMF analysts undertake a search of public domain data sources on the companies included in the assessment and pre-populate the online questionnaire with data relating directly to the metric questions.

Company review and reporting: The pre-populated questionnaire is shared individually with companies via a secure online platform, which includes: all indicators and metric questions, guidelines on the kinds of evidence that would be considered relevant for each indicator, and pre-filled fields showing all public domain data that has been collected on each indicator, the sources used and the preliminary assessment based on evidence available. Companies are invited to respond within a designated time frame.

Review and finalisation of data: RMF analysts review the responses of companies and, where necessary, contact companies directly for clarification or additional information.

Assessment and scoring: On the basis of all data collected from company reporting and/or public domain search, RMF analysts assess performances and assign scores for each metric question and indicator according to a detailed scoring framework.

Publication of the results: Publication of the study report will include the main findings, the full results on each company, and the raw data behind the results.

6. Glossary

This glossary provides definitions, generally accepted or as used for the purpose of this study, for the main terms related to the methodology.

Adverse human rights impact: "An adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.[15]

Arm's length principle: "The international standard which states that, where conditions between related enterprises are different from those between independent enterprises, profits which have accrued by reason of those conditions may be included in the profits of that enterprise and taxed accordingly."[16]

Beneficial ownership: "A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity."[17] A beneficial owner can own or control a company through, for example shares, voting rights, other decision/veto rights, right to profit, contractual associations, joint ownership arrangements or other means.

Bribery: "The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of money, gifts, loans, fees, rewards or other advantages (taxes, services, donations, favours etc.)."[18]

Business relationships: "Those relationships a business enterprise has with business partners, entities in its value chain and any other non-State or State entity directly linked to its business operations, products or services. They include indirect business relationships in its value chain […] and minority as well as majority shareholding positions in joint ventures."[19]

Conflict affected and high-risk areas: "Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. […] High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law."[20]

Corruption: The abuse of entrusted power for private gain. Corruption can take many forms, and can include behaviours like: public servants demanding or taking money or favours in exchange for services, politicians misusing public money or granting public jobs or contracts to their sponsors, friends and families, corporations bribing officials to get lucrative deals.[21]

Disclosure: "Public disclosure refers to the act of making information or data readily accessible and available to all interested individuals and institutions. Some examples of the different forms that public disclosure may take include: verbal or written statements released to a public forum, to the news media, or to the general public; publication in an official bulletin, gazette, report, or stand-alone document; and information posted on a website."[22]

Due diligence : In the context of human rights due diligence, RMF uses the term in line with the *UN Guiding Principles on Business and Human Rights*, which defines it as: "An ongoing risk management process … in order to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed."[23] In the context of illicit financial flows, the term is used in a similar way.

Engagement: "Stakeholder engagement or consultation refers here to an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches. "[24]

Leverage: "Leverage is an advantage that gives power to influence. In the context of the *UN Guiding Principles on Business and Human Rights*, it refers to the ability of a company to effect change in the wrongful practice of another party that is causing or contributing to a negative human rights impact."[25]

First trade: "First trade describes a situation where a state (or a state-owned enterprise) sells its share of physical resources from its oil, gas and mining sector, usually to commodity trading companies but also to large integrated companies. The terms of this transaction are a matter of public interest and help to create a transparent and open market in which governments, companies and citizens can have confidence. For many countries, this type of transaction represents a significant part of a government's share of revenues from the extractive sector and commodity traders are a major source of income."[26].

Grievance mechanism: A formal process through which people and groups can raise grievances about a project, and organisation or its workers (including its contractors or employees) and receive remedy. Remedy can include "apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well the prevention of harm through, for example, injunctions or guarantees of non-repetition".[27]

Human rights: Human rights are universal and inalienable rights inherent to all human beings, to which all people are entitled without discrimination. They may be civil, political, cultural, economic or social, and may apply to individuals or to groups.[28] States serve as the primary duty bearers for international human rights law, being obliged to respect, protect and fulfil human rights, but the obligation to respect human rights also falls on companies.[29]

Human rights risks: "A business enterprise's human rights risks are any risks that its operations may lead to one or more adverse human rights impacts. They therefore relate to its potential human rights impact. […]. Importantly, an enterprise's human rights risks are the risks that its operations pose to human rights. This is separate from any risks that involvement in human rights impact may pose to the enterprise, although the two are increasingly related."[30]

Illicit financial flows (IFFs): “Generally refers to cross-border movement of capital associated with illegal activity or more explicitly, money that is illegally earned, transferred or used that crosses borders. This falls into three main areas: The acts themselves are illegal (e.g., corruption, tax evasion); or the funds are the results of illegal acts (e.g., smuggling and trafficking in minerals, wildlife, drugs, and people); or the funds are used for illegal purposes (e.g., financing of organized crime).”[31]

Lobbying: Efforts to influence public policy, decision-making or related measures through representations to public officeholders.

Mitigation: “The mitigation of adverse human rights impact refers to actions taken to reduce its extent, with any residual impact then requiring remediation. The mitigation of human rights risks refers to actions taken to reduce the likelihood of a certain adverse impact occurring.“[32]

Money laundering: ”Money laundering is the processing of […] criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source.”[33]

Non-monetary payments: “Payments made to a government in the form of goods instead of cash. In extractives, it is a payment using the commodity itself as currency in lieu of a share of financial revenues.”[34]

Payments to governments: Commercial payments to governments in ‘first trades’ where states or state-owned enterprises sell commodities to companies.

Producing country: The country in which primary extractive activities occur and, in some cases, further processing of the extracted commodities.

Prevention: “The prevention of adverse human rights impact refers to actions taken to ensure such impact does not occur.”[35]

Remediation/remedy: “Remediation and remedy refer to both the *processes* of providing remedy for an adverse human rights impact and the substantive *outcomes* that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition”.[36]

Resource-backed loans: “All loans provided to a government or a state-owned company, in which the repayment is made in the form of natural resources. In these loans, natural resources can serve as payment in kind, the source of an income revenue stream used to make repayments or as an asset that serves as collateral.”[37].

Respect (for human rights): The responsibility of a company to avoid infringement of human rights and to address adverse impacts with which it is directly or indirectly involved.[38]

Special purpose vehicles (SPV): "A Special Purpose Vehicle (SPV) is a separate legal entity created by an organization. The SPV is a distinct company with its own assets and liabilities, as well as its own legal status. Usually, they are created for a specific objective, often which is to isolate financial risk."[39].

Suppliers: Actors located in different stages of the supply chain that provide services, products, or goods – including commodities – to one or several customers according to their expectations.

Supply chain: The supply chain of a company trading extractive commodities encompasses the upstream linkages with its suppliers.

Tax evasion: "[…] generally used to mean illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities."[40]
Tax transparency:. Refers to how an organisation clarifies the taxation of its profits and the amount of taxes it pays.

Trade mispricing: Intentionally misstate the value, quantity or composition of goods.[41]

Transfer pricing: "A transfer price is the price charged by a company for goods, services or intangible property to a subsidiary or other related company. Abusive transfer pricing occurs when income and expenses are improperly allocated for the purpose of reducing taxable income."[42].

References

Carbonnier, G. and Zweynert de Cadena, A. (2015*). Commodity Trading and Illicit Financial Flows.* International Development Policy, Policy Briefs, Working Papers. Graduate Institute of Geneva.
http://journals.openedition.org/poldev/2054

Corporate Finance Institute (n.d.). *Special Purpose Vehicle (SPV).*
https://corporatefinanceinstitute.com/resources/knowledge/strategy/special-purpose-vehicle-spv/

EITI (2019a). Discussion paper: *The EITI's Role in Addressing Corruption*. Extractive Industries Transparency Initiative.
https://eiti.org/files/documents/eitis_role_in_addressing_corruption_en.pdf

EITI (2019b). *Transparency in the first trade*. Extractive Industries Transparency Initiative
https://eiti.org/sites/default/files/documents/eiti_commodity_trading_transparency_may2019_web_0.pdf

EITI (2018). *Commodities Trading Transparency Stocktake*. Extractive Industries Transparency Initiative.
https://eiti.org/sites/default/files/documents/commodity_trading_transparency_stocktake.pdf

EITI (2017). Guidance note 26 – *Reporting on first trades in oil.* Extractive Industries Transparency Initiative
https://eiti.org/sites/default/files/documents/eiti_commodities_trading_working_group_reporting_guidance_june_2017_guidance-note-26_0.pdf

Financial Action Task Force (n.d.). *Money Laundering*.
https://www.fatf-gafi.org/faq/moneylaundering/

Longchamp, O. and Perrot, N. (2017) Trading in corruption: Evidence and mitigation measures for corruption in the trading of oil and minerals. Public Eye and Anti-Corruption Resource Centre. CHR Michelsen Institute U4 Issue No. 6 June 2017.
https://www.publiceye.ch/fileadmin/doc/Rohstoffe/2017_PublicEye_Trading_in_corruption_Report.pdf

NRGI (2020). *Resource-back Loans: Pitfalls and Potential.* Natural Resource Governance Institute.
https://resourcegovernance.org/sites/default/files/documents/resource-backed-loans-pitfalls-and-potential.pdf

NRGI, RCS Global Group (2018). *The Sales of Minerals and Metals by Governments and SOEs: Scale, Nature and Disclosure Practices*.
https://www.oecd.org/dev/NRGI_and_RCS_Sales_Minerals_Metals_by_Govs_and_SOEs_Scale_Nature_and_Disclosure_Practices.pdf

NRGI (2017). Natural Resource Governance Glossary.
https://resourcegovernance.org/analysis-tools/tools/natural-resource-governance-glossary

NRGI and PWYP (2016). Commodities Trading Transparency. Natural Resource Governance Institute and Publish What You Pay Briefing, May 2016.
https://resourcegovernance.org/sites/default/files/documents/commodities-trading-trans.pdf

NRGI (2015). Swissaid, Berne Declaration and Publish What You Pay (PWYP) (2015). *In Pursuit of Transparent Trading*.
https://www.pwyp.org/wp-content/uploads/2015/10/In_Pursuit_of_Transparent_Trading1.pdf

OECD (2018). *OECD Due Diligence Guidance for Responsible Business Conduct*. Organisation for Economic Co-operation and Development.
https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf

OECD (2016). *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Third edition.* Organisation for Economic Co-operation and Development.
https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf

OECD (2016). *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives*. OECD Development Policy Tools, OECD Publishing, Paris.
http://dx.doi.org/10.1787/9789264256569-en

OECD (2011). *OECD Guidelines for Multinational Enterprises.* Organisation for Economic Cooperation and Development.
https://mneguidelines.oecd.org/mneguidelines/

OECD (2004). *Glossary of Statistical Terms.* Organisation for Economic Cooperation and Development.
https://stats.oecd.org/glossary/detail.asp?ID=6139

OECD (n.d.). *Glossary of Tax Terms.* Organisation for Economic Cooperation and Development.
https://www.oecd.org/ctp/glossaryoftaxterms.htm

OHCHR (2012). *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide.* https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf

OHCHR (2011). *UN Guiding Principles on Business and Human Rights.* United Nations Office of the High Commissioner for Human Rights.
https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

OHCHR (n.d.). *What are human rights?* United Nations Office of the High Commissioner for Human Rights.
http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx

Public Eye/Berne Declaration (2018). *Five years of inaction. Why regulation of the commodity trade in Switzerland is long overdue*.
https://www.publiceye.ch/fileadmin/doc/Rohstoffe/2018_PublicEye_ReportCommodities_Five-years-of-inaction.pdf

Public Eye/Berne Declaration. (2017). *Switzerland's commodity sector: an analysis by Public Eye to understand why the Federal Council's legislative proposal is insufficient to fight corruption in resource-rich producing countries*.
https://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/Public_Eye._Switzerland_Commodity_Trading_Sector.xlsx

Public Eye/Berne Declaration, Anti-Corruption Resource Center (U4) (2017). *Trading in corruption, Evidence and mitigation measures for corruption in the trading of oil and minerals*.
https://www.publiceye.ch/fileadmin/doc/Rohstoffe/2017_PublicEye_Trading_in_corruption_Report.pdf

Swiss Confederation Federal Department of Foreign Affairs and State Secretariat for Economic Affairs (2018). *The Commodity Trading Sector – Guidance in Implementing the UN Guiding Principles on Business and Human Rights*.
https://www.seco.admin.ch/seco/en/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Aussenwirtschafts/broschueren/Guidance_on_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights.html

Transparency International (n.d.). *What is Bribery?* Global Anti-Bribery Guidance.
https://www.antibriberyguidance.org/guidance/5-what-bribery/guidance

Transparency International (n.d.b) *What is corruption?*
http://www.transparency.org/whoweare/organisation/faqs_on_corruption

Voluntary Principles on Security and Human Rights (2000). *The Voluntary Principles on Security and Human Rights*.
https://578bd193-3fb5-42fb-ba03-0c4f09793113.filesusr.com/ugd/f623ce_60604aa96d1c4bdcbb633916da951f25.pdf

World Bank (2017). *Ilicit financial flows*.
https://www.worldbank.org/en/topic/financialsector/brief/illicit-financial-flows-iffs

Endnotes

[1] Public Eye (2018); EITI (2019a).

[2] OECD (2016a).

[3] Swiss Confederation Federal Department of Foreign Affairs and State Secretariat for Economic Affairs (2018); OECD (2016a); EITI (2019b).

[4] See Open Data Principles: https://opendatacharter.net/principles/.

[5] OHCHR (2011).

[6] Swiss Confederation Federal Department of Foreign Affairs and State Secretariat for Economic Affairs (2018).

[7] OECD (2016a).

[8] EITI (2019a); NRGI and PWYP (2016).

[9] OECD (2016a); OECD (2018); OECD (2011).

[10] Longchamp and Perrot (2017).

[11] OECD (2016a).

[12] OECD (2016b).

[13] EITI (2019b).

[14] NRGI (2020).

[15] OECD (n.d.).

[16] OECD (n.d.).

[17] EITI (2016).

[18] Transparency International (n.d.a).

[19] OHCHR (2012a).

[20] OECD (2016a).

[21] Transparency International (n.d.b).

[22] OECD (2004).

[23] OHCR (2012).

[24] OHCR (2012).

[25] Swiss Confederation Federal Department of Foreign Affairs and State Secretariat for Economic Affairs (2018).

[26] EITI (2019b).

[27] OHCHR (2012).

[28] OHCHR (n.d.).

[29] OHCHR (2011).

[30] OHCHR (2012).

[31] World Bank (2017).

[32] OHCHR (2012).

[33] Financial Action Task Force (n.d.).

[34] NRGI (2017).

[35] OHCHR (2012).

[36] OHCHR (2012).

[37] NRGI (2020).

[38] OHCHR (2012).

[39] Corporate Finance Institute (n.d.).

[40] OECD (n.d.).

[41] Carbonnier and Zweynert (2015).

[42] OECD (n.d.).