



## FIRST PEOPLES WORLDWIDE

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#### **Strengthening Capacities to Build Consensus and Make Decisions**

In March 2014, the [Klamath Tribes](#) announced an agreement with the ranching industry aimed at resolving “contentious water rights issues in the Klamath Basin, a drought-ridden region spanning southern Oregon and northern California.” Tribal members protested the agreement, claiming that their elected leaders gave them less than a month to review and vote on it, and that not all tribal members were informed.

Meanwhile, a [settlement](#) has been established to block construction of the Pacific Trails Pipeline on Wet’suwet’en territories in British Columbia. The pipeline’s operators have agreements with the [Wet’suwet’en First Nation](#), but protesters claim that “while the elected leaders of some Indian bands have signed agreements... Wet’suwet’en hereditary clans have jurisdiction over their territories.” The [Wet’suwet’en Nation](#), which represents Wet’suwet’en traditional leaders and is a separate entity from the Wet’suwet’en First Nation, formally opposes the pipeline.

It is not uncommon for companies to sign agreements with elected leaders, only to meet resistance from traditional leaders, elders, and other decision-making authorities within communities. Companies cannot obtain assuring and cohesive decisions from communities with dysfunctional governance structures, highlighting the importance of strengthening capacities to build consensus and make decisions.

Sources: [Indian Country Today](#), [Oregon Public Broadcasting](#) [Intercontinental Cry](#), [Warrior Publications](#)

## **Can Native Title and Mining Leases Coexist?**

In March 2014, an Australian court ruled that the Ngarla Peoples' native title cannot be extinguished by preexisting mining leases. In 2007, the Ngarla Peoples secured native title to lands in the Pilbara region of Western Australia. The lands overlapped with a mining concession, awarded in 1964 and currently being developed by subsidiaries of BHP Billiton Limited, Itochu Corporation, and Mitsui & Co. The court was asked to determine whether this was grounds for termination of the Ngarla Peoples' native title, on the supposition that both sets of rights cannot be exercised simultaneously. The court decided that this was not grounds for termination, but maintained that native title can be temporarily suspended if it conflicts with the interests of mining leaseholders.

Although the ruling prioritizes the rights of mining leaseholders over those of native title holders, it creates a legal basis for their coexistence, and highlights why companies should be foreword-thinking in their approaches to Indigenous community engagement. While the concession was awarded years before native title became incorporated into Australian law, its developers are now at the center of a landmark legal ruling over local communities' customary land claims.

Sources: Mondaq

## **First Nation Acquires Control of Natural Resource Revenues**

In 2013, the Kawacatoose First Nation became the first community to opt into the First Nations Oil and Gas and Moneys Management Act (FNOGMA), which “provides First Nations with the option of managing and regulating oil and gas exploration and exploitation and of receiving moneys otherwise held for them by Canada.” In doing so, the community procures full control of revenues generated from the natural resources on its lands, and absolves the need to seek the Canadian government's approval for their expenditure.

While many Canadian policies are ill-suited for successful partnership between companies and First Nations, the FNOGMA could incentivize communities to support resource extraction.



Companies working in Canada could offer First Nations technical support for opting into the FNOGMA, which involves developing “a financial code specifying, but not limited to, the mode of holding moneys, the manner of expending moneys, accountability for the expenditure of those moneys, procedures for disclosing conflicts of interests in the expenditure of those moneys, and provisions for the amendment of the code by the First Nation.”

Sources: [Indigenous Peoples Issues and Resources](#)

### **Bakken Business Diverted from Tribes**

The Bakken oil boom has brought an abundance of cash and business opportunities to the [Fort Berthold Indian Reservation](#) in North Dakota, yet many Native-owned businesses are on the verge of closing because they cannot compete with other, newer businesses. Many of these newer businesses appear to be owned by tribal members, but are actually fronts for non-Native companies. Fort Berthold’s [Tribal Employment Rights Office \(TERO\)](#) requires preference for Native-owned businesses for work on tribal lands, with first bids going to businesses that are 100 percent Native-owned. Community members allege that TERO is not enforcing the latter, and that contracts are going to “Native-owned” businesses created solely to provide “the umbrella of Native certification” to non-Native companies wanting to work on the reservation. Because these businesses do not have assets or debt, they can easily outbid businesses that are legitimately Native-owned.

When contracting with Native-owned businesses, companies should conduct additional due diligence to ensure that the work is truly going to community members. Community support for the industry is likely to weaken if the most widely-acknowledged benefits of the Bakken oil boom – jobs and business opportunities – are not realized by residents of Fort Berthold.

Sources: [Rapid City Journal](#)

### **US Capital Energy Ignores Belize’s Supreme Court**

In April 2014, Belize’s Supreme Court ruled that the issuance of permits for oil drilling in [Sarstoon-Temash National Park](#) was irrational, unreasonable, and a breach of the [UN](#)



Declaration on the Rights of Indigenous Peoples. The lawsuit was filed by the Sarstoon-Temash Institute for Indigenous Management, along with four Mayan communities, to stop US Capital Energy from drilling on their territories. US Capital Energy is refusing to comply with the ruling. According to a company attorney, “the permits and licenses that were granted to US Capital are legitimate, even though they were not granted with any consent of the Mayan people. So, if they are good then US Capital, in my view, is allowed by this judgment to continue their work.”

This response is shortsighted, especially given that the company’s drilling permits expire at the end of this month. If the company pursues an extension of the permits, it will probably face sustained resistance from Mayan communities, bolstered by the legal authority of the Supreme Court. By openly eschewing both the court’s legitimacy and Indigenous Peoples’ right to Free, Prior, and Informed Consent, the company could be creating insurmountable hurdles to profitable resource extraction in Belize.

Sources: [Channel 5 Belize](#)

## **Transparency and Candor is Key to Community Support**

In 2009, after more than twenty years of exploration, Rio Tinto (LSE:RIO) began producing ilmenite in Madagascar, a country with high poverty levels, weak civil society, and several recent bouts of violent political unrest. The company’s stated aim is “to achieve a net positive impact on biodiversity over the course of its operations in Madagascar” through a “mitigation hierarchy of avoidance, minimization, and rehabilitation.” The company is also engaging in “close dialogue” with affected communities to “ensure better understanding of the project’s objectives and activities” and “to restore an atmosphere of mutual confidence between both parties.”

Despite these commitments, some community members are expressing dissatisfaction with Rio Tinto’s operations in Madagascar. The company acknowledges that its social and environmental practices have not always been exemplary, and notes that “they have a long way to go to fulfill their environmental and social commitments to local stakeholders. There is much

work to be done before the stories of communities...match the descriptions of the same areas in corporate communications documents.” When companies recognize past shortcomings and commit to amending them in the future, they create an atmosphere of transparency and candor that is key to obtaining support from communities.

Sources: [Ethical Corporation](#)

## **Burma Remains a High Risk Country**

In February 2014, hundreds of villagers staged a protest against [Total SA](#), [PETRONAS](#), [PTTEP](#), and other oil companies operating in the Tanintharyi Region of southern Burma. According to the villagers, the companies frequent dirt roads that pass through their communities, creating clouds of dust on a regular basis and causing health concerns. The villagers want the companies to tarmac the roads, and to ensure effective environmental conservation measures are in place. The companies are reportedly running economic development programs in thirty villages in the region, and recently invited Aung San Suu Kyi, the leader of Burma’s political opposition, to observe their work.

The US and the European Union recently eased sanctions on doing business in Burma, triggering a rapid influx of Western companies. At the same time, China is ramping up its investments in the country. While Burma’s diplomatic relations are improving, the country’s rapid pace of development could jeopardize the livelihoods of many Indigenous, minority, and/or rural communities. Companies should exercise extreme caution when doing business in Burma, and note that all oil companies operating there are required to partner with at least one domestic energy firm, usually the state-owned [MOGE](#), and thus risk association with the government’s long history of human rights violations.

Sources: [Shwe Gas Movement](#), [DVB](#), [Conflict Risk Network](#)

