**FIRST PEOPLES WORLDWIDE**

**CORPORATE MONITOR**

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**Strengthening the Framework for Indigenous Land Rights**

On September 13, Peru's [Constitutional Tribunal](http://www.tc.gob.pe) ruled that an Indigenous community could limit outsiders' access to its territory. In an effort to thwart mining companies, the community built a guarded gate on a dirt road passing through their lands. Two of the companies sued the community for violating their freedom of movement. A lower court ruled in the companies’ favor and sentenced four community leaders to fines and six years in prison. The Constitutional Tribunal reversed this decision and nullified the community leaders’ sentences, stating “while freedom of movement is a fundamental right, it is subject to certain constraints, such as not invading other people’s land without the owners’ consent.” It is the first Peruvian court ruling to recognize Indigenous Peoples' right to self-determination within their territory, which is mentioned in Article 89 of the [Peruvian Constitution](http://web.parliament.go.th/parcy/sapa_db/cons_doc/constitutions/data/Peru/peru.pdf).

This ruling follows a trend of strengthening framework for Indigenous Peoples' land rights in the Peruvian Amazon, in both the public and private sectors. On October 8, ConocoPhillips (NYSE: COP) announced plans to withdraw from Blocks 123 and 129, and on September 13, Talisman Energy (TSX: TLM) became the fifth oil company to withdraw from Block 64. Both companies failed to secure Free, Prior, and Informed Consent (FPIC) from local communities for their operations. In 2011, the Peruvian government passed a law requiring companies to consult with Indigenous Peoples before operating in their territory, and the first official consultations are scheduled for February of 2013.

Sources: [Chicago Tribune](http://articles.chicagotribune.com/2012-10-05/news/sns-rt-conocoperu-update-1l3e8l5553-20121005_1_conocophillips-exploration-blocks), [Amazon Watch](http://amazonwatch.org/news/2012/1008-under-pressure-conocophillips-withdraws-from-peru), [Indian Country Today](http://indiancountrytodaymedianetwork.com/2012/10/02/perus-constitutional-tribunal-rules-in-favor-of-indigenous-community-137120)

**The Cost of Ignoring Cleanup**

On October 19, an Ecuadorian court froze $200 million worth of Chevron Corporation's (NYSE: CVX) assets in the country, following up on an earlier decision ordering the company to pay $19.04 billion in reparations for environmental damages to Indigenous communities in the Ecuadorian Amazon. Prior to the ruling, Chevron CEO John Watson, in four separate statements, claimed the company had no assets in the country.

Lawyers such as Graham Erion, who authored a [report](http://chevrontoxico.com/assets/docs/2012-april-chevrons-failure-to-disclose.pdf) documenting alleged examples of Chevron executives misrepresenting the case to shareholders, are reviewing Watson's statements to determine if they were an attempt to downplay the risks associated with the case. A [letter](http://www.osc.state.ny.us/press/releases/may12/investor_letter.pdf) signed by shareholders holding $580 billion worth of company assets states “we believe that Chevron’s Board of Directors and management displayed poor judgment that has exposed the Corporation to a substantial financial liability and risk to its operations” and calls for corporate governance reforms. Shareholders also sent [letters](http://chevrontoxico.com/assets/docs/sec-complaint-letters.pdf) to the US Securities and Exchange Commission and the Financial Industry Regulatory Authority requesting investigations of Chevron’s alleged misrepresentations.

On October 9, the US Supreme Court rejected Chevron’s attempt to block global enforcement of the verdict. In order to recoup the full amount owed by the company, the communities have also filed actions in Argentina, Brazil and China, seeking recognition of the court’s verdict and freezing of Chevron’s assets in those countries.

Sources: [CSR Wire](http://www.csrwire.com/press_releases/34777-Chevron-CEO-John-Watson-Lied-to-Shareholders-About-Not-Having-Assets-In-Ecuador), [Amazon Defense Coalition](http://texacotoxico.org/eng/)

**Proper Engagement Opens Doors**

On October 12, Cameco Corporation (TSX: CCO) signed a landmark agreement with the [Western Desert Lands Aboriginal Corporation](http://www.wdlac.com.au/) (WDLAC) giving the Martu Indigenous Peoples an unprecedented level of participation in the exploration of the Kintyre uranium deposits on their land in Western Australia.

Developed over a three-year period, the agreement ensures employment and infrastructure benefits for the Martu, and identifies areas of cultural and spiritual significance where mining is not allowed. The negotiation process included a 2011 visit to Canada by WDLAC staff and Martu representatives to meet with Cameco executives and Canadian Aboriginals; the trip was [documented on film](http://www.wdlac.com.au/agreements/kintyre-cameco-australia/). WDLAC created an education package about the proposals and distributed it to Martu communities to help them make informed decisions.

The WDLAC holds 136,000 square kilometers of native title rights for the Martu. According to WDLAC Chairman Teddy Biljabu, “the Kintyre Agreement opens the door to a range of business, employment and cultural initiatives which ensure Martu have a strong stake in the future of the development.” Cameco’s managing director Brian Reilly stated “securing the social license to operate in the region is an important step since it allows us to continue to work in the area as we assess the feasibility of the Kintyre project.”

Sources: [Mining Weekly](http://www.miningweekly.com/article/cameco-signs-deal-with-aboriginal-landholders-2012-10-12), [Nuclear Engineering International](http://www.neimagazine.com/story.asp?sectioncode=132&storyCode=2063186), [WDLAC](http://wdlac.kittysauce.com/agreements/kintyre-cameco-australia/)

**Community Conflicted over Oil Drilling**

Few, if any, communities will reach unanimous consensus when making decisions about development. Companies must ensure their community engagement process is inclusive, that all voices are heard, and that outside NGOs are not controlling the community decision-making process.

The people of the small Inupiat village of Wainwright, Alaska are weighing the potential pros and cons of Royal Dutch Shell’s (LSE: RSDA) drilling in the Arctic. The community is in close proximity to where Shell intends to drill, and has become a staging area for the company's operations. Some believe Shell’s presence will bring much needed jobs and economic development to the village. Others fear they are being exploited for their resources, and that Shell's presence will damage the environment upon which have sustained themselves for thousands of years. According to a project management consultant, “there will be an influx of people. There will be an influx of traffic. It’ll be a cash infusion. It’ll be a job infusion. But it’ll also probably change to a certain extent the traditional way of life that people have enjoyed here.”

The people of Wainwright have the right to full disclosure on all aspects of the projects, adequate time to make decisions, and the final say on all decisions that might affect them. Shell has the opportunity to set an example of best practice that includes taking additional measures to ensure inclusiveness in the decision-making process.

Sources: [Global Post](http://www.globalpost.com/dispatch/news/regions/americas/121003/poor-alaskan-village-oil-could-change-everything), [Indian Country Today](http://indiancountrytodaymedianetwork.com/2012/10/04/alaska-natives-ambivalent-about-shell-drilling-in-chukchi-sea-torn-between-economic-promise-and-threat-to-indigenous-culture-137125)

**Shell Tried for International Actions in Domestic Courts**

[*Kiobel vs. Royal Dutch Shell*](http://ccrjustice.org/ourcases/current-cases/kiobel) is being reargued before the US Supreme Court. The judicial question at hand is whether corporations can be tried under the [Alien Tort Statue](http://www.law.cornell.edu/uscode/text/28/1350) (ATS), a law passed in 1789 giving federal courts jurisdiction to hear civil suits brought by foreigners for violations of international law. The court's decision could have far reaching impacts on multinational corporations. Although international law is traditionally applied to governments, the Supreme Court has ruled in prior cases that certain violations are universally condemned, regardless of who commits them.

The case, which was originally filed in a New York federal court in 2002, alleges Shell's complicity in the 1995 murder of nine Nigerian environmental activists who were protesting the company's failure to clean up oil spills. The plaintiffs were 12 Nigerians who had been granted citizenship and political asylum in the US. In 2006, the New York court ruled that Shell could be held liable for violations of international law and crimes against humanity, but not aiding and abetting extrajudicial killings. Both parties appealed the decision. In 2010, the US Court of Appeals upheld the lower court’s decision and in February of this year, the plaintiff’s brought their case to the US Supreme Court. The court did not reach a verdict, and the case is being reargued this month.

Sources: [Center for Justice and Accountability](http://cja.org/downloads/CJA%20Backgrounder%20on%20the%20Kiobel%20Case.pdf)

**Oil Impacts on North Dakota Reservations**

In October 10, the United States government signed an agreement with the Arikara, Hidatsa, and Mandan tribal governments to build an oil refinery on the [Fort Berthold Land Trust](http://www.ndstudies.org/resources/IndianStudies/threeaffiliated/demographics_land.html) in North Dakota. The refinery is expected to create 800 to 1,200 jobs, and 37 percent of the tax revenue will be redistributed to the tribal communities. According to the [Bureau of Indian Affairs](http://www.bia.gov/), the project incorporates American Indian economic development with the Obama administration’s initiatives to expand domestic energy production.

But past oil ventures in North Dakota have had unforeseen consequences on the tribal communities of the Fort Berthold reservation. Although they can create jobs, community members often lack the skills needed for them, and companies tend to prefer hiring qualified outsiders than investing in training programs. The subsequent population increase can lead to severe housing shortages, and local residents are forcibly evicted in favor of the wealthier newcomers. Infrastructure development on the reservation also lags, because tribal governments’ share of the tax revenue is not enough to cover the increased demand for roads, schools, houses, and other services.

Tribal governments are calling for a greater share of tax revenue from future projects on the reservation, but the real solution for managing the impacts of development lies in the planning process. Measures must be taken from the start to ensure that jobs are awarded to local residents, and that communities are adequately prepared for population increases and other consequences of development. Only then can the native residents of the Fort Berthold Land Trust harness the true economic potential of their lands.

Sources: [Bismarck Tribune](http://bismarcktribune.com/news/opinion/editorial/fort-berthold-mirrors-rest-of-oil-patch/article_924cf028-1217-11e2-a521-001a4bcf887a.html), [Bureau of Indian Affairs](http://www.bia.gov/cs/groups/public/documents/text/idc-022703.pdf), [Indigenous Peoples Issues and Resources](http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=14711:north-dakota-front-door-stripped-off-mobile-home-as-forced-evictions-reach-new-low-in-bakken-oil-fields&catid=22:north-america-indigenous-peoples&Itemid=55)

**Mongolian Communities File Complaint with IFC**

On October 12, Mongolian herders submitted a complaint to the [International Finance Corporation](http://www1.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/home), the private sector lending arm of the [World Bank](http://www.worldbank.org/), regarding Rio Tinto’s (LON: RIO) Oyu Tolgoi Mine in the Gobi Desert. The World Bank is considering financing the mine with $900 million in loans and $1 billion in political risk insurance, despite opposition to the project from Indigenous herders, which comprise nearly a quarter of Mongolia’s population.

A recent [report](http://www.oxfamamerica.org/campaigns/extractive-industries/community-consent-index) by [Oxfam America](http://www.oxfamamerica.org/) found that Rio Tinto made explicit public commitments to recognizing Indigenous Peoples’ right to Free, Prior, and Informed Consent (FPIC), but the herders are claiming their unique nomadic lifestyle was not taken into consideration in the consultation process. Resettlement compensation was allotted based on their distance from the mine, rather than the total size of their pasture being taken away, and the resettled herders were not provided adequate time to seek protection from winter storms, resulting in major herd losses. The herders also claim Rio Tinto failed to give adequate notice for public meetings about the project, and herders who live miles away and lack modern transportation methods were unable to attend.

In 2011, the IFC adopted FPIC as a required operating standard for companies within its network. Its response to the herders’ complaint will indicate its willingness to implement this policy.

Sources: [Bank Information Center](http://www.bicusa.org/en/Article.12703.aspx)