Indigenous Rights Risk Report

November 2014

The information and related assessments in this report are not intended to be relied upon as, or to be a substitute for, specific professional advice. First Peoples Worldwide (FPW) shall have no responsibility for loss occasioned to any person acting on or refraining from action as a result of any material in this report. With respect to any and all information and assessments contained in this report, FPW makes no representation or warranty of any kind, either express or implied, with respect to such information and assessments, the results to be obtained by the use thereof or any other matter. This report contains information that is derived from public sources and certain assessments by FPW based on that information. FPW expressly disclaims, and the buyer or reader waives, any and all implied warranties, including without limitation, warranties of originality, accuracy, completeness, merchantability, fitness for a particular purpose and warranties related to possible violations of intellectual property rights, trademark rights or any other rights of any third party.

When citing this report, please use the following format: Adamson, Pelosi. “Indigenous Rights Risk Report.” First Peoples Worldwide, Inc. 2014.

Acknowledgements

The Indigenous Rights Risk Report's methodology was designed by First Peoples Worldwide under the leadership of Rebecca Adamson with support from Karin Chamberlain, Dan Morrison, Zoe Osterman, and Nick Pelosi, and an advisory committee comprised of Chris Anderson (Rio Tinto), Jamie Bonham (NEI Investments), Paul Bugala (Calvert Investments), Nick Cotts (Newmont), Steven Heim (Boston Commons Asset Management), Tulia Machado-Helland (Storebrand), Francois Meloche (Batirente), and Julie Tanner (Christian Brothers Investment Services). The research and writing for this report was led by Nick Pelosi, building on preliminary research and writing by Karin Chamberlain and Dan Morrison.

In addition to the valuable time and knowledge contributed by the advisory committee members, First Peoples would like to recognize and thank the steering committee of the Indigenous Peoples Working Group of US SIF for their leadership role in socially responsible investing and Indigenous Peoples' rights. First Peoples would also like to thank the numerous organizations that helped extend the report's reach as broadly as possible, including Africa Grantmakers Affinity Group, American Indian Law Clinic at the University of Colorado, Assembly of Manitoba Chiefs, Boston Area Social Investment Consortium, Business and Human Rights Resource Centre, First Affirmative Financial Network, Future 500, Indian Law Resource Center, Interfaith Center on Corporate Responsibility, International Funders for Indigenous Peoples, International Human Rights Funders Group, International Indian Treaty Council, Mining Association of Canada, Oxfam America, RESOLVE, UN Global Compact, US SIF: The Forum for Sustainable and Responsible Investing, and any others that were missed.

Table of Contents

Forward

In 1998 when I left my job at Calvert Social Investment Fund to launch Honest Tea out of my house, there weren't many commonalities between marketing mutual funds and bottled beverages. But within Honest Tea's first month, we stumbled upon a challenge that could have derailed the company before we even started. Fortunately I was able to draw on my experience and contacts from Calvert to protect our nascent enterprise.

We had come across a delicious peppermint herbal tea recipe developed by a woman-owned company on the Crow Reservation in Montana. Our first instinct was to label the drink "Sundance Tea" and rush it to market. Fortunately, I resisted this impulse, and instead reached out for guidance to Rebecca Adamson, whom I had come to know from her work as a Calvert board member. Through my conversations with Rebecca and our Crow suppliers, I came to learn that the sundance is a solemn Native American ritual which in the Crow community involves self-mutilation. It would have been sacrilegious to use the Sundance name for the marketing and enjoyment of a ready-to-drink tea - certainly not the right image for a company calling itself "Honest Tea." Instead, we named it First Nation Peppermint, included a picture of the great war chief Medicine Crow on the label, and created a royalty agreement that benefited our supplier as well as the Pretty Shield Foundation, a non-profit for Crow foster children. Within a few years of hitting the market, First Nation Peppermint became one of the top selling teas in the natural food industry, and the world's first organic bottled tea.

Until now, most businesses refer to standard financial metrics to evaluate an investment opportunity and fail to consider the impact an investment might have on indigenous communities. With the release of this "Indigenous Rights Risk Report", First Peoples Worldwide is providing investors with the tools they need to make informed decisions which will ultimately help deliver a safer economic return. An economic evaluation that solely assesses economic factors without taking into account the impact on broader stakeholders is an incomplete analysis, and as the 2013 experience of Southwestern Energy makes clear in this report, one fraught with a high degree of risk.

Recently, I had the opportunity to serve on the US Advisory Board on Impact Investment, which produced the *Private Capital Public Good* Report. The experience highlighted the growing recognition that investment shapes society for better and for worse, and that long-term financial performance is closely linked with what kind of impact an investor makes. From investing in enterprises with a social good to shareholders who seek corporations for both financial and social performance, it is no longer business as usual. First Peoples' "Indigenous Rights Risk Report" is one of the first tools to comprehensively rate the social risks a company faces when it is operating on Indigenous lands without the community's consent. This report not only begins the process of quantifying social costs, it reminds us that whole communities and their ways of life

are at risk. Just as with an endangered species or ecosystems, once a community's way of life is lost, it can never be replaced. I hope investors will come to regard the Indigenous Rights Risk Report as the voice that too often isn't heard and that they will be able to listen to its wisdom, before it is too late for the companies and communities it can help protect.

Honestly Yours,
Seth Goldman
Co-Founder & TeaEO, Honest Tea

Introduction

In 2014, Ernst and Young elevated the "social license to operate" to the third place on its list of the greatest business risks to the mining industry, citing that "the frequency and number of projects being delayed or stopped due to community and environmental activists continues to rise."[1] Research conducted by the Corporate Social Responsibility Initiative at Harvard Kennedy School and the Centre for Social Responsibility in Mining at the University of Queensland revealed that "most extractive companies do not currently identify, understand and aggregate the full range of costs of conflict with local communities."[2] Additionally, a report by the McKinsey Global Institute expressed the need for "a new approach to the changing resource landscape…as exploration and production increasingly shift to developing countries and frontier markets, companies that can reframe their mission from simple extraction to ongoing partnership with host governments in economic development are likely to secure a real competitive advantage."[3]

The connection between a company's financial and social performance is gaining broader recognition from the business community, but analytical processes for identifying and evaluating social risks are far from refined. The US Securities and Exchange Commission does not require corporate securities reporting on community relations or human rights due to their perceived lack of material relevance,[4] resulting in widespread discrepancies in how US companies disclose their performance in these areas, if they disclose it at all. The Global Reporting Initiative and other voluntary sustainability reporting frameworks offer some guidance, but fail to incorporate sustainability context,[5] defined by the Center for Sustainable Organizations as "the combination of circumstances that determines what the norms, standards, or thresholds for sustainability performance should be when attempting to judge whether or not an organization's activities are sustainable."[6] As a result, many companies secure compliance with these frameworks by enlisting a "checkbox" approach to sustainability reporting that does not depict a clear picture of the business environments in which they are operating.

These informational loopholes limit the financial sector's ability to comprehensively manage social risks. Besides the obvious implications this poses for individual investors, it perpetuates a broader phenomenon in which capital flows are prevented from rewarding companies that pursue strong community relations and respect human rights, and penalizing companies that do not. In the absence of market incentives for proactively addressing social risks, companies are not prompted to do so until things go wrong, and social risks become social costs.

---

[1] http://www.ey.com/GL/en/Industries/Mining---Metals/Business-risks-in-mining-and-metals
[2] http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf
[3] http://www.mckinsey.com/insights/energy_resources_materials/reverse_the_curse_maximizing_the_potential_of_resource_driven_economies
[4] http://accountabilityroundtable.org/wp-content/uploads/2013/10/ICAR-Knowing-and-Showing-Report5.pdf
[5] http://www.greenbiz.com/blog/2013/05/22/has-gri-consigned-itself-irrelevance
[6] http://www.sustainableorganizations.org/Susty%20Context%20-%20What%20Is%20It.pdf

The Indigenous Rights Risk Report is a quantitative assessment of one of the most pressing social risks to the extractive industries - Indigenous Peoples' rights. The report analyzed the securities filings of 52 oil, gas, and mining companies listed on the Russell 1000 Index (a stock market index representing the 1,000 largest publicly-held companies in the US), and identified which of their projects overlap with or potentially impact Indigenous Peoples. Projects on or near Indigenous territories were assessed against five risk indicators (Country Risk, Reputation Risk, Community Risk, Legal Risk, and Risk Management), and rated on a scale of 1 (indicating low risk) to 5 (indicating high risk) for each. The weighted average of these ratings determined a project's risk score, gauging its susceptibility to Indigenous community opposition, or violations of Indigenous Peoples' rights.. A searchable database of the 330 oil, gas, and mining projects assessed is available on First Peoples' website at http://firstpeoples.org/wp/.

Since publishing the preliminary report in 2013, First Peoples Worldwide has proactively sought feedback from companies, governments, Indigenous Peoples, investors, NGOs, and others. Based on these conversations, First Peoples expanded the report's methodology to account for a broader range of factors that influence a project's risk exposure to Indigenous Peoples' rights. An advisory committee, comprised of companies and investors, was formed to provide ongoing technical expertise during this process, and First Peoples worked with the Business and Human Rights Resource Centre, Future 500, the Indigenous Peoples Working Group of US SIF, RESOLVE, the UN Global Compact, and others to extend our reach across the extractive industries. Additionally, companies were invited to submit comments to their scorecards. Thirteen companies responded, and had their comments considered for incorporation.

The Indigenous Rights Risk Report serves multiple functions. It is a tool for the private sector to measure social risks that are persistently overlooked or underestimated in financial planning, causing companies (and their shareholders) to be blindsided by costly operational disruptions. It provides a framework for identifying the circumstances in which violations of Indigenous Peoples' rights jeopardize bottom lines, with the intention of stimulating demand for business environments in which those circumstances are mitigated to the fullest extent possible.

Most importantly, it is a tool for Indigenous Peoples to exercise greater self-determination over their lands and resources. Indigenous Peoples are securing unprecedented recognition of their rights from governments, but these impressive legal gains are matched with chronic gaps in implementation, especially as they relate to resource extraction. It would be problematic for Indigenous Peoples to rely exclusively on governments to protect their rights from the private sector, when governments have a sustained record of violating Indigenous Peoples' rights themselves. Using market forces to financially incentivize business practices that respect Indigenous Peoples' rights - including Free, Prior, and Informed Consent - presents opportunities for communities to exert powerful leverage over companies operating on or near their lands.

Part A: Why Indigenous Peoples Matter

The UN estimates that there are more than 370 million Indigenous Peoples worldwide. There is no universal definition of Indigenous Peoples, and Indigenous leaders have expressed the view that a definition is not necessary or desirable, stressing "the importance of self-determination as an essential component of any definition that might be elaborated by the UN system."[7] Instead, the UN "has developed a modern understanding of the term based on the following:

•Self-identification as Indigenous Peoples at the individual level and accepted by the community as their member
•Historical continuity with pre-colonial and/or pre-settler societies
•Strong link to territories and surrounding natural resources
•Distinct social, economic or political systems
•Distinct language, culture and beliefs
•Form non-dominant groups of society
•Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities."[8]

In *Land Rich and Dirt Poor: The Story of Indian Assets*, First Peoples' Founder and President Rebecca Adamson describes how Native American reservations contain "5% of the US oil and 10% of the gas reserves, 30% of the low sulfur coal reserves and 40% of the privately held uranium deposits. For most people anywhere in today's world economy, such assets or major property holdings equal wealth and money. Not so for the American Indian and Alaska Native. Defying economic canon that assets and wealth are two sides of the same economic coin, today's Native Americans have the highest poverty rate and the highest unemployment rate in the nation...Simply stated, US government policy toward Native Americans on the whole reflects one theme: gain control of tribal assets. Federal Indian law governs the tribal assets, federal agencies administer oversight and manage the assets and any recourse that pertains to beneficiary rights or fiduciary dispensation is locked within the US federal courts...In this closed and unjust system based upon the concept of plenary power, Congress has systematically removed assets from tribal ownership, reduced tribal control of assets that American Indians and Alaska Natives rightfully own and redirected the benefits to outside interests."[9]

This is largely reflective of the situation of Indigenous Peoples globally. Resources worth billions of dollars are extracted from Indigenous territories every year, yet Indigenous Peoples are "among the world's most vulnerable, marginalized and disadvantaged groups.[10] Additionally, "the impact of such projects includes environmental damage to traditional lands in addition to

[7] http://en.wikipedia.org/wiki/Indigenous_peoples
[8] http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf
[9] http://nrfc.org/ln/documents/Adamson_LandRich_jb3.pdf
[10] http://www.ifad.org/pub/factsheet/ip/e.pdf

loss of culture, traditional knowledge and livelihoods, often resulting in conflict and forced displacement, further marginalization, increased poverty and a decline in health."[11] Although notable exceptions do occur, Indigenous Peoples' experiences with resource extraction remain largely characterized as a "resource curse" in which communities endure severe socioeconomic and environmental degradation despite the wealth generated from their lands, spawning controversy and resistance. The failure of governments to distribute benefits equitably, perform adequate regulatory oversight, and respect their commitments to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is largely to blame. However, the financial consequences inflict far more damage to the private sector.

Dollar losses tied to community opposition are difficult to quote due to the aforementioned lack of focus (and therefore, data) on the issue's material relevance. Research conducted by the Corporate Social Responsibility Initiative at Harvard Kennedy School and the Centre for Social Responsibility in Mining at the University of Queensland established a typology of costs that may be experienced by extractive companies as a result of conflict with local communities. The extensiveness of this typology "suggests that the range of costs experienced by companies may be significant in their scope and magnitude and that conflict is a means by which the social (and environmental) risks posed by projects can translate into serious business risks."[12] John Ruggie, who led the development of the UN Guiding Principles on Business and Human Rights, told *Business Ethics* that "for a world-class mining operation…there's a cost somewhere between $20 million to $30 million a week for operational disruptions by communities" and that the time it takes to bring oil and gas projects online has "doubled over the course of the previous decade, creating substantial cost inflation."[13] Additionally, "analysis by Environmental Resources Management of delays associated with a sample of 190 of the world's largest oil and gas projects (as ranked by Goldman Sachs) found that 73% of project delays were due to "above-ground" or non-technical risk, including stakeholder resistance."[14]

These numbers come from studies of community opposition in general. However, Indigenous community opposition is an especially perilous investment risk because Indigenous Peoples have the international legal framework for Free, Prior, and Informed Consent (FPIC). According to UNDRIP, "states shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."[15] FPIC is broadly defined as "the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they

[11] http://www.un.org/en/events/indigenousday/pdf/Indigenous_Industry_Eng.pdf
[12] http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf
[13] http://business-ethics.com/2011/10/30/8127-un-principles-on-business-and-human-rights-interview-with-john-ruggie/
[14] http://www.bsr.org/reports/BSR_LocalContent_March2011.pdf
[15] http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

customarily own, occupy or otherwise use."[16] Beyond that, perspectives on FPIC are extremely diverse; First Peoples has compiled nearly 40 practical guidebooks on FPIC implementation.[17] Despite these ambiguities, what is clear is that international law requires projects to obtain support from impacted Indigenous Peoples. Although governments maintain that their commitments to UNDRIP are aspirational and nonbinding, Indigenous Peoples are successfully using the document to influence domestic laws and court rulings, and stop unwanted projects from moving forward.

The extractive industries' risk exposure to Indigenous Peoples' rights will continue rising, as the global scramble for the world's last remaining resources pushes companies further into Indigenous territories. One of the report's most important trends was the direct correlation between Country Risk and a project's overall risk score. In other words, projects in countries with weak or nonexistent legal protections for Indigenous Peoples were far more likely to receive high risk scores. These numbers indicate that poor governance is bad for business. Governments that disregard their commitments to UNDRIP (often with the justification that they are obstacles to development) actually propagate volatile business environments that threaten the viability of investments in their countries. This is becoming increasingly evident in Canada, Ecuador, Peru, Indonesia, Russia, and other emerging resource economies. In 2013, a consortium of Canadian leaders (including industry representatives) warned that Canada is "heading for a gridlock in energy development that will rob the country of future wealth unless it can solve vexing environmental and Aboriginal conflicts."[18] Also in 2013, auctions for oil and gas concessions in Ecuador and Peru encountered both vehement opposition from Indigenous Peoples and "underwhelming" interest from companies,[19][20] raising speculations that the former influenced the latter. Indonesia has become saturated with violent resource conflicts, with more than 2,230 Indigenous communities requesting investigations into violations of their land rights.[21] In 2012, Russia attracted widespread condemnation for ordering the Russian Association of Indigenous Peoples of the North (RAIPON) to suspend its operations, citing "inconsistencies" between the country's laws and RAIPON's bylaws. RAIPON attributed the suspension to "an extensive hike in the level of industrialization in the north, and the Indigenous Peoples are among the last barriers against the companies' and state's development of the resources. The authorities strongly dislike RAIPON's extensive international engagement. All basic rights of Indigenous Peoples are being taken out of federal legislation."[22]

[16] http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic
[17] http://firstpeoples.org/wp/making-free-prior-and-informed-consent-available-to-all/
[18] http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/canada-heading-for-energy-gridlock-group-warns/article15941026/
[19] http://www.reuters.com/article/2013/11/29/ecuador-oil-idUSL2N0JE0QB20131129
[20] http://www.bnamericas.com/news/oilandgas/peru-delays-offshore-round-interest-underwhelming
[21] http://news.mongabay.com/2014/0822-lbell-indonesia-land-disputes.html
[22] https://intercontinentalcry.org/human-rights-groups-and-states-concerned-over-russian-suspension-of-raipon/

Case Study: Why Indigenous Peoples Matter in Canada

In 2013, a consortium of Canadian leaders (including industry representatives) warned that Canada is "heading for a gridlock in energy development that will rob the country of future wealth unless it can solve vexing environmental and Aboriginal conflicts."[1] The Canadian Chamber of Commerce says that Canada's lack of oil and gas infrastructure is "preventing Canadians from maximizing their potential benefits in energy markets" and costing the country's economy $50 million a day. The Chamber points to skyrocketing domestic production in the US, which currently receives 98 and 100 percent of Canada's oil and gas exports, respectively. With the US poised to become a net exporter by 2020, Canada's plans to become an "energy superpower"[2] are contingent upon the construction of pipelines to its east and west coasts for access to European and Asian markets.[3]

Although the Chamber does not explicitly say so, nearly every major proposed pipeline or pipeline expansion in Canada (Energy East, Northern Gateway, Pacific Trails, Trans Mountain) is facing staunch Aboriginal resistance. Additionally, First Nations in British Columbia are vowing to stop construction of refineries and export terminals due to their alleged impacts on fisheries and sacred sites, and Native Americans in the US stand at the forefront of national resistance to Keystone XL. The fate of many of these projects will probably be decided by the Canadian courts, where Aboriginals enjoy one of the clearest winning streaks in Canadian legal history.[4] The resulting pipeline bottlenecks "have caused Canadian oil products to be heavily discounted against world prices"[5] and as US demand continues to decline, so will the viability of Canadian oil (and companies that produce it). In 2014, Statoil became the first major company to "halt plans to develop an oil-sands project in Canada, citing high costs and shipping bottlenecks that threaten to block access to markets where heavy crude can be sold profitably."[6]

The Harper administration does not appear to be responding with an immediate urgency, and recently sparked "outrage" for using the UN World Conference on Indigenous Peoples "as an opportunity to continue its unprincipled attack on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)." At the conference, an outcome document was produced calling on governments to "take appropriate measures at the national level...to achieve the ends of the UNDRIP" and affirming that "decisions potentially affecting the rights of Indigenous Peoples should be undertaken only with their Free, Prior, and Informed Consent (FPIC)." Canada was the only country to raise objections to the outcome document, insisting that it cannot "commit to uphold provisions in the UNDRIP that deal with FPIC if these provisions were 'interpreted as a veto.'" Canada's behavior at the conference was condemned by the Assembly of First Nations and other Aboriginal leaders across the country.[7] It is unclear why Canada continues to backslide on an issue that is so crucial to its economic agenda. While its certainly not the only country disregarding its commitments to UNDRIP, it has positioned itself as the document's most vocal opponent, perpetuating the tensions that threaten to paralyze its resource future.

[1] http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/canada-heading-for-energy-gridlock-group-warns/article15941026/
[2] http://www.bloomberg.com/infographics/2014-04-24/canada-energy-superpower.html
[3] http://www.chamber.ca/media/blog/130917-50-Million-a-Day/1309_50_Million_a_Day.pdf
[4] http://business.financialpost.com/2012/12/14/170-legal-victories-empower-first-nations-in-fight-over-resource-development/
[5] http://www.chamber.ca/media/blog/130917-50-Million-a-Day/1309_50_Million_a_Day.pdf
[6] http://online.wsj.com/articles/statoil-shelves-canadian-oil-sands-project-citing-costs-and-access-1411682167
[7] http://www.ubcic.bc.ca/News_Releases/UBCICNews09241401.html#axzz3GKq9LDti

Part B: Methodology

The Indigenous Rights Risk Report analyzed the securities filings of 52 oil, gas, and mining companies listed on the Russell 1000 Index (a stock market index representing the 1,000 largest publicly-held companies in the US), and identified which of their projects overlap with or potentially impact Indigenous Peoples. Projects on or near Indigenous territories were assessed against five risk indicators (Country Risk, Reputation Risk, Community Risk, Legal Risk, and Risk Management), and rated on a scale of 1 (indicating low risk) to 5 (indicating high risk) for each. The weighted average of these ratings determined a project's risk score, gauging its susceptibility to Indigenous community opposition, or violations of Indigenous Peoples' rights.. A searchable database of the 330 oil, gas, and mining projects assessed is available on First Peoples' website at http://firstpeoples.org/wp/.

Since publishing the preliminary report in 2013, First Peoples Worldwide has proactively sought feedback from companies, governments, Indigenous Peoples, investors, NGOs, and others. Based on these conversations, First Peoples expanded the report's methodology to account for a broader range of factors that influence a project's risk exposure to Indigenous Peoples' rights. An advisory committee, comprised of companies and investors, was formed to provide ongoing technical expertise during this process, and First Peoples worked with the Business and Human Rights Resource Centre, Future 500, the Indigenous Peoples Working Group of US SIF, RESOLVE, the UN Global Compact, and others to extend our reach across the extractive industries. Additionally, companies were invited to submit comments to their scorecards. Thirteen companies responded, and had their comments considered for incorporation.

Under the report's expanded methodology, ratings for each of the five risk indicators were determined by a series of weighted subindicators, which were also rated on a scale of 1 to 5. The metrics used to rate the indicators and subindicators are detailed in the following pages.

Overview

Risk scores were assigned based on Country Risk (20%), Reputation Risk (20%), Community Risk (25%), Legal Risk (10%), and Risk Management (30%). Under the report's expanded methodology, ratings for each of the five risk indicators were determined by a series of weighted subindicators, which were also rated on a scale of 1 to 5.

Country Risk (20%)
Recognition (10%)
Land rights (30%)
Consultation (30%)
Civil liberties (30%)

Reputation Risk (20%)
Presence of negative attention (30%)
Scope of negative attention (30%)
Timeliness of negative attention (40%)

Community Risk (25%)
Identification (10%)
Status and tenure (15%)
Self-governance (15%)
Community development (15%)
External influence (15%)
Community opposition (30%)

Legal Risk (5%)
Presence of legal actions (50%)
Status of legal actions (50%)

Risk Management (30%)
Policy (20%)
Governance (20%)
Reporting (10%)
Consultation and agreement (20%)
Social investments (20%)
Social impact assessments (20%)

Country Risk (20%)

Country Risk assessed the strength of legal protections for Indigenous Peoples, and the degree to which they are enforced, in the country where the project is located. High risk countries had weak or nonexistent legal protections for Indigenous Peoples, while low risk countries had relatively strong legal protections for Indigenous Peoples. Country Risk scores were assigned based on recognition (10%), land rights (30%), consultation (30%), and civil liberties (30%).

Recognition (10%)	
5	The government does not recognize the status of Indigenous Peoples in any formal way/does not acknowledge the existence of Indigenous Peoples within the country.
4	Indigenous languages or the rights of "traditional communities" are recognized, but the peoples are not recognized as Indigenous in the international context.
3	Some Indigenous Peoples are recognized by the country but there are still numerous communities who self-identify as Indigenous and are not recognized as such.
2	Indigenous Peoples are recognized as Indigenous in the Constitution or another formal manner.
1	All Indigenous Peoples that fit the UN's working criteria of Indigenous Peoples are recognized as such.

Land rights (30%)	
5	Indigenous Peoples have no land rights or have been forcibly evicted from their land.
4	Indigenous Peoples have land rights on paper but there is no accessible titling process. There is recognition (and implementation) of customary land rights and titling, without explicitly acknowledging that customary owners are Indigenous Peoples.
3	Indigenous Peoples have land rights but the mechanism for securing title is not functioning effectively or efficiently.
2	Indigenous Peoples have well-established land rights and a functioning mechanism for securing land titles but they are not fully in accordance with UNDRIP and ILO 169.
1	Indigenous Peoples have land rights in accordance with ILO 169 and UNDRIP.

Consultation (30%)	
5	The country has no legal framework that recognizes the need to consult with Indigenous Peoples and communities.
4	The country has a legal framework for consultations with Indigenous Peoples but there is a regular pattern of actions taken on Indigenous Peoples' land without consultations.
3	The country has a legal framework for consultations but there are some instances of the government not consulting with Indigenous Peoples.
2	The country has a legal framework for consultations that is consistently implemented.
1	The country has a well-established policy for obtaining Indigenous Peoples' Free, Prior, and Informed Consent in accordance with UNDRIP and ILO 169.

Civil liberties (30%)	
5	Evidence of sustained and severe repression of Indigenous Peoples' civil liberties including reports of murder or death threats and general violence against Indigenous Peoples.
4	Evidence of repression of Indigenous Peoples' civil liberties including multiple arrests of Indigenous Peoples and the criminalization of protesting.
3	Evidence of repression of Indigenous Peoples' civil liberties including isolated reports of arrests and protests met with police brutality.
2	Indigenous Peoples have general enjoyment of their civil liberties including access to justice, freedom of the press, and the right of assembly.
1	Indigenous Peoples have general enjoyment of their civil liberties including access to justice, freedom of the press, and the right of assembly. The country is generally regarded as being in compliance with high international standards regarding civil liberties.

Reputation Risk (20%)

Reputation Risk assessed current and former negative attention to the project, and other projects in close geographic proximity, from the media, NGOs, and other groups that influence public opinion and can affect the company's reputation. Reputation Risk scores were assigned based on presence of negative attention (30%), scope of negative attention (30%), and timeliness of negative attention (40%).

Presence of negative attention (30%)	
5	There is negative attention to the project.
4	There is negative attention that directly implicates the project.
3	There is negative attention to associated facilities or supply chain operations that are important to the project's market access.
2	There is negative attention to unrelated projects in close geographic proximity.
1	There is no negative attention to the project's impacts on Indigenous Peoples.

Scope of negative attention (30%)	
5	Negative attention comes from media outlets with broad global reach.
4	Negative attention comes from media outlets with broad national reach, or large NGOs.
3	Negative attention comes from media outlets with broad local reach, or medium-sized NGOs.
2	Negative attention comes from media outlets with limited reach, or small NGOs.
1	There is no negative attention to the project's impacts on Indigenous Peoples.

Timeliness of negative attention (40%)	
5	Negative attention is dated 2014 or earlier.
4	Negative attention is dated 2013, 2012, or earlier.
3	Negative attention is dated 2011, 2010, or earlier.
2	Negative attention is dated 2009, 2008, or earlier.
1	Negative attention is more than seven years old. There is no negative attention to the project's impacts on Indigenous Peoples.

Community Risk (25%)

Community Risk assessed the project's susceptibility to community opposition, and whether the conditions are in place for successful community engagement. Community Risk scores were assigned based on identification (10%), status and tenure (15%), self-governance (15%), community development (15%), external influence (15%), and community opposition (30%).

Identification (10%)	
5	Impacted Indigenous communities are not identified by the company.
4	Some impacted Indigenous communities are identified by the company; there is evidence that others are excluded or overlooked.
3	Impacted Indigenous communities are vaguely identified by the company.
2	Impacted Indigenous communities are clearly identified by the company.
1	Impacted Indigenous communities are clearly identified and mapped by the company.

Status and tenure (15%)	
5	Violent land disputes in or near the project area. The project is in a country where Indigenous Peoples have no legal mechanisms to secure title to their lands.
4	Unresolved land disputes in or near the project area. There is no evidence that communities have secure title to their lands.
3	Communities' efforts to secure title to their lands appear to be making progress. Some communities have secure title to their lands, others have pending claims.
2	Communities have a treaty (or similar agreement) with their government regarding status and tenure; there are some issues that warrant attention.
1	Communities have a treaty (or similar agreement) with their government regarding status and tenure; there is no evidence of unresolved land disputes.

Self-governance (15%)	
5	There is no evidence of self-governance. There is an extremely complex political landscape due to the diverseness of impacted communities and unresolved/violent land disputes; there are no forums for coordinated decision-making between communities.
4	There is functioning self-governance with capacity for both internal decision-making and external negotiation with companies; there is evidence of strong factiousness. There is some self-governance; there is no evidence of capacity for external negotiation with companies. There is a complex political landscape due to the diverseness of impacted communities; there are no forums for collaborative decision-making between communities. There is an extremely complex political landscape due to the diverseness of impacted communities and unresolved/violent land disputes; there are forums for coordinated decision-making between communities.
3	There is functioning self-governance with demonstrable capacity for both internal decision-making and external negotiation with companies; there is evidence of moderate factiousness. There is a complex political landscape due to the diverseness of impacted communities; there are forums for collaborative decision-making between communities.
2	There is functioning self-governance with demonstrable capacity for both internal decision-making and external negotiation with companies; there is no evidence of factiousness.
1	There is functioning self-governance with capacity for both internal decision-making and external negotiation with companies; there is no evidence of factiousness; there is an administrative entity tasked with managing development of oil, gas, and mineral resources.

Community development (15%)	
5	There is no evidence of internally-controlled community development.
4	*see below* (1 out of 4)
3	*see below* (2 out of 4)
2	*see below* (3 out of 4)
1	There is evidence of internally-controlled economic development, education, healthcare, and social development. (4 out of 4)

External influence (15%)	
5	There are large NGOs establishing a presence in the community to oppose the project.
4	There are medium-sized NGOs opposing the project.
3	There are small NGOs opposing the project.
2	There were NGOs opposing the project; campaigns have been inactive for more than seven years.
1	There are no NGOs opposing the project.

Community opposition (30%)	
5	There are reports of community opposition associated with violence.
4	There are reports of community opposition.
3	There are no reports of community opposition; there is no evidence of an agreement. There are reports of community concerns. There are reports of community opposition to associated facilities or supply chain operations that are important to the project's market access. There are reports of community opposition more than seven years old; there is no evidence of an agreement.
2	There were some community issues, but they appear to be fully resolved through an agreement.
1	There are no reports of community opposition; there is an agreement.

Legal Risk (5%)

Legal Risk assessed current and former legal actions taken against the project, and other projects in close geographic proximity, in the past five years. In this context, a legal action may include, but is not limited to, a lawsuit in court, arbitration, or any other form of adjudication that is utilized to address violations of Indigenous Peoples' rights, in both domestic and legally-binding international jurisdictions. Legal Risk scores were assigned based on presence of legal actions (50%), and status of legal actions (50%).

Presence of legal actions (50%)	
5	There have been legal actions against the project.
4	There have been legal actions that could directly affect the project.
3	There have been legal actions against associated facilities or supply chain operations that are important to the project's market access.
2	There have been legal actions against unrelated projects in close geographic proximity.
1	There have been no legal actions in the past five years.

Status of legal actions (50%)	
5	Legal actions are pending in court.
4	Legal actions were ruled in the community's favor.
3	Legal actions were ruled in the community's favor, then reversed.
2	Legal actions were ruled in the company's favor, dropped, or resolved through mediated settlement.
1	There have been no legal actions in the past five years.

Risk Management (30%)

Risk Management assessed the project's efforts to establish positive relations with impacted Indigenous Peoples, and mitigate its risk exposure to Indigenous Peoples' rights. Risk Management scores were assigned based on three corporate-level subindicators and three project-level subindicators. The corporate-level subindicators were policy (20%), governance (20%), and reporting (10%). The project-level subindicators were consultation and agreement (20%), social investments (20%), and social impact assessments (10%).

Policy (20%)	
5	Company policies do not reference Indigenous Peoples.
4	Company policies reference Indigenous Peoples with an emphasis on compliance or procurement.
3	Company policies reference Indigenous Peoples with an emphasis on community engagement or human rights.
2	Company policies reference Indigenous Peoples' right to FPIC, the UN Declaration on the Rights of Indigenous Peoples, and/or ILO Convention 169.
1	Company policies reference Indigenous Peoples' right to FPIC, the UN Declaration on the Rights of Indigenous Peoples, and/or ILO Convention 169; there are publicly-available implementation guidelines or metrics.

Governance (20%)	
5	The company does not address community relations or human rights at the board level.
4	*see below* (1 out of 4)
3	*see below* (2 out of 4)
2	*see below* (3 out of 4)
1	The company has board expertise in community relations or human rights. The company has a board committee with community relations or human rights in its mandate. The company has an active and independent external body to advise and evaluate its community relations or human rights performance. The company provides internal rewards and incentives for staff and managers to pursue successful community relations. (4 out of 4)

Reporting (10%)	
5	The company does not report on Indigenous Peoples or human rights.
4	The company does not report on Indigenous Peoples, but reports on human rights.
3	The company reports on Indigenous community engagement.
2	The company reports on Indigenous Peoples' rights in adherence to the GRI's Sustainability Reporting Framework; the company reports on Indigenous community engagement.
1	The company reports on Indigenous Peoples' rights in adherence to the GRI's Sustainability Reporting Framework; the company reports on Indigenous community engagement; there is a public feedback mechanism through which alleged inaccuracies in the report can be addressed.

Consultation and agreement (20%)	
5	There is no evidence of a formal agreement with impacted Indigenous communities, or public consultation.
4	There is a formal agreement with impacted Indigenous communities; if community opposition is reported, there is no evidence of public consultation. There is no evidence of a formal agreement with impacted Indigenous communities; there is evidence of some public consultation.
3	There is a formal agreement with impacted Indigenous communities; if community opposition is reported, there is evidence of some public consultation. There is no evidence of a formal agreement with impacted Indigenous communities; there is evidence of extensive, ongoing public consultation.
2	There is a formal agreement with impacted Indigenous communities; there is a grievance mechanism; if community opposition is reported, there is evidence of extensive, ongoing public consultation. There is a formal agreement with impacted Indigenous communities; there is no grievance mechanism; there are no reports of community opposition.
1	There is a formal agreement with impacted Indigenous communities; there is a grievance mechanism; if community opposition is reported, there is evidence of inclusiveness in the negotiations and extensive, ongoing public consultation. There is a formal agreement with impacted Indigenous communities; there is a grievance mechanism; there are no reports of community opposition.

Social investments (20%)	
5	There is no evidence of social investments in Indigenous communities.
4	There are social investments in Indigenous communities; there is no evidence of local control over design and implementation.
3	There are social investments in Indigenous communities; there is some local control over design and implementation.
2	There are social investments in Indigenous communities; there is full or nearly full local control over design and implementation.
1	There are social investments in Indigenous communities; there is full or nearly full local control over design and implementation; benefits accrue to a broad cross-section of community members, and will be sustained beyond the project's life cycle.

Social impact assessments (10%)	
5	There is no publicly-available SIA.
4	There is a publicly-available SIA that assesses impacts to Indigenous cultural heritage sites, but not Indigenous communities.
3	There is a publicly-available SIA that assesses social impacts to Indigenous Peoples.
2	There is a publicly-available SIA that assesses social and cultural impacts to Indigenous Peoples.
1	There is a publicly-available SIA that assesses social and cultural impacts to Indigenous Peoples; there is evidence of consultation during the assessment process.

The report assessed companies' exploration and production projects, and some types of midstream projects (such as pipelines and processing facilities). The report did not assess companies' downstream assets (such as gas stations), and other types of midstream projects (such as trucking and storage). The report assigned risk scores to projects, rather than companies as a whole, because most companies do not disclose financial data at the project level. Thus, the impacts of a project's risk score to the company's overall financial performance cannot be accurately determined. It is worth noting that no standard definition of "project" is used across the extractive industries, and that companies disclose information about their projects with varying levels of detail and geographic specificity. For these reasons, the report's definition of "project" may be inconsistent across the scorecards.

One of the most frequently asked questions was how the report defined "Indigenous Peoples." First Peoples adheres to the UN's modern understanding of the term (see Part A) and, when in doubt, errs on the side of inclusiveness in its application. Some companies argued that this approach is problematic, and offers vague guidance for understanding and addressing the issue. In response, First Peoples acknowledges the complexities surrounding the term in many countries, and recognizes that companies may or may not choose to replicate our approach to identifying Indigenous Peoples. As an Indigenous-led organization, we are not in a position to promulgate restrictive interpretations of the term because Indigenous Peoples have historically suffered from definitions imposed by others.[23] It is worth noting that community opposition is risky in any form, and extensive debate about whether communities are Indigenous is not entirely necessary for the purposes of a financial study.

[23] http://en.wikipedia.org/wiki/Indigenous_peoples

Part C: Findings

35% (115) of the 330 projects assessed had high risk exposure to Indigenous community opposition or violations of Indigenous Peoples' rights, 54% (177) had medium risk exposure, and 11% (38) had low risk exposure (see Figure 1).

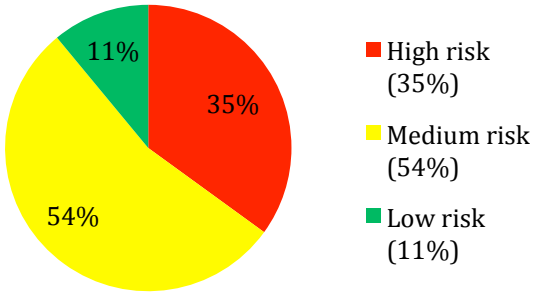


Figure 1

The oil and gas industry had collectively higher risk exposure than the mining industry, with both a larger percentage of high risk projects and a smaller percentage of low risk projects. 37% (94) of the 257 oil and gas projects received high risk scores, compared to 29% (21) of the 73 mining projects. By contrast, 10% (26) of the 257 oil and gas projects received low risk scores, compared to 16% (12) of the 73 mining projects. The average risk score for oil and gas projects was 3.3, while the average risk score for mining projects was 3.1.

This is possibly attributable to the mining industry's noticeably stronger standards related to Indigenous Peoples' rights, compared to the oil and gas industry. The International Council on Mining and Metals (ICMM) has a binding position statement on Indigenous Peoples and mining that recognizes FPIC "as a process based on good faith negotiation, through which Indigenous Peoples can give or withhold their consent to a project."[24] Although only 2 of the mining companies assessed are ICMM members, many others are affiliated with ICMM's network of member associations. By contrast, the International Petroleum Industry Environmental Conservation Association (IPIECA) provides some guidance on Indigenous Peoples' rights[25] and FPIC,[26] but lacks a binding position statement. 7 of the oil and gas companies assessed are IPIECA members.

The report assigned risk scores to projects, rather than companies as a whole, because most companies do not disclose financial data at the project level. Thus, the impacts of a project's risk score to the company's overall financial health cannot be accurately determined. That being said, some companies demonstrated noticeably higher risk exposure than others. Companies with high risk scores at more than 50% of their projects on or near Indigenous territories were Alpha Natural Resources (100%), Anadarko Petroleum (67%), Chevron Corporation (57%), Continental Resources (60%), Kosmos Energy (100%), Murphy Oil (89%), Royal Gold (67%), SM Energy (67%), Southern Copper (72%), Southwestern Energy (100%), Whiting Petroleum (100%), and WPX Energy (80%).

[24] http://www.icmm.com/publications/icmm-position-statement-on-indigenous-peoples-and-mining
[25] http://www.ipieca.org/topic-issue/summary-good-practice
[26] http://www.ipieca.org/topic-issue/free-prior-and-informed-consent

Discrete analysis of each of the five risk indicators (Country Risk, Reputation Risk, Community Risk, Legal Risk, and Risk Management) identified numerous key issues and emerging trends, detailed below.

Country Risk (20%)

Country Risk assessed the strength of legal protections for Indigenous Peoples, and the degree to which they are enforced, in the country where the project is located. 28% (94) of the projects assessed were in high risk countries, 23% (75) were in medium risk countries, and 49% (161) were in low risk countries (see Figure 2). An explanation for each country's risk score (listed below) is provided in the Country Risk Appendix. Because the report focused on US companies, projects were heavily concentrated in medium and low risk North American countries. 40% (131) of the projects assessed were in the US (a low risk country), and 20% (65) were in Canada (a medium risk country). With the exception of Australia and Indonesia, each of the remaining countries had fewer than 10 projects, and many had fewer than 5. Because of these vastly different sample sizes, the comparability of data within countries is questionable.

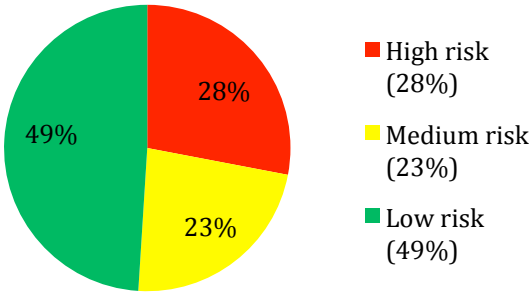
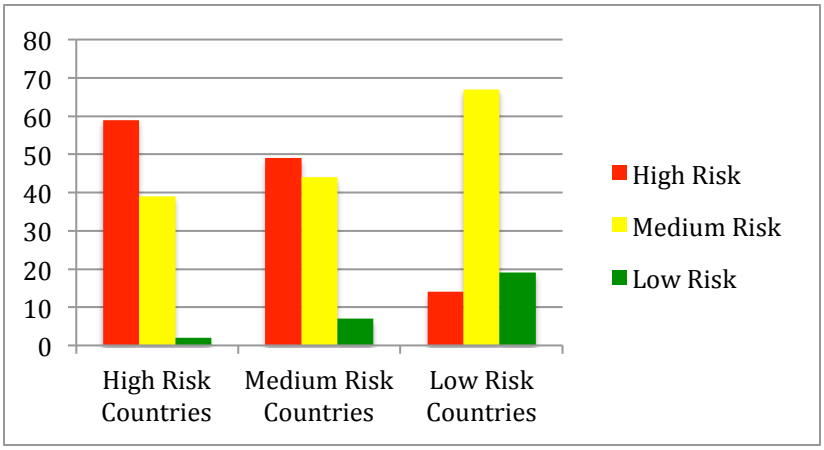


Figure 2

Country	Projects assessed	Score	Country	Projects assessed	Score
Greenland	2	1.3 (low)	Cameroon[27]	2	4.6 (high)
New Zealand	2	1.7 (low)	Mongolia	1	4.6 (high)
Australia	26	1.9 (low)	Colombia	7	4.7 (high)
US	131	2.1 (low)	DRC	2	4.7 (high)
Norway	1	2.2 (low)	Nigeria	2	4.7 (high)
Canada	65	2.9 (medium)	Suriname	1	4.7 (high)
Bolivia	1	3.2 (medium)	Indonesia	18	4.8 (high)
Venezuela	2	3.2 (medium)	Russia	8	4.8 (high)
Ecuador	1	3.3 (medium)	Algeria	2	4.9 (high)
Chile	6	3.6 (high)	Ghana	5	4.9 (high)
Peru	8	3.9 (high)	Iraq	3	4.9 (high)
Argentina	6	4.1 (high)	Chad[28]	4	5 (high)
Philippines	1	4.1 (high)	Egypt	1	5 (high)
Papua New Guinea	1	4.2 (high)	Equatorial Guinea	6	5 (high)
Mexico	9	4.4 (high)	Mozambique	1	5 (high)
Bangladesh	1	4.6 (high)	Western Sahara	1	5 (high)

[27] Two projects traversed the border of Cameroon and Chad
[28] Two projects traversed the border of Cameroon and Chad

One of the report's most important trends was the direct correlation between Country Risk and projects' overall risk scores. In other words, projects in countries with weak or nonexistent legal protections for Indigenous Peoples were far more likely to receive high risk scores. 59% (55) of the 94 projects in high risk countries received high risk scores, compared to 49% (37) of the 75 projects in medium risk countries, and 14% (23) of the 161 projects in low risk countries. By contrast, 2% (2) of the 94 projects in high risk countries received low risk scores, compared to 7% (5) of the 75 projects in medium risk countries, and 19% (31) of the 161 projects in low risk countries (see Figure 3). These numbers indicate that poor governance is bad for business. Governments that disregard their commitments to UNDRIP (often with the justification that they are obstacles to development) actually propagate volatile business environments that threaten the viability of investments in their countries.



The Munden Project's research on the financial risks of insecure land tenure explains how "emerging markets contrast with traditional investment environments. In addition to the absence of formal property rights, they often lack accessible and legitimate grievance procedures or conflict resolution mechanisms, such as reliably impartial (and speedy) judicial processes. This makes direct action via legal channels an impractical option when viewed from communities' perspectives. If the operator is unresponsive to local complaints, the only form of redress becomes disrupting the operation through any means available."[29] The direct correlation between Country Risk and projects' overall risk scores was further perpetuated by the chronic absence of information on status and tenure, self-governance, and community development in high risk countries. These data gaps prevent investors from accurately gauging whether the conditions are in place for successful community engagement.

Political risk insurance (PRI) offers some protections against Country Risk, but there are shortcomings to the assumption that this will always be the case. The Munden Project explains how "like any insurance policy, PRI can be rendered void by certain actions...[including] coercive practices on the part of the client." The Multilateral Investment Guarantee Agency defines "coercive practices" as "impairing of harming, or threatening to impair or harm, directly or indirectly, any person or the property of a person to influence improperly the actions of a person" or "illegal actions such as personal injury or abduction, damage to property, or injury to

[29] http://www.rightsandresources.org/documents/files/doc_5715.pdf

legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation." Given that PRI providers are incentivized to construe this definition inclusively, it would not be farfetched to conclude that violations of Indigenous Peoples' rights should qualify as coercive practices, cancelling a project's coverage.[30] Additionally, the Munden Project lists the incidents typically covered by PRI (confiscation, expropriation, nationalization, currency inconvertibility, and political violence) and notes how "none of these accurately reflect the specific risks of disruption that occur when land tenure is in dispute. It would be possible to argue that losses resulting from land tenure dispute are the fault of the government not performing on its concession contracts, and thus a form of expropriation, but there are many examples of policy holders being unable to claim on the PRI in much clearer cases of expropriation." According to the Federal Reserve Bank of New York, "PRI is not a substitute for fundamental economic, political and legal reforms that are needed to attract foreign direct investment to emerging markets."[31]

Reputation Risk (20%)

Reputation Risk assessed current and former negative attention to the project, and other projects in close geographic proximity, from the media, NGOs, and other groups that influence public opinion and can affect the company's reputation. Under Reputation Risk, 50% (166) of the projects assessed received high risk scores, 8% (26) received medium risk scores, and 42% (138) received low risk scores (see Figure 4).

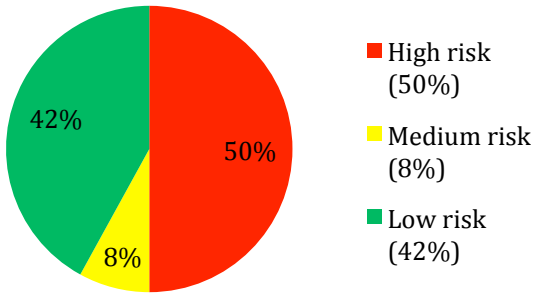


Figure 4

60% (197) of the projects assessed had some Reputation Risk exposure. Within that pool, 34% (65) had exposure to negative attention to the project, and 51% (97) had exposure to negative attention that directly implicates the project. The latter refers to the tendency of activists and newspapers to broadly criticize certain "pockets" of resource extraction (i.e. Canadian oil sands, or offshore drilling in Alaska) without identifying some (or all) of the companies involved. These criticisms do pose reputational implications for companies, but not as much as those that "name names." Additionally, 5% (10) had exposure to negative attention to associated facilities or supply chain operations that are important to the project's market access, and 10% (20) had exposure to negative attention to unrelated projects in close geographic proximity.

[30] http://www.rightsandresources.org/documents/files/doc_5715.pdf
[31] http://www.rightsandresources.org/documents/files/doc_6301.pdf

Timeliness of negative attention was the heaviest weighted subindicator under Reputation Risk, due to its presumed reflectiveness of the current situation on the ground. When analyzed in isolation, this subindicator revealed another important trend. Of the 197 projects exposed to some form of negative attention, 64% (127) had exposure to negative attention dated 2014 or earlier, 19% (37) had exposure to negative attention dated 2013/2012 or earlier, 6% (13) had exposure to negative attention dated 2011/2010 or earlier, 9% (17) had exposure to negative attention dated 2009/2008 or earlier, and 2% (3) had exposure to negative attention more than seven years old (see Figure 5). These numbers indicate that the media spotlight on Indigenous Peoples and resource extraction is shining brighter by the year, and that negative attention that appears in one year is highly likely to reappear in subsequent years.

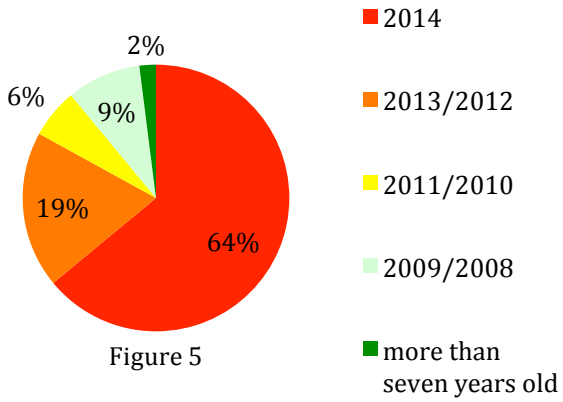


Figure 5

This is largely attributable to Indigenous Peoples' use of social media to disperse information faster and further than ever before. For example, in 2012, the Idle No More movement, which was a grassroots response to a series of Canadian legislative attacks on Aboriginal treaty rights, triggered hundreds of protests in Canada and around the world.[32] Research by Mark Blevis at Digital Public Affairs shows how Idle No More rapidly globalized via social media, despite receiving limited attention from traditional media outlets (see Figure 6) .[33]

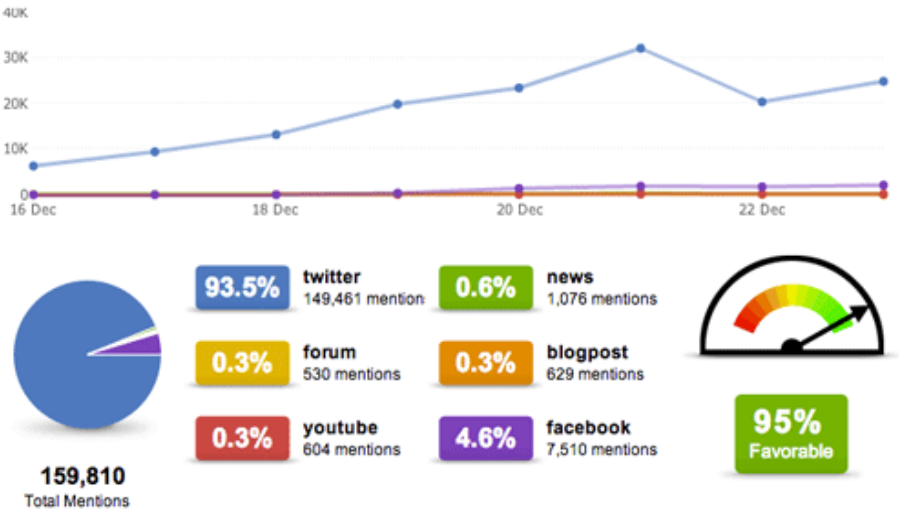


Figure 6

[32] http://en.wikipedia.org/wiki/Idle_No_More
[33] http://markblevis.com/summary-of-idlenomore-traffic-for-dec-16-through-23/

Community Risk (25%)

Community Risk assessed the project's susceptibility to community opposition, and whether the conditions are in place for successful community engagement. Under Community Risk, 32% (103) of the projects assessed received high risk scores, 47% (157) received medium risk scores, and 21% (70) received low risk scores (see Figure 7).

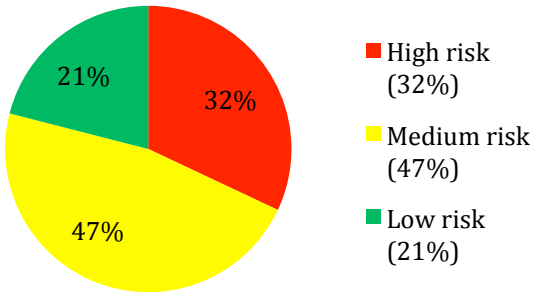


Figure 7

In many cases, Community Risk scores were elevated by reports of community opposition to the project. 33% (110) of the projects assessed had exposure to reports of nonviolent community opposition, and 5% (18) had exposure to reports of community opposition associated with violence. Community Risk scores were also elevated by the chronic absence of information on status and tenure, self-governance, and community development, especially in high risk countries. Comprehensive facts and figures about these subindicators are seldom provided by governments, nor are they referenced in projects' social and environmental impact assessments. Additionally, NGOs tend to focus on detailing projects' negative impacts to communities, rather than evaluating (or building) communities' capacity to negotiate with companies on their own terms. These data gaps prevent investors from accurately gauging whether the conditions are in place for successful community engagement.

Community Risk was assessed with the disposition that FPIC requires broad community support, not just signoff from political elites. In North Dakota, the Fort Berthold Reservation is surrounded by the prolific Williston Basin, and produces approximately 333,000 barrels of oil per day. Fort Berthold's tribal council supports the oil industry, but tribal residents are enduring severe socioeconomic and environmental degradation, and some are accusing their leaders of entering corrupt business deals with companies.[34] Because internal factiousness severely limits a company's ability to successfully engage communities, projects on or near Fort Berthold received high Community Risk scores, despite the tribal council's support. The results of Fort Berthold's recent elections confirm that many tribal residents are dissatisfied with the rapid pace of drilling on the reservation.[35]

Even if there were no reports of community opposition, projects were unlikely to receive low Community Risk scores without evidence of a formal agreement between the company and community. Such agreements were identified at only 18% (60) of the projects assessed. The actual percentage of projects with agreements is probably higher, given that most of the projects

[34] http://www.hcn.org/articles/lawsuits-feds-enabled-oil-drillers-others-to-cheat-fort-berthold-tribes-out-of-1-billion
[35] http://www.washingtontimes.com/news/2014/nov/6/fox-sworn-in-as-leader-of-three-affiliated-tribes/

assessed were in the US and Canada, countries where communities are typically entitled to some form of benefits sharing. However, the report did not make assumptions, and only counted agreements explicitly confirmed by the company, community, or other sources.

This raises questions about the transparency standards to which companies and communities should be held. Indigenous Peoples have legitimate concerns about transparency,[36] and must be permitted to enter agreements with reasonable provisions for protective confidentiality. At the same time, transparency is a crucial component of FPIC, because it enables communities to accurately gauge whether the benefits of resource extraction sufficiently offset the social and environmental costs. Fort Berthold exemplifies how agreements negotiated without public knowledge or inclusive consultation can divide communities, and cause benefits to flow to individuals rather than communities at large. The Extractive Industries Transparency Initiative (EITI) is a "global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources."[37] Participating in the EITI is an opportunity for Indigenous Peoples to influence global transparency laws and norms in ways that balance these tensions and benefit their communities.

Legal Risk (5%)

Legal Risk assessed current and former legal actions taken against the project, and other projects in close geographic proximity, in the past five years. Under Legal Risk, 10% (34) of the projects assessed received high risk scores, 10% (33) received medium risk scores, and 80% (263) received low risk scores (see Figure 8).

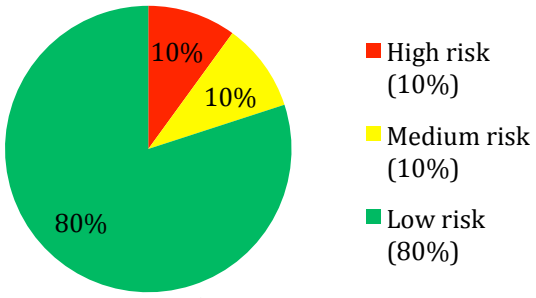


Figure 8

While this is a smaller percentage of risk than the other indicators, First Peoples believes it is the fastest growing, evidenced by strengthening legal protections for Indigenous Peoples' rights around the world. Although governments maintain that their commitments to UNDRIP are aspirational and nonbinding, Indigenous Peoples are successfully using the document to influence domestic laws and court rulings, and stop unwanted projects from moving forward. Not only will this yield more lawsuits against companies that violate FPIC, it also renders them increasingly liable for retroactive damages from past abuses of Indigenous Peoples' rights.

Incidentally, the report's highest risk project was ExxonMobil's Arun Field in Indonesia, which is currently facing charges in US courts for crimes allegedly committed more than fifteen years

[36] http://www.cbc.ca/news/aboriginal/first-nations-transparency-act-may-do-more-harm-than-good-hayden-king-1.2725654
[37] https://eiti.org/eiti

ago. The lawsuit, which was filed under the Alien Tort Statue (ATS) in 2001, accuses the company of "complicity in torture, arbitrary detention, and extrajudicial killings allegedly committed by Indonesian soldiers it hired to provide security."[38] In 2013, similar charges against Shell were dismissed because the plaintiffs "failed to overcome a presumption against extraterritoriality."[39] However, in 2014, a federal court ruled that the charges against ExxonMobil could proceed, and allowed the plaintiffs to "file for leave to amend their complaint in order to try and demonstrate that the facts of the case sufficiently "touch and concern" the US so as to overcome the presumption against extraterritoriality that applies to ATS cases."[40]

25% (83) of the projects assessed had some Legal Risk exposure. Within that pool, 61% (51) had exposure to legal actions pending in court, 35% (29) had exposure to legal actions ruled in the company's favor, dropped, or resolved through mediated settlement, and 4% (3) had exposure to legal actions ruled in the community's favor. Although companies are winning more lawsuits than communities, this should not be interpreted to suggest that Legal Risk exposure does not warrant attention from investors. Even when won, legal actions require companies to expend significant resources, and indicate the presence of community grievances that, if unaddressed, can lead to more unconventional means of resistance. Additionally, it is worth noting that most of the projects that had exposure to legal actions pending in court were in the US and Canada, countries with relatively unbiased judiciaries and generally strong respect for the rule of law.

Risk Management (30%)

Risk Management assessed the project's efforts to establish positive relations with Indigenous communities, and mitigate its risk exposure to Indigenous Peoples' rights. Under Risk Management, 83% (274) of the projects assessed received high risk scores, 15% (48) received medium risk scores, and 2% (8) received low risk scores (see Figure 10).

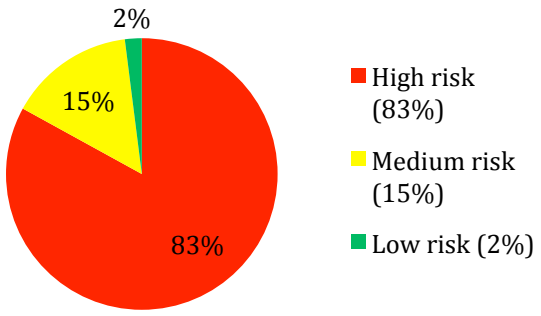


Figure 10

The vast majority of the projects assessed exhibited suboptimal efforts to establish positive relations with Indigenous communities, and are poorly positioned to mitigate their risk exposure to Indigenous Peoples' rights. Companies demonstrated especially weak performance under the governance subindicator. 92% (48) of the companies assessed do not address community relations or human rights at the board level in any formal capacity. Only 4 companies

[38] http://www.motherjones.com/environment/2012/10/did-exxon-pay-torturers
[39] http://www.csrandthelaw.com/2013/04/17/supreme-court-holds-that-plaintiffs-must-overcome-presumption-against-extraterritoriality-in-alien-tort-statute-cases/
[40] http://www.csrandthelaw.com/2014/09/30/alien-tort-case-development-litigation-against-exxon-mobil-corporation-may-proceed/

(ConocoPhillips, ExxonMobil, Freeport-McMoRan, and Newmont) have a board committee with community relations or human rights in its mandate, 2 companies (Freeport-McMoRan and Newmont) have board expertise in community relations or human rights, and 1 company (ExxonMobil) has an active and independent external body to advise and evaluate its community relations or human rights performance. Companies fared somewhat better under the policy subindicator. 38% (20) of the companies assessed have policies that reference Indigenous Peoples. However, only 5 companies (Apache, ConocoPhillips, ExxonMobil, Freeport-McMoRan, and Newmont) have policies that directly or indirectly reference FPIC, and 1 company (ConocoPhillips) supplements its policy with publicly-available implementation guidelines and metrics.

Companies received collectively lower risk scores under the corporate-level subindicators (policy, governance, and reporting), compared to the project-level subindicators (consultation and agreement, social investments, and social impact assessments). The average risk score for the corporate-level subindicators was 3.8, while the average risk score for the project-level subindicators was 4.5. While improvement is needed at both levels, companies are particularly behindhand when it comes to implementing corporate-level commitments at individual projects. In many cases, companies "showcased" examples of robust risk management strategies at one or two of their projects (often those under fire from activists), but failed to prove that those strategies are being replicated across their operations.

Companies that received lower Risk Management scores tended to be larger in size, and consequentially more susceptible to Reputation Risk. By contrast, many smaller companies (Alpha Natural Resources, Allied Nevada Gold, Continental Resources, EOG Resources, Murphy Oil, Newfield Exploration Company, Quicksilver Resources, Range Resources, SM Energy, Ultra Petroleum, and Whiting Petroleum) are doing virtually nothing to mitigate their risk exposure to Indigenous Peoples' rights, yet attract miniscule (if any) scrutiny from the media and NGOs, compared to their larger counterparts, even when operating in similar contexts. This indicates that companies mitigate their risk exposure to Indigenous Peoples' rights reactively rather than proactively, often in response to actual or potential threats to their reputation. This projects perceptions that communities need to "act up" in order for companies to address their concerns. Such passive approaches to mitigation would be considered unacceptable in most other areas of risk management, but remain widespread when it comes to engaging Indigenous Peoples.

Additionally, the activist community's proclivity to focus their attention overwhelmingly on several large companies appears to be enabling many smaller companies to "fly under the radar" and get away with strikingly weaker practices and policies for respecting Indigenous Peoples' rights in their operations.

Part D: Summary and Conclusion

Quantifying social risks comes with obvious challenges, but they are not insurmountable. Capital markets have institutionalized plenty of other "intangibles" that have proven to be indicative of an investment's viability. According to the International Corporate Accountability Roundtable, "in 1975, tangible assets accounted for up to 80% of the valuation assessment for corporate securities' market value. In 2005, tangible assets accounted for only 20% of that valuation assessment, as intangible assets - including risk management, intellectual property, human and social capital - have come to be used to calculate 80% of the market valuation equation for corporations."[41] Quantifying social risks is a crucial step towards linking capital costs to the social costs of corporate development, which have proven to be disproportionately devastating to Indigenous Peoples. Until that happens, companies will continue to disregard social costs as externalities, inflicting simultaneous damage to their profits, Indigenous Peoples, and the greater global community.

The need for change is evidenced by the fact that 35% of the 330 projects assessed had high risk exposure to Indigenous community opposition or violations of Indigenous Peoples' rights, 54% had medium risk exposure, and 11% had low risk exposure. The oil and gas industry had collectively higher risk exposure than the mining industry, with both a larger percentage of high risk projects and a smaller percentage of low risk projects.

98% of the projects assessed had high or medium Risk Management exposure. The vast majority of the projects assessed exhibited suboptimal efforts to establish positive relations with Indigenous communities, and are poorly positioned to mitigate their risk exposure to Indigenous Peoples' rights. Companies demonstrated especially weak performance under the governance subindicator. 92% (48) of the companies assessed do not address community relations or human rights at the board level in any formal capacity.

One of the report's most important trends was the direct correlation between Country Risk and projects' overall risk scores. In other words, projects in countries with weak or nonexistent legal protections for Indigenous Peoples were far more likely to receive high risk scores. These numbers indicate that poor governance is bad for business. Governments that disregard their commitments to UNDRIP (often with the justification that they are obstacles to development) actually propagate volatile business environments that threaten the viability of investments in their countries.

58% of the projects assessed had high or medium Reputation Risk exposure. Timeliness of negative attention was the heaviest weighted subindicator under Reputation Risk, due to its presumed reflectiveness of the current situation on the ground. When analyzed in isolation, this

[41] http://accountabilityroundtable.org/wp-content/uploads/2013/10/ICAR-Knowing-and-Showing-Report5.pdf

subindicator revealed that the media spotlight on Indigenous Peoples and resource extraction is shining brighter by the year, and that negative attention that appears in one year is highly likely to reappear in subsequent years.

79% of the projects assessed had high or medium Community Risk exposure. In many cases, Community Risk scores were elevated by reports of community opposition to the project. Community Risk scores were also elevated by the chronic absence of information on status and tenure, self-governance, and community development, especially in high risk countries. These data gaps prevent investors from accurately gauging whether the conditions are in place for successful community engagement.

20% of the projects assessed had high or medium Legal Risk exposure. While this is a smaller percentage of risk than the other indicators, First Peoples believes it is the fastest growing, evidenced by strengthening legal protections for Indigenous Peoples' rights around the world. Although governments maintain that their commitments to UNDRIP are aspirational and nonbinding, Indigenous Peoples are successfully using the document to influence domestic laws and court rulings, and stop unwanted projects from moving forward. Not only will this yield more lawsuits against companies that violate FPIC, it also renders them increasingly liable for retroactive damages from past abuses of Indigenous Peoples' rights.

Appendix A: Company Overviews

Company	Projects Assessed	High Risk	Medium Risk	Low Risk	Feedback Provided?
Allied Nevada Gold	2	0	2 (100%)	0	No
Alpha Natural Resources	1	1 (100%)	0	0	No
Anadarko Petroleum	9	6 (67%)	2 (22%)	1 (11%)	Yes
Apache Corporation	17	2 (12%)	12 (70%)	3 (18%)	Yes
Cabot Oil and Gas	1	0	1 (100%)	0	No
Chesapeake Energy	4	0	4 (100%)	0	No
Chevron Corporation	28	16 (57%)	11 (39%)	1 (4%)	No
Cimarex Energy	1	0	1 (100%)	0	No
Cliffs Natural Resources	4	1 (25%)	3 (75%)	0	Yes
Cobalt International Energy	0	0	0	0	N/A
Compass Minerals	0	0	0	0	N/A
Concho Resources	0	0	0	0	N/A
ConocoPhillips	36	5 (14%)	23 (64%)	8 (22%)	Yes
CONSOL Energy	0	0	0	0	N/A
Continental Resources	5	3 (60%)	2 (40%)	0	No
Denbury Resources	3	0	3 (100%)	0	No
Devon Energy	8	3 (37%)	5 (63%)	0	No
Energen Corporation	1	0	0	1 (100%)	No
EOG Resources	10	4 (40%)	6 (60%)	0	Yes
EQT Corporation	0	0	0	0	N/A
EXCO Resources	0	0	0	0	N/A
ExxonMobil Corporation	38	14 (37%)	15 (39%)	9 (24%)	Yes
Freeport-McMoRan	13	2 (15%)	4 (31%)	7 (54%)	Yes
Hess Corporation	6	2 (33%)	4 (67%)	0	Yes
Intrepid Potash Incorporated	1	0	1 (100%)	0	No
Kinder Morgan Incorporated	13	2 (15%)	10 (77%)	1 (8%)	No
Kosmos Energy	2	2 (100%)	0	0	Yes
Laredo Petroleum Holdings	0	0	0	0	N/A
Marathon Oil	15	5 (33%)	10 (67%)	0	No
Molycorp Incorporated	1	0	1 (100%)	0	No
Murphy Oil	9	8 (89%)	1 (11%)	0	No
Newfield Exploration Company	6	2 (33%)	3 (50%)	1 (17%)	No
Newmont Mining	14	2 (14%)	9 (64%)	3 (22%)	Yes
Noble Energy	4	1 (25%)	3 (75%)	0	No
Occidental Petroleum	5	2 (40%)	3 (60%)	0	Yes
Peabody Energy	14	0	12 (86%)	2 (14%)	No
Pioneer Natural Resources	1	0	1 (100%)	0	No
QEP Resources	6	2 (33%)	4 (67%)	0	No
Quicksilver Resources	2	1 (50%)	1 (50%)	0	No
Range Resources	2	0	2 (100%)	0	No
Royal Gold	3	2 (67%)	1 (33%)	0	No
Sandridge Energy	1	0	1 (100%)	0	No
SM Energy	3	2 (67%)	1 (33%)	0	No
Southern Copper	18	13 (72%)	5 (28%)	0	No
Southwestern Energy	2	2 (100%)	0	0	Yes
Spectra Energy	5	1 (20%)	4 (80%)	0	Yes
The Mosaic Company	1	0	1 (100%)	0	No

The Williams Companies	6	2 (33%)	3 (50%)	1 (17%)	No
Ultra Petroleum	1	0	1 (100%)	0	No
Walter Energy	1	0	1 (100%)	0	No
Whiting Petroleum	2	2 (100%)	0	0	No
WPX Energy	5	4 (80%)	0	1 (20%)	No
Total	330	115 (35%)	177 (54%)	38 (11%)	

Appendix B: Sample Scorecards

Apache - Devil Creek Gas Plant
Australia

IPs Impacted: Yaburara and Mardudhunera

No Risk	Low Risk	Medium Risk	High Risk	Critical Risk
	2			

Mineral:	Oil and Gas (onshore)	**% of Total Production (2012):**	N/A
Region:	Western Australia	**% of Total Proven Reserves (2012):**	N/A
Stage:	Operational	**SIA:**	Yes
Ownership:	100%	**Partners:**	N/A

"The Devil Creek Gas Plant located in Western Australia's northwest is the State's third domestic natural gas processing hub and the first new plant built in Western Australia in almost 20 years. Gas to supply the Devil Greek facility is extracted from the Apache-operated Reindeer field approximately 80 km northwest of Dampier in the Northwest Shelf and brought to the mainland via a 105 km offshore and onshore raw gas supply pipeline. The plant's onshore facilities consist of a two train gas plant designed to process 200 million standard cubic feet per day, (220 Terajoules per day), a gas supply pipeline and a sales gas export pipeline."[42]

There are "two Aboriginal groups with a connection to the Devil Creek area, the Wong-Goo-Tt-Ooo and Yaburara Coastal Mardudhunera."[43]

Risk	Score	Comments
Country Risk (20%)	1.9	*See Country Risk Appendix*
Reputation Risk (20%)	1	There is no negative attention to the project's impacts on Indigenous Peoples.
Community Risk (25%)	1.9	**Identification (10%)** (2) Impacted Indigenous communities are clearly identified by the company.[44] **Status and tenure (15%)** (3) Communities' efforts to secure title to their lands appear to be making progress. "The 13,940 square kilometre Yaburara & Mardudhunera Peoples application was lodged in August 1996...The next step has been to employ a capable, senior Anthropologist to prepare the group's Connection Report. In June 2014 Dr Michael O'Kane was employed to undertake this task. The Federal Court has given the group until 31st July 2015 to complete the Report."[45] **Self-governance (15%)** (2) There is functioning self-governance with demonstrable capacity for both internal decision-making and external negotiation with companies;[46] there is no evidence of factiousness. **Community development (15%)** (3) There is evidence of internally-controlled economic and social development.[47] **External influence (15%)** (1) There are no NGOs opposing the project. **Community opposition (30%)** (1) There are no reports of community opposition; there is an agreement *(See Consultation and agreement)*.
Legal Risk (5%)	1	There have been no legal actions in the past five years.
Risk Management (30%)	3	**Policy (20%)** (2) Company policies reference Indigenous Peoples' right to FPIC, the UN Declaration on the Rights of Indigenous Peoples, and/or ILO Convention 169.[48] **Governance (20%)** (5) The company does not address community relations or human rights at the board level. **Reporting (10%)**

[42] http://www.apachecorp.com/Operations/Australia/Projects/DevilCreek.aspx
[43] http://gastoday.com.au/news/developing_domestic_gas_at_devil_creek/075497/
[44] http://gastoday.com.au/news/developing_domestic_gas_at_devil_creek/075497/
[45] http://yacma.customers.smartyhost.com.au/the-ym-peoples-native-title-claim-and-heritage-agreements/
[46] http://yacma.customers.smartyhost.com.au
[47] http://yacma.customers.smartyhost.com.au
[48] http://www.apachecorp.com/Resources/Upload/file/governance/Apache_Statement_on_Indigenous_Peoples.pdf

	(2) The company reports on Indigenous Peoples' rights in adherence to the GRI's Sustainability Reporting Framework;[49] the company reports on Indigenous community engagement.[50] **Consultation and agreement (20%)** (2) There is an agreement with impacted Indigenous communities; there is no evidence of a grievance mechanism; there are no reports of community opposition. "Working in conjunction with the project archaeologist, Aboriginal heritage monitors commenced the collection and relocation of artefacts in accordance with an agreed management plan and in a manner consistent with the ministerial conditions...Within the 17 known Aboriginal heritage sites within the project area, in excess of 1,200 individual artefacts including grindstones, mullers, flakes and cores were collected and recorded during the salvage program. All artefacts have been returned to the local landscape at a location selected by senior members representing the traditional owners, the Wong-Goo-Tt-Ooo and Yaburara Coastal Mardudhunera people."[51] **Social investments (20%)** (3) There are social investments in Indigenous communities; there is some local control over design and implementation *(See Consultation and agreement)*. **Social impact assessments (10%)** (4) There is a publicly-available SIA that assesses impacts to Indigenous heritage sites, but not Indigenous communities.[52]

[49] http://www.apachecorp.com/Sustainability/GRIIPIECA/index.aspx
[50] http://www.apachecorp.com/Resources/Upload/file/sustainability/APACHE-Sustainability_Report_2013.pdf
[51] http://gastoday.com.au/news/developing_domestic_gas_at_devil_creek/075497/
[52] http://epa.wa.gov.au/EPADocLib/2839_1307ApacheDevilCreek.pdf

Appendix B: Sample Scorecards

Kinder Morgan - Ruby Pipeline
USA

IPs Impacted: Various

No Risk	Low Risk	Medium Risk	High Risk	Critical Risk
		3.4		

Mineral:	Oil and Gas (onshore)	**Capacity:**	Unreported
Region:	Various	**Length:**	680 miles
Stage:	Operational	**SIA:**	Yes
Ownership:	100%	**Partners:**	N/A

"Ruby Pipeline, owned and operated by Kinder Morgan, Inc., is a 680-mile, 42-inch diameter pipeline system that extends from Wyoming to Oregon providing natural gas supplies from the major Rocky Mountain basins to consumers in California, Nevada and the Pacific Northwest."[53]

The pipeline does not overlap with any reservations, but crosses "historically important lands for 32 Native American tribes."[54]

Risk	Score	Comments
Country Risk (20%)	2.1	*See Country Risk Appendix*
Reputation Risk (20%)	3.6	**Presence of negative attention (30%)** (5) There is negative attention to the project. **Scope of negative attention (30%)** (3) Negative attention comes from media outlets with broad local reach, or medium-sized NGOs. **Timeliness of negative attention (40%)** (3) Negative attention is dated 2010 or earlier.[55]
Community Risk (25%)	3.5	**Identification (10%)** (2) Impacted Indigenous communities are clearly identified by the company. **Status and tenure (15%)** (1) There is no evidence of unresolved land disputes in or near the project area. **Self-governance (15%)** (5) There is an extremely complex political landscape due to the project's large footprint and the diverseness of impacted communities; there are no forums for coordinated decision-making between communities in the project area. **Community development (15%)** (3) There is varying community development capacity amongst communities along the pipeline's route. **External influence (15%)** (5) There are large NGOs opposing the project.[56] **Community opposition (30%)** (4) There are reports of community opposition. According to a 2010 article in *Indian Country Today*, the pipeline "has been praised by Colorado's governor, the state's resource-rich Ute tribal nations, and the Council of Energy Resource Tribes, but the project irks some residents on at least four reservations who say it disturbs cultural resources and they were excluded from decision-making...At least one of them, the Klamath Tribes - Klamath, Modoc, Yahooskin - cannot support the project because of its impacts on cultural resources...Similar positions were voiced by key officials of the Shoshone/Paiute Tribes of the Duck Valley Indian Reservation of Idaho and Nevada, the Summit Lake Paiute Tribe and, to the south, the CERT-affiliated Walker River Paiute Tribe whose chairman, Lorren Sammaripa, said via the tribal administrator that the pipeline "is a negative project, and tribal people need to stick together...The Southern Utes, the Ute Mountain Ute Tribe of Colorado, and the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, CERT member tribes with oil and gas reserves, wrote letters of support for Ruby Pipeline, as did A. David Lester, Muscogee

[53] http://www.kindermorgan.com/business/gas_pipelines/west/Ruby/
[54] http://www.powereng.com/public/projects/ruby-pipeline-project/
[55] http://indiancountrytodaymedianetwork.com/2010/09/27/pipeline-creates-tribal-dissent-81747
[56] http://trib.com/news/state-and-regional/company-regrets-ruby-pipeline-conservation-deal/article_ffeade9b-ec86-580e-9bfa-3881231507ff.html

		Creek, CERT executive director, who praised El Paso Corporation's tribal outreach program. Although tribal resources exist along the pipeline route, the tribal nations' present-day boundaries will not be crossed, so neither the tribes nor BIA were enlisted as cooperating agencies, a designation held by FERC, the lead agency, as well as by BLM and other federal and state agencies with jurisdictional authority or special expertise. In addition, because the project did not transect contemporary tribal reservation boundaries, the pipeline could proceed without tribal nations' approval...The project is, however, required to comply with federal laws protecting the environment and tribal culture and mandating government-to-government consultation with the tribes."[57]
Legal Risk (5%)	3.5	**Presence of legal actions (50%)** (5) There have been legal actions against the project. **Status of legal actions (50%)** (2) Legal actions were ruled in favor of the company. In 2012, the Summit Lake Paiute Tribe "filed a petition for review challenging the US Bureau of Land Management's (BLM) decision to amend the rights of way and temporary use permits granted to Ruby Pipeline." The tribe argued that the BLM "violated the National Historic Preservation Act and its accompanying regulations by 1) not consulting with the Tribe; 2) not considering its proposed re-routing in good faith; and 3) not analyzing the impacts the re-route would have on the Tribe's cultural properties.[58] The BLM argued that, "because the construction of the pipeline is now complete, the…[tribes']challenges are moot." The petition for review was denied.[59]
Risk Management (30%)	4.1	**Policy (20%)** (5) Company policies do not reference Indigenous Peoples.[60] **Governance (20%)** (5) The company does not address community relations or human rights at the board level. **Reporting (10%)** (5) The company does not report on Indigenous Peoples or human rights. **Consultation and agreement (20%)** (3) There is no evidence of a formal agreement with impacted Indigenous communities, there is evidence of extensive, ongoing public consultation.[61] According to A. David Lester, Executive Director of the Council of Energy Resource Tribes, "the company behind the Ruby Pipeline Project...is a successful model for how private industry can work proactively with Indian tribes and nations to help them build internal capacity. In fact, El Paso has engaged in more and better outreach to tribes than any energy company with which I've worked in more than three decades. Nearly two years ago, El Paso approached CERT to develop an unprecedented tribal outreach program to encourage Native Americans to work on Ruby-related construction...Ruby has since held nine tribal employment workshops in six states, attended by more than 500 Native Americans and sponsored by Tribal Employment Rights Offices along the route of the pipeline. Because most construction jobs on the project require trade-union membership - a traditional barrier to Native American employment - CERT has focused on strengthening relationships between local unions and tribal members interested in working on the project. With the help of TEROs, some of which assist tribal members with the cost of paying their union dues, Native Americans are successfully navigating the union hiring process, many for the first time...El Paso has insisted from the inception of the project that tribal monitors be used along the Ruby Pipeline route to protect cultural resources. El Paso's path-breaking stance on this crucial issue was informed in part by a special two-day working session on cultural resource protection issues that CERT convened in Reno more than a year ago with more than 70 tribal council chairmen and other senior leaders from affected tribes. As a direct result of this tribal outreach, the Ruby Pipeline Project currently has the most extensive Native American cultural resources protection plan ever undertaken outside Indian trust land. To date, more than 40 tribal monitors, all from affected tribes, are working on construction. El Paso's highly experienced full-time Native American Tribal Liaison Les Anderson - a member of the Modoc Tribe and veteran cultural resource

[57] http://indiancountrytodaymedianetwork.com/2010/09/27/pipeline-creates-tribal-dissent-81747
[58] http://www.leagle.com/decision/In%20FCO%2020121022122
[59] http://www.leagle.com/decision/In%20FCO%2020121022122
[60] Kinder Morgan has an Aboriginal Policy, but it only applies to its Canadian operations.
[61] http://www.rubypipeline.com/docs/RR/RR4_Docs/Appendix%204E_Tribal%20Consultation.pdf

	protection specialist from previous energy projects - oversees Ruby's tribal monitoring program, both in the field and from the project's Native American Liaison office at the Reno-Sparks Indian Colony. Separately, the Klamath Tribes are providing a separate monitoring team of 22 tribal members directly to the project under contract to Ruby. These tribal monitors, who serve as eyes and ears from their respective tribal governments, are in addition to Native American cultural resource technicians who offer advice on cultural resources protection issues directly to Ruby and its contractors. El Paso is going farther than any U.S. energy company to make sure that the interests of Indian tribes and nations are respected during the construction process."[62] **Social investments (20%)** (3) There are social investments in Indigenous communities; there is evidence of some local control over design and implementation *(See Consultation and agreement)*. **Social impact assessments (10%)** (4) There is a publicly-available SIA that assesses impacts to Indigenous heritage sites, but not Indigenous communities.[63]

[62] http://indiancountrytodaymedianetwork.com/2010/11/01/lester-cert-and-ruby-pipeline-project-working-together-enhance-tribal-sovereignty-80973
[63] http://www.rubypipeline.com/docs/RR/RR-4.pdf

Appendix B: Sample Scorecards

Southern Copper - Buenavista
Mexico

IPs Impacted: Papago

No Risk	Low Risk	Medium Risk	High Risk	Critical Risk
			4.3	

Mineral:	Zinc	**% of Total Production (2012):**	Unreported
Region:	Sonora	**% of Total Proven Reserves (2012):**	Unreported
Stage:	Exploration	**SIA:**	Unreported
Ownership:	100%	**Partners:**	N/A

"The Buenavista-Zinc site is located in the state of Sonora, Mexico and forms part of the Buenavista ore body. Drilling and metallurgical studies have shown that the zinc-copper deposit contains approximately 36 million tons of mineralized material containing 29 grams of silver per ton, 0.69% copper and 3.3% zinc. A "scoping level" study indicates that Buenavista-Zinc may be an economic deposit. In 2011, 11,956 meters of diamond drilling were executed to confirm grade and acquire geotechnical information. In 2012, the Buenavista-Zinc mine plan was integrated with the overall mine plan of the Buenavista pit. The metallurgical testing was completed early in 2013 indicating some recovery problems with oxidized zinc. During 2013, we drilled 15,128 additional meters to locate the oxidized zinc for new modelling and metallurgical testing. We expect to receive the results of the new model early in 2014 and to proceed with metallurgical testing."[64][65]

There is likely overlap with or impacts to the Papago.[66]

Risk	Score	Comments
Country Risk (20%)	4.4	*See Country Risk Appendix*
Reputation Risk (20%)	5	**Presence of negative attention (30%)** (5) There is negative attention to the project. **Scope of negative attention (30%)** (5) Negative attention comes from media outlets with broad global reach. **Timeliness of negative attention (40%)** (5) Negative attention is dated 2014 or earlier.[67][68][69]
Community Risk (25%)	3.8	**Identification (10%)** (5) Impacted Indigenous communities are not identified by the company. **Status and tenure (15%)** (4) There is no evidence that communities have secure title to their lands. **Self-governance (15%)** (4) There is some self-governance;[70] there is no evidence of capacity for external negotiation with companies. **Community development (15%)** (5) There is no evidence of internally-controlled community development. **External influence (15%)** (1) There are no NGOs opposing the project. **Community opposition (30%)** (4) There are reports of community opposition. In 2014, a "toxic spill at a copper mine in the northwestern state of Sonora is the Mexican mining sector's worst environmental disaster in recent history. The mine is owned by mining giant Grupo México, Mexico's largest mining corporation and operated by its Buenavista del Cobre division. Grupo México is the third largest copper producer in the world and has a rail transport division, Ferrocarril Mexicano (Ferromex), that operates Mexico's largest rail fleet. The Buenavista del Cobre mine, part-way through a $3.4 billion expansion plan, has some of the largest proven copper reserves in the world and is

[64] http://www.southernperu.com/ENG/invrel/2013/10K/10k2013.pdf
[65] http://yahoo.brand.edgar-online.com/EFX_dll/EDGARpro.dll?FetchFilingHtmlSection1?SectionID=7762218-118736-283477&SessionID=Mpf86WfPE6gnDI2
[66] http://www.planetware.com/map/mexico-mexico-mexican-states-map-mex-mex1.htm
[67] http://geo-mexico.com/?p=11919
[68] http://upsidedownworld.org/main/mexico-archives-79/5066-sonora-spill-adds-to-the-social-and-environmental-consequences-of-free-market-mining-in-mexico
[69] http://online.wsj.com/articles/grupo-mexico-to-set-aside-150-million-for-mine-spill-cleanup-1410468455
[70] http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/MEX/INT_CERD_NGO_MEX_80_9637_E.pdf

		the world's fourth largest copper mine. The spill allowed 40,000 cubic meters of toxic copper sulfate acid to enter the Tinajas stream in the town of Cananea on 6 August 2014. Buenavista del Cobre claimed the spill was the result of an unforeseeable heavy rain storm, which triggered a rise in the level of water and copper sulfate in a holding tank being constructed at the copper mine."[71] "The massive spill of toxic mining residue that took place in August in Mexico's northwestern state of Sonora has underscored the weakness of the country's environmental laws, as well as the destructive consequences of free-market mining. It is a harbinger for what is in store for the country since Enrique Peña Nieto's government extended neoliberal reforms to the oil and gas sector, allowing for private and foreign investment in all facets of exploration and production, with a green light for fracking...Indeed, the experience of Mexico's mining sector, especially since neoliberal reforms were implemented over 20 years ago, has tended towards the annihilation of both the natural environment and the peoples directly affected by mining, including smallholder farmers, indigenous groups and miners themselves. The big spill in Sonora needs to be seen in this context."[72]
Legal Risk (5%)	1	There have been no legal actions in the past five years.
Risk Management (30%)	4.7	**Policy (20%)** (5) Company policies do not mention Indigenous Peoples. **Governance (20%)** (5) The company does not address community relations or human rights at the board level. **Reporting (10%)** (4) The company does not report on Indigenous Peoples, but reports on human rights.[73] **Consultation and agreement (20%)** (5) There is no evidence of a formal agreement with impacted Indigenous communities, or public consultation. **Social investments (20%)** (4) There are social investments in Indigenous communities; there is no evidence of local control over design and implementation. "The company reached an agreement with Mexico's government to create a trust to pay for any environmental and human damage caused by the spill, government officials said Thursday. A special committee at the trust will define the exact amount to be paid by the company, which could go beyond the initial amount."[74] **Social impact assessments (10%)** (5) There is no publicly-available SIA.

[71] http://geo-mexico.com/?p=11919
[72] http://upsidedownworld.org/main/mexico-archives-79/5066-sonora-spill-adds-to-the-social-and-environmental-consequences-of-free-market-mining-in-mexico
[73] http://www.southernperu.com/ENG/susdev/Docs/InformeDS2011e.pdf
[74] http://online.wsj.com/articles/grupo-mexico-to-set-aside-150-million-for-mine-spill-cleanup-1410468455