**FIRST PEOPLES WORLDWIDE**

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**The Risk of Land Conflict**

In December 2012 the [Munden Project](http://www.mundenproject.com/), a consultancy firm that provides investment models, market analysis, and risk assessments to emerging market investors, produced a [report](http://www.rightsandresources.org/documents/files/doc_5715.pdf) titled “The Financial Risks of Land Tenure: An Investment View.” The report makes three main conclusions:

1. Rather than being viewed as externalities, unresolved land conflicts pose direct financial risks to land-based investments, and should be included in all risk assessments, including credit rating analysis and insurance provision.
2. These risks are diverse in nature, ranging from massively increased operating costs (up to 29 times that of normal baseline scenarios) to outright abandonment of operations. The escalation of such risks can be rapid and irreversible.
3. The impacts of these risks range from substantial to catastrophic for the firm or investor involved.

These risks are rooted in varying degrees of opposition by communities whose traditional land claims, albeit centuries-old, seldom hold formal recognition or documentation in emerging market countries. Their lands are consequently subject to development without consultation or Free, Prior, and Informed Consent (FPIC). The absence of adequate grievance mechanisms for land conflicts prompts communities to adopt unconventional methods of resistance that can delay, disrupt, or terminate operations.

The report examined four hypothetical investment scenarios ranging from US$10 million to US$3 billion. Instances of normal operations, disruption/delay during operations, and forced withdrawal during operations were applied to each scenario. Using established financial terms and methodologies, the report finds that losses accrued from disruption/delay and forced withdrawal are financially significant when measured against instances of normal operations. These losses are wholly operational and do not take into account reputational damage levied on the operators.

Sources: [The Munden Project](http://www.rightsandresources.org/documents/files/doc_5715.pdf)

**The Cost of Inequitable Benefits Distribution**

In January 2013, violent protests occurred in the Mtwara region of southern Tanzania, where natural gas deposits were recently discovered. The protestors were not opposed to gas extraction, but to the construction of a pipeline to transport the gas to the wealthier region of Dar es Saleem for processing and sale. The protestors want the construction of a refining plant in Mtwara to ensure that the gas' economic benefits accrued to local communities.

The protests denote widespread dissatisfaction over natural resource policies in Tanzania, where contracts between the government and extractive companies frequently exclude the interests of small communities. According to a study commissioned by religious institutions, the country loses as much as US$1 billion per year due to mismanagement of natural resource revenues. Following the protests, Tanzanian President Jakaya Kikwete promised to update the country's natural resource policies.

While some communities will oppose natural resource extraction of any kind, a lack of equitability and transparency in benefits distribution can trigger broader dissent.

Sources: [The East African](http://www.theeastafrican.co.ke/news/Mtwara-protests-expose-gaps-in-oil-gas-mineral-laws-management/-/2558/1682724/-/item/0/-/43axygz/-/index.html), [The East African](http://www.theeastafrican.co.ke/news/Locals-turn-to-protests-for-a-larger-share-of-mining-revenue/-/2558/1658350/-/item/0/-/aqqjj9/-/index.html)

**Negative Precedent in Guyana**

In January 2013, the Guyanese High Court ruled that the safeguards for Indigenous Peoples’ rights contained in the country’s [Amerindian Act of 2006](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.iadb.org%2Fresearch%2Flegislacionindigena%2Fleyn%2Fdocs%2FGuy-AmerindianActa-6-2006.rtf&ei=bW4SUaatAsng2gXQtIGwBw&usg=AFQjCNEreWJ0Ppg3X-I06ujjliFwRu6RGQ&bvm=) do not apply to companies that obtained government permits prior to the law’s passage. The case involved an Isseneru village that received title to their lands in 2007, and was taking legal actions to expel mining companies encroaching on their territory without their permission. Following the village’s obtainment of two cease work orders by Guyana’s [Geology and Mines Commission](http://www.ggmc.gov.gy/), one of the companies brought the village to court, and won. The court’s decision sets a negative precedent for Indigenous Peoples’ rights in Guyana. It is out of step with several recent rulings in Latin America recognizing Indigenous Peoples’ self-determination rights, and has prompted calls for amending the Amerindian Act to ensure full protection of those rights.

Following the court’s decision, Guyana’s [Ministry of Amerindian Affairs](http://www.amerindian.gov.gy/legislation.html) released a [statement](http://moaanews.blogspot.com/2013/01/govt-reiterates-full-support-for.html) highlighting a clause in the law that allows companies to enter agreements directly with Indigenous communities regarding development, and noting that the Issenuru have the option of invoking that clause and engaging the companies in a discussion so they can come to an agreement. The ministry highlighted the importance of dialogue between companies and communities, but failed to acknowledge that such discussions are most effective when companies initiate the conversation prior to beginning work.

Sources: [Forest Peoples Programme](http://www.forestpeoples.org/topics/rights-land-natural-resources/news/2013/01/press-release-guyana-court-ruling-violates-indigen), [Ministry of Amerindian Affairs](http://moaanews.blogspot.com/)

**Investing in Peace**

During the weeks preceding Kenya’s 2013 prime ministerial elections, numerous companies invested their resources in peace campaigns to deter a repeat of the ethnic violence that followed the country’s 2007 elections. [Crown Paints](http://www.crownpaints.co.ke/) put up billboards displaying its various paint colors to represent unity among Kenya’s tribes. Employees of construction firm [PG Bison](http://www.pgbison.co.za/) collected signatures from citizens vowing to do their part to maintain peace during and after elections. [Safaricom](http://www.safaricom.co.ke/), Kenya’s leading mobile network operator, partnered with government agencies to disperse peace messages through its vast media networks.

Their efforts were not in vain. On March 4, Uhuru Kenyatta was announced as Kenya’s next Prime Minister, defeating incumbent Raila Odinga. Despite widespread allegations of electoral rigging from Odinga’s supporters, [*The New York Times*](http://www.nytimes.com/2013/03/12/world/africa/kenyan-reaction-to-disputed-election-is-far-calmer-than-last-time.html?pagewanted=all&_r=0) reported that the election’s aftermath has been relatively peaceful compared to the last. The peace is fragile, and the courts have already begun to hear petitions requesting the release of more information about the elections. Regardless, these actions exemplify positive proactive actions companies can take when operating in regions marred by external sociopolitical conflicts.

Sources: [New York Times](http://www.nytimes.com/2013/03/12/world/africa/kenyan-reaction-to-disputed-election-is-far-calmer-than-last-time.html?pagewanted=all&_r=0), [Business Daily Africa](http://www.businessdailyafrica.com/Companies-invest-in-peace-drive-ahead-of-polls/-/539546/1703196/-/11tq8ku/-/index.html)

**Tsilhqot’in Question Viability of New Prosperity Mine**

The Tsilhqot’in First Nation in British Columbia is disconcerted by recent statements from Pierre Lassonde, chairman of [Franco Nevada](http://www.franco-nevada.com/royalties/our-royalties/gold-royalties/advanced/prosperity-british-columbia), a gold royalty investment company that plans to loan US$350 million to [Taseko’s](http://www.tasekomines.com/home) (TSE:TKO) proposed New Prosperity Mine. According to Lassonde, mines producing less than .5 gram-per-tonne of gold are not financially viable to their operators and are frequently denied funding from banks. Royalty investment companies such as his invest in them anyway because generous returns can be yielded from the royalties alone, even if the mine as a whole is unprofitable to its operators. A 2009 feasibility [study](http://www.tasekomines.com/i/media/mce/factsheet/Taseko_Fact_Sheet.pdf) by Taseko reported that the New Prosperity Mine would produce .41 gram-per-tonne of gold, falling far below Lassonde’s measure mark.

The Tsilhqot’in First Nation is opposed to the New Prosperity Mine due to its environmental impacts on their lands and waters, and Lassonde’s statements are likely to agitate their concerns. If the mine does not generate profit for Taseko, the company will not have sufficient resources to manage environmental impacts. The mine’s questionable financial viability is also likely to further deter support from the Canadian government, which twice rejected Taseko’s bid due to inadequate environmental impacts assessments.

Sources: [Huffington Post](http://www.huffingtonpost.ca/2012/11/29/taseko-prosperity-mine-environmental-assessment_n_2214273.html), [Indigenous Peoples Issues and Resources](http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=17267%3Abritish-columbia-franco-nevada-chairman-s-approach-to-mining-alarming-royalty-system-promotes-low-grade-bad-mines-that-threaten-first-nations&catid=22%3Anorth-america-i)

**Better Risk Assessment Needed for Volta Grande Mine**

In February 2013, Brazil’s Federal Public Ministry recommended against the issuance of an environmental permit to [Belo Sun’s](https://www.google.com/finance?q=TSE%3ABSX&sq=belo%20sun&sp=3&ei=-0U3UYDfCo2kkQOsOQ&hl=en) (TSE:BSX) proposed Volta Grande Mine in the Xingu River, requesting more adequate research on the mine’s social and environmental impacts on Indigenous Peoples. The proposed location for the mine is directly downstream from the Belo Monte Dam, and may exacerbate opposition to both projects. The Belo Monte Dam, which was authorized by the Brazilian government without an environmental impact assessment or FPIC from affected communities, has been the subject of 53 judicial actions in Brazil, and construction was suspended at least five times in 2012 alone. The controversy surrounding the Belo Monte Dam may have prompted the Brazilian government to pay closer attention to the impacts of development on Indigenous Peoples.

Following the decision, Belo Sun’s stock immediately dropped 7.5 percent. According to [Amazon Watch](http://amazonwatch.org/), the Brazilian government’s scrutiny of the proposed mine cost the company nearly 19 percent of its value in the Toronto Stock Exchange over the past month.

Sources: [The Star](http://www.thestar.com/news/world/2013/02/14/brazil_wants_more_research_on_amazon_gold_mine_before_canadian_company_proceeds.html), [Foley Hoag](http://www.csrandthelaw.com/2012/12/brazils-belo-monte-move-will-national-development-banks-start-taking-human-rights-and-environmental-concerns-more-seriously/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+csrandthelaw+%28Corporate+Social+Re), [Amazon Watch](http://amazonwatch.org/news/2013/0213-authorities-reject-belo-sun-mining-project-in-brazilian-amazon)

**Rapporteur Alerted to Inadequate FPIC in Indonesia**

In March 2013, the [Forest Peoples Programme](http://www.forestpeoples.org/) (FPP) and [SawitWatch](http://sawitwatch.or.id/) delivered a statement on Indonesia’s palm oil plantations to James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, during his Asia Regional Consultation. Indonesia’s palm oil plantations, which span 9.4 million hectares and are expected to grow by 10 to 20 million hectares within the next ten years, are frequently located on Indigenous Peoples’ territories. The land is often obtained by highly abbreviated FPIC processes, in which communities are not given sufficient information on the impacts of the plantations or their rights under national and international law. Compensation is rarely given in the form of land restitution, which is what most Indigenous Peoples’ request during their negotiations. Indonesia in general has extremely high risk exposure to Indigenous Peoples’ rights, [stemming largely from actions by the Indonesian government](http://www.survivalinternational.org/news/8710).

The statement recommended that Anaya urge the Indonesian government to incorporate FPIC into its national laws and respond to numerous complaints filed with the [Committee on the Elimination of Racial Discrimination](http://www2.ohchr.org/english/bodies/cerd/) regarding its treatment of Indigenous Peoples. The statement also recommended that Anaya engage with companies to highlight not only their obligations to respect FPIC, but the benefits for them to do so. The Asia Regional Consultation was part of a three-year study being carried out by Anaya on the impacts of extractive companies on Indigenous Peoples.

Sources: [Forest Peoples Programme](http://www.forestpeoples.org/topics/palm-oil-rspo/publication/2013/sawitwatchfpp-statement-asia-regional-consultation-un-special-)

**The Cost of Carelessness**

In March 2013, it was reported that Suncor (NYSE:SE) spilled an estimated 350,000 liters of industrial waste water into the Athabasca River over a ten hour period, at an oil sands site in Alberta. The spill was the result of a cracked pipeline carrying water that had been used in bitumen extraction. There are few details about the chemicals and substances that flowed into the river, but the company stated that the spill would have “a short term, negligible impact on the river.”

Chief Allan Adam of the Athabasca Chipewyan First Nation (ACFN), which is located downstream from where the spill occurred, declared that the spill “substantiates my community’s long time concerns of the negative and adverse impacts this industry has on our ecosystem, traditional lands, and cultural rights.” The week before the spill occurred, Adam had traveled to Ottawa to discuss the impacts of oil sands development with other First Nations leaders. Despite the ACFN’s opposition to the current status quo of oil sands, Adam states that his community is not opposed to development, but to the inadequate environmental protections under which development occurs.

Sources: [Globe and Mail](http://www.theglobeandmail.com/globe-investor/suncor-says-leak-had-negligible-impact-on-athabasca-river/article10443883/), [Athabasca Chipewyan First Nation](http://acfnchallenge.wordpress.com/)

**Conflicting Perspectives to the Tampakan Mine**

In 2012, First Peoples Worldwide (FPW) made a community development grant to Kahugpongan sa mga Lumad sa Halayong-Habagatang Mindanao (KALUHHAMIN), a community-based Indigenous organization in Mindanao, Philippines. In its grant report to FPW, KALUHHAMIN alleged that [Sagittarius Mines Incorporated](http://www.smi.com.ph/EN/Pages/Home.aspx) (SMI), a joint venture between [Xstrata](http://www.xstrata.com/) (62.5 percent) and [Indophil Resources](http://www.indophil.com/) (37.5 percent), was developing its [Tampakan Copper-Gold Project](http://www.xstratacopper.com/EN/Publications/Other%20Publications/SMI%20Fact%20Sheet%202010%20-%20About%20Tampakan%20project%20-%20May%202010.pdf) without FPIC from affected B’laan communities. Initial response to the mine was split – with some community members in favor and others against – but according to KALUHHAMIN water contamination shifted the bulk of public opinion against. KALUHHAMIN also alleged that the mine’s opponents and their families were being subject to violence and subjugation. In October 2012 Juvy Capion (wife of mine opponent Daguil Capion) and her two children were murdered, and in February 2013 another mine opponent, Kitari Capion, was murdered.

These allegations are surprising because Xstrata is commonly regarded as a leader among extractive companies with regards to Indigenous Peoples’ rights. The company is a signatory to the [Voluntary Principles on Security and Human Rights](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf) (VPs), and its public commitments to FPIC were ranked favorably in [Oxfam America’s](http://www.oxfamamerica.org) [Community Consent Index](http://www.oxfamamerica.org/publications/community-consent-index). The company told FPW that the mine is still in the exploration stage, consent for which has been obtained from all ten host Indigenous communities. Although FPIC has not yet been obtained for the operation stage of the proposed mine, the company intends to begin the process this year under the regulatory framework of the Filipino government’s [National Commission on Indigenous Peoples](http://www.ncip.gov.ph/). Xstrata also claims to be performing ongoing water monitoring to ensure that its activities are not contaminating water resources, and noted that the Tampakan Project is still in the exploration stage and is not yet discharging waste water. The company claimed that the fatal shootings were not related to the Tampakan Project, and noted the region’s history of social conflict and the fact that Daguil Capion was wanted on murder charges. Xstrata uses a private security firm to protect its personnel and installations and has implemented the VPs in the Philippines, including VPs awareness training for both private and public security agencies.

The conflicting perspectives to the story indicate a need for further due diligence. FPW intends to continue engaging with Xstrata, the community, investors, and other stakeholders to remedy the situation, and to ensure that the FPIC process for the Tampakan Mine produces tangible benefits to the community. Please contact [npelosi@firstpeoples.org](mailto:npelosi@firstpeoples.org) for additional information.