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Conflicting Perspectives to Treaty on Business and Human Rights

In June 2014, the UN Human Rights Council adopted a resolution, drafted by Ecuador and South Africa, to “establish an intergovernmental working group with the mandate to elaborate an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights.”

Human Rights Watch criticized the resolution for being “too narrow since it only focuses on transnational corporations and will not address national or other businesses.” Contrariwise, the International Organization of Employers (IOE), the world’s largest private sector network, stated that it “deeply regrets that the adoption of the Ecuador initiative has broken the unanimous consensus on business and human rights achieved three years ago with the endorsement of the UN Guiding Principles on Business and Human Rights.” The IOE appears concerned that a treaty would muddle the roles for companies and states outlined under the “protect, respect, and remedy” framework, but provides few additional details in its statement.

Companies are frequently implicated in, or disrupted by, human rights abuses that are linked to states, and should welcome the onset of stronger legal frameworks for human rights. The resolution secured more support from states where human rights violations are likely to occur, and less support from states where most transnational corporations are headquartered. The twenty votes in favor came from Africa, Asia, and Latin America, while the thirteen votes against came from Europe, Japan, South Korea, and the US.

Sources: Business and Human Rights Resource Center

Positioning Companies and Communities on Equal Grounds

In July 2014, Active Energy Group and three Métis settlements entered a joint venture to commercialize 100,000 hectares of forestry assets in Alberta. The company and the settlements each hold a 45 percent stake in the JV, with the remaining equity owned by Ronald Derrickson, an Aboriginal entrepreneur and the former Chief of the Westbank First Nation. All of the JV's commercial transactions "will include an obligation to provide local employment for Métis citizens, and...CSR programs which benefit Métis communities." "To ensure fair and equitable participation for the Indigenous groups in the management of the JV...Derrickson will be appointed Chairman of the new company, and will be joined on the Board by three representatives from Active Energy Group and one representative from each of the three Métis settlements."

The JV is being called a "model of the type of natural resource development favored by Canada's Aboriginals" because it positions the company and the communities on equal grounds, with regards to both financial stake and decision making authority.

Sources: Yahoo Finance

Martu Welcome Uranium Development

Martu landowners are welcoming the government's approval of Cameco's Kintyre mine in Western Australia, for which they signed a land use agreement in 2012. Despite the landowners' support, the Conservation Council of Western Australia intends to appeal the government's decision. Noel Whitehead, CEO of the Western Desert Lands Aboriginal Corporation, welcomed dialogue with the conservationists, and acknowledged that not all Martu landowners support the decision to work with the company. "But what Martu people will not accept is, through a minority of Martu people, attempting to whip-up hysteria on something that is very clearly in the process of being considered at a state and federal level."

Free, Prior, and Informed Consent is applicable to all external entities, not just companies, and communities that choose to develop their natural resources can be strong allies for companies

under fire from environmental groups. Whitehead noted that the Martu's decision to work with the company "was not taken lightly" and that the project will adhere to stringent environmental standards.

Sources: [ABC](#)

API Publishes Community Engagement Guidelines

In August 2014, the [American Petroleum Institute](#) (API) published [Community Engagement Guidelines](#) to "promote the safe and responsible development of the nation's oil and natural gas resources by engaging and respecting the communities where these operations occur." The guidelines emphasize integrity, safety and environmental responsibility, communicating effectively, and the importance of community engagement throughout the full life cycle of projects. The guidelines do not reference revenue transparency and other methods of sharing benefits, nor do they mention specific considerations for engaging Indigenous communities.

These guidelines are a major step forward for the oil and gas industry, and through constructive engagement, they can hopefully be improved to better serve the interests of Indigenous Peoples. According to API's website, "API standards are developed by Subcommittees and task groups...[that] do their work at meetings...and by mail, fax, phone, e-mail, and electronic collaborative authoring...Representatives of organizations most impacted by the standards being developed may attend standards-writing meetings, and they may review drafts of standards and have their comments considered."

Sources: [API](#)

Bolstering Legitimacy of Consultation Processes

In August 2014, a Guatemalan court ruled that Indigenous Peoples' "right to information and consultation" must be respected "before granting any kind of mining permits", and that an exploration license for [Goldcorp's](#) Los Chocoyos project should be cancelled due to lack of consultation with Mayan communities. The plaintiffs are now expressing intentions to challenge Goldcorp's nearby Marlin mine, which has been active since 2005.

Goldcorp states on its website that its alleged lack of consultation at Marlin is a “myth” and that the government “instituted a Discussion Round-Table in December of 2010, made up of legitimate and legal representatives from the communities...in which dialogue and participation in environmental and social issues, among others, have been given high priority.” Goldcorp references these claims with links to various government agencies that were involved with the Discussion Round-Table. The legitimacy of the Discussion Round-Table would be bolstered if the company also referenced the community representatives and organizations that participated.

Sources: [Goldcorp](#), [Upside Down World](#), [Rights Action](#)

Fort Berthold Seeks to Raise Environmental Standards

The [Fort Berthold Reservation’s](#) elected leaders are outlining plans to impose fees on companies for natural gas flaring on tribal lands, under the assumption that “operators will actively initiate gas capture plans when they have the motivation of paying royalties on flared gas.” This could create a “major regulatory, jurisdictional, if not legal, dispute.” The [North Dakota Petroleum Council](#) questions whether the tribes are authorized to impose such fees, but is waiting for the tribes and the state to “work out the regulatory authority” before offering additional comments.

After last month’s [spillage of one million gallons of saltwater on tribal lands](#), Fort Berthold’s elected leaders are [experiencing greater scrutiny from community members](#), and appear to be raising expectations on companies to mitigate environmental impacts. The reservation experiences disproportionately high levels of natural gas flaring, compared to other communities in the Bakken region. According to [The Bismarck Tribune](#), “55 percent of the natural gas produced on the reservation is flared. While flaring in the Bakken has been high overall — the 30 percent range — the volume of gas being lost on Fort Berthold is excessive.”

Sources: [Natural Gas Intel](#)

Lawsuit against BHP Billiton in Chile

In July 2014, Aymara communities filed a lawsuit against a channeling system being constructed by BHP Billiton in northern Chile. The company claims that the system is intended to protect the communities by preventing runoff from its Cerro Colorado mine from entering a nearby creek, and performed an environmental impact assessment for the project. The communities argue that a fuller environmental impact study should be required.

BHP Billiton's efforts to reduce its environmental footprint and secure community acceptance do not appear to be working, and it is important for the company to step back and understand why. It is possible that the communities have broader grievances with the mine that have not been addressed. It is also possible that the company did not adequately communicate the purpose of the system, or failed to include the communities during project planning.

Several other mining projects in northern Chile were recently stalled or stopped by lawsuits from Indigenous Peoples, including Barrick Gold's Pascua-Lama project and Goldcorp's El Morro project.

Sources: Bloomberg