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World Bank Incentivizes Governments to Violate UNDRIP

The UN Office of the High Commissioner for Human Rights has criticized the World Bank's draft Safeguard Policies for "going out of their way to avoid any meaningful references to human rights." Among its [criticisms](#) is the fact that the safeguards now require Free, Prior, and Informed Consent (FPIC) from Indigenous Peoples, but "it is not clear whether the processes prescribed...to obtain such consent meet the standards required by international human rights laws." Furthermore, the safeguards enable borrowers to "opt out" of the FPIC requirement, ostensibly to "facilitate projects in countries where the existence or the notion of Indigenous Peoples is contested. However, the ability of borrower countries to effectively choose whether or not to recognize Indigenous Peoples appears incompatible with the fundamental purpose of UNDRIP...[and] may also undermine progress achieved in recognizing and implementing the collective rights of Indigenous Peoples in certain regions of the world."

By proposing weaker lending criteria for countries that do not recognize Indigenous Peoples, the Bank is incentivizing governments to violate UNDRIP. This has serious consequences not only for Indigenous Peoples, but for companies with investments in emerging markets, as the [Indigenous Rights Risk Report](#) demonstrates an unmistakable correlation between Country Risk and risk to the private sector.

Federal Legislation Ignores Tribal Sovereignty

The Chairman of the San Carlos Apache is expressing strong opposition to the National Defense Authorization Act, which contains a provision allowing Rio Tinto to acquire 2,400 acres of sacred land for its proposed Resolution copper mine. The chairman's sentiments are echoed by

the National Congress of American Indians, the United South and Eastern Tribes, and a blitz of media outlets. Additionally, the inclusion of a land provision in a defense bill has met criticism from federal agencies and legislators from both sides of the political spectrum. However, a letter sent to Congress from the former Chairwoman of the San Carlos Apache asserts that many community members support Resolution, and suggests that the tribe should hold a referendum to accurately gauge community perceptions about the project.

FPIC requires that the San Carlos Apache make a decision about Resolution through its own internal self-governance mechanisms. Even if a faction of the tribe supports the project, the government's issuance of a concession on sacred land, in the complete absence of consultative processes required under national and international law, is being perceived as a direct blow to the sovereignty of the San Carlos Apache and Native Americans elsewhere. Despite Rio Tinto's normally robust Indigenous engagement strategy, and strong positions on FPIC, the government's actions may undermine its chances of tipping community perceptions in its favor, and create a challenging road ahead for the company.

Sources: [Indian Country Today](#), [Huffington Post](#)

Neuquén Shale Boom Revives Conflicts with Indigenous Peoples

Oil and gas drilling in Neuquén, Argentina, is reviving conflicts between the government and Mapuche communities, as concessions are awarded on disputed Mapuche territories without consultation or Free, Prior, and Informed Consent. Only 10% of the 70 Mapuche communities in Neuquén have title to their lands. A spokesperson for the Mapuche Confederation of Neuquén believes that "the logic followed by the state is that the weaker the documentation of land tenure, the greater the legal security enjoyed by the company."

On the contrary, weak land tenure threatens the viability of Argentina's "shale boom" in Neuquén, as communities take to occupying wells and chaining themselves to derricks to protest unauthorized use of their lands. Recent regulatory reforms aimed at accelerating foreign investment may increase the volatility of these conflicts. Analysts are skeptical about

Argentina's investment climate due to high levels of government intervention in the economy, but the widespread presence of unresolved Mapuche land claims may pose even greater risks to companies.

Sources: [Inter Press Service](#), [Financial Times](#)

Canada Launches CSR Strategy

The Canadian government is launching a CSR strategy to enhance the reputation and viability of Canadian companies doing business around the world. The Canadian Minister of International Trade is appointing a CSR counsellor, and has promised to give its ombudsman "some teeth by insisting companies cooperate with the office or lose the support of the government." The minister asserts that social and environmental responsibility is integral to the "Canada brand" and warns "if you don't play ball by doing business the Canadian way, then we won't go to bat for you."

This is probably a response to the increasingly poor reputation of Canadian companies overseas, particularly in the mining sector. A recent report by the Council on Hemispheric Affairs alleges that "mining operations by Canadian firms across nine Latin American countries are causing serious environmental impacts...as well as forcibly displacing people, dividing and impoverishing communities, making false promises about economic benefits, endangering people's health, and fraudulently acquiring property. Some who protest such projects have been killed or seriously wounded...others persecuted, threatened or accused of being terrorists."

Sources: [Globe and Mail](#), [The Guardian](#)

Final Land Claim Agreements Supersede Territorial Legislation in Yukon

In December 2014, a Yukon court rejected the Yukon government's land use plan for the Peel Watershed, on the grounds that it does not respect final land claim agreements with First Nations. The lawsuit was filed on behalf of First Nations, conservation groups, and individuals, in response to a series of incremental changes to the land use plan (initially approved in 2009)

that rendered it “unrecognizable” from the original, and reduced protected areas from 80% to 29%. The court ordered the Yukon government to return to discussions with First Nations and revise the land use plan in ways that fulfill its constitutional duty to consult and accommodate. This ruling establishes a precedent that final land claim agreements supersede territorial legislation in Yukon, and has important implications for companies interested in the largely undeveloped Peel Watershed.

Sources: [Common Sense Canadian](#), [Yukon Courts](#)

The Importance of Culture

For several years, the Wixarika Peoples of Mexico have urged First Majestic Silver Corporation to cancel a planned mining project on Wirikuta, a sacred mountain that has been the site of ceremonial pilgrimages for generations. In November 2014, the company made headlines again when a film about the Wixarika’s ongoing struggle was released.

In its [response](#), the company claims to have a “high level of commitment with the communities of the locations where we operate” and is “open to establishing a mutually respectful dialogue with the Wixarika.” The company also claims to be building museums and “improving the area as a tourist destination” to “give the local community long term jobs and improve their standard of living.” It is paramount that the company obtains the Wixarika’s consent for this (as well as the mining project itself), as tourism can impact Indigenous Peoples just as negatively as mining, especially when sacred sites are involved. Additionally, the company donated 761 hectares “to protect the sacred sites of the Wixarika groups.” However, it is unclear if the donated area encompasses Wirikuta, which appears to be the focal point of the Wixarika’s grievance with the company.

Sources: [Intercontinental Cry](#)

The Importance of Inclusiveness

Following fines and delays at its Pascua-Lama project in Chile, Barrick Gold signed a Memorandum of Agreement (MoU) with twelve Diaguita communities and three Diaguita

associations that provides “a six-month period in which mining details will be divulged to the communities for discussion.” The MoU does not indicate community support for the project, but provides a formalized conduit for dialogue between parties that did not appear to be in place before.

The MoU is open to Diaguita communities and associations with recognized status. However, one of the project’s most vocal opponents – the Huascoaltinos – are unrecognized, and thus excluded from the agreement. Such exclusiveness could mitigate the company’s chances of obtaining broad community support. According to Barrick, the Huascoaltinos are “not among the 22 recognized Indigenous Diaguita communities in Huasco province because they are organized as an Agricultural Community under Chilean legislation...While members of this community have objected to the MoU and are opposed to the Pascua-Lama project, Barrick remains open to engagement with the Huascoaltinos on issues of concern to them.”

Sources: [Mint Press News](#)