**FIRST PEOPLES WORLDWIDE**

**CORPORATE MONITOR**

**FEBRUARY 2013**

**Canadian Government Facing Legal Challenges from Idle No More**

Building upon the momentum for Indigenous Peoples' rights generated by the Idle No More protests, Canadian First Nations are using both domestic and international legal tactics to usurp their treaty rights. On January 8, the Frog Lake First Nation and the Mikisew Cree First Nation filed a constitutional challenge to Canada’s [Jobs and Growth Act](http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5942521), the omnibus budget implementation law that triggered the protests due to its undermining of First Nations’ sovereignty and treaty rights. The plaintiffs are arguing that the Canadian government knew of the law’s adverse impacts on First Nations but did not consult with them, thus breaching its constitutional obligation to do so.

On February 18, the [International Indian Treaty Council](http://www.treatycouncil.org/) and Attawapiskat First Nation Chief Theresa Spence (whose high-profile hunger strike prompted Canadian Prime Minister Stephen Harper to meet with First Nations chiefs) filed a similar motion under the [UN Committee on the Elimination of Racial Discrimination](http://www2.ohchr.org/english/bodies/cerd/) (CERD). The motion accused the Canadian government of violating its treaty obligations to both First Nations and the legally-binding [International Convention on the Elimination of all Forms of Racial Discrimination.](http://www2.ohchr.org/english/law/cerd.htm) The motion also addresses the lack of clean water and adequate housing on First Nations reservation, both of which have been brought before CERD before. In March 2012, CERD asked the Canadian government to provide a report within one year about its "progress and results" in addressing these issues.

Sources: [Supra Law News](http://www.jdsupra.com/legalnews/alberta-first-nations-challenge-constitu-19104/), [Indian Country Today](http://indiancountrytodaymedianetwork.com/2013/02/19/chief-theresa-spence-attawapiskat-and-international-indian-treaty-council-file-urgent)

**Balancing Economic and Social Development**

In January 2013, at least a dozen people were injured in clashes between police and members of a Quechua community at Candente Copper Corporation's Canariaco Mine in northwestern Peru. The Peruvian government admits to over 200 conflicts between mining companies and Indigenous communities in the country, many of which turn violent. The Peruvian government’s plans to auction Indigenous territory for oil development in early 2013 will only further exacerbate these conflicts.

The civil unrest spurred by development presents a challenge to Peruvian President Ollanta Humala, who was elected on a social democratic platform that pledged support for communities in such disputes. The social programs promised by Humala’s administration depend on revenue generated from mining and oil development. In August 2011, Ollanta addressed this challenge by passing a law requiring consultation with Indigenous Peoples affected by development, claiming the reduction in social conflict would spur foreign investment. Indigenous organizations declared that for the consultations to be effective, their decisions must be respected.

The delicate balance between economic development and Indigenous Peoples’ rights in Peru poses both risks and opportunities for companies operating in the country.  If conflicts with Indigenous Peoples continue to jeopardize the viability of an industry so crucial to Peru’s growth, the country may enact tighter regulations and restrictions on companies that fail to respect Indigenous Peoples’ rights. On the other hand, companies developing best practices towards Indigenous Peoples can take advantage of the country’s desire to prioritize both economic and social development.

Sources: [Financial Times](http://www.ft.com/intl/cms/s/0/a448ade4-661d-11e2-bb67-00144feab49a.html#axzz2KIYCoiTm), [International Press Service](http://www.ipsnews.net/2013/02/native-peoples-say-no-consultations-no-concessions/?utm_source=dlvr.it&utm_medium=twitter)

**The Risks of Transitioning from Communal to Private Property**

Since June 2012, Indigenous Peoples in Cambodia have accepted over 100,000 private land ownership titles from the Cambodian government, in order to protect their territories from land developers and speculators. In doing so, they are abandoning ancient traditions of communal living. The land plots that community members receive are typically no larger than 1 hectare, preventing them from planting and harvesting crops on larger, rotating land tracts, as their ancestors did for centuries. The discontinuation of this sustainable farming technique may pose risks to food security and generate economic inequalities among individuals. There is also concern that community members, many of whom are in debt, will sell their land plots to pay off their debt, leaving them landless.

Many Indigenous communities live and utilize resources collectively, and transitioning to private land ownership can jeopardize their economic security and cultural integrity. When providing compensation for resources that are collectively owned, companies should ensure that the benefits of these communal economic systems are preserved.

Sources: [Cambodia Daily](http://www.cambodiadaily.com/news/ethnic-minorities-risk-more-than-just-land-6483/)

**Ethiopian Dam Threatens Indigenous Livelihoods**

The Gilgel Gibe 3 Dam, currently under construction in Ethiopia’s Omo River, is expected to double Ethiopia's electrical output while negatively impacting an estimated 500,000 Indigenous Peoples. Communities in the Omo Valley practice a sophisticated system of flood-retreat agriculture and seasonal grazing that allows them to gain subsistence with minimal environmental impacts and coexist with Ethiopia’s large wildlife population. The dam will compromise the agricultural productivity of the communities’ land by curtailing the Omo River’s annual floods. The dam will also disrupt the flood cycles and increase the salinity levels of Lake Turkana in neighboring Kenya, to which the Omo River is a tributary.

The Ethiopian government announced plans to release annual controlled floods that will “fully compensate” for the loss of natural floods. An independent study commissioned by the [European Investment Bank](http://www.eib.org/) (EIB), which considered funding the dam, concluded that the controlled floods were planned without an adequate assessment of the problems they are intended to solve or their likely effectiveness. The EIB chose not to fund the dam in 2010, but claimed the decision was based on the Ethiopian government’s obtainment of alternative financing sources, rather than the results of social or environmental impact studies.

Sources: [International Rivers](http://www.internationalrivers.org/files/attached-files/impact_of_gibe_3_final.pdf), [European Investment Bank](http://www.eib.org/about/press/2010/2010-126-european-investment-banks-clarification-of-involvement-in-gibe-3-project-and-commitment-to-east-african-energy-sector.htm), [National Geographic](http://newswatch.nationalgeographic.com/2013/01/11/ethiopian-dam-threatens-to-destroy-indigenous-livelihoods-and-the-worlds-largest-desert-lake/), [The Guardian](http://www.guardian.co.uk/global-development/2012/feb/23/ethiopia-dam-project-resettlement-concerns)

**African Development Bank Addresses Indigenous Issues**

On February 12, the [African Development Bank](http://www.afdb.org/en/) (ADB) hosted a forum to discuss how Indigenous Peoples’ rights and interests can be integrated into the bank’s policies and development initiatives. The forum’s speakers discussed the challenges faced by African governments in addressing the unique economic needs for each of the diverse communities within their countries, and emphasized the need to view Indigenous Peoples as equitable partners, rather than victims, in development.

The ADB’s social and environmental safeguards differ from those of the [World Bank](http://www.worldbank.org/), the [European Investment Bank](http://www.eib.org), the [Inter-American Development Bank](http://www.iadb.org/en/inter-american-development-bank,2837.html), and other multilateral financial institutions, in that they contain no explicit protections for Indigenous Peoples. In June 2012, the [Civil Society Coalition on the ADB](http://www.coalitionafdb.org/) released a [report](http://www.coalitionafdb.org/wp-content/uploads/2012/09/Why-A-Standalone-IP-Policy-in-AfDBs-ISS.pdf) asserting the need for a standalone Indigenous Peoples’ policy within the ADB safeguards. The ADB's hosting of an Indigenous Peoples' forum indicates increasing attention to this issue.

Sources: [Civil Society Coalition on the ADB](http://www.coalitionafdb.org/indigenous-peoples-rights/), [Agence de Presse Afrique](http://www.apanews.net/spip.php?article193858)

**The Risks of NGO Partnerships**

The presence of Barrick Gold (TSE:ABX) and other mining companies in the northern Chilean town of Copiapo, and the subsequent demand for labor, is expected to increase the town’s population by 45,000 by 2014. The companies’ heavy use of water resources could add to this number, as rural farmers displaced by water shortages migrate to the town. Copiano’s housing infrastructure is not keeping pace with the population increase, resulting in the rapid spread of slums.

In 2008, Barrick partnered with [Un Techo para Chile](http://www.techo.org/chile/), a local NGO focused on housing issues, to construct a residential complex for 125 families. Critics say the partnership will inhibit Un Techo para Chile’s willingness to publicly critique the company, thus costing the community a key representative in discussions about housing and other social and environmental impacts of the mining industry.

NGOs can be enticing partners for companies undertaking community development projects, due to their expertise in the relevant issues. However, such partnerships are often subject to criticism that they are detrimental to or do not address the needs of communities. Partnering directly with communities provides companies with heightened assurance that the impacts of community development projects will be felt by their intended beneficiaries.

Sources: [Corporate Knights](http://corporateknights.com/article/too-close-comfort?page=show)

**The Cost of Ignoring Cleanup: Chevron**

Despite enlisting at least 2,000 legal personnel from over 60 law firms, Chevron (NYSE:CVX) continues to face setbacks in its resistance to a 2011 Ecuadorian court [ruling](http://www.nytimes.com/2012/01/04/world/americas/ecuador-18-billion-ruling-against-chevron-is-upheld.html) ordering the company to pay US$19.04 billion for environmental damages to Indigenous communities in Ecuador. On January 30, an Argentine appeals court upheld a November 2011 freeze on all of Chevron’s assets in the country (estimated at US$2 billion), until the company agreed to pay the fine. The decision was based on a [treaty](http://www.oas.org/juridico/english/treaties/b-42.html) ratified by most South American countries, which states that a defendant's assets will automatically be frozen if it fails to pay a final judgment by a foreign court. On February 15, a US appeals court ordered Chevron to submit documents pertaining to allegations that it bribed Ecuadorian judges in exchange for false testimony depicting the company in a positive light.

Chevron’s legal troubles are exacerbated by its refusal to acknowledge and address shareholder concerns related to the risks associated with the company’s actions. In November 2012, the company subpoenaed Trillium Asset Management, an investment firm that sponsored several shareholder proposals requesting the company to improve its social and environmental performance. The [subpoena](http://www.scribd.com/doc/116292660/Billenness-Subpoena) is part of a lawsuit Chevron is filing against the parties involved in bringing charges against the company.

Sources: [Reuters](http://www.reuters.com/article/2013/01/30/chevron-argentina-idUSL1N0AZF6D20130130), [Amazon Defense Coalition](http://chevrontoxico.com/news-and-multimedia/2013/0121-chevron-offering-bribes-to-ecuadorian-judges), [CSR Wire](http://www.csrwire.com/press_releases/35219-U-S-Federal-Appeals-Court-Deals-Chevron-Another-Setback-in-19-Billion-Ecuador-Case?tracking_user=npelosi@firstpeoples.org&tracking_source=email), [CSR Wire](http://www.csrwire.com/blog/posts/674-external-affairs-a-battle-brews-between-chevron-and-shareholders), [CSR Wire](http://www.csrwire.com/press_releases/35294-Chevron-Using-60-Law-Firms-and-2-000-Legal-Personnel-To-Evade-Ecuador-Environmental-Liability-Company-Reports)

**Tanzania Restricts Land Investments**

As of January 2013, Tanzania will restrict the size of land that investors can lease for agricultural use. The restrictions vary based on what commodity is grown on the land; for example, the limit for rice is 5,000 hectares (12,355 acres) and the limit for sugar is 10,000 hectares (24,710 acres).

The decision comes in response to increasing international criticisms that large-scale land acquisitions are physically and economically displacing small farmers and Indigenous communities in Africa. The [Land Rights Research and Resources Institute](http://www.hakiardhi.org/) estimates that out of 1,825 general land disputes in Tanzania in 2011, 1,095 involved large-scale investors. In November 2012, representatives from 22 countries approved the [Yaoundé Declaration](http://nhri.ohchr.org/EN/Regional/Africa/Documents/THE%20YAOUNDE%20DECLARATION.pdf) at the first African Land Forum, which recommended protection and recognition of Indigenous Peoples’ land claims (including communal lands), and the obtainment of free, prior, and informed consent (FPIC) from Indigenous Peoples in large-scale land investment decisions. Tanzania’s new law is a step towards recognition of these recommendations, but does not guarantee Indigenous Peoples' land rights. The law contains no mentioning of awarding land tenure to Indigenous communities, and the restrictions imposed are far larger than their territories may be.

Sources: [Inter Press Service](http://www.ipsnews.net/2012/12/curbing-tanzanias-land-grabbing-race/)