FOURTH WORLD JOURNAL

CENTER FOR WORLD INDIGENOUS STUDIES

WINTER 2022 VOLUME 21 NUMBER 2

THE HIGHLIGHTS

Open pit mine in Peru

IN THIS ISSUE

ON THE COVER

Glencore Corporation open pit mine

The Fourth World Journal is published twice yearly by DayKeeper Press as a Journal of the Center for World Indigenous Studies.

ISSN: 1090-5251

EDITORS

DAYKEEPER PRESS
Center for World Indigenous Studies
PMB 214, 1001 Cooper PT RD SW 140
Olympia, Washington 98502, U.S.A.

Other licensing agents:
EBSCO PUBLISHING, Inc. Ipswich, Massachusetts, USA GALE GROUP, Inc. Farmington Hills, Michigan, USA INFORMIT, RMIT PUBLISH, Ltd. Melbourne, AUS

LUKANKA

Lukanka is a Miskito word for "thoughts"

FWJ V21 N2 – WINTER 2022

RUDOLPH C. RŸSER
Editor in Chief
Fourth World Journal

Fourth World Peoples worldwide face the daily challenge of whether they have access to the land that provides food, shelter, clothing, and safety. And if they live in cities or complex, large communities next to people who have never known life on the land, the challenges people face are not necessarily less overwhelming. People face structural, economic, and political inequalities though direct reliance on the land that ensures food, shelter, clothing, and safety is quite remote. All human beings directly or indirectly rely on the Earth's nurturing lands for life.

When natural disasters violently force indigenous peoples to escape dangers threatening death or deprivation, they suffer. When human-created disasters violently force Fourth World peoples to escape the dangers of environmental breakdown, mass murder, destruction of villages, and or dislocation, they suffer. Fourth World peoples are suffering the consequences of human-made disasters because of transnational corporations engaging in mining, deforestation, petroleum, and agricultural exploitations conducted on Fourth World nations' lands.

"Land Rights" has for centuries remained the leading alarm called out by Fourth World peoples because of imperial and state expansion into and on top of native peoples' territories.

Since the 1960s, international institutions have agreed to the lawful requirement that when a state's government or state-created agent such as a corporation undertakes administrative, legislative, or judicial actions, they must negotiate an agreement with affected nations before proceeding. Suppose prospective actions adversely affect the lives and properties of indigenous peoples. In that case, before the state or corporation can take action, the affected nation must first give its consent to the activity. Obtaining consent requires negotiation between the interested state, corporation, and nation parties. Without the consent of Fourth World nations, corporations currently extract raw materials in the territories of nations with the complicit endorsement of state governments, banks, and investors. The state-supported corporations extract natural minerals, metals, wood products, and conduct agribusiness on nations' lands destroying lands,

dislocating peoples, promoting violent attacks on communities, breaking down biodiversity, and causing greenhouse gas imbalances. Millions of Fourth World peoples in more than 63 countries experience unregulated activities of transnational extractive corporations.

Recognizing that Fourth World peoples suffer at the hands of extractive industries that exploit their resources and directly and indirectly cause violence against communities, many non-governmental organizations advocate recognizing nations' rights to their lands. They call for implementing the principle of "free, prior and informed consent." Yet, "advocacy without enforceable solutions" has had little or no effect beneficial to Fourth World nations. International bodies such as the United Nations that hosted the establishment of conventions and other international laws requiring negotiated consent of nations go unenforced. Indeed, Dr. Deborah Rogers, leader of the vital organization **Initiative for Equity**, has reported that the UN responds to violations of Fourth World nations' territories and peoples by corporations by saying controls "are out of our hands." Dr. Rogers and her organization provided essential insights and on-the-ground revelations helpful to this Special Issue. She offered analysis, especially from her experience in the Democratic Republic of Congo, where transnational corporations exploit resources harming the lives and properties of the Twa and other peoples to extract gold, oil, and other raw materials.

Prompted by experiences and requests from Fourth World nations in Africa, Central America, Melanesia, the United States, and Canada, the Center for World Indigenous Studies formally undertook the Extractive Industries Initiative Panel beginning in April 2021. We set out to investigate possible strategies Fourth World nations can implement to reverse transnational corporation violations of their peoples and territories. We formed the Panel of Associate Scholars and advisors to conduct a 10-month investigation and a series of remote weekly colloquies to identify potential strategies. The initial result of our work in the spirit of activist scholarship is this Special Issue of the Fourth World Journal. The initial conclusions of the Extractive Industries Initiative Panel are presented in our overarching article, "Nations' Land Rights vs. Corporate Exploitation," followed by the graphic illustration work of Irene Delfanti and then full-length essays by several of the Associate Scholars, including Dr. Hiroshi Fukurai, Dr. Sabina Singh and Dr. Melissa Farley.

Publication of this Special Issue focused on extractive industries is intended to inform Fourth World nations directly and provide the basis for direct action by the nations themselves. The working premise of our analysis is that those who have capability must support Fourth World nations when invited by specific nations in a direct fashion to enhance their capabilities to prevent and regulate harmful extractive industry actions inside their territories. This transfer of technical support becomes essential since states and most corporations are unwilling to act on their own to regulate the consequences of extractive enterprises. We will reach out to non-governmental organizations, responsible

states, and responsible corporations, urging their participation in actively supporting nations when those nations request support.

Our authors have undertaken deep inquiries to give active meaning to solutions.

• Associate Scholars in the Extractive Industries Initiative Panel **Muhammad Al-Hashimi, Sabina Singh, Hiroshi Fukurai, Amelia Marchand, Melissa Farley** supported by advisors **Irene Delfanti, Deborah Rogers** and **Aline Castañeda** joining Resident Scholar **Rudolph Rÿser** engaged in intensive dialogue, and research to jointly write **Nations' Land Rights vs. Corporate Exploitation** – Extractive Industries Initiative Panel. In this essay published in English and Spanish the Panel members comment on the nature of the unregulated extractive industries problem and its manifest danger to the survival of Fourth World peoples as well as the sustainability of biodiversity and changing climate.

• The complexity of extractive industry relationships is hard to understand when communicated in the written word alone. Graphic illustrations that depict connections between industries, states' government political leaders, male dominated temporary company towns that promote prostitution and violence against women, involvement of militates attacking indigenous communities and violently polluting and destroying the environment may help advance understand when words alone are insufficient. In **Relationship of Extractive Industry to Exploitation of Nations: A Graphic Reality, Irene Delfanti** uses the spider web to graphically illustrate the connections and consequences of extractive industry activities.

• **Dr. Hiroshi Fukurai**, a professor of Legal and Social Studies at the University of California--Santa Cruz describes another form of corporate harm committed against Fourth World peoples in his essay The **"Vaccine Genocide" of Indigenous Nations and Peoples: The Intellectual Property (IP) Regime, "Vaccine Apartheid" and "Vaccine Untouchables"**. Dr. Fukurai explains how "intellectual property rights" shields pharmaceutical corporations from sharing the formulae for COVID-19 vaccines enhancing their profits. The lack of vaccine supports in Fourth World nations leave them to be exposed to infections by infected extractive industries and individual workers illegally mining, cutting trees resulting in deforestation, and agribusinesses. Fukurai offers specific alternatives for controlling the onslaught and disease disaster.

• In **Unregulated Corporate and State Capitalization of Nations' Land by Rudolph C. Rÿser** provides an in-depth discussion of the drive to capitalize on Fourth World nations lands and resources at nations' expense while benefiting states' politicians, corporate leaders, investors, banks, and commercial outlets mainly in northern hemisphere countries. Rÿser

identifies the countries most targeted for exploitation and the nations harmed by corporations registered in northern countries such as Canada, Switzerland, United Kingdom, Russia, PR China, and the United States.

• When unregulated mining, deforestation, agricultural businesses conduct exploitive activities in Fourth World territories men are the main workers employed and located at extractive sites. "Company towns" are created and made up of men with women imported from Fourth World nations and sometimes more distant locations prostituted for sex and male comforts. Women become a commodity exploited and often killed when out of favor. In **Exploiting Indigenous Peoples: Prostitution, Poverty, Climate Change and Human Rights**. **Melissa Farley, PhD** describes how indigenous women from Fourth World communities are the "bottom of the brutal race and class hierarchy" and the business of resource extraction.

• Describing Canada's extractive industry policies as "continuing down the road of colonial governance," **Dr. Sabina Singh** examines how governments actively work to gain control over new mining industries for increasing financial benefit while permitting them to "trample" on Fourth World nations in her **Green Colonialism**. Drawing on examples offered by Lukas Bednarski's suggestion that First Nations and the corporations could benefit each other and nature too agreeing to building capacities for recycling batteries, computers and other existing sources of lithium, nickel, copper to fill the new needs for electric cars, computers, Iphones and other electricity dependent and climate friendly products urgently needed to replace petroleum dependent products.

• Published in English and Spanish **Rudolph Rÿser's "A Framework for implementing the Principle of Free, Prior, and Informed Consent (FPIC) – Comity or Conflict"** explores the limitations of the international community's principle of FPIC, the dynamic requirement of negotiations between Fourth World nations, states' governments and corporations and the need for a specific mechanism to implement the principle. Rÿser describes in detail steps for establishing a mechanism to monitor and facilitate negotiations providing for specific steps that determine the consent of nations with measures for enforcing agreements. He suggests that state and corporate XX is proved to be insufficient to ensure honest and fair exploitation of Fourth World lands, peoples, and resources. Enforceable structures and agreements are needed to prevent and restrain violent and destructive exploitation that harms Fourth World peoples and, in the end, all peoples in the world.

• **Book Reviews:** In **"ORIGIN"** by **Jennifer Raff** we review the benefits of intercultural collaboration to conventional

genetic science and indigenous nations' sciences revealing more accurate facts about the peopling of the western hemisphere. And in our review of **"Born on Lakes and Plains"** by **Anne F. Hyde** she discusses the role of native women determining through their actions and their "mixed-offspring" the survival of Fourth World nations facing colonization of North America in the period of 16th to the 20th Centuries.

We are grateful to the authors in their roles as Extractive Industries Initiative Panel members for their intensive participation in colloquies and narratives in the joint essay, and as authors of insightful essays for this Extractive Industries and Indigenous Peoples Special Issue.

Nations' Land Rights vs. Corporate Exploitation

Editor: This is a paper jointly authored and contributed to by eight scholars participating in a five-month colloquy through remote communications to address the basic question of how to protect indigenous nations' land rights.

Dr. Muhammad Al-Hashimi, Dr. Hiroshi Fukurai, Amelia Marchand, Dr. Sabina Singh, Dr. Rudolph Rÿser, Dr. Melissa Farley, Dr. Deborah Rogers, Irene Delfanti and Aline Castañeda began meeting in October of 2021 to consider what might be the most effective strategy for protecting indigenous nations' land rights. Land rights has been the "clarion call" of nations' leaders seeking to protect their traditional territories from destruction by colonial powers. What these leaders and their communities have recognized for generations is that their very survival is directly linked to the health of the land, the air, the water, and the people. The remarkable panel making up what became known as the Extractive Industries Initiative joined their thoughts in this paper. Several members authored separate papers that are also published here in the Fourth World Journal.

Center for World Indigenous Studies Associate Scholars immediately recognized the need for strategies that nations' leaders must consider reversing the violence visited in their territories by States' government and the transnational resource extraction corporations they created. The conversations all contributed to this essay.

The following analysis is an initial product of the Extractive Industries Initiative reflecting much of our discussion over the many remote meetings in which all participated. As the convenor of the Extractive Industries Initiative made up of Associate Scholars and the consulting advice of Dr. Deborah Rogers, President of Initiative for Equality (IfE) on the WEB at https://initiativeforequality.org/ and Dr. Melissa Farley, President of the Prostitution Research organization on the WEB at https://prostitutionresearch.com/ we had differing viewpoints, but agreed that a new strategy is warranted.

ABSTRACT

Challenging the predatory impact of extractive industries upon indigenous nations and peoples around the globe requires the formulation of effective global strategies to pursue the creation and implementation of a legal framework. Analysts suggest five possible strategies to resist successfully and potentially overcome state-assisted corporate extraction and prevent environmental destruction of biodiversity, climate change, sea-level rise, and frequent occurrences of cross-species virus pandemics around the globe:

(1) The effective deployment of civil lawsuits against extractive industries, their inner staff, and corporate personnel.

(2) The human rights registration exposure of predatory extractive corporations to hold them accountable to internationally recognized human rights laws.

(3) The public exposure and "shaming" of corporate, political, and investor leaders and financiers who reap profits and powers from extractive industries and financial accessories.

(4) The engagement of effective vertical policy organizing, such as the strategic deployment of lobbying and political pressures against nations, states, regional inter-state organizations, and NGOs.

(5) The facilitation of indigenous voices advancing demands, oppositions, and resistance to the actions taken by the extractive industrial complex to block access to nations' territories and resources. Mediation establishing a balanced and mutually acceptable decision between concerned parties (transnational corporation, indigenous nations, and perhaps a state as well) employs concepts of accommodation and mutual benefit reducing or eliminating all violent effects of resource exploitation inside indigenous territories.

Keywords: extractive Industries, indigenous peoples, extraction, environmental destruction, climate change

Colonizing Nations through Centuries and the Present

Colonization exists when a nation, a state, or a people imposes its will over a nation and subjects the people to control, forced removal, forced language usage, alien culture, and exploitation of lands and resources. The Akan people colonized other peoples in what is now Ghana, as did the Quechua led by the Inca in what is now Bolivia, Peru, and Ecuador. The ancient states of Greece, Rome, and Egypt all engaged in colonization from about 1550 BC. Domination of "other peoples" was regarded as essential to obtain new power and wealth from neighboring lands and the natural resources in those lands.

What is referred to as modern colonization is recorded to have begun in the 15th century when the Kingdom of Portugal began its overseas search for trade routes for riches, initially imposing its will in 1415 over Ceuta, a coastal town in North Africa. So successful was the conquering and colonization in Ceuta the Portuguese forces moved on to colonize the islands of Madeira and Cape Verde. Spain quickly followed Portugal's lead, reaching the Americas, India, Africa, and Asia. Soon, Belgium, England, the Netherlands, France, and Germany organized their own colonizing ventures. By the beginning of the 20th century, thirteen states and kingdoms joined the ranks of colonizing powers, including

Russia/Union of Soviet Socialist Republics (USSR), the Ottoman Empire/Turkey, United States of America (USA), Denmark, Belgium, and Italy. By the early 20th century, virtually all the world's non-states were under the colonial control of these thirteen kingdoms and states.

Today, effectively, all 207 internationally recognized states (including the formerly decolonized populations) sit astride original nations sharing much of the same territorial and political spaces. The states compete with the original nations inside their boundaries for control over and access to lands and resources. The colonial process is accelerated over indigenous nations by states seeking control over lands, people, and resources.

It is a familiar prophecy spoken by traditional healers and traditional spiritual leaders from indigenous nations throughout the world that "human wants must be balanced against the capacity of the earth to restore life support giving foods, medicines, air, and water." Failure to adhere to this maxim results in the death of the people. A similar way of saying the same thing is offered by London-based business consultant Umar Haque[1] in a recent article appearing in DC Reports.[2] He points out that economic rebalancing the relationship between human consumption of earth's raw materials with transformational investment in the restoration of earth's life-supporting resources is essential to life. He argues that it is essential to alter the "economics of our civilization in a transformational way, at a global scale, on a level that never happened before. And we have to do it fast." Consumer wants must be balanced with investment in restoration. Promoting "balance" with the physical environment is necessary to avoid disruption and the resulting adverse effects of climate change.

There is ample evidence of unrestrained development by human beings globally and in localities on virtually all the continents responsible for a whole range of converging crises. Viral pandemic, the lapse of environmental systems and biodiversity, increasing number of migrants and refugees moving from one part of the world to other parts of the world seeking security, and conflicts between state militaries and militias inside states seeking to obtain control and access to control over life-supporting lands.

There is perhaps no better example of unrestrained human development causing damage to the environment and to human lives than the resource extraction industry. Resources such as oil and gas, minerals including aluminum, bauxite, gold and lithium, rainforests and pine, maple, spruce and cedar forests for construction materials and paper products, and lands that produce natural foods and medicines are all targets of extractive industries. Extractive industries are investment-rich businesses for banks, endowments, and individual investors. Extractive industries are essential to developing

[1] He is director of Havas Media Lab and an online contributor to the Harvard Business Review. Haque is the author of "The New Capitalist Manifesto: Building a Disruptively Better Business" (2011)

[2] https://www.dcreport.org/2021/11/11/why-were-underestimating-climate-change

new technologies and the operation of major factories producing cars, computers, washing machines, and other mechanical devices purchased by individuals and other businesses to operate the modern economy.

States Formed on top of Nations

Geopolitics studies the effects of the territories and the people on the land and international relations politics. Applying Fourth World Geopolitics, we analyze the relations between the world's original nations (their politics, cultures, lands, populations, and economies) and their relationship to internationally recognized states. As a field of study and practice, Fourth World Geopolitics responds to nations' all too frequent alarm stated in human rights terms as "land rights," "forced population removals," "replacement of cultural values and practices through imposed education systems," imposition of cash economies" as well as "governance and other systems of decision-making." All these actions taken by corporate, states, and sometimes indigenous nation militias and by state militaries cause distress for families, communities, and national leaders. Responses reflect their deeply centered resistance to what can only be understood as forms of colonization—imposed replacement of social, economic, political, and cultural ways of life by an outside political power. Kingdoms, states, and their corporations have played a significant role in executing modern colonial practices since the 15th century of the common era. The consequence of the more than 500-year imposition of emergent global powers over peoples in Africa, Asia, the Americas, and the Pacific and Atlantic regions is that a system of states was formed on top of the world's original nations. Traditional territories and peoples were occupied, and states and their businesses exploited communities and resources of the land for the economic and political benefit of the imposed states.

The territories of more than 5000 indigenous nations are located within the boundaries of one or more of the world's 207 states. In some instances, these nations consented to have their territories included within a state's borders. Still, most nations were not parties to an agreement to retain their territories and were not included in the state's governance. Therefore, it is reasonable to emphasize that most nations are the original occupants of lands and resources in territories claimed by states. Decisions about access to lands, resources, and waterways in these territories are a matter of contention between the nations and the state. The state governments claim sovereignty over all of the territories.

Of the 207 modern states, 181 were established on pre-existing indigenous nation territories. From 1810 through 1981, virtually all 35 western hemispheric states and 64 devolved states[3] were established on top of indigenous nation territories. The UN's decolonization project beginning in 1945, created another 82 countries on top of indigenous territories.

[3] States such as Laos, Lebanon, Brunei, and Bangladesh. These states were devolved from colonial control or formed out of a larger geographic area.

While "modern colonialism" has its roots in 15th-century kingdoms and 19th-century state actions, neo-colonialism overlaps modern colonialism in the 19th century and extends into the 21st century.

The common feature of neo-colonialism is the role of the extractive industry now operating in 63 countries applauded by the International Monetary Fund (IMF) and the World Bank (WB), proclaiming, "Natural resources have the potential to drive growth, development and poverty reduction."[4]

Twenty-nine of the sixty-three states are considered "Resource-Rich Developing Countries." These states, including Bolivia, Indonesia, Iraq, Timor-Leste, and the Democratic Republic of the Congo, were formed on top of mature nations and territories with resources rich in precious metals, minerals, natural foods, petroleum, and forests. The nations suffer from poverty even as the state's population benefits from the resources developed and exported from nations' lands. The nations' territories constitute 43% to 100% of the state's claimed territory. The remaining developing countries on the IMF and World Bank list considered "developing" are not considered "resource-rich" but are nevertheless made up of mature nations on top of which a state is imposed. An example worth noting is Afghanistan, with fourteen nations, including the Pashto, covering more than 40% of the state. Vast minerals, foods, and metals are extracted from this traditional land of the Pashtuns. Exports of resources from nations' territories constitute an estimated 20% of the revenues generated for the state's economy.

[4] World Bank https://www.worldbank.org/en/topic/extractiveindustries/overview#1 (Aug 13, 2021)

As the map illustrates, most of the world's states are dependent on access to and use of nations' lands and resources while nations can only be characterized as impoverished. Even with access to nations' territories many states remain "undeveloped" and "poor" according to the IMF. It is evident that the value of resources in nations' territories benefit other economies that are primarily organized to produce electronics, machinery, automobiles, and other commercial goods.

Uncontrolled Development Destroys Peoples and Earth's Life Supports

Perhaps Francis Fukuyama might rethink what the "end of history was at the end of the Cold War."[5] Essentially, as he wrote, capitalism won that war. The communists in Russia and China were not giving us the socialism we hoped for, and the world wanted wealth, prosperity, and unrestrained consumerism, no matter how it came. The cost of this freedom would be the loss of control of corporations, and in doing so, and feeding consumerism, we would plunge countless indigenous nations into more peril. Uncontrolled development could not be stopped, nor did money or wealth get redistributed meaningfully. So, the end of history, as it is looking, is the end of humanity.[6]

The industrial revolution and its progeny, its most perverse and current form, neoliberalism, is perhaps wealth-generating, but it is also destroying the earth's fabric and its people. This approach has been mired in simple and vertical calculations, often economic or money-based, that cannot account for either humanity or the earth. The neoliberal project, as George Monbiot so eloquently states, is one that puts us all in competition with one another. This "invisible system" has us competing, against humans and nature, instead of creating communities in which we can live in harmony with our abundant surroundings.[7]

In this way of thinking, neoliberal, the primary approach is to lower producers' costs and get humans to consume as much as they can. The system can be profitable financially, but it has been said numerous times, a race to the bottom. The neoliberal project privatizes all social services and causes the wealthy to pay less tax. Those that cannot earn or get a job are conveniently called derogatory names and considered useless - though the system is engineered to keep ordinary people out of the way. This neoliberal system does not distribute wealth or allow humanity to prosper together and with nature.

This idea of consumerism is false and does not replace democracy. We cannot vote with consumer dollars. In the Democratic Republic of the Congo, we can see how the military, state, and industry collude to profit off (sometimes child) labor. The countries surrounding the resource, in this case, cobalt, are using their military to ensure the governments benefit from this extraction

[6] IBID. https://www.jstor.org/stable/24027184

[7] Monbiot, G. (2016) Neoliberalism – the ideology at the root of all our problems The Guardian https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot

and protect corporations - in this case, as far away as China and Switzerland. We buy products from workers' labors in holes in the ground that corporations mine for metals and minerals used in the semi-conductors operating our phones and computers. Yet we cannot, as consumers, stop this. We must buy these products to participate in the world. According to neoliberalism, our consumer dollars are our new form of democracy. Yet is there a choice? Even if we are aware of the problematic nature of resource extraction throughout the world, in Congo, Libya, Chad, Sudan, Central, South and North America, and Asia, we must consume these products to stay connected, be safe, work, and feed our families. Because these industries have such a hold on the technology-dependent populations, we consume not only their products but also their ways of viewing the world.[8]

A compelling movement is going on; the World Economic Forum and the United Nations are working up a new governance system that directly includes corporations.[9] The United Nations is a state-based organization that has never supported the millions of 'Indigenous' or Fourth World Nations throughout the world. States were formed on top of nations, and to be legitimate, they have, for all purposes, ignored the weight of Fourth World people and tried to subsume them within their respective governments. Now, with this new global compact, governments of the United Nations are proposing a solid deal in the form of Multistakeholder Governance to allow corporations to take over key areas of interest in the world that governments (although without Indigenous nations) negotiated over decades. For Fourth World Nations, Indigenous people throughout the world, this is an added level of disenfranchisement and a new problem regarding government (military) and corporate control of resources.

Gleckman gives the example of the Sustainable Development Goals negotiated by governments of the UN. Goal Number 7 is "affordable energy for all." The leading corporation working on this has reinterpreted the goal to leave out affordability. Gleckman shows us how corporations can reinterpret the plans to suit their companies without compromising their ability to say they are meeting the goals.[10] The "public-private partnerships" are being solidified globally and entrenching neoliberalism. It means that public goods and services will all be delivered with an eye towards profits for the companies involved. As Gleckman writes.

---

[8] Pal, Ananya. (2020). "The Cycle of Iphone." February 4, 2020 https://storymaps.arcgis.com/stories/791c02e17f1443e7a1ec48633c135c67?fbclid=IwAR3_kc4NTmBWgLu_jH_DC12o5c8wLwz93CXg5FAVi4p20ixKrbqYbabnDPE Resources included in the Iphone or computer include aluminum (taken from Bauxite found in Australia, Brazil and India), iron, lithium (mined in Chile, and the Democratic Republic of Congo), gold, copper (mined in Chile, Papua New Guinea, Democratic Republic of Congo and Peru), titanium, silver, zinc, cobalt, nickel, tungsten, lead, platinum, antimony and more. The destination for these minerals transported by cargo ship, railroad or by plane is Shenzheun, China to a factory owned by Foxconn and final assembly in Japan.

[9] Tedneneke, A. 2019). World Economic Forum and UN Sign Strategic Partnership Framework. World Economic Forum. Geneva. Switlzerland. https://www.weforum.org/press/2019/06/world-economic-forum-and-un-sign-strategic-partnership-framework/.

[10] Freis, Lynn. (2019) "The UN is being turned into a public-private partnership": An interview with Harris Gleckman https://www.opendemocracy.net/en/oureconomy/un-being-turned-public-private-partnership-interview-harris-gleckman/ Open Democracy, an independent global media organization. London, UK.

Yet people, with or without a sovereign's protection, can be negatively affected by global forces. The globalized economy has produced globalized inequalities, where people at the bottom or even in the middle-income brackets in the globalized economy are excluded from meaningful participation in global governance, including matters that they perceive affect them directly.[11] [6]

Indigenous people and their governments have been disproportionality affected by industrialization economically, spiritually, and culturally. The current system of uncontrolled development has taken lives, communities, and livelihoods. However, we are all affected by this in terms of losing money, democracy, and community. The neoliberal system and globalization have moved us in the opposite direction that we should be going. A new story of community, sharing and altruistic behavior will mean shifting the powerful who do not want to leave their stations. Redistribution, however, will be suitable even for the wealthy as they open their eyes to love, security and community.

A Strategy for Restoring the Balance

In this part of our essay, we explore two potential approaches to advance the discussion of effective strategies for restoring global balance, based on indigenous nations' demands, visions, and knowledge:

(1) the establishment of the "civil jury" system as a strategic priority for the adjudication of civil lawsuits against extractive industries, thereby allowing a panel of ordinary laypeople, including indigenous residents from the community targeted by extractive industries, to adjudicate civil disputes, as opposed to the bench trial adjudication led by the state-appointed professional judges; and

(2) the political advancement of "resource socialist" policies and "redistributive" government programs to ensure the rights and sovereignty of indigenous nations and peoples.

These political plans are designed to facilitate and empower indigenous peoples' political organizing and "bottom-up" judicial activism, thereby placing authority and rights of independence back into the hands of indigenous peoples and their allies.

The establishment of Civil Jury Trials in Argentina and Japan

In 2021, the Argentinian Province of Chaco decided to adopt the civil jury system.[12] The new law stipulated that a panel of 12 ordinary citizens was authorized to deliver the verdict in the adjudication of civil disputes.[13] When the case involves indigenous peoples in civil disputes, including indigenous complaints against

[11] IBID. (Gleckman 2018, p.4)

[12] Asociacion Argentina de Juicio por Jurados (2021) The Civil Jury of Chaco (Argentina), Central Protagonist of the Presitious Annual Meeting of "Law and Society", Cicago, 2021, http://www.juicioporjurados.org/2021/01/the-civil-jury-of-chaco-argentina.html.

[13] Caitlyn Scherr (2016) "Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina," University of Miami Inter-American Law Review 47 (2): 316-353.

extractive firms in their homeland, the jury panel must also require an equal number of indigenous jurors in the adjudication process. This innovative jury model is called El Jurado Indigena (the Indigenous Jury). The law mandates explicitly that indigenous concerns and issues must be incorporated into the final judgment by ethnically- and culturally diverse jurors. In addition to the mandated requirement of indigenous inclusion in the jury trial, Argentina's jury system also required the equal participation of women in jury trials, i.e., six women and six men in the adjudication of criminal cases and civil disputes. The effect of the indigenous participation in resolving civil disputes has proven to be significant, and the indigenous jury panel has become emblematic of the expression of indigenous rights and sovereignty concerning corporate predation in their native lands. Before the adoption of the civil jury system in 2021, the Province of Neuquén in Argentina in 2011 had become the first jurisdiction to introduce the criminal component of the all-citizen jury trial, which Chaco, Buenos Aires soon followed, and other jurisdictions.[14] The indigenous jury was first mobilized in Neuquén in 2015 when the leader of the Mapuche Nation, Relme Namku, was indicted for attempted homicide after a rock thrown by the Mapuche leader had allegedly endangered the lives of corporate representatives. Two other indigenous land protectors were also indicted for severe damages to properties. The incident happened in December 2012 in the mining town of Zapala, Neuquén, when indigenous land protectors and their supporters who faced forceful removal from their ancestral homelands had participated in demonstrations against the extractive mining by multinational corporations. These powerful corporations included the Apache Corporation, the U.S. petroleum and natural gas exploration firm headquartered in Houston, Texas; Repsol S.A., Spain's energy company based in Madrid; and Argentina's state-run energy corporation YPF (Yacimientos Petrolieros Fisales). Before adopting criminal jury trials, more than 200 indigenous activists and land protectors had been charged and prosecuted for criminal offenses, and 50 of the indicted offenses were directly related to indigenous land resistance against extractive industries in their territories.[15] Additionally, more than 300 Mapuche members have been prosecuted as illegal "usurpers" in the territories where they have lived for many generations.[16]

The criminal jury trial began in October 2015. The panel of six Mapuche and six non-indigenous members, six women, began to deliberate on the criminal charges against indigenous activists. Under the scrutiny

[14] Hiroshi Fukurai & Andres Harfuch (2022) The U.S. Supreme Court Decision in "Francis A. Keeble v. United States" and the Necessity for the Gender-Diverse and Nationally-Bifurcated Jury: Recuperatores in Rome, Jury de Medietate Linguae in England and the U.S., and El Jurado Indigena in Argentina, (forthcoming in El juicio por jurados en la jurisprudencia nacional e internacional, edited by Andres Harfuch).

[15] Censo Nacional de Poblacion, Hogares y Viviendas 2010:Pueblos Originarios" Region Noroeste Argentino: Serie D N 1," INDEC (last accessed on January 15, 2022), https://web.archive.org/web/20080611004448/http://www.indec.gov.ar/webcenso/ECPI/index_ecpi.asp.

[16] Amnistía Internacional (2015, Nov. 17), Diario del Juicio a Relmu Namku, https://amnistia.org.ar/relmu/.

of national and international corporate and independent media, numerous instances of human rights violations against Mapuche land protectors and indigenous activists were exposed, including the use of child labor by extractive industries in their mining exploration, violence against indigenous land protectors by private paramilitary groups hired by extractive firms, and numerous instances of oil spills and water pollution caused by corporate extractive activities. In November, the jury delivered a not-guilty verdict for all three Mapuche defendants. The testimony also revealed that no action had been taken against extractive activities and private paramilitary troopers even though numerous instances of violence and environmental damages had been reported to the offices of public prosecutors and government agencies.[17] The jury verdict reverberated in the corporate world, indigenous peoples' resistance to extractive industries, and indigenous members' civil jury panel. The verdict represented a significant judicial challenge to the impunity of extractive activities by multinational corporations. It offered a viable judicial alternative to Argentina's traditional state-led bench trial system.

It is also important to recognize that the introduction of all-citizen jury trials in Argentina's criminal justice system has been advanced and long supported by the two progressive civic organizations that were formed following Argentina's brutal military dictatorship from the 1970s to 1980s. Progressive scholars, legal practitioners, labor organizers, indigenous activists, and grassroots organizations created The Argentine Association of Trial by Jury (*Associacion Argentina de Juicio por Jurados, AAJJ*) and INECIP (*Instituto de Estudios Comparados en Ciencias Penales y Sociales*).[18] These organizations argued that Argentina's introduction of the jury system was long overdue, given that the 1853 Constitution in Argentina had guaranteed the introduction of a jury trial. While Argentina amended the constitution on multiple occasions, the sections that guaranteed the jury trial remained intact in the most recently adopted 1991 Constitution. The INECIP and AAJJ, since their inception in 1989 and 2001 respectively, have been advocating for the introduction of the "constitutionally guaranteed" right to jury trial and the creation of adjudicative processes that are transparent and accessible to the public, including indigenous nations and peoples in Argentina. The Argentinian populace had experienced the so-called "Dirty War," Then-President Jorge Rafael Videla's military dictatorship in the 1970s and 1980s was responsible for secret interrogations, coerced confessions, and executions. "Disappearances" were not uncommon among countless politicians, progressive lawyers, indigenous activists, student leaders, labor organizers, women activists, and many others.[19] The public preferred the jury trial's open court process and judicially mandated transparency on evidence and testimony to the state-judge bench

[17] Fionuala Cregan (2015, Nov. 6) Mapuche Leader Found 'Not Guilty' in Unprecedented Trial in Argentina, Intercontinental Cry, https://intercontinentalcry.org/mapuche-leader-found-not-guilty-in-unprecedented-trial-in-argentina/.

[18] Fukurai & Harfuch.

[19] David R. Kohut & Olga Vilella (2017), Historical Dictionary of the Dirty War (Plymouth, UK: Scarecrow Press).

trial system. This preference was because the jury trial mandated active public participation based on oral arguments, adversarial proceedings, and evidence that disallows the use of coerced confession or other secretly gathered information and evidence.

A cautionary warning is needed, nonetheless, for, despite the institution of indigenous juries in civil and criminal cases in Argentina, the intimidation by private military troopers and the state-assisted corporation predation over indigenous nations and their lands continue today.[20] The state prosecution of indigenous communities in neighboring Chile also continues, including the recent allegation of "genocide" against Mapuche activists and peoples who make up 12% of the Chilean population. Civil jury trials and other socialist measures to empower indigenous peoples are urgently needed in Chile. These changes are of equal importance, given the victory of left-wing candidate Gabriel Boric in the 2021 Chilean presidential election may be significant in advancing indigenous rights and sovereignty against extractive industries. Efforts such as these would benefit other neighboring countries in Latin America to preserve indigenous nations, biodiversity, and ecological health of ancestral lands from corporate extractive predation and destruction.

Japan's Attempt to Introduce the Civil Jury System

Like AAJJ and INECIP in Argentina, several civic organizations in Japan have been struggling to introduce the 12-member jury system in criminal cases for many decades.

Japan once had a criminal jury trial system, from 1928 to 1943, which was suspended only due to the intensification of the Second World War. The Japanese government was legally required to re-start the criminal jury trial once the war was over, but the state has failed to follow its legal mandate. The civic organization called the Research Group on Jury Trial (RGJT) was established by a group of progressive lawyers, civic activists, investigative journalists, and legal scholars in 1982. Its objectives were to introduce Japan's "legally-mandated" criminal jury trial and educate the Japanese public about the importance of lay participation, including the democratic ideal of realizing a self-governing society through direct involvement in legal decision-making. Since its inception in 1982, RGJT has worked collaboratively with various organizations to achieve its objectives, including the Japanese Federations of Bar Associations (JFBA), the Civic Group to Reinstate the Jury Trial (Baishin Saiban o Fukkatusuru Kai), the Kyushu Baishin Saiban o Kangaeru Kai, among many others.[21]

Since the early 2010s, RGJT has also organized efforts to introduce the civil component of a jury trial. It plans to create and distribute an educational video of a mock civil jury trial through collaboration with other grassroots organizations throughout Japan. The video focuses on the jury's resolution of

[20] Meaghan Beatley (2017, Nov. 2) 'Disappearing' Indigenous Rights Protectors, TRT World.

[21] Hiroshi Fukurai & Richard Krooth (2010) What Brings People to the Courtroom? Comparative Analysis of People's Willingness to Serve as Jurors in Japan and the U.S., International Journal of Law, Crime, and Justice, 2011, 38:198-215.

the noise pollution issue at the U.S. military base in Okinawa. More than 70% of the U.S. military bases and facilities in Japan have been concentrated in the Island of Okinawa, while the island constitutes a mere 0.6 percent of Japan's landed territory. Since the U.S. began to establish military bases in 1945 following the end of the Second World War, crimes committed by soldiers and civilian corporate contractors have victimized local Okinawa residents, including women and children. The U.S.-Japan military treaty, the Status of Forces Agreement (SOFA) signed in 1960, provides military personnel and civilian contractors with an extraterritorial shield from local prosecution, creating a culture of impunity surrounding sexual assaults and other crimes directed against residents. Okinawa was once an independent kingdom in the South China Sea and served as an important international port for China, Korea, Russia, the Philippines, Thailand, Taiwan, and Southeast kingdoms until Japan forcefully annexed it in 1879.

The mock jury trial video focuses on examining class-action civil lawsuits filed by Okinawa residents against the Japanese government to compensate for the noise pollution at the Kadena Airport, the largest U.S. military Air Force facility in Asia. The civil lawsuit also demands that the Japanese government formally request the U.S. military to refrain from the night and early morning flight exercises at the airport. Given the 1951 U.S.-Japan Security Treaty, the U.S. government has primary jurisdiction over military operations. The civil lawsuits by Okinawan residents specifically ask the Japanese government to stop the night flight exercises and negotiate the status of its operation schedules at the Air Force bases.

The video features five plaintiffs from the noise-affected neighborhoods and three defense witnesses, including the SOFA specialist from the Japanese government. RGJT plans to produce the educational video by the summer of 2022.

Given the Covid-19 pandemic in Japan and beyond, the mock jurors will deliberate using an online virtual trial. They will have provided an important educational tool to ignite much-needed public debates about the utility of the citizen-centered jury panel in adjudicating civil lawsuits filed by local indigenous residents. Like the indigenous jury adopted in Argentina, the mock civil jury trial is also designed to help further the sense of sovereignty, dignity, and independence for the communities of indigenous peoples and their allies on the Island of Okinawa and beyond.

Nicaragua and its Socialist Agendas to Preserve Indigenous Sovereignty

It is important to explore the democratic effects of the recent adoption of socialist-oriented agendas advanced by the Nicaraguan government. In addition to examining the efforts to establish the civil jury trial to provide a sense of sovereignty to indigenous populations in the determination of civil legal disputes filed against powerful adversaries, including the extractive industry and military establishment in Argentina and Japan. They aimed to restore indigenous sovereignty and independence in Nicaragua. In 1979, the Sandinistas (the Sandinista National Liberation Front or *Frente Sandinista de Liberacion*

Nacional, FSLN) toppled the Samosa government and ended its brutal military dictatorship. In 1987, a new constitution was created, with provisions designed to recognize the rights of indigenous peoples, African descendants, and thus indigenous sovereignty. The section entitled "Rights of the Indigenous Populations and Communities of the Atlantic Coast" recognized "their right to preserve and develop their cultural identity within the framework of national unity, to choose their forms of social organization, and administer local affairs in conformity with their traditions." Further, Article 180 shows that "the State guarantees enjoyment by these communities of their natural resources, enforcement of their communal forms of property, and free election by the same of their authorities and representatives."[22]

The U.S.-supported Contras fought the Sandinistas and their supporters throughout the 1980s. The government led by U.S.-backed Violeta Chamorro finally replaced the Sandinistas in 1990. Following that, the constitutional protection of indigenous nations' sovereignty was neglected and compromised. Neoliberal programs and privatization agendas led to the devastation of the rights of indigenous nations, the destruction of natural landscapes, deforestation, environmental pollution, and the eradication of biodiversity and ecological health of the ancestral homelands.[23] In 2006, a democratically held election reinstalled the Sandinistas government, which proposed social welfare programs, incorporated food sovereignty into law, and implemented socialist agendas that included free education, free healthcare, and housing subsidies for the poor. The socialist government also built twenty hospitals in indigenous communities and helped reduce maternal mortality, infant mortality, and malnutrition. The Sandinistas program also empowered peasant movements in indigenous and African-descendant communities. The indigenous community activists began to serve as the leaders of peasant struggles across the region and around the globe.[24] By offering the socialist-based legal compacts between the Nicaraguan government and indigenous people, the Sandinistas also promoted large-scale land reforms. They promoted the preservation of the communal property in indigenous ancestral homelands by extending the constitutional guarantee of the legal protection of sovereignty and independence to indigenous and Afro-descendant communities in the eastern Atlantic regions. From 2007 and 2019, for example, 140,000 land titles were issued to women (55%

[22] Andrew Reding (1987), Nicaragua's New Constitution: A Close Reading, *World Policy Journal*, Vol.4, No.2: .257-294..

[23] See generally Luciano Baracco (2018) Indigenous Struggles for Autonomy: The Caribbean Coast of Nicaragua (Washington, DC: Lexington Books) for Nicaragua's devastation of indigenous communities from 1990 to 2006. The U.S.-led intervention of Nicaragua dates to the nineteenth and early twentieth centuries. For example, the brutal military domination started following the assassination of Augusto Sandino who successfully challenged and defeated the U.S. intrusion in 1933. After the *Sandinistas* won the 1979 election, the U.S.-led Contras and hybrid warfare in Nicaragua, including massacres of indigenous populations, forced the International Court of Justice (ICJ) to declare that the U.S. action constituted the violation of international law in 1986.

[24] Rita Jill Clark -Gollub, Erika Takeo, & Avery Raimondo (2020, Feb. 2) Feeding the People in Times of Pandemic: The Food Sovereignty Approach in Nicaragua, Council of Hemispheric Affairs, https://www.coha.org/feeding-the-people-in-times-of-pandemic-the-food-sovereignty-approach-in-nicaragua/.

of land title recipients) in 304 indigenous and Afro-descendant communities in the Caribbean coast, totaling 37,842 km2 or 31% of the national territory.[25] Nicaragua also ranks the first in gender equality in the Western Hemisphere and the fifth in the world, only outranked by north European states. Furthermore, the passage of the 2009 law of Food and Nutritional Sovereignty and Security law provided seeds, plants, and farm animals to women land title holders in rural sectors to diversify their production and strengthen women-led household economies increasing food security and strengthening agricultural sovereignty in Nicaragua.[26]

Recent reports suggest that the government's socialist programs helped create the democratic space to reassure the sovereignty and independence of indigenous communities and peoples and their efforts in challenging and resisting the impacts of multinational extractive industries upon their ancestral lands and territories. The effects of Nicaragua's socialist agendas and closer compacts with its "political subjects" have been closely observed by international human rights organizations and indigenous alliance groups. The victory of the Sandinistas in the 2021 presidential election further solidified the continuation of socialist agendas and programs while also triggering the imposition of new waves of U.S. economic sanctions against Nicaragua.[27] These new sanctions involved continuing the U.S. government's Nicaraguan Investment Conditionality Act (NICA) in 2017. The U.S. Act was designed to prevent foreign direct investment and further destabilize Nicaragua's economy and, thus, its political sovereignty.[28] Despite the U.S. economic and trade sanctions against the Sandinistas government, Nicaragua's socialist agendas have succeeded in improving the living standards of the general population, including indigenous and African-descendant peoples. As a result, Nicaragua remains the sole exception among the many Central American and Caribbean regions that are experiencing the phenomenon of the mass exodus of their peoples, fleeing their countries to seek refuge in the U.S. El Salvador, Guatemala, and Honduras in Central America, and Haiti in the Caribbean, have been victimized by both past, and present U.S. foreign policies that devastated their states through the U.S.-led neoliberal agendas and corporate predation, including mining industries of indigenous territories by the multinational corporations of the North Atlantic states such as the U.S. and Canada.[29]

[25] Ibid.

[26] Ibid.

[27] U.S. State Department (2021, Nov. 15) New Sanctions Following Sham Elections in Nicaragua, https://www.state.gov/new-sanctions-following-sham-elections-in-nicaragua/.

[28] Nicaragua Investment Conditionality Act (NICA) was promulgated in 2017. For more information, see Frances Robles (2018, Dec. 24) In Nicaragua, Ortega Was on the Ropes: Now, He has Protesters on the Run, New York Times, https://www.nytimes.com/2018/12/24/world/americas/nicaragua-protests-daniel-ortega.html.

[29] Amelia Cheatham (2021, Jul. 1) Central America's Turbulent Northern Triangle, Council of Foreign Relations, https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle; Palm Beach Post (2021, Aug. 18) Reboot Foreign Policy to Address Crises in Haiti, Central America, https://www.palmbeachpost.com/story/opinion/2021/08/18/u-s-foreign-policy-must-change-help-haiti-and-central-america/8149987002/.

In Sum ...

Only a handful of states around the globe have successfully established a legal system that allows indigenous nations participation in the resolution of criminal and civil disputes. Historically, the jury and other "lay participation" systems have allowed the participation of diverse community sections, including indigenous peoples, women, and racial and ethnic minorities, in resolving civil lawsuits filed against extractive corporate activities in their communities.

This paper in part examined the adoption of the civil jury trial in Argentina and Japan, exploring how the direct participation of people, including indigenous community members, has advanced marginalized populations' interest in resolving civil conflicts and disputes. Their direct legal participation has instilled a strong sense of indigenous sovereignty and independence in their communities. Also explored was the impact of the socialist agendas and redistributive Nicaraguan government, including the implementation of land redistribution, food sovereignty, and social safety nets, which have helped empower the indigenous and African-descendant communities and peoples. These socialist-oriented programs help restore the sense of indigenous peoples' authority by providing the collective ownership of ancestral territories in indigenous and African-descendant dominant regions in the eastern Caribbean coastal areas.

The indigenous communities and their allies continue to challenge and resist predatory corporate extractive activities across the globe. The strong anti-corporate alliance led by Nicaragua's peasant and indigenous leaders also supports large-scale peasant movements in Central America and around the world. The analysis presented here contributes to the further discussion of the solidification of self-governing practices and people's direct participation and the application of democratic and socialist ideals, thereby creating indigenous peoples' sovereignty, dignity, and independence. These vital visions are desperately needed to preserve ecological diversity and environmental balances on earth for future generations in the coming years and decades.

EPILOGUE

Our Extractive Industries Initiative Panel has been meeting intending to prepare an analysis that can serve as the basis for a strategy addressing the global catastrophe for thousands of nations resulting from uncontained land, resources, and human exploitation. Our Panel of Scholars calls for new measures to prevent or restrain the unmonitored and unaccountable violence committed against indigenous communities. The destruction of the environment and displacement of peoples forced into refugee status or killed outfight by gangs and militias by the Extractive Industry and its accomplices among states' governments, investors, and commercial resources businesses can no longer be allowed. Absent the ability of the UN or any other international state-based institution exercising restraining authority or other controls; it does appear that global disinvestment, exposure of financially culpable and organized nation-based law and action are required as part of a strategy. Mediation is a concept that may be needed, especially since the state-based legal system remains neutral or inoperable when indigenous nations are concerned. Nation-based law may serve best in the context of mediation between nations, corporations, and some states.

CWIS is reaching out to indigenous nations to determine the extent to which nations are willing, capable, or otherwise able to join in a "ground up" effort invoking nation-based domestic and international laws. Several indigenous nations exercising their inherent sovereignty and nation-based law have demonstrated their willingness and ability to block extractive industries from entering their territories following the model of blocking entrance into indigenous territories due to the COVID-19 pandemic. They may invoke their laws to regulate corporate behavior inside their territories as the mediated best solution.

While frustrating to some states and industries, employing nation-based law is having some success. If this is added to the global disinvestment exposure initiative conducted by NGOs and indigenous nations, we may see some initial measure of progress. The UN cannot respond to the most egregious violence against indigenous peoples due to state obstructionism. Equally clear, we must note that states' governments are unwilling (as demonstrated by the results of the Paris Accord on climate and the two-week meeting in Glasgow, Scotland - 2022) to restrain businesses and development measures from destroying the environment and causing changing climate globally.

The multi-decade crisis that recent reports graphically demonstrate about the environment, mass forced human relocations, and viral pandemics call on us to take more action and direct effort to prevent corporate destruction of the environment, indigenous communities, and the climate.

REFERENCES

[1] Amnistía Internacional (2015, Nov. 17), Diario del Juicio a Relmu Namku, https://amnistia.org.ar/relmu/.

[2] Asociacion Argentina de Juicio por Jurados (2021) The Civil Jury of Chaco (Argentina), Central Protagonist of the Presitious Annual Meeting of "Law and Society", Cicago, 2021, http://www.juicioporjurados.org/2021/01/the-civil-jury-of-chaco-argentina.html.

[3] Baracco, Luciano (2018) Indigenous Struggles for Autonomy: The Caribbean Coast of Nicaragua (Washington, DC: Lexington Books)

[4] Censo Nacional de Poblacion, Hogares y Viviendas 2010:Pueblos Originarios" Region Noroeste Argentino: Serie D N 1, INDEC (last accessed on January 15, 2022), https://web.archive.org/web/20080611004448/http://www.indec.gov.ar/webcenso/ECPI/index_ecpi.asp.

[5] Cheatham, Amelia (2021, Jul. 1) Central America's Turbulent Northern Triangle, Council of Foreign Relations, https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle

[6] Clark -Gollub, Rita Jill, Erika Takeo, & Avery Raimondo (2020, Feb. 2) Feeding the People in Times of Pandemic: The Food Sovereignty Approach in Nicaragua, Council of Hemispheric Affairs, https://www.coha.org/feeding-the-people-in-times-of-pandemic-the-food-sovereignty-approach-in-nicaragua/

[7] Cregan, Fionuala (2015, Nov. 6) Mapuche Leader Found 'Not Guilty' in Unprecedented Trial in Argentina, Intercontinental Cry, https://intercontinentalcry.org/mapuche-leader-found-not-guilty-in-unprecedented-trial-in-argentina/.

[8] Fukurai, Hiroshi & Richard Krooth (2010) What Brings People to the Courtroom? Comparative Analysis of People's Willingness to Serve as Jurors in Japan and the U.S., International Journal of Law, Crime, and Justice, 2011, 38:198-215.

[9] Fukurai, Hiroshi & Andres Harfuch (2022) The U.S. Supreme Court Decision in "Francis A. Keeble v. United States" and the Necessity for the Gender-Diverse and Nationally-Bifurcated Jury: Recuperatores in Rome, Jury de Medietate Linguae in England and the U.S., and El Jurado Indigena in Argentina, (forthcoming in El juicio por jurados en la jurisprudencia nacional e internacional, edited by Andres Harfuch).

[10] Kohut, David R. & Olga Vilella (2017), Historical Dictionary of the Dirty War (Plymouth, UK: Scarecrow Press).

[11] Meaghan Beatley (2017, Nov. 2) 'Disappearing' Indigenous Rights Protectors, TRT World.

[12] Palm Beach Post (2021, Aug. 18) Reboot Foreign Policy to Address Crises in Haiti, Central America, https://www.palmbeachpost.com/story/opinion/2021/08/18/u-s-foreign-policy-must-change-help-haiti-and-central-america/8149987002/.

[13] Reding, Andrew (1987), Nicaragua's New Constitution: A Close Reading, World Policy Journal, Vol.4, No.2: .257-294.

[14] Robles, Frances (2018, Dec. 24) In Nicaragua, Ortega Was on the Ropes: Now, He has Protesters on the Run, New York Times, https://www.nytimes.com/2018/12/24/world/americas/nicaragua-protests-daniel-ortega.html.

[15] Scherr, Caitlyn (2016) "Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina," University of Miami Inter-American Law Review 47 (2): 316-353.

[16] U.S. State Department (2021, Nov. 15) New Sanctions Following Sham Elections in Nicaragua, https://www.state.gov/new-sanctions-following-sham-elections-in-nicaragua/

This article may be cited as:
Al-Hashimi, M., Fukurai, H., Marchand, A., Singh, S., Rÿser, R., Farley, M., Rogers, D., Delfanti, I., (2022) Nations' Land Rights vs. Corporate Exploitation. *Fourth World Journal*. Vol. 21, N2. pp. 1-20.

ABOUT THE AUTHOR

Muhammad Al-Hashimi

Muhammad Al-Hashimi, PhD, is a Senior Lecturer at Euclid University (Pole Universitaire Euclide), www.euclid.int, Washington, DC, USA; and Banjul, The Gambia, West Africa. Dr. Al-Hashimi is the author of Islam and Pan-Africanism, (Detroit: El-Hajj Malik El-Shabazz Press, 1973) and The Oppressed Muslims in Ethiopia, (Washington, D.C.: El-Hajj Malik El- Shabazz Press, 1986)

Hiroshi Fukurai

Professor of Sociology & Legal Studies at the University of California, Santa Cruz & Past President of the Asian Law & Society Association (ALSA). He is specialized in lay adjudication, indigenous approaches to international law, and Asian law and politics. His recent articles include "The Prevention of the Sixth Mass Extinction: Socio-Legal Responses to Mitigate the Anthropogenic Crises in Asia and Beyond" (2022); "President's Farewell Message: The Anthropocene, Earth Jurisprudence and the Rights of Nature" (2020) ; "The Decoupling of the Nation and the State: Constitutionalizing Transnational Nationhood, Cross Border Connectivity, Diaspora and 'Nation' Identity-Affiliations in Asia and Beyond" (2020), all of which appeared in the Asian Journal of Law and Society (Cambridge Univ. Press). His books include: Original Nation Approaches to Inter-National Law: The Quest for the Rights of Indigenous Peoples and Nature in the Age of Anthropocene (Palgrave Macmillan, 2021); East Asia's Renewed Respect for the Rule of Law in the 21st Century (Brill, 2015); Japan and Civil Jury Trials: The Convergence of Forces (Edward Elgar, 2015); Nuclear

ABOUT THE AUTHOR

Tsunami: The Japanese Government and America's Role in the Fukushima Disaster (Lexington Book, 2015); Race in the Jury Box: Affirmative Action in Jury Selection (SUNY Press, 2003); Anatomy of the McMartin Child Molestation Case (Univ. Press of America, 2001); Race and the Jury: Racial Disenfranchisement and the Search for Justice (Plenum Press, 1993, Gustavus Meyers Human Rights Award); and Common Destiny: Japan and the U.S. in the Global Age (MacFarland, 1990).

Amelia Marchand

Amelia Marchand is a citizen of the Colville Confederated Tribes. She holds a BA in anthropology and an MA in environmental law and policy and resides on the lives with her husband three children. She is a Director on the Center for World Indigenous Studies Board of Directors, and volunteers with Conservation Northwest, Hearts Gathered, and the Nez Perce Wallowa Homeland. Throughout her professional career, Amelia has been the first woman and the first indigenous person to serve in four government positions with her Tribe. She is an alumnus of Presidential Classroom and the Ronald E. McNair Scholars Program. Amelia is a wife, daughter and granddaughter of U.S. Army veterans, and a descendant of U.S. prisoners of war and the U.S. boarding school system. Her personal experiences and family history have increased her passion for indigenous rights, environmental justice, and implementing socially equitable solutions for climate change adaptation and mitigation that not only honor values of community and reciprocity; but also heal wounds from intergenerational trauma and institutional colonialism.

Sabina Singh

Sabina was born in Kamloops BC to parents who came from India. Her PhD was a case study in Uganda, and she taught African Politics at the University of Victoria. After finishing her degree, Sabina began to research and write about connections between indigenous people throughout the world following the work of George Manuel.

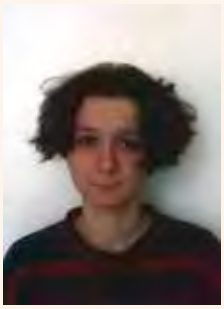
ABOUT THE AUTHOR

Rudolph Rÿser, PhD

Dr. Rudolph C. Rÿser grew to maturity in the Cowlitz Indian culture on the US Pacific Northwest coast though he is of Cree/Oneida descent on his mother's side and Swiss descent on his father's. He earned his doctorate in international relations and has served as the Founding Chair of the Center for World Indigenous Studies since 1979. He is widely recognized around the world as the principle architect of theories and the practice of Fourth World Geopolitics. He is the author of the seminal book "Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power" (2012), the Fourth World Geopolitical Reader and the currently released "Biodiversity Wars, Coexistence or Biocultural Collapse in the 21st Century" (2019). He has for more than fifty years worked in the field of Indian Affairs as a writer/ researcher/ and advisor to political leaders of Fourth World nations throughout the world.

Melissa Farley

Melissa Farley is a research and clinical psychologist who has published 50 peer-reviewed articles and 2 books on prostitution, pimping/trafficking, and pornography. She co-authored research on the lives of trafficked Native women in Minnesota, on prostitution and PTSD in nine countries; and research comparing men who buy sex to men who do not buy sex. Dr. Farley founded Prostitution Research & Education in 1995, a nonprofit research institute that conducts original research on the sex trade and provides a free library of information for survivors, advocates, policymakers, and the public at www.prostitutionresearch.com



Irene Delfanti

Irene is a designer and a recent graduate from the MA Design for Change at the University of Edinburgh. Her work focuses on how design methodologies contribute in enhancing social and environmental justice. Her experience includes credits in the arts and entertainment industry, activism and policy. Born near the Italian Alps, she is now to be found in Scotland.

CWIS
Center for World Indigenous Studies

cult: worship
ure: earth
Culture

Studying at the Center for World Indigenous Studies, you engage in studies that are important to both your personal and professional life.

INQUIRE ABOUT OUR EDUCATIONAL PROGRAMS

- Indigenous and Fourth World Studies
- Traditional Healing Arts & Sciences
- Applied Indigenous Research Methods
- Strategy, Decision-Making and Governance
- Environmental Studies and Fourth World Peoples

"I am profoundly grateful for the CWIS. My Indigenous thoughts, ideals, and consciousness were valued and affirmed...vitally important to my well being and confidence participating in academia.
Chi miigwetch to my mentor, and to everyone involved in the program."

Amy Dejarlais, B.A., MA / Certificate in Fourth World and Indigenous Studies

Find our latest courses here: cwis.org/study-with-us/our-courses/

Derechos Territoriales de las Naciones vs. la Explotación Empresarial

Editor: este es un documento escrito conjuntamente por nueve académicos que participaron en un coloquio de cinco meses a través de comunicaciones remotas para abordar la cuestión básica de cómo proteger los derechos territoriales de las naciones indígenas.

Traducción al Español por Aline Castañeda Cadena

El Dr. Muhammad Al-Hashimi, el Dr. Hiroshi Fukurai, Amelia Marchand, la Dra. Sabina Singh, el Dr. Rudolph Rÿser, la Dra. Melissa Farley, la Dra. Deborah Rogers, Irene Delfanti y Aline Castañeda comenzaron a reunirse en octubre de 2021 para considerar cuál podría ser la estrategia más eficaz para proteger los derechos territoriales de las naciones indígenas. Los derechos territoriales han sido el "llamado de atención" de los líderes de las naciones que buscan proteger sus territorios tradicionales de la destrucción por parte de las potencias coloniales. Lo que estos líderes y sus comunidades han reconocido durante generaciones es que su propia supervivencia está directamente relacionada con la salud de la tierra, el aire, el agua y la gente. El notable panel que compuso lo que se conoció como la Iniciativa de Industrias Extractivas unió sus pensamientos en este documento. Varios miembros escribieron artículos separados que también se publican en este número de la Revista del Cuarto Mundo.

Los académicos asociados del Centro de Estudios Indígenas del Mundo reconocieron de inmediato la necesidad de estrategias que los líderes de las naciones deben considerar para revertir la violencia inflingida en sus territorios por el gobierno de los estados y las corporaciones transnacionales de extracción de recursos que crearon. Todas las conversaciones contribuyeron a este ensayo.

El siguiente análisis es un producto inicial de la Iniciativa de Industrias Extractivas que refleja gran parte de nuestra discusión sobre las muchas reuniones remotas en las que todos participaron. Como coordinador de la Iniciativa de Industrias Extractivas compuesta por académicos asociados y el asesoramiento de consultoría de la Dra. Deborah Rogers, presidenta de Iniciativa para la Igualdad (IfE) en la WEB en https://initiativeforequality.org/ y la Dra. Melissa Farley, presidenta de la organización de investigación sobre la prostitución en la WEB en https://prostitutionresearch.com/ tuvimos puntos de vista diferentes, pero acordamos que se justifica una nueva estrategia.

RESUMEN

Desafiar el impacto depredador de las industrias extractivas sobre las naciones y pueblos indígenas de todo el mundo requiere la formulación de estrategias globales efectivas

para buscar la creación e implementación de un marco legal. Los analistas sugieren cinco estrategias posibles para resistir con éxito y potencialmente superar la extracción corporativa asistida por el estado y prevenir la destrucción ambiental de la biodiversidad, el cambio climático, el aumento del nivel del mar y la ocurrencia frecuente de pandemias de virus entre especies en todo el mundo:

(1) El despliegue efectivo de acciones civiles contra las industrias extractivas, su personal interno y el personal corporativo.

(2) La exposición del registro de derechos humanos de las corporaciones extractivas depredadoras para hacerlas responsables de las leyes de derechos humanos reconocidas internacionalmente.

(3) La exposición pública y la "vergüenza" de líderes corporativos, políticos e inversionistas y financieros que obtienen ganancias y poderes de las industrias extractivas y accesorios financieros.

(4) El compromiso de la organización política vertical efectiva, como el despliegue estratégico de cabildeo y presiones políticas contra naciones, estados, organizaciones interestatales regionales y ONGs.

(5) La facilitación de las voces indígenas que avanzan demandas, oposiciones y resistencias a las acciones tomadas por el complejo industrial extractivo para bloquear el acceso a los territorios y recursos de las naciones. La mediación que establece una decisión equilibrada y mutuamente aceptable entre las partes involucradas (empresa transnacional, naciones indígenas y quizás también un estado) emplea conceptos de acomodación y beneficio mutuo que reducen o eliminan todos los efectos violentos de la explotación de recursos dentro de los territorios indígenas.

Palabras clave: industrias extractivas, pueblos indígenas, extracción, destrucción ambiental, cambio climático

Las Naciones Colonizadoras a través de los Siglos y el Presente

Las naciones colonizadoras a través de los siglos y la presente colonización existe cuando una nación, un estado o un pueblo impone su voluntad sobre una nación y somete a la gente al control, la expulsión forzosa, el uso forzado del idioma, la cultura extranjera y la explotación de tierras y recursos. El pueblo akan colonizó a otros pueblos en lo que ahora es Ghana, al igual que los quechuas liderados por los incas en lo que ahora es Bolivia, Perú y Ecuador. Los antiguos estados de Grecia, Roma y Egipto se involucraron en la colonización desde alrededor de 1550 a.C. La dominación de "otros pueblos" se consideraba esencial para obtener nuevo poder y riqueza de

las tierras vecinas y los recursos naturales de esas tierras.

Se registra que lo que se conoce como colonización moderna comenzó en el siglo XV cuando el Reino de Portugal comenzó su búsqueda en el extranjero de rutas comerciales para las riquezas, inicialmente imponiendo su voluntad en 1415 sobre Ceuta, una ciudad costera en el norte de África. Tan exitosa fue la conquista y colonización en Ceuta que las fuerzas portuguesas pasaron a colonizar las islas de Madeira y Cabo Verde. España siguió rápidamente el ejemplo de Portugal, llegando a América, India, África y Asia. Pronto, Bélgica, Inglaterra, los Países Bajos, Francia y Alemania organizaron sus propias empresas colonizadoras. A principios del siglo XX, trece estados y reinos se unieron a las filas de las potencias colonizadoras, incluidos Rusia/Unión de Repúblicas Socialistas Soviéticas (URSS), el Imperio Otomano/Turquía, los Estados Unidos de América (EE. UU.), Dinamarca, Bélgica y Italia. A principios del siglo XX, prácticamente todos los países no estatales del mundo estaban bajo el control colonial de estos trece reinos y estados.

Hoy, efectivamente, los 207 estados reconocidos internacionalmente (incluidas las poblaciones anteriormente descolonizadas) se sientan a horcajadas sobre las naciones originales que comparten gran parte de los mismos espacios territoriales y políticos. Los estados compiten con las naciones originales dentro de sus fronteras por el control y el acceso a las tierras y los recursos. El proceso colonial se acelera sobre las naciones indígenas por parte de los estados que buscan el control sobre las tierras, las personas y los recursos.

Es una profecía familiar pronunciada por los curanderos tradicionales y los líderes espirituales tradicionales de las naciones indígenas de todo el mundo que "los deseos humanos deben equilibrarse con la capacidad de la tierra para restaurar el soporte vital proporcionando alimentos, medicinas, aire y agua". El incumplimiento de esta máxima resulta en la muerte del pueblo. Una forma similar de decir lo mismo es ofrecida por el consultor de negocios con sede en Londres Umar Haque[1] en un artículo reciente que apareció en DC Reports.[2] Señala que el reequilibrio económico de la relación entre el consumo humano de las materias primas de la tierra con la inversión transformadora en la restauración de los recursos de soporte vital de la tierra es esencial para la vida. Argumenta que es esencial alterar la "economía de nuestra civilización de una manera transformadora, a escala global, en un nivel que nunca antes había sucedido. Y tenemos que hacerlo rápido". Los deseos de los consumidores deben equilibrarse con la inversión en restauración. Es necesario promover el "equilibrio" con el entorno físico para evitar la interrupción y los efectos adversos resultantes del cambio climático.

[1] Es director de Havas Media Lab y colaborador en línea de Harvard Business Review. Haque es el autor de "The New Capitalist Manifesto: Building a Disruptively Better Business" (2011)

[2] https://www.dcreport.org/2021/11/11/why-were-underestimating-climate-change

Estados Formados en la Cima de las Naciones

La geopolítica estudia los efectos de los territorios y las personas sobre la tierra y la política de relaciones internacionales. Aplicando la Geopolítica del Cuarto Mundo, analizamos las relaciones entre las naciones originales del mundo (su política, culturas, tierras, poblaciones y economías) y su relación con los estados reconocidos internacionalmente. Como campo de estudio y práctica, la Geopolítica del Cuarto Mundo responde a las alarmas demasiado frecuentes de las naciones expresadas en términos de derechos humanos como "derechos a la tierra", "desplazamientos forzosos de población", "reemplazo de valores y prácticas culturales a través de sistemas educativos impuestos", imposición de economías de efectivo", así como "gobernanza y otros sistemas de toma de decisiones". Todas estas acciones tomadas por corporaciones, estados y, a veces, milicias de naciones indígenas y por militares estatales causan angustia a familias, comunidades y líderes nacionales. Las respuestas reflejan su resistencia profundamente centrada a lo que solo puede entenderse como formas de colonización: reemplazo impuesto de formas de vida sociales, económicas, políticas y culturales por un poder político externo. Los reinos, los estados y sus corporaciones han desempeñado un papel importante en la ejecución de prácticas coloniales modernas desde el siglo XV de la era común. La consecuencia de la imposición de más de 500 años de poderes globales emergentes sobre los pueblos de África, Asia, las Américas y las regiones del Pacífico y el Atlántico es que se formó un sistema de estados sobre las naciones originales del mundo. Se ocuparon territorios y pueblos tradicionales, y los estados y sus empresas explotaron comunidades y recursos de la tierra para el beneficio económico y político de los estados impuestos.

Los territorios de más de 5000 naciones indígenas se encuentran dentro de los límites de uno o más de los 207 estados del mundo. En algunos casos, estas naciones dieron su consentimiento para que sus territorios se incluyeran dentro de las fronteras de un estado. Aún así, la mayoría de las naciones no eran parte de un acuerdo para retener sus territorios y no estaban incluidas en el gobierno del estado. Por lo tanto, es razonable enfatizar que la mayoría de las naciones son los ocupantes originales de las tierras y los recursos en los territorios reclamados por los estados. Las decisiones sobre el acceso a tierras, recursos y vías fluviales en estos territorios son motivo de controversia entre las naciones y el estado. Los gobiernos estatales reclaman la soberanía sobre todos los territorios.

De los 207 estados modernos, 181 se establecieron en territorios de naciones indígenas preexistentes. Desde 1810 hasta 1981, prácticamente todos los 35 estados del hemisferio occidental y los 64 estados descentralizados[3] se establecieron sobre territorios de naciones indígenas. El proyecto de descolonización de la ONU que comenzó en 1945 creó otros 82 países además de los territorios indígenas.

[3] Estados como Laos, Líbano, Brunei y Bangladesh. Estos estados se delegaron del control colonial o se formaron a partir de un área geográfica más grande.

La característica común del neocolonialismo es el papel de la industria extractiva que ahora opera en 63 países, aplaudida por el Fondo Monetario Internacional (FMI) y el Banco Mundial (BM), proclamando que "los recursos naturales tienen el potencial de impulsar el crecimiento, el desarrollo y la reducción de pobreza."[4]

Veintinueve de los sesenta y tres estados se consideran "países en desarrollo ricos en recursos". Estos estados, incluidos Bolivia, Indonesia, Irak, Timor-Leste y la República Democrática del Congo, se formaron sobre naciones y territorios maduros con recursos ricos en metales preciosos, minerales, alimentos naturales, petróleo y bosques. Las naciones sufren de pobreza incluso cuando la población del estado se beneficia de los recursos desarrollados y exportados de las tierras de las naciones. Los territorios de las naciones constituyen del 43% al 100% del territorio reclamado por el estado. El resto de los países en desarrollo en la lista del FMI y el Banco Mundial considerados "en desarrollo" no son considerados "ricos en recursos", pero sin embargo están formados por naciones maduras sobre las cuales se impone un estado. Un ejemplo digno de mención es Afganistán, con catorce naciones, incluida la pashto, que cubren más del 40% del estado. Grandes minerales, alimentos y metales se extraen de esta tierra tradicional de los pashtunes. Las exportaciones de recursos desde los territorios de las naciones constituyen aproximadamente el 20% de los ingresos generados para la economía del estado.

[4] Banco Mundial https://www.worldbank.org/en/topic/extractiveindustries/overview#1 (13 agosto, 2021)

Como ilustra el mapa, la mayoría de los estados del mundo dependen del acceso y uso de las tierras y los recursos de las naciones, mientras que las naciones solo pueden caracterizarse como empobrecidas. Incluso con acceso a los territorios de las naciones, muchos estados siguen siendo "subdesarrollados" y "pobres" según el FMI. Es evidente que el valor de los recursos en los territorios de las naciones beneficia a otras economías que se organizan principalmente para producir productos electrónicos, maquinaria, automóviles y otros bienes comerciales.

El Desarrollo Descontrolado Destruye los Pueblos y los Soportes Vitales de la Tierra

Quizás Francis Fukuyama podría repensar cuál fue el "fin de la historia al final de la Guerra Fría".[5] Esencialmente, como escribió, el capitalismo ganó esa guerra. Los comunistas en Rusia y China no nos estaban dando el socialismo que esperábamos, y el mundo quería riqueza, prosperidad y consumismo desenfrenado, sin importar cómo llegara.

El costo de esta libertad sería la pérdida del control de las corporaciones, y al hacerlo, y alimentando el consumismo, sumergiríamos a innumerables naciones indígenas en más peligro. El desarrollo descontrolado no se pudo detener, ni el dinero o la riqueza se redistribuyeron de manera significativa. Entonces, el fin de la historia, tal como se ve, es el fin de la humanidad.[6]

La revolución industrial y su progenie, su forma más perversa y actual, el neoliberalismo, es quizás generadora de riqueza, pero también está destruyendo el tejido de la tierra y su gente. Este enfoque se ha visto envuelto en cálculos simples y verticales, a menudo económicos o monetarios, que no pueden dar cuenta ni de la humanidad ni de la Tierra. El proyecto neoliberal, como afirma tan elocuentemente George Monbiot, es uno que nos pone a todos en competencia unos con otros. Este "sistema invisible" nos hace competir, contra los humanos y la naturaleza, en lugar de crear comunidades en las que podamos vivir en armonía con nuestro abundante entorno.[7]

En esta forma de pensar, neoliberal, el enfoque principal es reducir los costos de los productores y hacer que los humanos consuman tanto como puedan. El sistema puede ser rentable financieramente, pero se ha dicho muchas veces, una carrera hacia el abismo. El proyecto neoliberal privatiza todos los servicios sociales y hace que los ricos paguen menos impuestos. Aquellos que no pueden ganar o conseguir un trabajo son convenientemente llamados nombres despectivos y considerados inútiles, aunque el sistema está diseñado para mantener a la gente común fuera del camino. Este sistema neoliberal no distribuye la riqueza ni permite que la humanidad prospere junta y con la naturaleza.

Esta idea del consumismo es falsa y no reemplaza a la democracia. No podemos votar con dólares de los consumidores. En la República

[5] Fukuyama, F. (2012). The end of history and the last man. Penguin Books

[6] IBID. https://www.jstor.org/stable/24027184

[7] Monbiot, G. (2016) Neoliberalism – the ideology at the root of all our problems The Guardian https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot

Democrática del Congo, podemos ver cómo el ejército, el estado y la industria se confabulan para sacar provecho del trabajo (a veces infantil). Los países que rodean el recurso, en este caso, el cobalto, están utilizando sus fuerzas armadas para garantizar que los gobiernos se beneficien de esta extracción y protejan a las corporaciones, en este caso, tan lejos como China y Suiza. Compramos productos del trabajo de los trabajadores en agujeros en el suelo que las corporaciones extraen en busca de metales y minerales utilizados en los semiconductores que operan nuestros teléfonos y computadoras. Sin embargo, no podemos, como consumidores, detener esto. Debemos comprar estos productos para participar en el mundo. Según el neoliberalismo, nuestros dólares de consumo son nuestra nueva forma de democracia. Sin embargo, ¿hay una opción? Incluso si somos conscientes de la naturaleza problemática de la extracción de recursos en todo el mundo, en el Congo, Libia, Chad, Sudán, América Central, del Sur y del Norte y Asia, debemos consumir estos productos para mantenernos conectados, estar seguros, trabajar y alimentar a nuestras familias. Debido a que estas industrias tienen un control tan grande sobre las poblaciones dependientes de la tecnología, consumimos no solo sus productos sino también sus formas de ver el mundo.[8]

Está ocurriendo un movimiento convincente; el Foro Económico Mundial y las Naciones Unidas están trabajando en un nuevo sistema de gobierno que incluye directamente a las corporaciones.[9] Las Naciones Unidas es una organización estatal que nunca ha apoyado a los millones de naciones "indígenas" o del Cuarto Mundo en todo el mundo. Los Estados se formaron encima de las naciones, y para ser legítimos, han ignorado a todos los efectos el peso de los pueblos del Cuarto Mundo y han tratado de subsumirlos dentro de sus respectivos gobiernos. Ahora, con este nuevo pacto global, los gobiernos de las Naciones Unidas están proponiendo un acuerdo sólido en forma de Gobernanza de múltiples partes interesadas para permitir que las corporaciones asuman áreas clave de interés en el mundo que los gobiernos (aunque sin naciones indígenas) negociaron durante décadas. Para las Naciones del Cuarto Mundo, los pueblos indígenas de todo el mundo, este es un nivel adicional de privación de derechos y un nuevo problema con respecto al control gubernamental (militar) y corporativo de los recursos.

Gleckman pone el ejemplo de los Objetivos de Desarrollo Sostenible negociados por los gobiernos de la ONU. El objetivo número 7 es "energía asequible para todos". La corporación

[8] Pal, Ananya. (2020). "The Cycle of Iphone." February 4, 2020 https://storymaps.arcgis.com/stories/791c02e17f1443e7a1ec48633c135c67?fbclid=IwAR3_kc4NTmBWgLu_jH_DC12o5c8wLwz93CXg5FAVi4p20ixKrbqYbabnDPE Los recursos incluidos en el Iphone o la computadora incluyen aluminio (tomado de la bauxita que se encuentra en Australia, Brasil e India), hierro, litio (extraído en Chile y la República Democrática del Congo), oro, cobre (extraído en Chile, Papua Nueva Guinea, República Democrática del Congo y Perú), titanio, plata, zinc, cobalto, níquel, tungsteno, plomo, platino, antimonio y más. El destino de estos minerales transportados por carguero, ferrocarril o avión es Shenzheun, China a una fábrica propiedad de Foxconn y montaje final en Japón.

[9] Tedneneke, A. 2019). El Foro Económico Mundial y la ONU firman el Marco de Asociación Estratégica. Foro Economico Mundial. Ginebra. Suiza. https://www.weforum.org/press/2019/06/world-economic-forum-and-un-sign-strategic-partnership-framework/.

líder que trabaja en esto ha reinterpretado el objetivo de dejar de lado la asequibilidad. Gleckman nos muestra cómo las corporaciones pueden reinterpretar los planes para adaptarlos a sus empresas sin comprometer su capacidad de decir que están cumpliendo los objetivos.[10] Las "asociaciones público-privadas" se están solidificando globalmente y afianzando el neoliberalismo. Significa que todos los bienes y servicios públicos se entregarán con miras a las ganancias de las empresas involucradas. Como escribe Gleckman.

Sin embargo, las personas, con o sin la protección de un soberano, pueden verse afectadas negativamente por las fuerzas globales. La economía globalizada ha producido desigualdades globalizadas, donde las personas en la parte inferior o incluso en los tramos de ingresos medios en la economía globalizada están excluidas de una participación significativa en la gobernanza global, incluidos los asuntos que perciben que les afectan directamente.[11]

Los pueblos indígenas y sus gobiernos se han visto afectados de manera desproporcionada por la industrialización económica, espiritual y culturalmente. El actual sistema de desarrollo descontrolado ha cobrado vidas, comunidades y medios de subsistencia. Sin embargo, todos nos vemos afectados por esto en términos de pérdida de dinero, democracia y comunidad. El sistema neoliberal y la globalización nos han movido en la dirección opuesta a la que deberíamos ir. Una nueva historia de comunidad, intercambio y comportamiento altruista significará cambiar a los poderosos que no quieren abandonar sus puestos. La redistribución, sin embargo, será adecuada incluso para los ricos que abren los ojos al amor, la seguridad y la comunidad.

Una Estrategia para Restablecer el Equilibrio

En esta parte de nuestro ensayo, exploramos dos enfoques potenciales para avanzar en la discusión de estrategias efectivas para restaurar el equilibrio global, con base en las demandas, visiones y conocimientos de las naciones indígenas:

(1) el establecimiento del sistema de "jurado civil" como una prioridad estratégica para la adjudicación de juicios civiles contra las industrias extractivas, lo que permite que un panel de laicos comunes, incluidos los residentes indígenas de la comunidad objetivo de las industrias extractivas, resuelvan disputas civiles, a diferencia de la adjudicación de juicios sin jurado dirigida por jueces profesionales designados por el estado; y

(2) el avance político de políticas "socialistas de recursos" y programas gubernamentales "redistributivos" para garantizar los derechos y la soberanía de las naciones y pueblos indígenas.

[10] Freis, Lynn. (2019) "The UN is being turned into a public-private partnership": An interview with Harris Gleckman https://www.opendemocracy.net/en/oureconomy/un-being-turned-public-private-partnership-interview-harris-gleckman/ Open Democracy, una organización independiente de medios globales. Londres, Reino Unido.

[11] IBID. (Gleckman 2018, p.4)

Estos planes políticos están diseñados para facilitar y empoderar la organización política de los pueblos indígenas y el activismo judicial "de abajo hacia arriba", devolviendo así la autoridad y los derechos de independencia a las manos de los pueblos indígenas y sus aliados.

El Establecimiento de Juicios por Jurado Civil en Argentina y Japón

En 2021, la provincia argentina del Chaco decidió adoptar el sistema de jurado civil.[12] La nueva ley estipulaba que un panel de 12 ciudadanos comunes estaba autorizado para emitir el veredicto en la adjudicación de disputas civiles.[13] Cuando el caso involucra pueblos indígenas en disputas civiles, incluidas las denuncias indígenas contra empresas extractivas en su tierra natal, el panel del jurado también debe requerir un número igual de jurados indígenas en el proceso de adjudicación. Este innovador modelo de jurado se llama El Jurado Indígena. La ley ordena explícitamente que las preocupaciones y cuestiones indígenas deben ser incorporadas en el juicio final por parte de jurados étnica y culturalmente diversos. Además del requisito obligatorio de inclusión indígena en el juicio con jurado, el sistema de jurado de Argentina también requería la participación igualitaria de mujeres en los juicios con jurado, es decir, seis mujeres y seis hombres en la adjudicación de casos penales y disputas civiles.

El efecto de la participación indígena en la resolución de disputas civiles ha demostrado ser significativo, y el panel del jurado indígena se ha convertido en un emblema de la expresión de los derechos y la soberanía indígenas en relación con la depredación empresarial en sus tierras de origen. Antes de la adopción del sistema de jurado civil en 2021, la provincia de Neuquén en Argentina en 2011 se había convertido en la primera jurisdicción en introducir el componente penal del juicio con jurado de todos los ciudadanos, al que pronto siguieron Chaco, Buenos Aires y otras jurisdicciones.[14] El jurado indígena se movilizó por primera vez en Neuquén en 2015 cuando el líder de la Nación Mapuche, Relme Namku, fue procesado por tentativa de homicidio luego de que una piedra lanzada por el líder mapuche supuestamente pusiera en peligro la vida de representantes corporativos. Otros dos protectores de tierras indígenas también fueron procesados por daños severos a las propiedades. El incidente ocurrió en diciembre de 2012 en el pueblo minero de Zapala, Neuquén, cuando los defensores indígenas de la tierra y sus simpatizantes que enfrentaban el desalojo forzoso de sus tierras ancestrales habían participado en manifestaciones contra la minería extractiva de las corporaciones multinacionales. Estas

[12] Asociacion Argentina de Juicio por Jurados (2021) The Civil Jury of Chaco (Argentina), Central Protagonist of the Presitious Annual Meeting of "Law and Society", Cicago, 2021, http://www.juicioporjurados.org/2021/01/the-civil-jury-of-chaco-argentina.html.

[13] Caitlyn Scherr (2016) "Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina," University of Miami Inter-American Law Review 47 (2): 316-353.

[14] Hiroshi Fukurai & Andres Harfuch (2022) The U.S. Supreme Court Decision in "Francis A. Keeble v. United States" and the Necessity for the Gender-Diverse and Nationally-Bifurcated Jury: Recuperatores in Rome, Jury de Medietate Linguae in England and the U.S., and El Jurado Indigena in Argentina, (forthcoming in El juicio por jurados en la jurisprudencia nacional e internacional, edited by Andres Harfuch).

poderosas corporaciones incluían Apache Corporation, la empresa estadounidense de exploración de petróleo y gas natural con sede en Houston, Texas; Repsol S.A., la empresa energética española con sede en Madrid; y la corporación energética estatal argentina YPF (Yacimientos Petrolíferos Fiscales). Antes de adoptar los juicios penales con jurado, más de 200 activistas indígenas y protectores de la tierra habían sido acusados y procesados por delitos penales, y 50 de los delitos imputados estaban directamente relacionados con la resistencia indígena contra las industrias extractivas en sus territorios.[15] Además, más de 300 miembros mapuche han sido procesados como "usurpadores" ilegales en los territorios donde han vivido durante muchas generaciones.[16]

El juicio penal con jurado comenzó en octubre de 2015. El panel de seis mapuche y seis miembros no indígenas, seis mujeres, comenzaron a deliberar sobre los cargos penales contra los activistas indígenas. Bajo el escrutinio de medios corporativos e independientes nacionales e internacionales, se expusieron numerosos casos de violaciones de derechos humanos contra los protectores de la tierra mapuche y activistas indígenas, incluido el uso de mano de obra infantil por parte de las industrias extractivas en su exploración minera, la violencia contra los protectores de la tierra indígena por parte de paramilitares privados. grupos contratados por empresas extractivas, y numerosos casos de derrames de petróleo y contaminación del agua causados por actividades extractivas corporativas. En noviembre, el jurado emitió un veredicto de no culpabilidad para los tres acusados mapuche. El testimonio también reveló que no se habían tomado medidas contra las actividades extractivas y los paramilitares privados, a pesar de que se habían denunciado numerosos casos de violencia y daños ambientales a las oficinas de los fiscales y organismos gubernamentales.[17] El veredicto del jurado repercutió en el mundo corporativo, la resistencia de los pueblos indígenas a las industrias extractivas y el panel del jurado civil de miembros indígenas. El veredicto representó un importante desafío judicial a la impunidad de las actividades extractivas de las empresas multinacionales. Ofrecía una alternativa judicial viable al tradicional sistema de juicios sin jurado dirigido por el estado de Argentina.

También es importante reconocer que la introducción de juicios con jurado de todos los ciudadanos en el sistema de justicia penal de Argentina ha sido promovida y apoyada durante mucho tiempo por las dos organizaciones cívicas progresistas que se formaron después de la brutal

[14] Hiroshi Fukurai & Andres Harfuch (2022) The U.S. Supreme Court Decision in "Francis A. Keeble v. United States" and the Necessity for the Gender-Diverse and Nationally-Bifurcated Jury: Recuperatores in Rome, Jury de Medietate Linguae in England and the U.S., and El Jurado Indigena in Argentina, (forthcoming in El juicio por jurados en la jurisprudencia nacional e internacional, edited by Andres Harfuch).

[15] Censo Nacional de Poblacion, Hogares y Viviendas 2010:Pueblos Originarios" Region Noroeste Argentino: Serie D N 1," INDEC (last accessed on January 15, 2022), https://web.archive.org/web/20080611004448/http://www.indec.gov.ar/webcenso/ECPI/index_ecpi.asp.

[16] Amnistía Internacional (2015, Nov. 17), Diario del Juicio a Relmu Namku, https://amnistia.org.ar/relmu/.

[17] Fionuala Cregan (2015, Nov. 6) Líder Mapuche encontrado "No Culpable" en un juicio sin precedentes en Argentina, Intercontinental Cry, https://intercontinentalcry.org/mapuche-leader-found-not-guilty-in-unprecedented-trial-in-argentina/.

dictadura militar de Argentina de los años setenta y ochenta. Académicos progresistas, profesionales del derecho, sindicalistas, activistas indígenas y organizaciones de base crearon la *Asociación Argentina de Juicio por Jurados* (AAJJ) y el INECIP (*Instituto de Estudios Comparados en Ciencias Penales y Sociales*).[18] Estas organizaciones argumentaron que la introducción del sistema de jurado en Argentina estaba muy atrasada, dado que la Constitución de 1853 en Argentina había garantizado la introducción de un juicio por jurado. Si bien Argentina enmendó la constitución en múltiples ocasiones, las secciones que garantizaban el juicio por jurado permanecieron intactas en la Constitución de 1991 adoptada más recientemente. El INECIP y la AAJJ, desde su creación en 1989 y 2001 respectivamente, han estado abogando por la introducción del derecho a juicio con jurado "garantizado constitucionalmente" y la creación de procesos adjudicativos que sean transparentes y accesibles al público, incluidas las naciones y pueblos indígenas. en Argentina. La población argentina había experimentado la llamada "Guerra Sucia", la dictadura militar del entonces presidente Jorge Rafael Videla en las décadas de 1970 y 1980 fue responsable de interrogatorios secretos, confesiones forzadas y ejecuciones. Las "desapariciones" no eran infrecuentes entre innumerables políticos, abogados progresistas, activistas indígenas, líderes estudiantiles, sindicalistas, mujeres activistas y muchos otros.[19] El público prefirió el proceso judicial abierto del juicio con jurado y la transparencia ordenada judicialmente en las pruebas y testimonios al sistema de juicios de tribunal de jueces estatales. Esta preferencia se debió a que el juicio con jurado exigía la participación activa del público sobre la base de argumentos orales, procedimientos contradictorios y evidencia que desautoriza el uso de confesiones forzadas u otra información y evidencia recopilada en secreto.

Sin embargo, se necesita una advertencia de precaución, ya que, a pesar de la institución de jurados indígenas en casos civiles y penales en Argentina, la intimidación por parte de soldados militares privados y la depredación de las corporaciones asistidas por el estado sobre las naciones indígenas y sus tierras continúan actualmente.[20] También continúa el enjuiciamiento estatal de las comunidades indígenas en el vecino Chile, incluida la reciente denuncia de "genocidio" contra activistas y pueblos mapuches que representan el 12% de la población chilena. Los juicios por jurado civil y otras medidas socialistas para empoderar a los pueblos indígenas se necesitan con urgencia en Chile. Estos cambios son de igual importancia, dado que la victoria del candidato de izquierda Gabriel Boric en las elecciones presidenciales chilenas de 2021 puede ser significativa para promover los derechos y la soberanía indígenas contra las industrias extractivas. Esfuerzos como estos beneficiarían a otros países vecinos de América Latina para preservar las naciones indígenas, la biodiversidad y la salud ecológica de las tierras ancestrales de la depredación y destrucción extractiva corporativa.

[18] Fukurai & Harfuch.

[19] David R. Kohut & Olga Vilella (2017), Historical *Dictionary of the Dirty War* (Plymouth, UK: Scarecrow Press).

[20] Meaghan Beatley (2017, Nov. 2) 'Disappearing' Indigenous Rights Protectors, TRT World.

El Intento de Japón de Introducir el Sistema de Jurado Civil

Al igual que AAJJ e INECIP en Argentina, varias organizaciones cívicas en Japón han estado luchando por introducir el sistema de jurado de 12 miembros en casos penales durante muchas décadas.

Japón alguna vez tuvo un sistema de juicios penales con jurado, de 1928 a 1943, que fue suspendido solo debido a la intensificación de la Segunda Guerra Mundial. El gobierno japonés estaba legalmente obligado a reiniciar el juicio penal con jurado una vez que terminara la guerra, pero el estado no cumplió con su mandato legal. La organización cívica llamada Grupo de Investigación sobre Juicios por Jurado (RGJT, por sus siglas en inglés) fue establecida por un grupo de abogados progresistas, activistas cívicos, periodistas de investigación y académicos del derecho en 1982. Sus objetivos eran introducir el juicio por jurado penal "legalmente obligatorio" de Japón y educar al público japonés sobre la importancia de la participación de los legos, incluido el ideal democrático de hacer realidad una sociedad autónoma a través de la participación directa en la toma de decisiones legales. Desde su creación en 1982, RGJT ha trabajado en colaboración con varias organizaciones para lograr sus objetivos, incluidas las Federaciones Japonesas de Colegios de Abogados (JFBA), el Grupo Cívico para Restablecer el Juicio por Jurado (Baishin Saiban o Fukkatusuru Kai), el Kyushu Baishin Saiban o Kangaeru Kai, entre muchos otros.[21]

Desde principios de la década de 2010, RGJT también ha organizado esfuerzos para introducir el componente civil de un juicio con jurado. Planea crear y distribuir un video educativo de un simulacro de juicio con jurado civil a través de la colaboración con otras organizaciones de base en todo Japón. El video se enfoca en la resolución del jurado sobre el problema de la contaminación acústica en la base militar estadounidense en Okinawa. Más del 70 % de las bases e instalaciones militares de EE. UU. en Japón se han concentrado en la isla de Okinawa, mientras que la isla constituye solo el 0,6 % del territorio terrestre de Japón. Desde que EE. UU. comenzó a establecer bases militares en 1945 tras el final de la Segunda Guerra Mundial, los crímenes cometidos por soldados y contratistas corporativos civiles han victimizado a los residentes locales de Okinawa, incluidos mujeres y niños. El tratado militar entre EE. UU. y Japón, el Acuerdo sobre el estado de las fuerzas (SOFA) firmado en 1960, brinda al personal militar y a los contratistas civiles un escudo extraterritorial contra el enjuiciamiento local, creando una cultura de impunidad en torno a las agresiones sexuales y otros delitos dirigidos contra los residentes. Okinawa fue una vez un reino independiente en el Mar de China Meridional y sirvió como un importante puerto internacional para China, Corea, Rusia, Filipinas, Tailandia, Taiwán y los reinos del sudeste hasta que Japón lo anexó por la fuerza en 1879.

[21] Hiroshi Fukurai & Richard Krooth (2010) What Brings People to the Courtroom? Comparative Analysis of People's Willingness to Serve as Jurors in Japan and the U.S., *International Journal of Law*, Crime, and Justice, 2011, 38:198-215.

El video del juicio con jurado simulado se enfoca en examinar las demandas civiles colectivas presentadas por los residentes de Okinawa contra el gobierno japonés para compensar la contaminación acústica en el aeropuerto de Kadena, la instalación militar de la Fuerza Aérea de EE. UU. más grande en Asia. La demanda civil también exige que el gobierno japonés solicite formalmente al ejército estadounidense que se abstenga de los ejercicios de vuelo nocturnos y matutinos en el aeropuerto. Dado el Tratado de Seguridad EE. UU.-Japón de 1951, el gobierno de EE. UU. tiene jurisdicción principal sobre las operaciones militares. Las demandas civiles de los residentes de Okinawa piden específicamente al gobierno japonés que detenga los ejercicios de vuelos nocturnos y negocie el estado de sus horarios de operación en las bases de la Fuerza Aérea.

El video presenta a cinco demandantes de los vecindarios afectados por el ruido y tres testigos de la defensa, incluido el especialista en SOFA del gobierno japonés. RGJT planea producir el video educativo para el verano de 2022.

Dada la pandemia de Covid-19 en Japón y más allá, los jurados simulados deliberarán mediante un juicio virtual en línea. Habrán proporcionado una herramienta educativa importante para iniciar debates públicos muy necesarios sobre la utilidad del panel de jurado centrado en los ciudadanos para adjudicar demandas civiles presentadas por residentes indígenas locales. Al igual que el jurado indígena adoptado en Argentina, el juicio civil simulado con jurado también está diseñado para ayudar a promover el sentido de soberanía, dignidad e independencia de las comunidades de pueblos indígenas y sus aliados en la isla de Okinawa y más allá.

Nicaragua y sus Agendas Socialistas para Preservar la Soberanía Indígena

Es importante explorar los efectos democráticos de la reciente adopción de agendas de orientación socialista impulsadas por el gobierno de Nicaragua. Además de examinar los esfuerzos para establecer el juicio por jurado civil para brindar un sentido de soberanía a las poblaciones indígenas en la resolución de disputas legales civiles presentadas contra adversarios poderosos, incluida la industria extractiva y el establecimiento militar en Argentina y Japón.

Su objetivo era restaurar la soberanía indígena y la independencia en Nicaragua. En 1979, los sandinistas (el Frente Sandinista de Liberación Nacional o Frente Sandinista de Liberación Nacional, FSLN) derrocaron al gobierno de Samosa y pusieron fin a su brutal dictadura militar. En 1987, se creó una nueva constitución, con disposiciones diseñadas para reconocer los derechos de los pueblos indígenas, los afrodescendientes y, por lo tanto, la soberanía indígena. La sección titulada “Derechos de las Poblaciones y Comunidades Indígenas de la Costa Atlántica” reconoció “su derecho a conservar y desarrollar su identidad cultural en el marco de la unidad nacional, a elegir sus formas de organización social y a administrar los asuntos locales de conformidad con sus

tradiciones." Además, el artículo 180 establece que "el Estado garantiza el disfrute por parte de estas comunidades de sus recursos naturales, la observancia de sus formas comunales de propiedad y la libre elección por las mismas de sus autoridades y representantes".[22]

Los Contras apoyados por Estados Unidos lucharon contra los sandinistas y sus partidarios a lo largo de la década de 1980. El gobierno encabezado por Violeta Chamorro, respaldada por Estados Unidos, finalmente reemplazó a los sandinistas en 1990. Después de eso, la protección constitucional de la soberanía de las naciones indígenas fue descuidada y comprometida. Los programas neoliberales y las agendas de privatización llevaron a la devastación de los derechos de las naciones indígenas, la destrucción de los paisajes naturales, la deforestación, la contaminación ambiental y la erradicación de la biodiversidad y la salud ecológica de las patrias ancestrales.[23] En 2006, una elección celebrada democráticamente reinstaló el gobierno sandinista, que propuso programas de bienestar social, incorporó la soberanía alimentaria en la ley e implementó agendas socialistas que incluían educación gratuita, atención médica gratuita y subsidios de vivienda para los pobres. El gobierno socialista también construyó veinte hospitales en comunidades indígenas y ayudó a reducir la mortalidad materna, la mortalidad infantil y la desnutrición. El programa Sandinistas también empoderó a los movimientos campesinos en las comunidades indígenas y afrodescendientes. Los activistas de las comunidades indígenas comenzaron a servir como líderes de las luchas campesinas en toda la región y en todo el mundo.[24] Al ofrecer los pactos legales de base socialista entre el gobierno de Nicaragua y los pueblos indígenas, los sandinistas también promovieron reformas agrarias a gran escala. Promovieron la preservación de la propiedad comunal en las tierras ancestrales indígenas al extender la garantía constitucional de la protección jurídica de la soberanía y la independencia a las comunidades indígenas y afrodescendientes de las regiones del Atlántico oriental. Entre 2007 y 2019, por ejemplo, se otorgaron 140.000 títulos de propiedad a favor de mujeres (55% de las titulares) en 304 comunidades indígenas y afrodescendientes de la Costa Caribe, totalizando 37.842 km2 o el 31% del territorio nacional.[25] Nicaragua también ocupa el primer lugar en igualdad de género en el hemisferio occidental y el quinto en el mundo, solo superado por los estados del norte

[22] Andrew Reding (1987), Nicaragua's New Constitution: A Close Reading, *World Policy Journal*, Vol.4, No.2: .257-294..

[23] Ver Luciano Baracco (2018) Indigenous Struggles for Autonomy: The Caribbean Coast of Nicaragua (Washington, DC: Lexington Books) por la devastación de comunidades indígenas en Nicaragua entre 1990 y 2006. La intervención de Nicaragua encabezada por Estados Unidos data del siglo XIX y principios del XX. Por ejemplo, la brutal dominación militar comenzó tras el asesinato de Augusto Sandino, quien desafió y derrotó con éxito la intrusión estadounidense en 1933. Después de que los sandinistas ganaran las elecciones de 1979, los contras liderados por Estados Unidos y la guerra híbrida en Nicaragua, incluidas masacres de poblaciones indígenas, obligó a la Corte Internacional de Justicia (CIJ) a declarar que la acción de Estados Unidos constituyó una violación del derecho internacional en 1986.

[24] Rita Jill Clark -Gollub, Erika Takeo, & Avery Raimondo (2020, Feb. 2) Feeding the People in Times of Pandemic: The Food Sovereignty Approach in Nicaragua, Council of Hemispheric Affairs, https://www.coha.org/feeding-the-people-in-times-of-pandemic-the-food-sovereignty-approach-in-nicaragua/.

[25] Ibid.

de Europa. Además, la aprobación de la Ley de Soberanía y Seguridad Alimentaria y Nutricional de 2009 proporcionó semillas, plantas y animales de granja a las mujeres titulares de tierras en los sectores rurales para diversificar su producción y fortalecer las economías domésticas dirigidas por mujeres aumentando la seguridad alimentaria y fortaleciendo la soberanía agrícola en Nicaragua.[26]

Informes recientes sugieren que los programas socialistas del gobierno ayudaron a crear el espacio democrático para reafirmar la soberanía y la independencia de las comunidades y pueblos indígenas y sus esfuerzos para desafiar y resistir los impactos de las industrias extractivas multinacionales en sus tierras y territorios ancestrales. Los efectos de las agendas socialistas de Nicaragua y los pactos más estrechos con sus "sujetos políticos" han sido observados de cerca por organizaciones internacionales de derechos humanos y grupos de alianzas indígenas. La victoria de los sandinistas en las elecciones presidenciales de 2021 consolidó aún más la continuación de las agendas y programas socialistas al tiempo que desencadenó la imposición de nuevas oleadas de sanciones económicas de Estados Unidos contra Nicaragua.[27] Estas nuevas sanciones implicaron continuar con la Ley de Condicionalidad de Inversión en Nicaragua (NICA) del gobierno de EE. UU. en 2017. La Ley de EE. UU. fue diseñada para evitar la inversión extranjera directa y desestabilizar aún más la economía de Nicaragua y, por lo tanto, su soberanía política.[28] A pesar de las sanciones económicas y comerciales de Estados Unidos contra el gobierno sandinista, las agendas socialistas de Nicaragua han logrado mejorar el nivel de vida de la población en general, incluidos los pueblos indígenas y afrodescendientes. Como resultado, Nicaragua sigue siendo la única excepción entre las muchas regiones de Centroamérica y el Caribe que están experimentando el fenómeno del éxodo masivo de sus pueblos, que huyen de sus países para buscar refugio en los EE. UU. El Salvador, Guatemala y Honduras en América Central, y Haití en el Caribe, han sido víctimas de las políticas exteriores estadounidenses pasadas y presentes que devastaron sus estados a través de las agendas neoliberales lideradas por Estados Unidos y la depredación corporativa, incluidas las industrias mineras de los territorios indígenas por parte de las corporaciones multinacionales de los estados del Atlántico Norte como Estados Unidos y Canadá.[29]

---

[26] Ibid.

[27] U.S. State Department (2021, Nov. 15) New Sanctions Following Sham Elections in Nicaragua, https://www.state.gov/new-sanctions-following-sham-elections-in-nicaragua/.

[28] Nicaragua Investment Conditionality Act (NICA) was promulgated in 2017. For more information, see Frances Robles (2018, Dec. 24) In Nicaragua, Ortega Was on the Ropes: Now, He has Protesters on the Run, New York Times, https://www.nytimes.com/2018/12/24/world/americas/nicaragua-protests-daniel-ortega.html.

[29] Amelia Cheatham (2021, Jul. 1) Central America's Turbulent Northern Triangle, Council of Foreign Relations, https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle; Palm Beach Post (2021, Aug. 18) Reboot Foreign Policy to Address Crises in Haiti, Central America, https://www.palmbeachpost.com/story/opinion/2021/08/18/u-s-foreign-policy-must-change-help-haiti-and-central-america/8149987002/.

En Resumen ...

Solo un puñado de estados en todo el mundo han establecido con éxito un sistema legal que permite la participación de las naciones indígenas en la resolución de disputas penales y civiles. Históricamente, el jurado y otros sistemas de "participación laica" han permitido la participación de diversos sectores de la comunidad, incluidos pueblos indígenas, mujeres y minorías raciales y étnicas, en la resolución de demandas civiles presentadas contra actividades corporativas extractivas en sus comunidades.

Este artículo examinó en parte la adopción del juicio por jurado civil en Argentina y Japón, explorando cómo la participación directa de las personas, incluidos los miembros de las comunidades indígenas, ha fomentado el interés de las poblaciones marginadas en la resolución de conflictos y disputas civiles. Su participación legal directa ha inculcado un fuerte sentido de soberanía e independencia indígena en sus comunidades. También se exploró el impacto de las agendas socialistas y el gobierno redistributivo de Nicaragua, incluida la implementación de la redistribución de la tierra, la soberanía alimentaria y las redes de seguridad social, que han ayudado a empoderar a las comunidades y pueblos indígenas y afrodescendientes. Estos programas de orientación socialista ayudan a restaurar el sentido de autoridad de los pueblos indígenas al proporcionar la propiedad colectiva de los territorios ancestrales en las regiones predominantemente indígenas y afrodescendientes en las áreas costeras del Caribe oriental.

Las comunidades indígenas y sus aliados continúan desafiando y resistiendo las actividades extractivas corporativas depredadoras en todo el mundo. La fuerte alianza anticorporativa liderada por líderes campesinos e indígenas de Nicaragua también apoya movimientos campesinos a gran escala en América Central y en todo el mundo. El análisis presentado aquí contribuye a la discusión adicional sobre la consolidación de las prácticas de autogobierno y la participación directa de las personas y la aplicación de los ideales democráticos y socialistas, creando así la soberanía, dignidad e independencia de los pueblos indígenas. Estas visiones vitales se necesitan desesperadamente para preservar la diversidad ecológica y los equilibrios ambientales en la tierra para las generaciones futuras en los próximos años y décadas.

EPÍLOGO

Nuestro Panel de Iniciativa de Industrias Extractivas se ha estado reuniendo con la intención de preparar un análisis que pueda servir como base para una estrategia que aborde la catástrofe global para miles de naciones como resultado de la tierra, los recursos y la explotación humana descontrolados. Nuestro Panel de Académicos pide nuevas medidas para prevenir o contener la violencia sin control y sin responsabilidad cometida contra las comunidades indígenas. Ya no se puede permitir la destrucción del medio ambiente y el desplazamiento de personas forzadas a refugiarse o asesinadas por bandas y milicias de la industria extractiva y sus cómplices entre los gobiernos de los estados, los inversores y las empresas comerciales de recursos. En ausencia de la capacidad de la ONU o cualquier otra institución estatal internacional que ejerza autoridad restrictiva u otros controles; parece que la desinversión global, la exposición de leyes y acciones nacionales organizadas y financieramente culpables son necesarias como parte de una estrategia. La mediación es un concepto que puede ser necesario, especialmente porque el sistema legal estatal sigue siendo neutral o inoperante cuando se trata de naciones indígenas. La ley basada en la nación puede servir mejor en el contexto de la mediación entre naciones, corporaciones y algunos estados.

CWIS se está acercando a las naciones indígenas para determinar hasta qué punto las naciones están dispuestas, son capaces o pueden unirse en un esfuerzo “desde cero” que invoca las leyes nacionales e internacionales basadas en la nación. Varias naciones indígenas que ejercen su soberanía inherente y su derecho nacional han demostrado su voluntad y capacidad para impedir que las industrias extractivas ingresen a sus territorios siguiendo el modelo de bloquear la entrada a los territorios indígenas debido a la pandemia de COVID-19. Pueden invocar sus leyes para regular el comportamiento corporativo dentro de sus territorios como la mejor solución mediada.

Si bien es frustrante para algunos estados e industrias, el empleo de leyes nacionales está teniendo cierto éxito. Si esto se suma a la iniciativa de exposición de desinversión global realizada por ONG y naciones indígenas, podemos ver una medida inicial de progreso. La ONU no puede responder a la violencia más atroz contra los pueblos indígenas debido al obstruccionismo estatal. Igualmente claro, debemos señalar que los gobiernos de los estados no están dispuestos (como lo demuestran los resultados del Acuerdo de París sobre el clima y la reunión de dos semanas en Glasgow, Escocia - 2022) a impedir que las empresas y las medidas de desarrollo destruyan el medio ambiente y provoquen cambios. clima a nivel mundial.

La crisis de varias décadas que los informes recientes demuestran gráficamente sobre el medio ambiente, las reubicaciones humanas forzadas masivas y las pandemias virales nos llaman a tomar más medidas y esfuerzos directos para prevenir la destrucción corporativa del medio ambiente, las comunidades indígenas y el clima.

REFERENCIAS

[1] Amnistía Internacional (2015, Nov. 17), Diario del Juicio a Relmu Namku, https://amnistia.org.ar/relmu/.

[2] Asociacion Argentina de Juicio por Jurados (2021) The Civil Jury of Chaco (Argentina), Central Protagonist of the Presitious Annual Meeting of "Law and Society", Cicago, 2021, http://www.juicioporjurados.org/2021/01/the-civil-jury-of-chaco-argentina.html.

[3] Baracco, Luciano (2018) Indigenous Struggles for Autonomy: The Caribbean Coast of Nicaragua (Washington, DC: Lexington Books)

[4] Censo Nacional de Poblacion, Hogares y Viviendas 2010:Pueblos Originarios" Region Noroeste Argentino: Serie D N 1, INDEC (last accessed on January 15, 2022), https://web.archive.org/web/20080611004448/http://www.indec.gov.ar/webcenso/ECPI/index_ecpi.asp.

[5] Cheatham, Amelia (2021, Jul. 1) Central America's Turbulent Northern Triangle, Council of Foreign Relations, https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle

[6] Clark -Gollub, Rita Jill, Erika Takeo, & Avery Raimondo (2020, Feb. 2) Feeding the People in Times of Pandemic: The Food Sovereignty Approach in Nicaragua, Council of Hemispheric Affairs, https://www.coha.org/feeding-the-people-in-times-of-pandemic-the-food-sovereignty-approach-in-nicaragua/

[7] Cregan, Fionuala (2015, Nov. 6) Mapuche Leader Found 'Not Guilty' in Unprecedented Trial in Argentina, Intercontinental Cry, https://intercontinentalcry.org/mapuche-leader-found-not-guilty-in-unprecedented-trial-in-argentina/.

[8] Fukurai, Hiroshi & Richard Krooth (2010) What Brings People to the Courtroom? Comparative Analysis of People's Willingness to Serve as Jurors in Japan and the U.S., International Journal of Law, Crime, and Justice, 2011, 38:198-215.

[9] Fukurai, Hiroshi & Andres Harfuch (2022) The U.S. Supreme Court Decision in "Francis A. Keeble v. United States" and the Necessity for the Gender-Diverse and Nationally-Bifurcated Jury: Recuperatores in Rome, Jury de Medietate Linguae in England and the U.S., and El Jurado Indigena in Argentina, (forthcoming in El juicio por jurados en la jurisprudencia nacional e internacional, edited by Andres Harfuch).

[10] Kohut, David R. & Olga Vilella (2017), Historical Dictionary of the Dirty War (Plymouth, UK: Scarecrow Press).

[11] Meaghan Beatley (2017, Nov. 2) 'Disappearing' Indigenous Rights Protectors, TRT World.

[12] Palm Beach Post (2021, Aug. 18) Reboot Foreign Policy to Address Crises in Haiti, Central America, https://www.palmbeachpost.com/story/opinion/2021/08/18/u-s-foreign-policy-must-change-help-haiti-and-central-america/8149987002/.

[13] Reding, Andrew (1987), Nicaragua's New Constitution: A Close Reading, World Policy Journal, Vol.4, No.2: .257-294.

[14] Robles, Frances (2018, Dec. 24) In Nicaragua, Ortega Was on the Ropes: Now, He has Protesters on the Run, New York Times, https://www.nytimes.com/2018/12/24/world/americas/nicaragua-protests-daniel-ortega.html.

[15] Scherr, Caitlyn (2016) "Chasing Democracy: The Development and Acceptance of Jury Trials in Argentina," University of Miami Inter-American Law Review 47 (2): 316-353.

[16] U.S. State Department (2021, Nov. 15) New Sanctions Following Sham Elections in Nicaragua, https://www.state.gov/new-sanctions-following-sham-elections-in-nicaragua/

Este artículo debe citarse como:
Al-Hashimi, M., Fukurai, H., Marchand, A., Singh, S., Rÿser, R., Farley, M., Rogers, D., Delfanti, I., (2022) Derechos Territoriales de las Naciones vs. la Explotación Empresarial. *Fourth World Journal.* Vol. 21, N2. pp. 22-42.

SOBRE EL AUTOR

Muhammad Al-Hashimi

Muhammad Al-Hashimi es catedrático en Euclid University (Pole Universitaire Euclide), www.euclid.int, en Washington, D.C. E.U.; y Banjul, Gambia, Africa Oriental. El Dr. Al-Hashimi es autor de Islam and Pan-Africanism, (Detroit: El-Hajj Malik El-Shabazz Press, 1973) y The Oppressed Muslims in Ethiopia (Washington, D.C.: El-Hajj Malik El-Shabazz Press, 1986)

Hiroshi Fukurai

Profesor de Sociologia & Estudios legales en la Universidad de California, Santa Cruz & antiguo Presidente de la Assian Law & Society Association (ALSA). Se especializa en adjudicaión, enfoques indígenas al derecho internacional, y derecho y políticas asiáticas. Sus artículos más recientes "The Prevention of the Sixth Mass Extinction: Socio-Legal Responses to Mitigate the Anthropogenic Crises in Asia and Beyond" (2022); "President's Farewell Message: The Anthropocene, Earth Jurisprudence and the Rights of Nature" (2020) ; "The Decoupling of the Nation and the State: Constitutionalizing Transnational Nationhood, Cross Border Connectivity, Diaspora and 'Nation' Identity-Affiliations in Asia and Beyond" (2020), todos aparecieron en Asian Journal of Law and Society (Cambridge Univ. Press). Algunos de sus libros incluyen: Peoples and Nature in the Age of Anthropocene (Palgrave Macmillan, 2021); East Asia's Renewed Respect for the Rule of Law in the 21st Century (Brill, 2015); Japan and Civil Jury Trials: The Convergence of Forces (Edward Elgar, 2015); Nuclear Tsunami: The Japanese Government and

SOBRE EL AUTOR

America's Role in the Fukushima Disaster (Lexington Book, 2015); Race in the Jury Box: Affirmative Action in Jury Selection (SUNY Press, 2003); Anatomy of the McMartin Child Molestation Case (Univ. Press of America, 2001); Race and the Jury: Racial Disenfranchisement and the Search for Justice (Plenum Press, 1993, Gustavus Meyers Human Rights Award); and Common Destiny: Japan and the U.S. in the Global Age (MacFarland, 1990).

Amelia Marchand

Amelia Marchand es ciudadana de las Tribus Confederadas de Colville. Tiene una licenciatura en antropología y una maestría en derecho y política ambiental y vive con su esposo y sus tres hijos. Es directora del Consejo del Centro de Estudios Indígenas del Mundo y es voluntaria en Conservation Northwest, Hearts Gathered y Nez Perce Wallowa Homeland. A lo largo de su carrera profesional, Amelia ha sido la primera mujer y la primera indígena en ocupar cuatro puestos gubernamentales con su Tribu. Es exalumna del Aula Presidencial y del Programa de Becas Ronald E. McNair. Amelia es esposa, hija y nieta de veteranos del ejército de los Estados Unidos y descendiente de prisioneros de guerra de los Estados Unidos y del sistema de internados de los Estados Unidos. Sus experiencias personales y su historia familiar han aumentado su pasión por los derechos indígenas, la justicia ambiental y la implementación de soluciones socialmente equitativas para la adaptación y mitigación del cambio climático que no solo honren los valores de la comunidad y la reciprocidad; sino también curar heridas del trauma intergeneracional y el colonialismo institucional.

Sabina Singh

Sabina nación en Kamloops, Columbia Británica de padres procedentes de la India. Su doctorado fue en caso estudio en Uganda, y enseó Política Africana en la Universidad de Victoria. Después de terminar su doctorado, Sabina comenzó a investigar y escribir sobre las conecciones entre los pueblos indígenas alrededor del mundo siguiendo el trabajo de George Manuel.

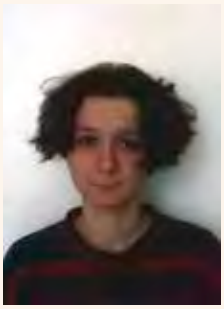
SOBRE EL AUTOR

Rudolph Rÿser, PhD

El Dr. Rudolph Rÿser creció hasta la madurez en la cultura Cowlitz en el noroeste del pacífico de los Estados Unidos aunque es descendiente Cree/Oneida por el lado de su madre y suizo por el lado de su padre. Obtuvo su doctorado en relaciones internacionales y sirvió como el Presidente Fundador del Centro de Estudios Indígenas del Mundo desde 1979. Es mundialmente reconocido como el principal arquitecto de las teorías y práctica de la Geopolítica del Cuarto Mundo. Es autor del influyente libro "Indigenous Nations and Modern State: The Political Emergence of Nations Challenging State Power" (2012), "Fourth World Geopolitical Reader" y el recién publicado "Biodiversity Wars, Coexistence or Biocultural Collapse in the 21st Century" (2019). Tiene más de cincuenta años trabajando en el campo de los Asuntos Indígenas como escritor/investigador y consultor de líderes politicos de las naciones del Cuarto Mundo alrededor del mundo.

Melissa Farley

Melissa Farley es una investigadora y psicóloga clínica que ha publicado 50 artículos revisados por pares y dos libros sobre prostitución, proxenetismo/tráfico, y pornografía. Realizó una investigación como co-autora sobre las vidas de mujeres nativas en Minnesota, sobre la prositutción y TEPT en nueve países; y una investigación comparada sobre hombres que pagan por sexo y hombres que no pagan por sexo. La Dra. Farley fundó Prostitution Research & Education en 1995, un instituto de investigación sin fines de lucro que dirige investigación orginal sobre el comercio sexual y proporciona una biblioteca gratis con información para sobrevivientes, abogados, formuladores de políticas, y público en general en www.prostitutionresearch.com



Irene Delfanti

Irene es una diseñadora y recientemente egresada de la maestría de Diseño para el cambio de la Universidad de Edinburgh. Su trabajo se enfoca en cómo las metodologías de diseño contribuyen al compromiso en la justicia ambiental y social. Su experiencia incluye créditos en la industria de las artes y el entretenimento, activismo y política. Nació cerca de los Alpes italianos, y vive actualmente en Escocia.

Nuevo E-Book

PREVENIR Y TRATAR LA DIABETES TIPO 2 NATURALMENTE

Leslie E. Korn & Rudolph C. Rÿser

Aprende estrategias diarias fáciles de usar para tratar la diabetes y sus síntomas, tales como neuropatías, enfermedad cardiovascular, estrés, trauma, dolor y depresión.

Aprende nutrición de alimentos integrales, herbolaria, trabajo corporal, ejercicio físico y desintoxicación. ¡Todos podemos estar saludables y felices con este libro como guía!

Adquiérelo en **Amazon** El libro se encuentra en formato de Ipad y Iphone.

Relationship of Extractive Industry to Exploitation of Nations: A Graphic Reality

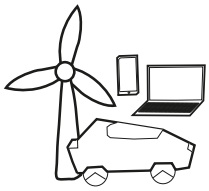
By Irene Delfanti
Consulting Communications Specialist

ABSTRACT

Transnational and domestic corporations engaged in the exploitation of lands, resources and peoples in indigenous territories poses a challenge to understanding the complex relationships between the businesses, states' governments, militias and gangs, indigenous communities, poverty, climate change, shortages of food and water and environmental degradation. "Extractive industries are generally unregulated inside the country where they are a registered business or in the country where they engage in resource exploitation. As a matter of reality while a few corporations engaged in resource exploitation many attempt to avoid adverse consequences of their business, most do not. The principle of free, prior and informed consent (FPIC) is available to corporations to smooth relations with indigenous nations through negotiations, but most do not.

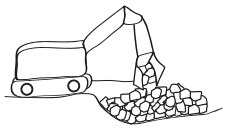
To help describe the effects of unregulated corporate exploitation of resources in indigenous territories now operating in 63 countries according to the World Bank and International Monetary Fund we present diagrams to illustrate the web of relationships between Extractive Industry and the social, economic, political, cultural and security realities of indigenous nations and their territories. A general web of relationships and then (1A) relationships of profit and power, (2A) relationships to the prostitution of women, (3A) relationships to corporations not obtaining the negotiated consent of nations to access resources and land and the lack of civil lawsuits, and (4A) relationships to indigenous nation leaders. We provide a legend for graphic characters used in the corporate webs to further explain the relationships.

Legend



Products

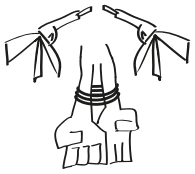
Climate Change



Environmental Degradation

Financial gains

Water & Food Shortages



Violence

No Health Standards

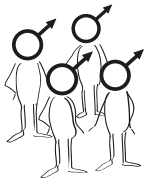
Land

Banks

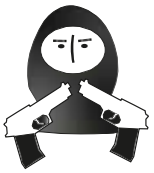
Corruption

Law in company home country

Violation of FPIC



Groups of men



Gangs

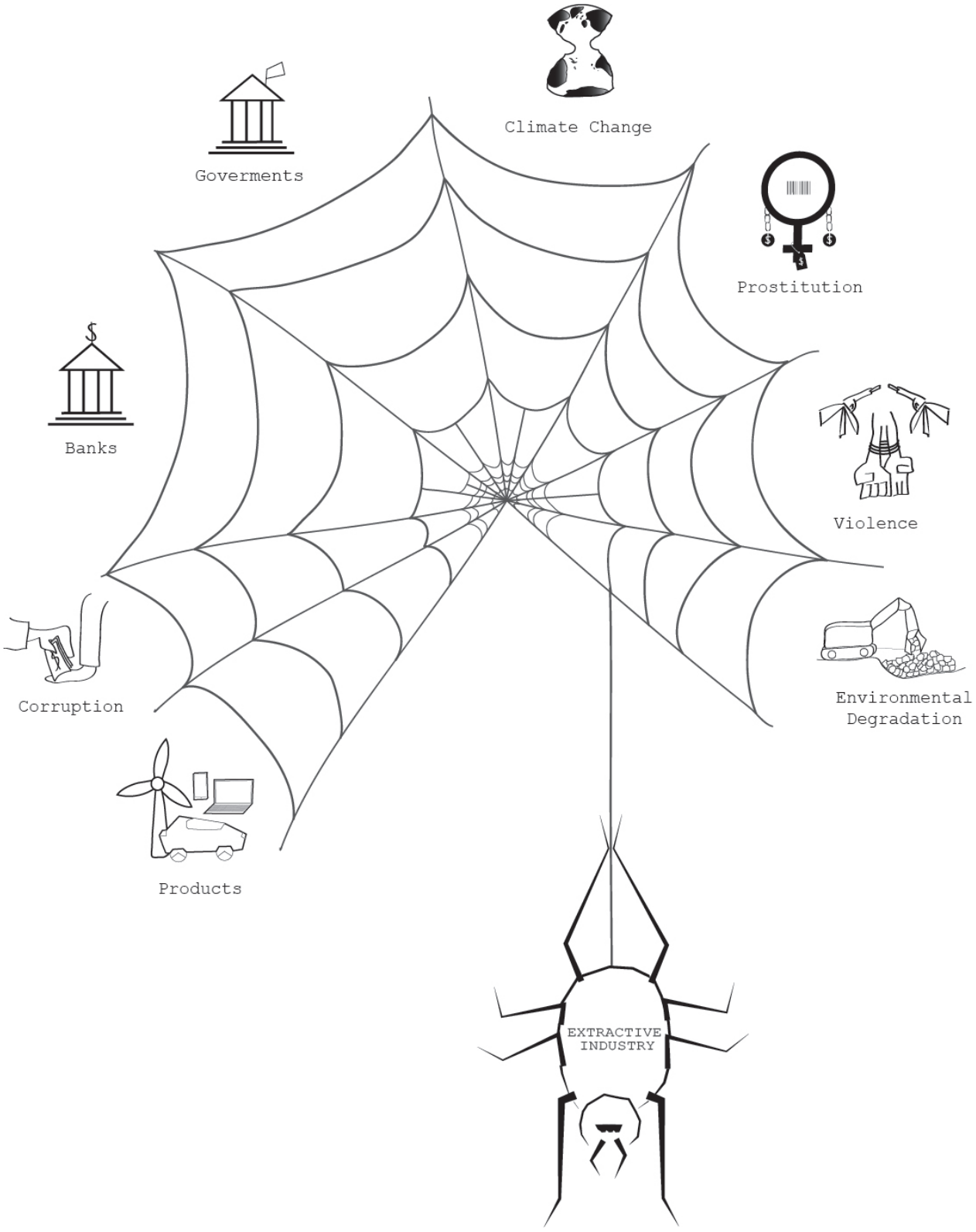
Goverments

Prostitution

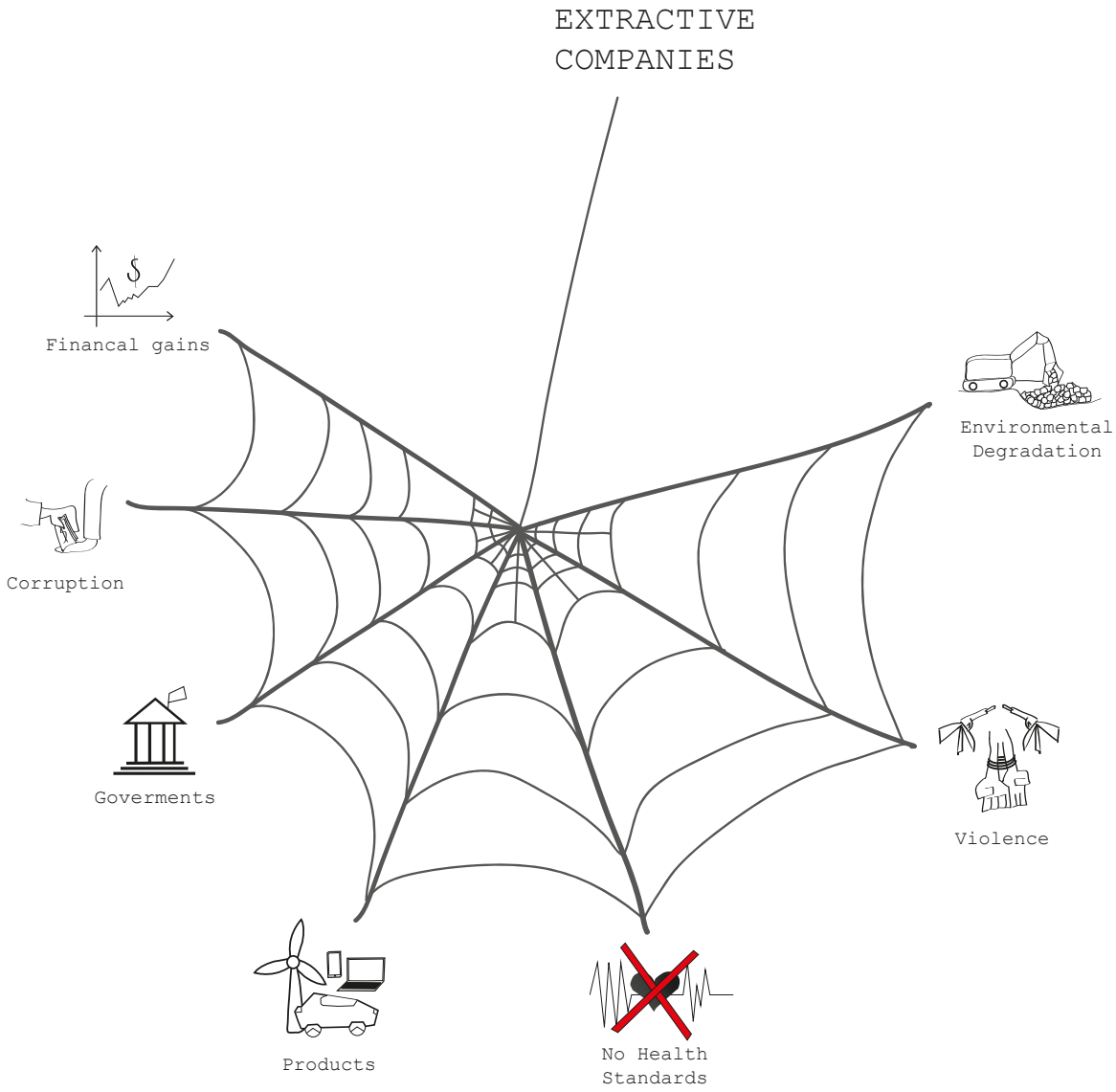
Poverty

Company decisions

General


Climate Change
Goverments
Prostitution
Banks
Violence
Corruption
Environmental Degradation
Products
EXTRACTIVE INDUSTRY

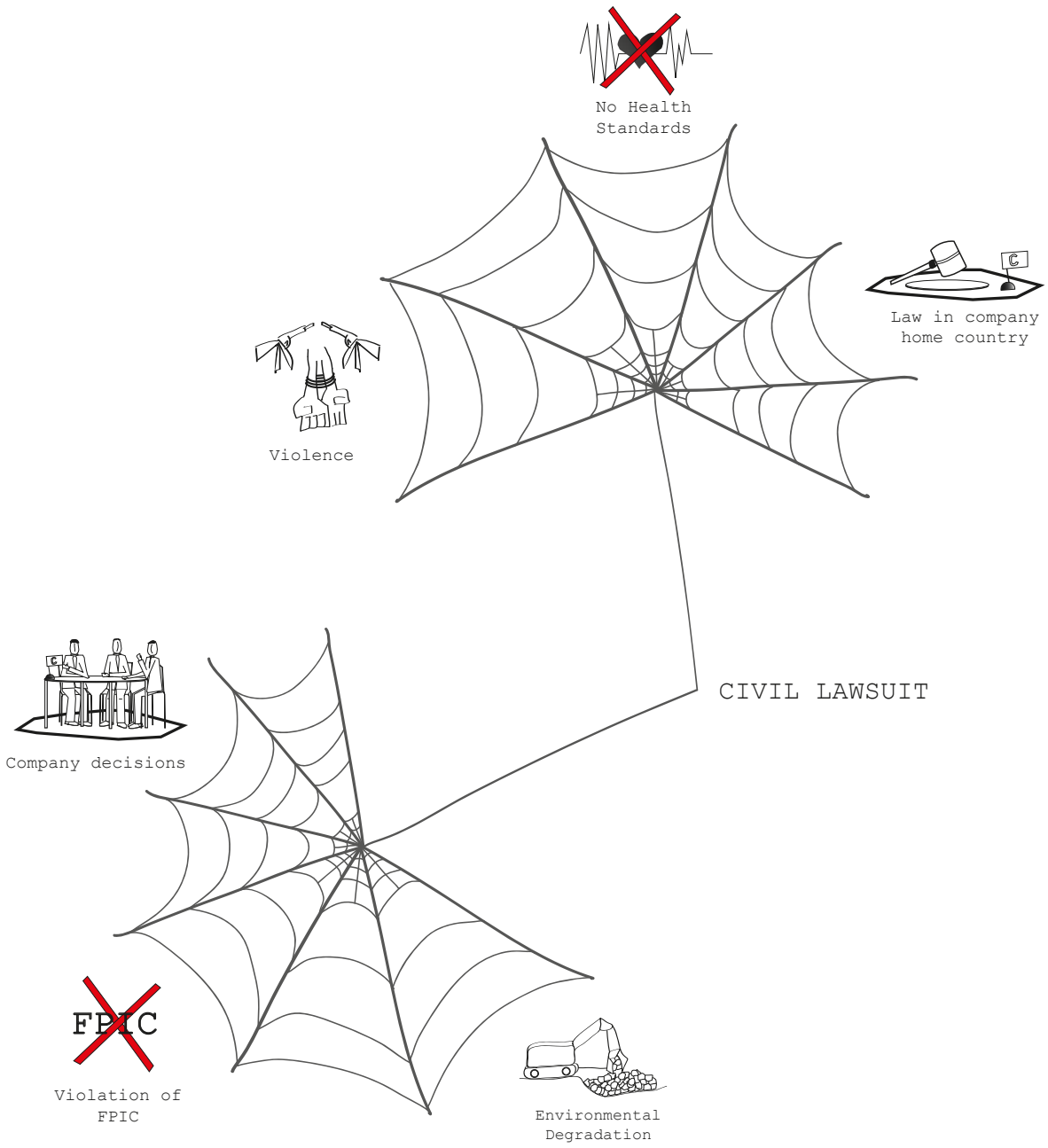
1A



Extractive companies operations are based on profit and power. Banks, privates, and other companies invest into them, and in turn extractive companies invest into shares of others. It is not unusual for a company to fully own another one, hence effectively profiting from operating in an area while their name is partly hidden.

Extractive companies are also very intertwined with political powers, borrowing money to goverments and lobbying. Inside and around mining sites it is common to find: increased violence, modern slavery and prostituition, as well as a lack of care for people's health and environmental standards.

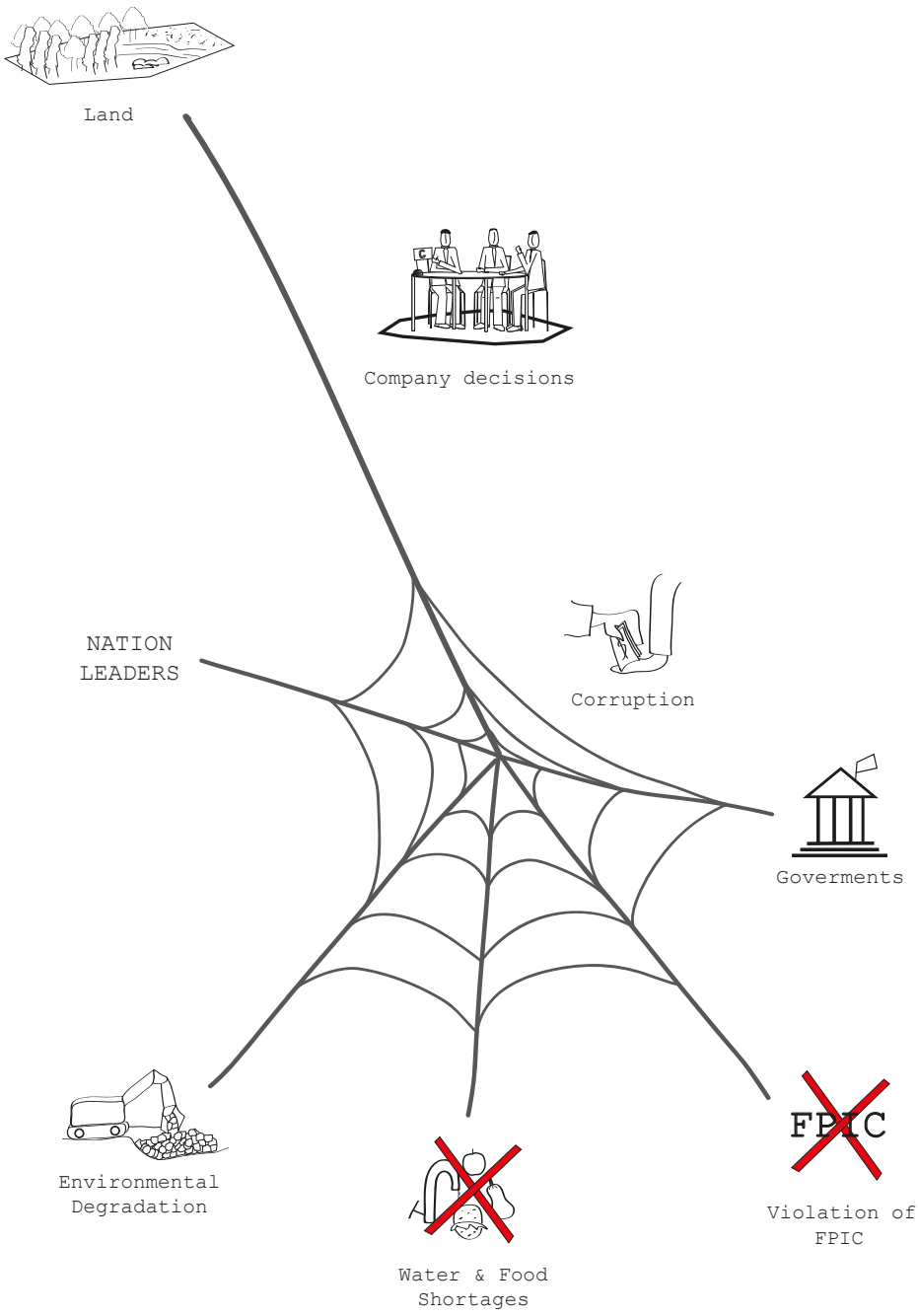
3A



Extractive companies are not currently implementing FPIC, and their activities often increase the level of violence in a place, while lowering health standards (from directly exposing people to hazard at work or by leaks and other type of accidents).

Although the legal system in the countries where they operate may not side with workers, and appealing to countries where the companies are registered through a civil lawsuit can be a way to hold people in power accountable.

4A

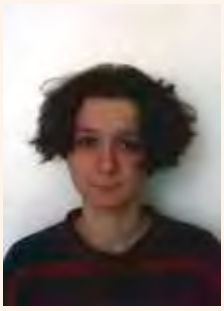


When a company or the government gets interested in land, it may offer money to nation leaders and communities in exchange for the right to operate in the territory.

When this happens and the agreements made do not fulfill the FPIC policy and other communities rights, the land and the people on the territory are still at risk.

This Article may be cited as:
Delfanti, I. (2022) Relationship of Extractive Industry to Exploitation of Nations: A Graphic Reality. *Fourth World Journal*. Vol. 21, N2. pp. 44-51.

ABOUT THE AUTHOR



Irene Delfanti

Irene is a designer and a recent graduate from the MA Design for Change at the University of Edinburgh. Her work focuses on how design methodologies contribute in enhancing social and environmental justice. Her experience includes credits in the arts and entertainment industry, activism and policy. Born near the Italian Alps, she is now to be found in Scotland.

NATIVE ROOTS

GREENER FUTURES

WALKING THE KÁLHACULTURE WAY

FREE COURSE

- Learn Indigenous sciences to address climate change
- Define Co2 and its effects on plants
- Explore how the colors of plants, fruits, and vegetables provide medicine and nutrition
- Learn how to become an activist scholar and change the world!
- Apply mindfulness for self-care and successful studies
- Contrast Indigenous ways of knowing and western knowledge systems

BECOME AN ACTIVIST SCHOLAR!
nativeroots.cwis.org

The "Vaccine Genocide" of Indigenous Nations and Peoples: The Intellectual Property (IP[1]) Regime, "Vaccine Apartheid" and "Vaccine Untouchables"

By Hiroshi Fukurai
Professor of Sociology and Legal Studies, University of California, Santa Cruz

ABSTRACT

The first section of this essay examines the recent emergence of the "vaccine apartheid" system produced by the collaboration of North Atlantic States' intellectual property (IP) regime, monopoly capitalism, and powerful international organizations such as the World Trade Organization (WTO) and transnational drug conglomerates. The second section elaborates on the perilous impact of "vaccine apartheid," including the creation of so-called "vaccine untouchables" composed of indigenous peoples around the globe who have been largely shut off from the medical and scientific benefits of vaccination.[2] The presence of this "disposable" population serves to ensure continually emerging forms of new virus variants, thereby creating a potential market for further vaccine production and the maximization of future corporate profits. The third section explores the possibility of sharing vaccine recipes and developing globalized vaccine production as a viable strategic alternative to the IP regime, thereby leading to the eradication of "vaccine apartheid" and the vilified presence of "vaccine untouchables." While innovative mRNA vaccines were largely developed by publicly funded research in North Atlantic states, the profit deriving from medical innovations has been privatized through the state-corporate collaboration. This section also examines the efforts by socialist states, including Cuba and others, to develop their own vaccines, make vaccine recipes available, and produce them for a global vaccination effort, involving indigenous peoples around the world. The fourth and final section summarizes strategies to help prevent recurrences of "vaccine genocide" in relation to indigenous peoples. Since nearly 80% of the earth's biodiversity remains in indigenous homelands, it is vital that states and corporations cultivate close collaborative relations with indigenous peoples around the globe to prevent further destruction of biodiversity and natural ecology, thus eliminating the likelihood of future zoonotic virus pandemics and their deadly consequences.[3]

[1] It is common to abbreviate "intellectual property" as "IP" and the author does apply this practice here. "IP" is sometimes also associated with "indigenous peoples" but that is how the abbreviation is used in this essay.

[2] Sirleaf," Disposable."

Keywords: intellectual Property, product patents, multinational corporations, COVID-19, disarticulation of production

On August 9, 2021, after a great many pandemic deaths occurred due to the spread of the COVID-19 virus in the Amazon region, Brazil's indigenous peoples filed a request with the International Criminal Court (ICC) to investigate Brazilian President Jair Bolsonaro alleging genocide against them.[4] A coalition of indigenous organizations made the charges against Bolsonaro alleging that he encouraged miners and loggers to invade Indigenous territories even though it is illegal and intentionally promoted the spread of the COVID-19 virus into indigenous communities.[5] WHO Director-General Tedros Adhanom Ghebreyesus warned that indigenous peoples were at the forefront of the dangerous health crisis caused by the pandemic.[6] The Center for Global Development, a conservative think tank organization in Washington, DC., declared that the loss of indigenous lives was due to "vaccine apartheid" -- the unequal distribution of life-saving vaccines to indigenous populations.[7] Public Citizen, a United States-based progressive consumer rights advocacy group, furthermore reported that the crisis of "vaccine apartheid" was due to the intellectual property regime of powerful transnational corporations in the North Atlantic states. Pharmaceutical corporations not sharing the formulations for vaccines limited the distribution of vaccines to developing countries, a regime leading to the deaths of indigenous peoples across the globe.[8] Multinational corporations seeking to extract raw materials that mainly benefit states in the northern hemisphere commit violence against indigenous peoples' and the environments of their territories.

Since the end of the fifteenth century, Europe's predatory activities involving "East India" companies from England, France,

[3] International Union for Conservation of Nature (IUCN), "IUCN Director General's Statement on International Day of the World's Indigenous Peoples 2019," August 9, 2019, https://www.iucn.org/news/secretariat/201908/iucn-director-generals-statement-international-day-worlds-indigenous-peoples-2019.

[4] Nadia Pontes, "Indigenous Brazilians Accuse Jair Bolsonaro of Genocide at ICC," DW, September 8, 2001; See also Climate Activists Call for Investigation of Bolsonaro," *Independent*, October 12, 2021.

[5] Ibid.

[6] Stephanie Nebehay & Michael Shields, "Indigenous People Especially 'Vulnerable' to Coronavirus Pandemic, WHO Warns," *Reuters.* July 20, 2020.

[7] Justin Sandefur & Arvind Subramanian (2021, May 3) How Biden Can End "Vaccine Apartheid," Center for Global Development, May 3, 2021. For the pandemic profiteers, see John Nichols, *Corona Virus Criminals and Pandemic Profiteers: Accountability for Those Who Caused the Crisis* (NY: Verso, 2022).

[8] "Vaccine Apartheid," *Public Citizen*, November 29, 2021. https://www.citizen.org/article/vaccine-apartheid/.

Portugal, Italy, the Netherlands, and other European states have been responsible for the genocide of indigenous peoples in the Western Hemisphere.[9] The United Kingdom's East India Company, for instance, was enriched by exploiting indigenous peoples, resources, and minerals. At the same time, other European imperial powers exploited them further, including the Netherlands' infamous Dutch East India Company, Spain's Indias Orientales Espanolas, France's East India Company, and Portugal's Companhia do Commercio da India, among other state-assisted colonial ventures from Europe. Imperial colonization later extended these colonial ventures to Africa, South and Southeast Asia, the Pacific, and beyond.[10] Today, multinational corporations of the West continue to exploit indigenous lives, disfigure ancestral homelands, eradicate biodiversity, and pollute the natural environment upon which indigenous peoples have depended for many centuries. The West's major extractive corporations have mainly been headquartered in Canada, including First Quantum, Barrick, Gabriel, Yamana Gold, Oceana Gold, Eldorado Gold, Hudbay, Nevsun, Fortuna, and Kinross. These extractive businesses are among nearly one thousand companies listed on the Toronto Stock Exchange (TSX)-Venture list in North America.[11]

Scientists warn that continuous environmental destruction could lead to more nonhuman-to-human, cross-species virus pandemics.[12] By the close of 2021, the COVID-19 pandemic had claimed the lives of almost six million people. In September 2021, the United Nations Special Rapporteur for Indigenous Peoples, Jose Francisco Cali Tzay, argued that indigenous people have been hit hardest by the pandemic and were most likely to die due to inadequate access to vaccines now and in years to come.[13] WHO Director-General Ghebreyesus warned that this "vaccine apartheid" would lead to even more indigenous deaths due to future virus variants, poor health services, malnutrition, and the many deadly consequences of epidemics and pandemics.[14]

The Intellectual Property (IP) Regime and "Vaccine Apartheid"

Since the end of 2020, several North Atlantic pharmaceutical corporations have come to dominate the production and distribution of life-

[9] Rudolph Ryser, *Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power* (NY: Routledge, 2013); Hiroshi Fukurai & Richard Krooth, *Original Nation Approaches to Inter-National Law: The Quest for the Rights of Indigenous Nations and Peoples in the Age of Anthropocene* (NY: Palgrave Macmillan, 2021).

[10] For the history of Europe's devastating consequences in the "New World" and beyond, see Jared Diamond, *Guns, Germs and Steels* (W.W. Norton & Company, 1999).

[11] Tricontinental Institute for Social Research, "10 Canadian Mining Companies: Financial Details and Violations: Briefing No.1," 2019, https://www.thetricontinental.org/wp-content/uploads/2019/04/190430_Briefing_Mining_Final_Web.pdf; See also MiningWatch Canada, an NGO based in Ottawa, Canada for extractive activities by Canada's mining companies, https://miningwatch.ca/.

[12] Damian Carrington, "Halt Destruction of Nature or Suffer Even Worse Pandemics, Say World's Top Scientists," *Guardian*, April 27, 2020.

[13] UNOCHRC, "Indigenous Peoples Have Been Disproportionately Affected by COVID-19: Senior United Nations Official Tells Human Rights Council," September 28, 2021, https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27556&LangID=E.

[14] Matiangai Sirleaf, "Disposable Lives: COVID-19, Vaccines, and the Uprising," *Columbia Law Review* Vol.121, No.5, 71-94, 2021.

saving vaccines through use of the revolutionary "messenger RNA (mRNA)" biotechnology. The multinational corporations holding the intellectual property (IP) of the vaccine technology have included Pfizer-BioNTech of the U.S. and Germany; AstraZeneca of the U.K.; and Moderna of the U.S.[15] The monopoly of the "product" patent of these mRNA vaccines has so far reaped significant profit for these corporations. The IP right of the "product patent" was firmly built into the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of the WTO, which was created in 1995 after many years of intense negotiations between the Global North and the Global South on the General Agreement over Tariffs and Trade (GATT). Many sensitive issues were involved, including the investment dispute settlement (IDS) mechanism and IP disputes over product and process patents, among others.

The WTO's new IP agreement has succeeded in eliminating the "process patent" right and replacing it with the "product patent" right, which means that no other drug company can manufacture the same product through different, or even cheaper, manufacturing processes. Previously, the primacy of the "process patent" allowed the "third-party" research lab and drug firms in the Global South to "reverse-engineer" the drug production process and propose alternative production methods to manufacture the same drug. The primacy of the "process patent" right had helped evade the monopoly of the IP rights held by the West's powerful corporations, and at the same time, allowed the production of cheaper generic drugs to be shared among the populations of the Global South who otherwise could not afford access to the high-priced drugs from the Global North. The new "product patent" right adopted by WHO thus helped eradicate the "innovative" endeavors previously conducted by research centers and medical labs of the Global South.

The new IP regime helped bring enormous wealth to North Atlantic corporations in the following ways. First, the privilege of the "product patent" helped the powerful corporation to become a "rent-collecting" agency by monopolizing the product patent right, while denying others the right to manufacture the same drug cheaply and share it with impoverished populations of the Global South. By the end of 2021, Pfizer-BioNTech had earned more than $36 billion from vaccine sales, and other multinational corporations similarly earned enormous profit from their vaccines during the COVID-19 pandemic.[16] Second, the new IP regime helped create a complex, yet competitively outsourced, global supply chain for products. This phenomenon has been called the "disarticulation of production," in which each and every step of commodity production is supplanted by the sophisticated regional network of the "global commodity supply chain." Pfizer-BioNTech, for instance, has developed one of the most sophisticated of these, consisting of

[15] The Johnson & Johnson vaccine does not use the mRNA technology. See James Shea, "Johnson & Johnson Vaccine: How Is it Different?" *VCU News*, May 3, 2021.

[16] Ibid.

more than 40 production sites and facilities with nearly 200 different suppliers globally.[17] AstraZeneca's vaccine production has spanned over 15 countries with 25 separate manufacturing facilities.[18] Another U.S. biotech firm, Novavax, produced its own brand of vaccine through its own global supply chain, including Japanese and South Korean pharmaceutical conglomerates and other firms in the U.S. and Europe.[19] The corporations that held IP rights began to exploit the competitive manufacture process in relation to the vaccines and their global distribution.

Third, the IP regime allowed transnational corporations to shape preferential governmental policies through their contractual negotiations and obligations. The contract between Pfizer-BioNTech and the Brazilian government, for instance, stipulated that Brazil had to wave sovereign immunity against the firm, impose no penalty for late vaccine delivery, and agree to adjudicate future disputes, not in Brazilian courts, but at a secret private arbitration court in New York. The transnational corporations also prevented the state government from providing donations of excess vaccines and/or receiving donated vaccines from other states and/or external parties. The state was further restricted, through being prohibited from revelation of the details of contractual contents without prior written consent by the firm.[20]

Fourth, the IP regime has given the transnational corporation the power to shield itself from future product liability lawsuits. The WTO's TRIPS helped indemnify the transnational company with regard to any civil lawsuits involving patent infringement. For example, Pfizer-BioNTech's agreement with the Colombian government has successfully shielded the firm from any legal actions in the event of the drug's serious side-effects for their consumers.[21] The contractual clause also required Colombia to pay the bill in dealing with potential patent infringements lawsuits brought against the firm in Colombia.[22] The IP regime that was incorporated into the WTO's TRIPS has awarded the transnational corporations the state-granted monopolies to further solidify the system of international IP protection, thereby empowering corporate monopolies with IP rights and shielding the transnational corporation from compensatory damages lawsuits in the future.

Fifth, the disarticulated production of vaccines and the global commodity chain has helped to fragment and weaken the possibility of working-class solidarity and the formation of powerful collaborations and global alliances of such territorially-based progressive communities

[17] Pfizer, "Manufacturing and Distributing the COVID-19 Vaccine," (accessed December 23, 2021), https://www.pfizer.com/science/coronavirus/vaccine/manufacturing-and-distribution.

[18] Fraiser Kansteiner & Eric Sagonowsky, "What Does It Take to Supply COVID-19 Vaccines Across the Globe? Here's How the Leading Players Are Working It," *Fierce Pharma*, March 3, 2021.

[19] Ibid; Mary Van Beusekom, "NOVAX COVID Vaccine Shows 90.4% Efficacy Against Infection," *Center for Infectious Disease Research and Policy (CIDRAP)*, December 16, 2021.

[20] DemocracyNow, "Public Citizen Special Program," October 22, 2021.

[21] Martha Busby & Flavia Milhorance, "Pfizer Accused of Holding Brazil 'to Ransom' Over Vaccine Contract Demand," *Guardian, September* 10, 2021.

[22] DemocracyNow, "Public Citizen."

as organized labor, trade unions, indigenous nations and their alliances, socialist institutions, environmental protection agencies, and progressive political activists across the globe.[23]

Lastly, the IP rights regime has led to the creation of "vaccine apartheid," further perpetuating the unequal distribution of life-saving vaccines around the globe. The vaccines produced by the Western transnational corporations have gone to the affluent states and their wealthy clients, including those in the U.S., the U.K., European states, Israel, and a few others.[24] Many states and their poor constituents in Africa, South and Southeast Asia, and Latin America have faced significant deficits of access to the vaccines. Even when vaccines have been made available in the developing states, indigenous peoples have been largely left out of the vaccination distribution.[25] The endgame of the COVID-19 pandemic, according to WHO Director-General Ghebreyesus, can only be reached by vaccinating the entire global population, including indigenous peoples all across the globe.[26] WHO has also warned wealthy states against hoarding vaccines, including booster shots, instead of sharing them with people in the Global South. For instance, the U.S. has been accused of hoarding nearly 500 million excess COVID-19 vaccine doses, along with others accused of hoarding, including Canada and other European states.[27]

The "vaccine apartheid" has ensured the creation of "disposable" populations of "vaccine untouchables" in the global peripheries, whose presence assures the future emergence and potential global spread of transmuted virus variants. The emergence of the new vaccine market also means that transnational corporations could profit by their continuous investment in new research and invention of new generations of life-saving vaccines. The "vaccine apartheid" system, meanwhile, continues to be maintained by predatory corporate policies which are leading to "vaccine genocide" of indigenous peoples around the globe.

"Vaccine Genocide" and the Corporate Monopoly of IP Rights

The "vaccine apartheid" system related to the IP regime and the corporate monopoly of

[23] Vijay Prashad, "In the Ruins of the Present," *Tricontinental Institute for Social Research*, March 1, 2018, https://thetricontinental.org/working-document-1/.

[24] Paul Sisson & Lauren J. Mapp, "Why Are San Diego's Black and Native American Communities Less Vaccinated? It's About Trust," *San Diego Union-Tribune*, November 20, 2021; Michael A. Smith, "We're Not Doing Enough to Ensure Native Americans Are Vaccinated Against COVID-19," *Topeka Capital-Journal*, October 8, 2021; Wawmeesh Hamilton, "Action Needed to Boost Low Indigenous Youth COVID-19 Vaccination Rate, Health Officials Say," *CBS-Canada*, October 24, 2021.

[25] A. Kuniawan Ulung & Arti Ekawati, "Indonesia: Indigenous Groups Face COVID Vaccine Barriers," *DW*, July 28, 2021; See also Anne Nuorgam, "COVID-19 and Indigenous People," *UN Department of Economic and Social Affairs*, (last accessed on February 15, 2022), https://www.un.org/development/desa/indigenouspeoples/covid-19.html.

[26] United Nations, "'Consistent Evidence' of Omicron's Spread vs Delta: WHO's Tedros," December 20, 2021, https://news.un.org/en/story/2021/12/1108452. He specifically stated that "70% of the population of every country … [must be] vaccinated by the middle of next year" for the pandemic to end in 2022.

[27] "US Must Stop Hoarding Excess COVID-19 Vaccine Doses," *Doctors Without Borders*, October 11, 2021.

life-saving vaccine technologies has created and maintained the vilified presence of unvaccinated populations who are spatially distributed all around the globe. These "vaccine untouchables" contribute to the likelihood of future zoonotic transmutation of more evolved virus forms and dangerous zoonotic variants. The corporate monopolization of IP rights also ensures a new marketplace and potential financial windfall for multinational corporations by offering new generation and endless "branding" of life-saving vaccines and booster shots to the Global North states and their wealthy customers. At the same time, "vaccine genocide" continues in relation to the "disposable" populations, including indigenous peoples around the world.

Relying on the third definitive act of genocide as defined under the 1948 U.N. Genocide Convention, "vaccine genocide" is here defined as the intentional act of creating "the group conditions of life calculated [with a high certainty] to bring about its physical destruction [and deny its future reproduction]."[28] While the numbers of deaths of indigenous populations may not be immediately apparent, the egregious system of "vaccine apartheid" helps create circumstances that lead to imminent conditions that do not support prolonged life of indigenous peoples around the globe. In the so-called "nation-destroying" project emerging from European settler colonialism foisted upon the "New World" dating back to the late fifteenth century, the genocide of indigenous peoples has been a primary objective.[29] In North America, an indigenous population of up to 15 million, which existed when Cristóbal Colon first "discovered" the New World, had been reduced to a quarter million by 1880, when the first U.S. Census was taken, thereby accomplishing a 98% liquidation of the original population over four hundred years of settler colonialism.[30] Today, the "vaccine apartheid" system produced by the IP regime continues to destroy and exterminate, in whole or in part, indigenous peoples around the globe.

Multinational Pharmaceutical Corporations and "Vaccine Genocide"

As described earlier, Pfizer-BioNTech has exercised their power to impose the following conditions to facilitate the "vaccine genocide" of indigenous peoples and other vulnerable populations, including the efforts to: (1) block

[28] Under Article 2, the genocide was defined in the following five categories: (1) Killing members of the group; (2) Causing serious bodily or mental harm to members of the group; (3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (4) Imposing measures intended to prevent births within the group; and (5) Forcibly transferring children of the group to another group. Article 3 defines the crime punishable under the convention, including: (1) Genocide; (2) Conspiracy to commit genocide; (3) Direct and public incitement to commit genocide; (4) Attempt to commit genocide; and (5) Complicity in genocide. See the U.N. Convention on the Prevention and Punishment of the Crime of Genocide in 1948, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf.

[29] Bernard Nietschmann, "Forth World: Nations v. States." In George J. Demko & William B. Wood, eds., *Reordering the World: Geopolitical Perspectives on the Twenty-First Century*, pp.225-242, (Boulder CO: Westview Press, 1991). See also Ryser, "Indigenous Nations"; Fukurai & Krooth, "Original Nation."

[30] Ward Churchill, *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America* (Monroe, ME: Common Courage Press, 1993).

countries from donating their COVID-19 vaccines to other states, including those in the Global South; (3) adjudicate any dispute, not in a domestic court or any other public forum of the host states, but through the privately-arranged arbitration mechanism under New York law in the U.S.; (3) waive immunity against Pfizer's precautionary seizure caused by any of their vaccines in Brazil, Chile, Colombia, and the Dominican Republic; and (4) prohibit "any public announcement concerning the existence, subject matter of terms of [the] agreement" or commenting about the [contractual] relationship with Pfizer, unless it had the company's prior written consent."[31] Such preferential contractual agreements effectively prevent indigenous peoples from bringing civil lawsuits against large corporations or having their grievances heard or adjudicated in their own domestic courts, allowing hearings only at the international arbitration panel in the U.S.

In order to challenge and eradicate the system of "vaccine apartheid" and the subsequent impact of "vaccine genocide" upon indigenous peoples, some scholars and politicians have suggested the potential application of the "socialist-oriented" model, including the measures similar to the mobilization of the National Defense Authorization Act (NDAA) in the U.S.[32] The NDAA and other similar state actions may have the potential to limit the effect of the IP regime and the corporate monopoly of vaccine technologies by enabling "socialized governmental actions" in order to: (1) place corporate enterprises under government programs and engage in the state-assisted production and distribution of life-saving vaccines; (2) engage in collaborative ventures with other states in the global production of crucial medicines; and (3) produce and disseminate such products with reasonable prices, if not fully compensated by the state, similar to the case of Cuba, People's Republic of China (PRC), and other socialist-oriented states.[33]

The People's Republic of China strategies for dealing with the pandemic, for instance, have been characterized by the following principles. First, China National Pharmaceutical Group Corporation (CNPGC or Sinopharm) has produced the BIBP COVID-19 vaccine (or BIBP vaccine) which was approved by the WHO for use in COVAX in May 2021. Sinopharm is a large state-owned pharmaceutical enterprise in China which has been ranked 109th in the world in the 2021 Fortune Global 500 list. Sinopharm vaccines have been distributed through PRC's vaccination campaigns in multiple states in Asia, Africa, South America and Europe. By November 2021, more than three quarters of PRC's domestic population (76.3%) had completed the COVID-19 vaccination.[34] Smilar to Cuba's policies of medical internationalism, China has been sending its doctors and healthcare workers to the states in the Global South, under its so-called "vaccine diplomacy," in addition to sending 1.1 billion

[31] David Chau, "Pfizer Has Power to 'Silence' Governments and 'Maximize Profits', Consumer Group Alleges," *ABC News*, October 20, 2021.

[32] See generally Nichols, "Corona Virus Criminals."

[33] Ibid

[34] Thomas Peter, "China Has Given 76.3% of Population Complete COVID-19 Vaccine Doses," *Reuters*, November 19, 2021.

vaccine doses to more than 100 states during the pandemic.[35]

While PRC's "vaccine diplomacy" may have allowed the distribution of life-saving vaccines in the Global South, it is still unknown whether these states made vaccines available to their indigenous peoples and other vulnerable populations. Cuban doctors in their renowned Henry Reeves Medical Brigade have also been dispatched to many Latin American states, including Brazil, Venezuela, Bolivia, among others. Yet it is still unknown whether these states have allowed these doctors and healthcare workers to be strategically located to support the indigenous nations and nucleated communities, nor whether these states allowed Chinese and Cuban vaccines to be equitably distributed among indigenous peoples and other ethnic minorities in rural regions of these states. Since 2018, Brazil has removed more than eight thousand Cuban doctors and healthcare specialists who had been working in various locations in Brazil for many years.[36] The state governments still continued to exercise their prerogative over the domestic placement of international doctors and healthcare workers, as well as the distribution of vaccines and medical supplies donated by other states and international organizations. It is important to promote the construction of the infrastructure and medical facilities to engage in the domestic production of sufficient supplies of vaccines, medicines, and personal protective equipment (PPE), as well as to ensure the equitable distribution of these medical supplies among indigenous peoples and vulnerable populations in regional sectors.

Socialized Productions of Life-Saving Vaccines

It is important to reiterate that new mRNA vaccines have been developed by publicly funded research, while the profit accrued from such research has been privatized. In the U.S., the Department of Defense has long served as an effective funnel through which public funding has gone to high-tech research at universities and research institutes. The so-called "Pentagon Model" has been the staple system of developing a new generation of high-tech telecommunications and sophisticated bio-technology, including modern computers, transistors, internet, cyber technologies, other sophisticated technological communications, and more recently, bio-tech sciences and bio-engineering advances.[37] Such research endeavors have been financed through the Pentagon's Defense Advanced Research Projects Agency (DARPA), and the benefits of such publicly-financed research and technological innovations have been privatized by powerful corporations, including IBM, Microsoft, Apple, Google, Facebook, Amazon, and other high-tech industries. Beginning in the 1990s, the frontiers of government funding have also shifted into bio-technology and bio-engineering, resulting in the proliferation of medical and pharmaceutical innovations. As a result, nearly

[35] Ralph Jennings, "China's COVID-19 Vaccine Diplomacy Reaches 100-Plus Countries," *VOANEWS*, September 18, 2021.

[36] Shasta Darlington & Leticia Casado, "Brazil Failed to Replace Cuban Doctors, Hurting Health Care of 28 Million," *NY Times*, June 11, 2019.

[37] Noam Chomsky, "Mandate for Change or Business as Usual," *Z Magazine*, February 1993.

all of the mRNA-based vaccines have been developed by government-funded research, including the National Institute of Health and the National Science Foundation, among others. The company title of Moderna, for instance, was named after the National Institute of Health (NIH)-funded research called "Modified RNA" in order to develop the new generation of vaccines. The efforts were led by Dr. Anthony Fauci and other leading scientists in the field of virology. Because of the original contractual agreement signed by Moderna and the state government to share its vaccine recipe, the WHO-led research team in South Africa has also worked to replicate the Moderna vaccine, and in February 2022, the vaccine was finally reproduced and WHO has announced it will make the vaccine recipe available to the rest of the world.[38] The Pfizer-BioNTech vaccine was developed by publicly-funded endeavors, although the corporations have insisted on corporate ownership of the vaccine recipe.[39]

COVAX and GAVI Projects

Another scenario for the state government's approach to publicly sharing the vaccine recipe has been proposed elsewhere. For instance, China's collaboration with WHO, COVAX (The COVID-19 Vaccines Global Access Facility), and other international organizations was designed to lead to the eradication of future pandemics. Cuba, on the other hand, decided not to join COVAX, led by WHO, GAVI (The Global Alliance for Vaccines and Immunizations), the Vaccine Alliance, and the Coalition for Epidemic Preparedness Innovations.

GAVI was set up by the Gates Foundation in 1999, currently co-leading COVAX and its vaccine pillar of the Access to COVID-19 Tools (ACT) Accelerator to procure and distribute COVID-19 vaccines. GAVI's vaccine market-shaping efforts have been designed to make life-saving vaccines and other immunization products more accessible and affordable for lower-income states. These North Atlantic organizations and their alliances, however, do not act solely on the basis of philanthropic or humanitarian principles. For instance, the Gates Foundation was the key catalyst in privatizing the AstraZeneca vaccine, although its initial development at Oxford University in the U.K. was largely based on publicly-funded research.[40] Further, when the state of Venezuela tried to procure the vaccines from COVAX, its payment was blocked by international banks, significantly delaying its first vaccine delivery until the beginning of September 2021.[41] The U.S.'s economic blockade and trade sanctions further complicated Venezuela's access to the government funds deposited in the international banks and delayed the government efforts to purchase the life-saving vaccines for their populations. Cuba has sent 7 million vaccine

[38] Amy Maxmen, "South African Scientists Copy Moderna's COVID Vaccine," Nature, February 3, 2022.

[39] James Surowiecki, "Pfizer and Moderna Protecting Their Patents Leaves Much of the World at Risk," MSNBC, October 21, 2021, https://www.msnbc.com/opinion/pfizer-moderna-protecting-their-patents-leaves-much-world-risk-n1282454.

[40] Mohit Mookim, "The World Loses Under Bill Gates' Vaccine Colonialism," Wired, May 19, 2021, https://www.wired.com/story/opinion-the-world-loses-under-bill-gates-vaccine-colonialism/.

[41] "First Lot of Coronavirus Vaccine Arrives in Venezuela Through COVAX Mechanism," *CE Noticias Financieras*, September 7, 2021.

doses to help Venezuela and, in October 2021, the Venezuelan government announced that it would start its own production of Cuba's Abdala vaccine in January 2022 in the close cooperation with Cuba.[42] It is important to examine, however, whether the vaccines produced in Venezuela will be equitably distributed among indigenous peoples whose lands have also been long targeted by the Venezuelan government, its domestic corporations, as well as international mining interests.

Final Thoughts

The COVID-19 pandemic has posed a grave threat to the viability and survivability of indigenous peoples around the world. Many international organizations and their leaders warn that the pandemic has placed indigenous peoples at the crossroads of the greatest health risks both currently and in the future. The "vaccine genocide" system is the newest form of Europe-based, extractive activities in relation to indigenous peoples' lives, their resources and lands conducted by the West's medical and pharmaceutical corporations, which have been accused of engaging in the practices of "bio-piracy" and "bio-colonialism" against indigenous peoples for many years. Today, Pfizer-BioNtech, Moderna, AstraZeneca, and other Western medical conglomerates continue to contribute to the inequitable system of "vaccine apartheid" and state-assisted "vaccine genocide" perpetuated upon indigenous peoples around the globe. The allied community of indigenous nations, peoples, and their supporters must seek to construct a robust organizing movement throughout the world to promote the global production of vaccines, leading the way to vaccinating the entire world population, and thus eradicating the "disposable" populations of "vaccine untouchables" once and for all.

---

[42] "Venezuela to Begin Production of Abdala Vaccine in January," TeleSUR, October 21, 2021; Andreina Chavez Alava, "Venezuela: Maduro Reinforces Vaccination Over Omicron Variant, Condemns Western 'Political' Response," *Venezuelaanalysis.com* December 2, 2021.

REFERENCES

[1] Busby, Martha & Flavia Milhorance (2021) "Pfizer Accused of Holding Brazil 'to Ransom' Over Vaccine Contract Demand," *Guardian*, September 10.

[2] Carrington, Damian (2020) "Halt Destruction of Nature or Suffer Even Worse Pandemics, Say World's Top Scientists," *Guardian*, April 27.

[3] Chavez Alava, Andreina (2021) "Venezuela: Maduro Reinforces Vaccination Over Omicron Variant, Condemns Western 'Political' Response," *Venezuelaanalysis.com* December 2.

[4] Chau, David (2021) "Pfizer Has Power to 'Silence' Governments and 'Maximize Profits', Consumer Group Alleges," *ABC News*, October 20.

[5] Chomsky, Noam (1993) "Mandate for Change or Business as Usual," *Z Magazine*, February.

[6] Churchill, Ward (1993) *Struggle for the Land: Indigenous Resistance to Genocide, Ecocide, and Expropriation in Contemporary North America (Monroe, ME: Common Courage Press)*

[7] DemocracyNow (2021) "Public Citizen Special Program," October 22.

[8] Diamond, Jared (1999) *Guns, Germs and Steels* (W.W. Norton & Company).
"First Lot of Coronavirus Vaccine Arrives in Venezuela Through COVAX Mechanism" (2021) CE *Noticias Financieras*, September 7.

[9] Fukurai, Hiroshi & Richard Krooth (2021) *Original Nation Approaches to Inter-National Law: The Quest for the Rights of Indigenous Nations and Peoples in the Age of Anthropocene* (NY: Palgrave Macmillan)

[10] Hamilton, Wawmeesh (2021) "Action Needed to Boost Low Indigenous Youth COVID-19 Vaccination Rate, Health Officials Say," *CBS-Canada*, October 24.

[11] International Union for Conservation of Nature (IUCN) (2019) "IUCN Director General's Statement on International Day of the World's Indigenous Peoples 2019," August 9. https://www.iucn.org/news/secretariat/201908/iucn-director-generals-statement-international-day-worlds-indigenous-peoples-2019.

[12] Jennings, Ralph (2021) " China's COVID-19 Vaccine Diplomacy Reaches 100-Plus Countries," *VOANEWS*, September 18.

[13] Kansteiner, Fraiser & Eric Sagonowsky (2021) "What Does It Take to Supply COVID-19 Vaccines Across the Globe? Here's How the Leading Players Are Working It," Fierce Pharma, March 3.

[14] Maxmen, Amy (2022) "South African Scientists Copy Moderna's COVID Vaccine," Nature, February 3.

[15] MiningWatch Canada (2022), https://miningwatch.ca/.

[16] Mookim, Mohit (2021) "The World Loses Under Bill Gates' Vaccine Colonialism," Wired, May 19, https://www.wired.com/story/opinion-the-world-loses-under-bill-gates-vaccine-colonialism/.

[17] Nebehay, Stephanie & Michael Shields (2020) "Indigenous People Especially 'Vulnerable' to Coronavirus Pandemic, WHO Warns," Reuters. July 20.

[18] Nichols, John (2022) *Corona Virus Criminals and Pandemic Profiteers: Accountability for Those Who Caused the Crisis* (NY: Verso)

[19] Nietschmann, Bernard (1991) "Forth World: Nations v. States." In George J. Demko & William B. Wood, eds., *Reordering the World: Geopolitical Perspectives on the Twenty-First Century, pp.225-242*, (Boulder CO: Westview Press).

[20] Nuorgam, Anne (2022) "COVID-19 and Indigenous People," *UN Department of Economic and Social Affairs*, (last accessed on February 15), https://www.un.org/development/desa/indigenouspeoples/covid-19.html.

[21] Peter, Thomas (2021) "China Has Given 76.3% of Population Complete COVID-19 Vaccine Doses," *Reuters*, November 19.

[22] Pfizer (2021) "Manufacturing and Distributing the COVID-19 Vaccine," accessed December 23, https://www.pfizer.com/science/coronavirus/vaccine/manufacturing-and-distribution.

[23] Pontes, Nadia (2021) "Indigenous Brazilians Accuse Jair Bolsonaro of Genocide at ICC," *DW* , September 8, 2001; See also, "Climate Activists Call for Investigation of Bolsonaro," Independent, October 12.

[24] Prashad, Vijay (2018) "In the Ruins of the Present," *Tricontinental Institute for Social Research*, March 1, https://thetricontinental.org/working-document-1/.

[25] Ryser, Rudolph (2013) *Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power* (NY: Routledge)

[26] Sandefur, Justin & Arvind Subramanian (2021) "How Biden Can End Vaccine Apartheid," *Center for Global Development*, May 3.

[27] Shasta Darlington & Leticia Casado, "Brazil Failed to Replace Cuban Doctors, Hurting Health Care of 28 Million," *NY Times*, June 11, 2019.

[28] Shea, James (2021) "Johnson & Johnson Vaccine: How Is it Different?" *VCU News*, May 3.

[29] Sirleaf, Matiangai (2021) "Disposable Lives: COVID-19, Vaccines, and the Uprising," *Columbia Law Review* Vol.121, No.5, 71-94

[30] Sisson, Paul & Lauren J. Mapp (2021) "Why Are San Diego's Black and Native American Communities Less Vaccinated? It's About Trust," *San Diego Union-Tribune*, November 20.

[31] Smith, Michael A. (202), "We're Not Doing Enough to Ensure Native Americans Are Vaccinated Against COVID-19," *Topeka Capital-Journal*, October 8.

[32] Surowiecki, James (2021) "Pfizer and Moderna Protecting Their Patents Leaves Much of the World at Risk," MSNBC, October 21, https://www.msnbc.com/opinion/pfizer-moderna-protecting-their-patents-leaves-much-world-risk-n1282454

[33] Tricontinental Institute for Social Research (2019) "10 Canadian Mining Companies: Financial Details and Violations: Briefing No.1," https://www.thetricontinental.org/wp-content/uploads/2019/04/190430_Briefing_Mining_Final_Web.pdf

[34] Ulung, A. Kuniawan & Arti Ekawati (2021) "Indonesia: Indigenous Groups Face COVID Vaccine Barriers," *DW*, July 28.

[35] United Nations (2021) "'Consistent Evidence' of Omicron's Spread vs Delta: WHO's Tedros," December 20, https://news.un.org/en/story/2021/12/1108452.

[36] United Nations Convention on the Prevention and Punishment of the Crime of Genocide in 1948, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

[37] UNOCHRC (2021) "Indigenous Peoples Have Been Disproportionately Affected by COVID-19: Senior United Nations Official Tells Human Rights Council," September 28, https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27556&LangID=E.

[38] "US Must Stop Hoarding Excess COVID-19 Vaccine Doses" (2021) *Doctors Without Borders*, October 11.

[39] "Vaccine Apartheid" (2021) *Public Citizen*, November 29, https://www.citizen.org/article/vaccine-apartheid/.

[40] Van Beusekom, Mary (2021) "NOVAX COVID Vaccine Shows 90.4% Efficacy Against Infection," *Center for Infectious Disease Research and Policy* (CIDRAP), December 16, 2021.

[41] "Venezuela to Begin Production of Abdala Vaccine in January" (2021) *TeleSUR*, October 21.

This article may be cited as:
Fukurai, H. (2022) The "Vaccine Genocide" of Indigenous Nations and Peoples: The Intellectual Property (IP) Regime, "Vaccine Apartheid" and "Vaccine Untouchables". *Fourth World Journal*. Vol. 21, N2. pp. 53-67.

ABOUT THE AUTHOR

Hiroshi Fukurai

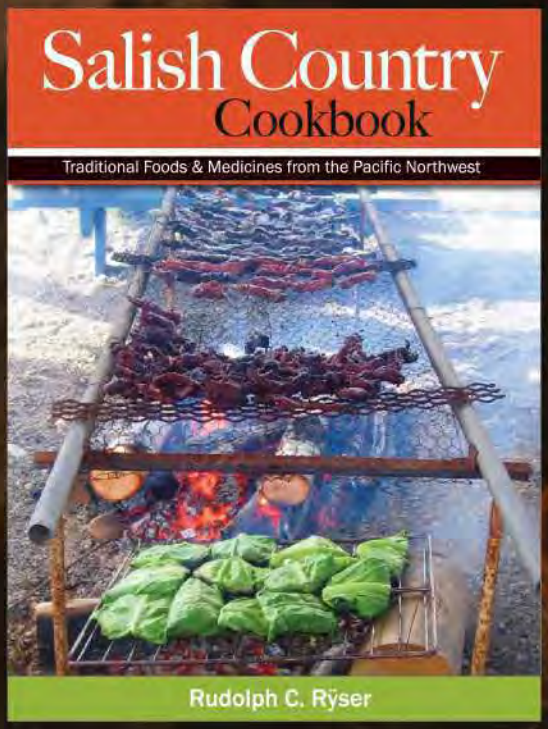
Professor of Sociology & Legal Studies at the University of California, Santa Cruz & Past President of the Asian Law & Society Association (ALSA). He is specialized in lay adjudication, indigenous approaches to international law, and Asian law and politics. His recent articles include "The Prevention of the Sixth Mass Extinction: Socio-Legal Responses to Mitigate the Anthropogenic Crises in Asia and Beyond" (2022); "President's Farewell Message: The Anthropocene, Earth Jurisprudence and the Rights of Nature" (2020) ; "The Decoupling of the Nation and the State: Constitutionalizing Transnational Nationhood, Cross Border Connectivity, Diaspora and 'Nation' Identity-Affiliations in Asia and Beyond" (2020), all of which appeared in the Asian Journal of Law and Society (Cambridge Univ. Press). His books include: Original Nation Approaches to Inter-National Law: The Quest for the Rights of Indigenous Peoples and Nature in the Age of Anthropocene (Palgrave Macmillan, 2021); East Asia's Renewed Respect for the Rule of Law in the 21st Century (Brill, 2015); Japan and Civil Jury Trials: The Convergence of Forces (Edward Elgar, 2015); Nuclear Tsunami: The Japanese Government and America's Role in the Fukushima Disaster (Lexington Book, 2015); Race in the Jury Box: Affirmative Action in Jury Selection (SUNY Press, 2003); Anatomy of the McMartin Child Molestation Case (Univ. Press of America, 2001); Race and the Jury: Racial Disenfranchisement and the Search for Justice (Plenum Press, 1993, Gustavus Meyers Human Rights Award); and Common Destiny: Japan and the U.S. in the Global Age (MacFarland, 1990).

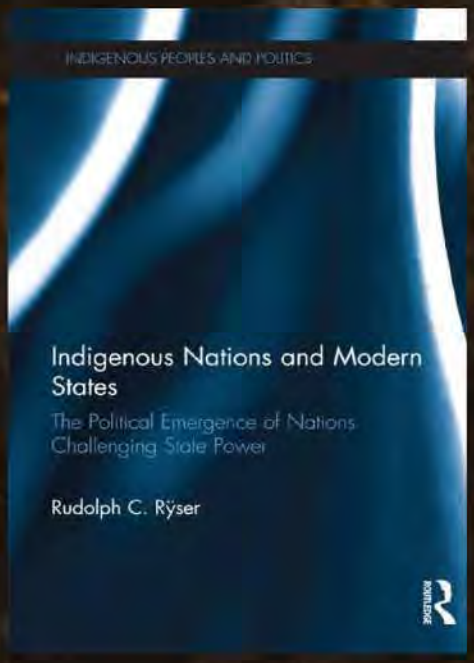
Salish Country Cookbook

Traditional Foods & Medicines from the Pacific Northwest

"Salish Country Cookbook" by Dr. Rudolph Rÿser, is a celebration of Salish knowledge with ancient roots in the land and the sea. Find northwest native foods, medicines and recipes gathered and prepared in ways suitable for the 21st century kitchen.

Download for free at nativeroots.cwis.org





Indigenous Nations and Modern States

The Political Emergence of Nations Challenging State Power

In this volume Rudolph C. Rÿser describes how indigenous poples transformed themselves from anthropological curiosities into politically influential voices in domestic and international deliberations affecting everyone on the planet.

Now on Amazon

Indigenous Nations and Modern States provides a refreshing, insightful – and needed – reframing of the international system, contemporary ethnic conflict, and the politics of indigenous peoples. The text brings to the analytical forefront the underlying tensions between surviving nations and national identities and the states that were constructed on top of them. As Ryser clearly elucidates, contemporary nation-states have not assimilated or vanquished the continuing attachment to non-state national identities, and this analysis facilitates a needed "un-thinking" of the inevitability, stability, and predominance of the unitary nation-state."

—Erich Steinman, Pitzer College

Unregulated Corporate and State Capitalization of Nations' Land

Stopping and Regulating Unrestricted Extractive Industry Resource Extractions in the Territories of Indigenous Nations

By Rudolph C. Ryser, PhD
Resident Scholar and Editor in Chief of FWJ

ABSTRACT

The twenty-nine "less developed states" are rich with undeveloped oil and gas, mineral, land, water, metals, and food sources currently extracted for export by major raw materials extraction companies. The raw materials are located mainly inside or adjacent to the territories of more than 1,600 indigenous nations that have not given their consent for taking these materials by the companies or to the states. While the states and indigenous nations occupy the same territorial space and political space (and often nations' territories are divided by states' boundaries), the States claim sovereignty over all the land and resources. State assertions of sovereignty mean that the state government claims the authority to access and use nations' territories and resources of the various nations to its benefit. If a state is weak (meaning it cannot govern its people, enforce its laws, and otherwise is governed corruptly), it becomes a logical target for company development. Asserting its sovereignty over all land and resources inside its claimed boundaries, the government of these southern hemisphere states facilitate transnational extractive corporations. Meanwhile, they take vast wealth at the expense of indigenous nations and ultimately benefit the state and commercial enterprises mainly located in northern hemisphere states.

This paper discusses how States and transnational extractive corporations engage in raw resource removal from indigenous nations' territories without regulations or controls internationally or by the various states and nations. Meanwhile, the companies indirectly or overtly perpetrate violence against indigenous nations, their economies, and the environment prompting the spread of conflicts and the commission of genocide.

Despite human rights violations, the United Nations and other state-based bodies do not impose international organization constraints. There remains no accountability for the destruction in communities, the environment, or economies. By implementing nation-based laws, Indigenous nations may be the only actors to stop the human and environmental carnage resulting from unregulated mining, forest cutting, and industrial food production. Furthermore, nation-based laws may also moderate unrestrained development of commercial and urban centers carried out in the name of improving the social, economic,

and political lives of so-called "less developed" countries. Nation-based governance and laws are only possible if efforts to corrupt nations and divide them politically can be prevented.

Keywords: "free, prior and informed consent", raw materials, nation territories, unregulated, voluntary regulation.

"Land" is the birthplace of life on the Earth and forms the basis of human cultures worldwide. Access to and use of lands and all that exists beneath those lands consequently stand as first principles warranting complete fidelity. For tens of thousands of years, the access to and use of lands remained open to humans and other animals moving from place to place for food, shelter, clothing, and medicines. As human beings developed technologies extending their capacity to gather and modify life-supporting plants and animals, over the last five thousand years, the use of soils, minerals, metals, and difficult-to-access earth resources became the basis for wealth. What had been a slow-moving and essentially a local process of human colonization exploded into a global process in the last 1000 years systematically carried out by empires, kingdoms, and states. The result has been the confiscation of lands and extraction of petroleum and gas, minerals, metals, rare elements, and cutting of forests in support of a global economic system that serves as the foundation for unrestrained development. The states, corporations, and economic systems now comprise new forms of colonization and wealth accumulation, often at the expense of life, a sustainable life-supporting environment, and peaceful relations between peoples. At the center of this global colonization and wealth accumulation are the world's extractive companies fostered by states' governments and an economic system solely driven by wealth accumulation.

The World Bank and the International Monitory Fund identify the location for Extractive Industry activity in sixty-three states characterized as "benefitting the development of less developed and medium developed countries."[1] Of the 63 states, twenty-nine are characterized as "less developed" with limited economic capacity, "weak governance," and extensive poverty, while other states in the list are identified as "medium developed." Perhaps surprising to some political, academic, and legal leaders, several thousand indigenous nations occupying raw materials-rich territories are the primary occupants of these states that are characterized as key to the development strategies of the World Bank and IMF. Twenty-nine of these less developed states offer corporations access to exploit raw materials. Agricultural products (i.e., oil and gas, minerals such as cobalt, lithium, and

[1] International Monetary Fund (2012) "MACROECONOMIC POLICY FRAMEWORKS FOR RESOURCE-RICH COUNTRIES". Approved by Siddharth Tiwari, Carlo Cottarelli, Olivier Blanchard, Antoinette M. Sayeh, and José Viñals cited in https://www.worldbank.org/en/topic/extractiveindustries/overview#1

other rare metals, uranium, copper, gold, bauxite) used commercially in computers, telephones, solar panels, electrical power generators, and automobiles; forest products such as mahogany, tigerwood, purpleheart, and secondary wood products such as plywood and decking mainly imported to the United States.

Virtually all the raw materials exploitation in the twenty-nine states is carried out in the territories of more than 1,329 indigenous nations—raw materials extraction without the consent of the various nations. These companies conduct their raw material exploitation inside or adjacent to indigenous nations' territories. They claim in their public reports to abide by the ethical and human rights standards advocated by such entities as the United Nations Global Compact, International Council on Mining and Minerals, the UN Declaration on the Rights of Indigenous Nations, International Labor Organization Convention 169, the Rio Declaration on Environment and Development and the United Nations Convention Against Corruption. Indeed, twenty-five of the largest extractive corporations in the world[2] regularly report their compliance with the international human rights standards and assert that they seek to comply with the practice of obtaining the consent of the nations in potentially affected territories because of "good faith negotiations." The typical expression of this practice is stated by the Responsible Mining Foundation as follows:

> Agree on appropriate engagement and consultation processes with potentially impacted Indigenous Peoples and relevant government authorities as early as possible during project planning, to ensure the meaningful participation of Indigenous Peoples in decision making. Where required, support should be provided to build community capacity for good faith negotiation on an equitable basis. These processes should strive to be consistent with Indigenous Peoples' decision-making processes and reflect internationally accepted human rights, and be commensurate with the scale of the potential impacts and vulnerability of impacted communities. The processes should embody the attributes of good faith negotiation and be documented in a plan that identifies representatives of potentially impacted indigenous communities and government, agreed consultation processes and protocols, reciprocal responsibilities

[2] BP, Chevron, China Minmetals, CITIC, ConocoPhillips, Eni Trading & Shipping, ExxonMobil, Gerald Group, Glencore, Gunvor, LITASCO, Mercuria, Mitsubishi Corporation, Mitsui, MRI Trading, Noble, Phibro, RGL Group, Shell Trading, Tewoo Group, Totsa Total Oil Trading, Trafigura, Unipec, Vitol, Wogen as identified by the Responsible Mining Foundation https://www.responsibleminingfoundation.org/

of parties to the engagement process and agreed avenues of recourse in the event of disagreements or impasses occurring.

Stated another way, the companies commit to comply with international human rights laws and the codified principle that requires states' governments and corporations to obtain indigenous nations' free, prior, and informed consent. This requirement is to be implemented if the proposed state and corporate actions, policies, or behaviors affect the interests of indigenous nations. Mining and other forms of raw materials exploitation of any kind from indigenous territories without the consent of the affected nations can affect the health and security of indigenous nations. Unrestrained exploitation can break down the environment, contribute to climate change, potentially perpetrate genocide or crimes against humanity. For nations' sustainability and sustainability of the environment, these forms of exploitation must be controlled by negotiated agreements or other forms of regulation. Good faith, documented negotiations in the form each nation agrees to is essential. Negotiations must be conducted by representatives chosen by the nation according to its decision-making processes consistent with international human rights standards and the principle of self-determination.

Furthermore, nation, corporation, and state negotiations must respect the requirement that states governments and businesses obtain a nation's free, prior and informed consent. Ensuring compliance with these requirements must be the responsibility of the state government. However, since there are no sanctions for failing to comply, nations have the responsibility to force compliance without state government sanctions.

The twenty-five of the largest raw materials extraction companies locate their headquarters in states and territories in the northern hemisphere—the states that primarily benefit economically and commercially from minerals, rare earth, coal, metals, forest products, and petroleum extracted from indigenous nations' territories. Indeed, the companies that conduct the most intensive raw materials extraction in some of the most vulnerable states and indigenous territories. These companies maintain their primary registration and headquarters in Jersey, Switzerland, the United States of America, PR China, Italy, and others maintain their registration in France, Cyprus, Russia, United Kingdom, Bermuda, Panama, and the Cayman Islands. Raw materials in reserve mainly located inside indigenous nation territories have an estimated value of $290 trillion. The primary beneficiary states from such resources (whether from inside their claimed territories or in remote locations elsewhere in the world) include ten of the world's wealthiest states.[3] Notably, the states in which major extractive corporations locate their headquarters are also beneficiaries of raw materials mined and extracted from the world's least developed countries and indigenous nation territories (See Figure 1).

[3] World Bank Source: The state and estimated value of claimed reserve resources are: China ($23T), Saudi Arabia ($34.4T), Canada ($33.2T), India ($0.1064T), Russia ($75T), Brazil ($21.8T), USA ($45T), Venezuela ($14.3T), DR Congo ($24T), Australia ($19.9T)

Figure 1. Twenty-Five Companies Headquarters or Registration - 15 states[4]

The twenty-nine "developing states" noted in Appendix 1 have significant oil, mineral, land, water, food sources extracted for export. They are registered or identified as candidates for registration with monitoring organizations in compliance with international human rights standards. These raw materials are located primarily inside or adjacent to the territories of more than 1,600 indigenous nations. These states and indigenous nations occupy the same territorial space and political space. Territorial claims mean that the state government declares its authority to access and use nations' territories and resources of the various nations to its benefit and an expression of "state sovereignty." Suppose a state is weak[5] [1] (it cannot govern its people, enforce its laws, and is otherwise governed corruptly) and has raw materials inside its boundaries. In that case, it becomes a logical target for company development. Asserting its sovereignty over all land and resources inside its claimed boundaries, the government of these states facilitate transnational extractive corporations taking vast wealth at the expense of indigenous nations and without their consent.

[4] Source: Responsible Mining Foundation, The ESG Due Diligence and Transparency Report on Extractive Commodity Trading - https://www.responsibleminingfoundation.org/

[5] Ten of the twenty-nine less developed states qualify as corrupt and a non-functioning government. The DR Congo, Guinea, Chad, Yemen, Sudan, Republic of Congo, Iraq, Syria, Turkmenistan, and Angola are rich sources of oil and gas, minerals, and metals in very high demand for the production of electricity, the manufacture of computers, smartphones, automobiles, and military technologies.

[6] Dinina, G., and Shabala, Z., (2021) "Glencore return $2.8 billion to shareholders in 2021". https://sg.finance.yahoo.com/news/glencore-return-2-8-billion-062057096.html?guccounter=1&guce_referrer=aHR0cHM6Ly9kdWNrZHVja2dvLmNvbS8&guce_referrer_sig=AQAAAH6bH6cAZSGKpqKzBFCSXnrKdNl2KBZb61gWY99dxPpjfW4Aaxk3-gL0V8YW-4URNmdJnKEmwQD_ZxcsbN7kx_fvhr7uunf0C3_TJYPlgkMVBGsvDGurhsrRQJNXteItAtFYGrdJ8jste5nWOCj_iyU05UnwD3rvefWN5P35toeY

Figure 2. Global Glencore Footprint - 35 countries (Source: Glencore)

Glencore employs 160,000 people worldwide and had an income in 2021 of $17.4 billion[6]—a level greater than twenty-one countries.[7] In that year, the company paid its investors $2.8 billion[8], extracting from the earth and indigenous nations territories copper, zinc, nickel, aluminum, iron ore, coal, oil, and agricultural products. Meanwhile, Glencore and other companies with a similar extractive profile globally are cited for extensive harm to the environment, indigenous nations and a significant factor in changing climate, poverty, femicide, and prostitution in their worksites. They commonly fail to report the violence and destructive consequences of mining and resource extraction to the organizations and agencies they registered to affirm corporate commitments to comply with human rights and environmental law standards.

Incidents of violence and violations of human rights and environmental standards worldwide committed by or because of extractive industry practices are regularly reported in countries with limited state government oversight and those with strong governmental capabilities. Violations of indigenous nations' communities, environments, and economies in high-income and low-income countries occur extensively. Monitoring organizations conclude that the Extractive companies and governments are

[7] 2021 Annual GDP of twenty-one countries: Solomon Islands, Antigua and Barbuda, Seychelles, Guinea-Bissau, Comoros, Sint Maarten, Turks and Caicos Islands, Grenada, St. Kits and Nevis, Vanuatu, St. Vincent and the Grenadines, Samoa, Dominica, Tonga, Sao Tome and Principe, Micronesia, Kiribati, Palau, Marshal Islands, Nauru, Tuvalu combined report $16.792 billion with a combined estimated population of 1.3 million people.

[8] Dinina, G., and Shabala, Z., (2021) "Glencore return $2.8 billion to shareholders in 2021".

often responsible for, 1. Harmful human rights, environmental and economic results occur worldwide, 2. Mining and other resource exploitation sites are epicenters of harm, 3. Risk management by companies and governments is inconsistently applied 4. Lack of transparency and limited grievance mechanisms, 5. Hard to access and use remedies. 6. Regulatory frameworks often offer little or no protection, 7. 'Business as usual' practices that normalize potential harms, 8. Business practices that overlook cumulative effects of mining and other resource exploitation, 9. Rare reporting of harmful effects, and 10. The failure of independent monitoring and reporting of harms to indigenous nations and surrounding communities.[9]

Mining associations and some monitoring organizations contribute to these shortcomings resulting in destructive practices that produce genocides, militia attacks against individuals and communities, sexual violence against women, biodiversity collapse, and environmental destruction while contributing to changing climate globally. The results of monitoring and regulatory failures by organizations like the United Nations, companies themselves, non-governmental organizations, the public media, states' governments, and in some instances, indigenous nation governments violence perpetrated against indigenous nations is the result around the world. Violence against indigenous nations regularly occurs in their territories inside the Democratic Republic of Congo[10]--for example—where child labor and persons enslaved are used in mining operations, Hutu and other militias traffic minerals (i.e., gold) into Rwanda and Uganda. Massacres are committed against nations (Bambuti in January 2021) and Batwa resulting in the United Nations responding, "we know what's happening, but our hands are tied."[11] The UN Security Council receives reports[12] frequently describing the crimes being committed against indigenous nations, but "its hands are tied" due to claims of sovereignty by the various states where such crimes occur.

When monitoring organizations and international agencies have little effect on the behavior of extractive companies, what can be done? Resource exploitation by extractive companies with headquarters in wealthy states but that conduct operations with impunity inside or adjacent to indigenous nations' territories

[9] Responsible Mining Foundation. (2021). Harmful Impacts of Mining, When extraction harms people, environments, and economies. (www.responsibleminingfoundation.org/harmfulimpacts). Responsible Mining Foundation is an independent foundation that does not accept finding or other contributions from the extractive industry. The foundation is in Nyon, Switzerland chaired by Samuel Kofi Woods II a Liberian human rights Lawyer and academic. The Foundation's Advisory Council includes Joan Carling from the Kankanaey, Igorot Tribe in the Cordillera Region of the Philippines and former Chair of the Cordillera Peoples' Alliance (CPA), Prabindra Shakya a human rights activist from Nepal focusing on the protection of indigenous peoples' rights and other experts and leaders of mining, environment, biodiversity, and land use organizations in Switzerland, China, United States, Britain, and the Netherlands.

[10] Investigations and reports by Initiative for Equality (https://www.initiativeforequality.org/ headed by Dr. Deborah Rogers have worked to amplify the crimes committed against indigenous nations and neighboring communities in the DRC for more than ten years.

[11] IBID.

[12] UN Security Council. June 10, 2021. "Letter dated 10 June 2021 from the Group of Experts on the Democratic Republic of the Congo addressed to the President of the Security Council". 21-06047 (F) 150621 150621 (French, English).

violates human rights and the consent of nations too frequently, resulting in disastrous consequences. States and companies dominating indigenous peoples and their territories is a form of neo-colonialism. Colonization is conducted from a distance through the work of transnational corporations that are not and cannot be regulated or otherwise controlled by states' governments and international states' bodies. Wealthy states benefit from the exploitation of raw materials in resource-rich indigenous territories. Their companies generate resources to produce commercial products. Computers, electric cars, computerized home equipment, nuclear power plants, military rockets and drones, solar panels, and smartphones use raw materials such as copper, cobalt, lithium, aluminum, uranium, rare earth, gold, and zinc. All of this produces vast wealth for corporate leaders and political leaders. Meanwhile, indigenous nations and their neighbors suffer from poverty, violence, environmental destruction, biodiversity collapse, crimes against humanity, and corruption of state and nation officials. While it may be true that some states, extractive companies, and the investors in such companies intend to comply with constructive human rights and environmental standards set in international laws, the reality is that little is done to bring this colonial exploitation under control. There are no direct or indirect international, state-based, or nation-based transnational corporation controls to hold companies accountable.

The United Nations Human Rights Council recognized in 2011 that transnational corporations were perpetrating and fostering social, environmental, and economic violence resulting from their business activities. The Council authorized an Intergovernmental Working Group to draft a binding treaty to regulate transnational corporation business activities, especially those infringing on human rights. The Working Group originally published and distributed guiding principles applying to "all states and all business enterprises … to achieve tangible results for affected individuals and communities."[13] However, the Working Group affirmed that their principles created no new international law limiting state or corporation obligations may have. In other words, the principles could be ignored.

A Treaty, on the other hand, is intended to stop corporations such as those engaged in resource extraction from evading state-based legal controls formalized in international law and state domestic laws. They have committed in the absence of enforceable regulations imposed under current international human rights laws and weak or absent state government enforcement of laws. Extractive companies are free to perpetrate violence. They are free to commit violence with impunity against indigenous peoples, the environment, and the economy inside indigenous nations' territories. The Treaty, [14] under discussion since 2011, is in its third draft,

[13] UN Human Rights Council (2011). "Guiding Principles on Business and Human Rights." United Nations. New York/Geneva. HR/PUB/11.04. https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[14] UN Human Rights Council, UN Intergovernmental Working Group (IGWP) (2021). "Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises. OIGWG Chairmanship Third Revised Draft 17.08.2021. https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf

and intergovernmental states' bodies such as the European Union. It states such as Mexico, Brazil, United States of America. Switzerland has actively endorsed corporate language for the Treaty "praising the benefits of voluntary regulations."[15] Such language merely renders the Treaty voluntary with no formal obligations or enforcement of its terms. States and corporations merely need to demonstrate "due diligence" on their terms. Critiques of the Treaty draft call attention to the existence of "a number of important gaps" that need to be filled, such as 1. Formalizing liability of parent companies to their value chains in civil, criminal, and administrative matters, 2. the rights of affected communities and individuals, 3. The question of jurisdiction (home state, host state), and 4. Effective and efficient international enforcement mechanisms.[16] Absent legal or political enforcement of the Treaty or internationally determined "guiding principles" renders state and corporate responsibility for preventing or becoming accountable for violations of human rights and the environment mute. Even with legal instruments created to regulate extractive companies and other transnational corporations, there is no enforcement—just voluntary self-regulation.

Some steps may be taken to curb and even halt the carnage and crimes committed in the name of development. Nevertheless, they will require that indigenous nations take the lead responsibility for controlling and regulating extractive industries. They must control enablers in the states, commercial producers of products using the raw materials produced by extractive companies, the banks that loan massive amounts of money, and investors who benefit from profits generated. While some states and companies may agree to work with indigenous nations constructively, most do not. They regularly congratulate themselves for human rights compliance, but usually, in terms they define themselves. Therefore, indigenous nations must develop their capabilities to directly engage companies and states to regulate extractive activities or capabilities to obstruct companies from harmfully accessing indigenous nation territories. Where they lack such capabilities, nations must seek out and obtain technical support to establish internal capabilities to actively institute their regulatory powers to control or, in some instances, obstruct the business practices and actions on the ground of extractive companies. Where a company and possibly a state decides to act responsibly to engage affected nations by negotiating an operational and regulatory framework for extractive activities, then mutually established agreements may serve as a framework for bi-lateral or multi-lateral regulation. Negotiations consistent with the free, prior, and informed consent (FPIC) may serve as a working framework. The FPIC principle is wholly dependent on states, corporations, and indigenous nations engaging in good faith negotiations free from intimidation and

[15] CETIM (2021). "The Long Journey towards a Binding Treaty on Transnational Corporations." Europe-Third World Centre (CETIM) Bulletin No. 64. December 2021. Geneva. Switzerland. www.cetim.ch. p. 5.

[16] IBID., 5.

manipulation. However, the principle as defined in state-based international commitments and laws does not include provisions for ensuring good faith negotiations or enforcement of agreements. Absent good faith guarantees and enforcement measures, there are no restraints on state and corporate actions that result in negative consequences for indigenous nations and the environment resulting from unregulated exploitation of raw materials. As suggested below, an independent mediating body that monitors and facilitates negotiations may be the only means for ensuring fair, honest, and enforced nation, state, and corporate arrangements.

A comprehensive, multi-factor approach initiated by indigenous nations will be necessary to implement protective and leveraged measures to advance their interests and prevent harm to their people and territories.

Civil Lawsuits

Civil lawsuits lodged against extractive industries focusing on monetary awards from a company, boards of directors, banks providing loans and investors. Such legal actions can be taken to hold those responsible for resource exploitation that results in violent acts committed against peoples, individuals, and related institutions that violate a state's laws may serve to prevent or stop such harms from being committed for a price. Such lawsuits can be accessible and relatively inexpensive. Industries located in a civil law country but that carry out activities in other countries may become the subject of lawsuits when an individual or group can be shown to have been harmed.

Civil law originates in both nations and states in constitutional or customary law. Community, constitutional and parliamentary statutes, orders, and regulations serve as the foundation. Mainly, Civil law is used in a body of law that mainly emphasizes problems over the delivery of peaceful decisions to non-criminal cases. Civil law is the oldest legal system rooted in the experience and cultures of nations and established in modified form in the modern jurisdiction of states.

While civil legal actions using the court systems of states where corporations are registered may have significant potential to impose economic pressures on corporations and their beneficiaries, civil court systems vary from state to state. Moreover, states ruled by an autocratic political system can seriously restrict a civil legal process to place economic and legal pressures on corporations that commit actions that produce violence, poverty, and environmental destruction. Corporations can force court proceedings (appeals and delays) to extend over years and at great expense. Meanwhile, raw materials extraction often continues as the court action proceeds. These factors can cause this approach to achieving leverage to advance negotiations on resource extraction, and land use can be prohibitive.

Human Rights Registration Exposure

Many corporations engaged in extractive activities have registered with the UN Global Compact, the Extractive Industries Transparency Initiative, Transparency International, and similar inter-state or non-governmental organizations. By registering Extractive Industries and thousands of other corporations and businesses pledge

their commitment to upholding internationally established human rights conventions, treaties, and rules established by inter-state human rights agencies. Corporations often use the mere fact of their registration with a monitoring body to demonstrate their commitments to human rights and (in many cases) to protect indigenous nations' cultures and society. Registration does not mean "implementation." Many companies can skirt transparency by simply announcing their "compliance with the registering organization rules or regulations, but a company may fail to implement in a way consistent with the goals set out. Companies' websites often site their registration and "compliance" but ignore the actual consequences of their actions on the lands, people, and environment.

Publicly disclosing failures by the company, board of directors, and investors to comply with commitments made to inter-state and non-governmental organizations focusing on transparency and compliance with human rights and environmental policies may, in many instances, force compliance or withdrawal from the registered organization. Thus, reporting failures to comply with those organizations and agencies can be used to force rejection of the company.

Public Exposure of Corporate, Political, and Investor Leaders

Acts by companies recognized as crimes against people, the environment, and lands can be documented and then publicly disclosed while identifying the board of directors, investors, and organizations that benefit from the extractive industry. Publicly revealing individual culpability is a form of public exposure that, if undertaken thoroughly and without "defamation," may force policy changes by the corporation.

This process requires an extensive and well-organized network of organizations committed to conducting a common approach over a long period. The network organized to promote public exposure must be supported by research capability, public information distribution capabilities, and financial resources not tied to the corporate system.

Vertical Policy Organizing

Engaging in lobbying and political pressure through public awareness (including public protest) with nations, states, regional inter-state organizations, and non-governmental organizations and with international state organizations can prove to have a significant and long-term benefit to deter, prevent or stop extractive industry harmful actions. Many non-governmental organizations have employed some forms of this approach on issues such as human rights, environmental protection, indigenous rights, and social advocacy.

This process requires an organized network of individuals and organizations familiar with and able to sustain engagement with local, regional and international state bodies. The difficulty faced by organizers approaching vertical engagement is that the state-based political and legal system is expensive to influence and heavily dependent on voluntary commitments by states, corporations, and international bodies. Indigenous nations

have limited capacity to engage in the state-based international system. This circumstance places a burden for influencing international change in organizations and individuals outside indigenous nations. However, where nations have established capabilities, they may be allied with non-governmental organizations. Where nations form alliances with other nations, the capabilities may be further magnified.

The Voice and Authority of Nations

Nations may act as the most effective deterrent to the human, land, and environmental violence committed by extractive industries if they have sufficient support and capabilities to engage in actions such as those mentioned above. Furthermore, internal community political stability must be maintained to prevent external manipulation to the advantage of state, corporation, and organizational players. Countering violence with violence has proved least effective, though "blocking" access to nations' territories can be effective for a time. When a state and a corporation collaborate in the extractive enterprise (states often receive about 20% of the profits and often extensive political bribing through "lobbying" and political fundraising), the nation is rarely included. The state and corporate collaboration ensures that benefits of resource extraction taken from indigenous territories flow to the state, corporation, and other corporate beneficiaries. When such conditions exist, and they exist in at least 45 of the 63 countries of the world's 194 states where extractive activities occur, the options suggested earlier may be the only approaches that can change the balance of power..

It is noteworthy that there are currently 98 state democracies among the world's 206 states – the lowest number in many years. There are 20 hybrid governments (autocratic using a semblance of democratic processes), including Russia, Morocco, Iran, Nicaragua, Turkey, and 47 authoritarian regimes including China, Saudi Arabia, Ethiopia, the Democratic Republic of Congo, and Syria. The movement toward authoritarianism contributes to expanding Extractive Industries into nations' territories—to enrich the authoritarian elite. With 10 of the 29 "less developed" states falling to corruption (See Table 1), it is clear that indigenous nations cannot depend on state officials in these countries to engage in constructive relations.

Suppose there is a state that has stable policies and laws where an extractive industry headquarters is registered. In that case, it may be possible to promote and aid a nation(s) effort to engage in implementing the principle of "free, prior and informed consent" (FPIC) provided that fair monitoring and negotiating mechanisms can be established. This arrangement would allow it to formalize agreements between nations, corporations, and the state. Circumstances must exist to render this approach as necessary. However, it is perhaps the most efficacious option that ensures a lawful environment within which a nation can exist while ensuring its sustainability as a society, culture, and sovereignty.

A critical matter concerning the potential for strengthening nations' response to the growing trend toward exploitive extraction of raw

materials from indigenous nations' territories is the capacity of nations to engage corporations, states, and other entities as equal partners. A fair and regulated outcome for resource extraction may be possible to ensure the sustainability of the environment and a stable and secure nation. Similarly, the limited capacity of corporations and states to engage nations hinders the possibility of nations serving as regulators of the extractive industry. States and Corporations require new capabilities to engage indigenous nations. Technical advice and support must be offered to states, companies, and nations as well. An independent monitoring mechanism between the states, corporations, and the nations given the power to sanction parties may be necessary to ensure fairness and sustained regulation of relations.

While there is considerable evidence that extractive company practices engaging indigenous nations have proved less than beneficial to the nations, the environment, and economies, there is some evidence that it is possible to establish a potentially workable set of arrangements for the constructive and non-harmful conduct of resource exploitation. Through agreements between indigenous nations and extractive companies, Regulating extractive companies is reported in Papua New Guinea, Ghana, Laos, Greenland, Australia, and Canada. These agreements are operationalized by concluding "community development agreements" (CDA) or "benefit agreements" (BA).[17] Though the agreements concluded in these countries have flaws and limitations, the negotiated engagements may prove instructive since they were guided in part by the implementation of the principle of free, prior and informed consent. This principle is frequently referenced by states' governments and resource extraction companies as their guidance for carrying out corporate social responsibility.[2][18]

The First Nations' LND Alliance agreement with the TransCanada Energy "GasLink Pipeline is one example of a negotiated agreement between a state, corporations, and indigenous nations that may be instructive. Twenty separate First Nations signed "Beneficial Agreements" with Canada, British Columbia, and a corporate consortium to construct a gas pipeline crossing indigenous territories. While demonstratable in its limitations, the development and negotiation of Benefit Agreements (See Appendix 2 for terms of reference and Reference Support) may provide some instruction for a course of action to enhance the voice of indigenous nations.

The Case of the First Nations LNG Alliance and Hereditary Chiefs – Canada

Twenty different First Nations in Canada's British Columbia signed agreements with TransCanada Energy to construct a 670-kilometer (416.32 miles) pipeline from the gas-producing region of the province to the interior. The pipeline is being constructed

[17] Loutit, Mandlebaum and Szoke-Burke, (2016). "Emerging Practices in Community Development Agreements." J. OF SUST. DEV. LAW & POLICY VOL. 7: 1: 2016. Afe Babalola University. doi: http://dx.doi.org/10.4314/jsdlp.v6i2.4

[18] IBID., 68.

through the indigenous nations' territories with the encouragement of the Canadian federal government, the British Columbia provincial government, and TransCanada Energy. The pipeline is described as "the largest private-sector and natural resource investment in Canadian history."[19] The GasLink pipeline's construction began in 2018 with agreements between the Canadian government, British Columbia government, the twenty indigenous governments, and the TransCanada-led consortium of some of the largest multinational corporations in the world.[20] The pipeline's construction was immediately contested and remains publicly opposed (and obstructed in some instances) by the Unist'ot'en protest encampment led by Wet'suwet'en nation hereditary chiefs.

While elected First Nation chiefs politically recognized by Canada and British Columbia agreed to the pipeline, the hereditary chiefs opposed the pipeline based on their authoritative and customary jurisdiction over traditional territories through which the pipeline is being constructed. The hereditary chiefs assert that Canada lacks jurisdiction to authorize the pipeline. They should block what is now called the Coastal GasLink and prevent workers from building it. Complicating matters, the British Columbia Royal Canadian Mounted Police (RCMP) entered the controversy to enforce an order of a Canadian court decision that supported the Coastal GasLink's construction across the traditional territories. Chiefs regarded this act as violating the hereditary chiefs' traditional governance structures and supporting the elected First Nations' decisions.

All of this is happening despite the negotiated February 2020 Memorandum of Agreement. The Canadian and British Columbian governments agreed to recognize the hereditary chiefs' authoritative jurisdiction over traditional Wet'suwet'en territory. Several Wet'suwet'en elected leaders who opposed the Memorandum of Agreement negotiated by the hereditary chiefs later received the support of the Canadian and British Columbia governments and the TransCanada corporation, and the pipeline was fully authorized for construction by the First Nations' governments. Acting to their economic and political advantage, the governments supporting the pipeline took action to sign separate "benefit agreements" giving the authority to build the pipeline.

Extractive Industries offer themselves in public statements as ready to engage indigenous nations as partners in using or removing earth's resources in nations' territories such as the conduct of petroleum, mineral, pipeline, forest cutting, and rare earth project plans. The Transnational companies established under states' government laws claim that they are using land and raw materials in partnership with nations' governing officials. Furthermore, they claim that they seek to "understand their interest, identify opportunities, respond to their concerns and facilitate participation" in support

[19] Greaves. W., and Lackenbauer, W. (2019). "First Nations, LNG Canada, and the Politics of Anti-Pipeline Protests." Canadian Global Affairs Institute – Institute Canadien des Affaires Mondiales. Cagary, Alberta. www.cgai.ca ISBN: 978-1-177397-078-3 p. 1

[20] IBID., Shell Oil, Petronas, PetroChina, Mitsubishi and the Korean Gas Corporation.

of mining, petroleum drilling, forest clearing, and other extractive businesses. If companies engage nations' governments, they do so with the support of a state government and under the veil of international legitimacy by proclaiming their business intentions in compliance with international human rights laws. The basic rule is that engagement must implement international principles requiring that businesses and states obtain the free, prior, and informed consent of nations BEFORE taking actions that affect the nation's interests. One test of the validity and authenticity of corporate and state compliance with the spirit and concrete reality of obtaining the "consent" of nations is whether nations negotiate with full disclosure of information and give their consent in a manner consistent with the normal decision-making processes of the nation. Where an indigenous nation's decision-making processes are fully carried out, the theory is that a decision that supports or rejects consent will be fairly determined one way or another. However, suppose differences within the nation's polity and a nation's negotiating team's standing are in question. In that case, the opportunity exists for the business, the state, and other external interests to insert influence to produce a decision favorable to those outside players.

In the case of the twenty First Nations in Canada's British Columbia, the negotiation of "Benefit Agreements" included positive and negative outcomes. The process and outcomes require thoughtful consideration if applied to indigenous nations' engagement in negotiated relations with extractive corporations, states, and other organizations in accord with state-based international treaties and agreements such as the principle of free, prior, and informed consent.

TransCanada Energy (TC Energy) was established in 1951 in Calgary, Alberta, Canada, and currently operates 92,600 km of natural gas pipelines across North America, supplying 25% of the fuel for homes, industries, and generation of electrical power. As the leader of a consortium of the Coastal Gaselink pipeline six of the world's largest construction companies,[21] TC Energy has planned a liquid gas pipeline across British Columbia where the route of the pipeline crosses the territories of 20 First Nations (See Figure 3).

The First Nations LNG (Liquified Natural Gas) Alliance[22] [4] nations negotiated and signed "Benefit Agreements" with TransCanada Energy that are the focus of this narrative. The nations are functioning as members of the alliance state that they were concerned with focusing on sixteen critical issues before engaging in negotiations and signing "Benefit Agreements" with TransCanada Energy. The Critical Issues considered were:

[21] IBID.

[22] First Nations: Wet'suwet'en Nation, Gitxaala Nation, Haisla First Nation, Stellat'en Nation, Nadleh Whut'en Nation, Saulteau Nation, Witset (Moricetown Band), Moberly Nation, Skin Tyee Nation, Halfway River Nation, and Saik'uz First Nation – all having signed "Benefit Agreements" to implement the Coastal GasLink Pipeline Project with TC (TransCanada) Energy between June 25, 2018, and July 26, 2018. The Benefit Agreements with these nations resulted in conditionally awarding $620 million (CAN) [$484.106 million USD) "for the project's right-of-way clearing, medical, security and camp management needs." Source: First Nations Alliance page: https://www.fnlngalliance.com/2018/07/28/coastal-gaslink-signing-ceremonies/) The First Nations Alliance website states that the project will provide another $400 million in additional contracts and "employment opportunities for indigenous and local communities during pipeline construction."

Benefit Agreement Critical Issues:[23]

1. Weighing Risks & Benefits	2. Defining Roles and Responsibilities	3. Content flexibility meeting new circumstances
4. Governance Principles and arrangements	5. Linkage with Environmental and Social Impact Assessments	6. Implementation, Impact and Effectiveness
7. Internal Conflicts	8. Standing and Representation of Nation	9. Monitoring & Evaluation
10. Revenue Strems and Models	11. Gender Equity	12. Data, Information and Knowledge
13. Local Procurement & Local Content Policies	14. Community Resilience and Well-being	15. Legal Context and Rights
16. Capacity Development		

Impact and Benefit Agreements (IBA) are considered one way to address many of the social, environmental, and cultural impacts of mining projects and to ensure that local communities benefit from these projects. However, the contribution of commercial mining operations to community development depends on the type of agreement that is negotiated, how it is drafted, whether it is entered into free of coercion, whether it is conceived with a long-term vision and how it is linked to development policy. This, in turn, depends on t¬he legal protection, government support, financial resources, and access to expertise and information that Aboriginal communities are afforded and an effective governing and decision process inside a nation to ensure respect for cultural and political views. The experience of First Nations in Canada in the negotiation of IBAs is instructive. Recommendations the twenty First Nation communities in the Alliance and legal advisors assert that IBAs should include:

1.- Form a good negotiation team, with people who can represent the interests of all the sectors of the population involved, as well as experts in environmental, legal and mining issues. Try to separate the team from the internal politics of the community (particularly if there is a high turnover of leaders or chiefs).

2.- Secure funding. Forming a team, developing a plan, and negotiating and implementing an IBA can be very expensive. IBAs should include generous provisions for covering the costs of implementation committees, reporting and consultation. Ideally, the company should cover some or all of these costs.

3.- Develop a good plan. Make sure that your community understands the impacts of mining and what is at risk by holding

[23] First Nations Alliance: https://benefits.fnlngalliance.com/critical-issues/

discussions at the community level and where possible, request that the company/ government give you enough time to consult with your community. With the help of experts, develop a negotiating position that can serve as a reference. Be clear as to which elements are non-negotiable.

4.- Establish cooperation principles between the parties (mining companies, government, other communities). This can be done by signing a memorandum of understanding.

5.- Keep a long-term perspective in mind. Do not settle for a few jobs and recreational programs at the expense of neglecting environmental protection and community development. Invest in training, skills development and economic diversification.

6.- Make agreements as specific as possible, so that they can be enforced. Avoid vague language. Clearly specify responsibilities and targets and time frames for meeting them, formulas for calculating aboriginal employment and participation in economic development, environmental standards, and contingency measures and the indicators that trigger them.

7.- Establish conflict resolution mechanisms that can be resorted to before taking more radical and costly measures like going to court or trying to close down the mine's operations.

8.- Maintain communication with the company. IBAs are just one component of a relationship between the company and the community that has to be continuously nurtured.

9.- Do not agree to clauses that compromise the community's sovereignty or its right to object to a particularly damaging practice. Avoid stating that the purpose of the agreement is to support the project. The benefits that a community receives are a share of the wealth that a company takes from the community's territory and is compensation for the environmental and social impacts that mining will have. Communities do not need to compromise their power in exchange for such compensation.[24]

Wet'suwet'en Hereditary Chiefs Oppose GasLink

The Wet'suwet'en hereditary Chiefs assert that they are the rightful holders of title to unceded territories, and in 1997 the Supreme Court of Canada agreed with the Chiefs when it decided Delgamuukw v. British Columbia that the community's Aboriginal title had not been extinguished. Hereditary chiefs' jurisdiction over traditional territory is the central issue behind opposition by Wet'suwet'en and neighboring hereditary Chiefs to the TransCanada Energy Pipeline called the Coastal GasLink pipeline being constructed on and across their traditional unceded territory. While the hereditary chiefs

[24] Sosa, I and Keenan, K. (2001) "IMPACT BENEFIT AGREEMENTS BETWEEN ABORIGINAL COMMUNITIES AND MINING COMPANIES: THEIR USE IN CANADA." http://metisportals.ca/MetisRights/wp/wp-admin/images/Impact%20Benefit%20Agreements%20-%20Mining.pdf pp. 21-22.

engaged TransCanada, the Canadian government, and the British Columbia government to negotiate an initial "memorandum of agreement" that recognized the hereditary chiefs' jurisdiction over the land.[25]

When three things are true, Indigenous nations' territories become vulnerable to resource exploitation by outside actors: 1. When a state imposes its declared sovereignty over indigenous territories and then partners with extractive companies to establish operations in resource-rich territories, and or 2. When indigenous nations are politically and culturally divided, they become susceptible to economic and political manipulation, creating the potential for outside actors corruptly creating apparent consent to the resource exploitation. And 3. When indigenous nations and their neighboring nations cannot participate in agreement negotiations due to the enforced confidentiality of agreement contents or intentional separation of various nations' interests by state and company actors, division in the Wet'suwet'en proves how both conditions gave TransCanada Energy and its partners the opening to gain access to Wet'suwet'en traditional territory. They did so under the veil of nation consent achieved through a (state, company, nation) "Benefit Agreement" that allows for nation benefits as well as disadvantages.

The Wet'suwet'en engagement with Canada, British Columbia, and the TransCanada Coastal GasLink corporate partners experienced all three conditions during and after negotiating an agreement for the gas pipeline construction Wet'suwet'en territory. Canada and the British Columbia Province government engaged the Wet'suwet'en nation based on a Canadian Supreme Court decision that affirmed the nation "retained title to the territory they had traditionally occupied."[26] Canada's colonial Indian Act law also formed the basis for its approach to dealing with "recognized political leadership" in the Wet'suwet'en government instead of or in addition to the culturally determined hereditary governance by chiefs. In other words, Canada and its provincial government engaged Wet'suwet'en from a political and legal perspective determined by their institutions while ignoring the hereditary governing authorities.

The First Nations LNG Alliance[27] recognizes that certain conditions for "benefit agreements[28] must be met to avoid rendering First Nations vulnerable to external actor political manipulation and economic corruption. These included:

1. Culturally-grounded Agreements
2. External Mediation and Litigation
3. Inter-nation protocols
4. Nation-to-nation Agreements.

In the case of Wet'suwet'en, it appears that none of these institutional arrangements were implemented to resolve the pre-benefit agreement

[25] Cecco, Leyland. (2020). "Canada: Wet'suwet'en sign historic deal to negotiate land rights." The Guardian.

[26] Delgamuukw v British Columbia, [1997] 3 SCR 1010.

[27] As noted in footnote 22, the members of the alliance include: Wet'suwet'en Nation, Gitxaala Nation, Haisla First Nation, Stellat'en Nation, Nadleh Whut'en Nation, Saulteau Nation, Witset (Moricetown Band), Moberly Nation, Skin Tyee Nation, Halfway River Nation, and Saik'uz First Nation

[28] First Nations LNG Alliance. (circ. 2021) "Benefit Agreements: AWayfinding Guide. Internal Conflicts" communications@fnlngalliance.com

conflict between the hereditary chiefs who opposed the gas pipeline crossing their traditional territory and elected Chief and Council of the First Nation recognized by Canada who supported the gas pipeline.[29]

Coastal GasLink Pipeline President David Pfeiffer engaged hereditary chiefs in January 2020 to negotiate an "MOU." Pfeiffer issued a press release stating, "Today, Coastal GasLink is reiterating our request to meet and engage with Wet'suwet'en Hereditary Chiefs. Our first priority (Sic) is to find a peaceful resolution to the issues at hand and to avoid enforcement of the injunction granted by the courts."[30] The MOU offered Canada's decision to recognize Wet'suwet'en "rights and title throughout Yintah," good faith negotiations by British Columbia and "negotiations to be intensively mediated by an agreed mediator."[31] The British Columbia court injunction against hereditary chiefs' blockade intended to stop the Coast GasLink pipeline from being constructed on traditional Wet'suwet'en traditional lands. The blockade prompted discussions of the MOU concluded in May 2020. It pointed to setting out protocols for a 12-month timeline for establishing a negotiated "benefit agreement." The $40 billion (CAN) joint venture between some of the largest transnational corporations in the world led by TransCanada Energy was consummated in October 2018. Shortly thereafter, several hereditary chiefs expressed their opposition, and this decision prompted public demonstrations.[32] Months of controversy drew environmental groups' opposition to the pipeline arguing that Canada and British Columbia had failed to achieve greenhouse gas emissions targets. In addition, neighboring province Alberta was surprised that Canada would endorse the Coastal GasLink Pipeline since a similar pipeline in that province had been rejected.

The MOU with the hereditary chiefs was roundly applauded by governments and activists but elected Wet'suwet'en political leaders and some hereditary chiefs opposed.[33] Elected first nations leaders proceeded to negotiate and sign "Benefit Agreements" with the Coastal GasLink Pipeline with Canada and British Columbia in derogation of "legislated and traditional governance structures among First Nations"[34] in British Columbia and throughout Canada. This occurred despite the hereditary chiefs' opposition

[29] Fletcher. T. (2020). "Wet'suwet'en land title dispute an 'internal issue' BC Minister Says." Comox Valley Record.

[30] https://www.coastalgaslink.com/whats-new/news-stories/2020/statement-from-coastal-gaslink-president-david-pfeiffer/

[31] "Memorandum of Understanding between Canada, British Columbia and Wet'suwet'en as Agreed on February 19, 2020." To be signed on 14th day of May 2020 on behalf of the We'suwet'en nation by Hereditary Chiefs Woos (Frank Alec), Madeek (Jef Brown), Knedebeas (Warner William), Kloum Khun (Alphonse Gagnon), Hagwilneghl (Ron Mitchell), Gisday'wa (Fred Tom), Na'Moks (John Ridsdale), Goohlaht Lay'oh (James Namax), Smogelgem (Warner Naziel) and signed on behalf of here Magesty the Queen in right of Canada by the Minister of Crown-Indigenous Relations Hon. Carolyn Bennett, and signed on behalf of her Majesty the Queen in right of the Province of British Columbia by Minister of Indigenous Relations and Reconciliation Hon. Scott Fraser. https://rcaanc-cirnac.gc.ca/eng/1589478905863/1589478945624#shr-pg0

[32] Greaves, W. and Lackenbauer. (2019) "First Nations, LNG Canada, and the Politics of Anti-Pipeline Protests. https://www.cgai.ca/first_nations_lng_canada_and_the_politics_of_anti_pipeline_protests

[33] Bennet, N. (2020) "Female Hereditary Chiefs Challenge Wet'suwet'en MOU." https://www.alaskahighwaynews.ca/local-business/female-hereditary-chiefs-challenge-wetsuweten-mou-3741963 Alaska Highway News.

[34] Greaves. W., and Lackenbauer, W. (2019). "First Nations, LNG Canada, and the Politics of Anti-Pipeline Protests." Canadian Global Affairs Institute – Institute Canadien des Affaires Mondiales. Cagary, Alberta. www.cgai.ca ISBN: 978-1-177397-078-3 p. 2

and in agreement with several female hereditary chiefs. Arrests of hereditary chiefs and opponents to the Coast GasLink Pipeline continued after the MOU did not proceed because of the Canadian government and British Columbia government and the GasLink Pipeline deciding that the hereditary chiefs were not going to accept their construction goals and timelines. Negotiations switched to the Canadian and corporations negotiating with the elected First Nations leaders with the promise of hundreds of millions of dollars and jobs paid to the twenty-first nation signators of Benefit Agreements.

The Coastal GasLink Pipeline construction project proceeded with systematic efforts of protesters attempting to block workers. The obstruction is significant since the completed pipeline promises billions of dollars for the Canadian and British Columbia economies that political consequences could jeopardize. Moreover, the First Nations anticipate a potential 22.5% ownership in the pipeline.[35] The pipeline is in full construction. Opposition to the pipeline continues to the present day, not only breaking internal cultural relations of the various nations but also jeopardizing Canadian government efforts to formalize reconciliation with first nations.

APPENDIX 1

States registered or candidates for registration under the UN Global Compact pledged to implement international human rights. The table below illustrates the resources extracted by companies and the nations affected by the resource exploitation by extracted resource and whether the corporation(s) have successfully registered and become certified by the UN Global Compact (X) or the company is a candidate (C) for successful registration...

Country	Mineral	Petroleum	Land Forest	Plant/ Animal	Registered	Indigenous Nations
1. Congo, Dem. Rep. COD Minerals & Oil 180 LIC* 94 30 0.29 80 2 Candidate	**X**	**X**	**X**		**C**	X More than 2 million 250 nations including Mbuti, Baka, and Batwa peoples – 700 languages
2. Liberia LBR Gold/ Diamond/Iron Ore 210 LIC* ... 16 0.33 95 6 Compliant	**X**		**X**		**X**	X More than 4.9 million 17 nations and scores of subnations including the Kpelle, Bassa, Grebo, Gio, Kru, Lorma and more.

[35] IBID., p. 5

Country	Mineral	Petroleum	Land Forest	Plant/ Animal	Registered	Indigenous Nations
3. Niger NER Uranium 360 LIC* … … 0.30 76 21 Compliant	X		X		X	X Tebu
4. Guinea GIN Mining Products 390 LIC* 93 23 0.34 70 10 Candidate	X				C	X More than 12 million 7 nations in four geographical regions including Peuhl, Malinké and Kissi among others
5. Mali MLI Gold 600 LIC* 75 13 0.36 77 19 Compliant	X				X	X More than 20 million 5 nations including Bambara, Sonike, Khassonke and Malinke
6. Chad TCD Oil 710 LIC* 89 67 0.33 83 1 Candidate	X				C	X More than 10 million 21 and more nations including Ngambaye, Tebu, Dasa, Kanembu, Wada
7. Mauritania MRT Iron Ore 1,000 LMIC* 24 22 0.45 44 27 Compliant	X	X			X	X More than 4 million 5 nations including Peulh, Soninké, and HaratineWolof,
8. Lao PDR LAO Copper and Gold 1,010 LMIC 57 19 0.52 66 14 Other	X			X		X More than 5 million 6 nations and more including Khmou, Hmong, Phouthay, Tai, Makong, Katang, Akha
9. Zambia ZMB Copper 1,070 LMIC* 72 4 0.43 82 22 Candidate	X		X		C	X An estimated 8 million 5 and more nations including the Bemba, Tonga, Chewa, Lozi and Nsenga

Country	Mineral	Petroleum	Land Forest	Plant/ Animal	Registered	Indigenous Nations
10. Vietnam VNM Oil 1,160 LMIC* 14 22 0.59 38 48 Other		**X**	**X**			X More than 14.1 million 54 nations including Tay, Muong, Khmer Krom, Hmong, Nung
11. Yemen YEM Oil 1,160 LMIC* 82 68 0.46 47 9 Compliant		**X**			**C**	X 11.4 million 3 nations including Zaydis, Muhamasheen, Ismáilis
12. Nigeria NGA Oil 1,170 LMIC* 97 76 0.46 84 15 Compliant		**X**	**X**	**X**		X 184 million 250 nations including Hausa, Yoruba, Ibo, Kanuri, Ibibio-Efik, Tiv, and Edo and others
13. Cameroon CMR Oil 1,200 LMIC* 47 27 0.48 30 8 Candidate	**X**	**X**		**X**	**C**	X 24.4 million people 7 nations including Bantu, Fulani, Peuhl, Igbo and forest peoples.
14. Papua New Guinea PNG Oil/copper/gold 1,300 LMIC* 77 21 0.47 57 4 Other	**X**	**X**	**X**	**X**		X 9.1 million people 250 nations and 830 languages
15. Sudan SDN Oil 1,300 LMIC* 97 55 0.41 … 36 Other	**X**	**X**				X More than 13.4 million 500 nations including Fur, Beja Nuba and Fallata
16. Uzbekistan UZB Gold/gas 1,300 LMIC* … … 0.64 77 87 Other						X More than 3.3 million 4 nations including Kazakhs, Karakalpaks,Kyrgyz, Tatars, Turkmen
17. Côte d´Ivoire CIV Oil/gas 1,650 LMIC* … … 0.40 46 8 Candidate	**X**	**X**	**X**	**X**	**C**	More than 16.4 million 5 nations including Gur, Mandé, Kru, Yacouba, Gagu

Country	Mineral	Petroleum	Land Forest	Plant/ Animal	Registered	Indigenous Nations
18. Bolivia BOL Gas 1,810 LMIC* 74 32 0.66 25 7 Other	**X**	**X**				X More than 4.8 million 5 nations including Aymara, Quechua, Chiquita, Guarani, and Moxeño
19. Mongolia MNG Copper 1,870 LMIC* 81 29 0.65 49 4 Compliant	**X**		**X**		**X**	X About 200 thousand 4 nations including Durvud, Bayad, Buriad and Dariganga
20. Congo, Rep. of COG Oil 2,240 LMIC* 90 82 0.49 74 7 Candidate		**X**	**X**	**X**	**C**	X More than 5.5 million 11 nations including Bakongo, Batéke, M'Boshi, Sangha, BaAka, Mbendjele, Mikaya, Gyeli, Luma, Twa and Babongo
21. Iraq IRQ Oil 2,380 LMIC 99 84 0.57 25 90 Candidate	**X**	**X**				X An estimated 37.5 million and 150 nations including Kurds, al-Dulaim, Yezidi, Shabak, Mandaeans,Al-Bu, Al-Bu Badri, Al-Dhafeer, Dhanyal Dulaim, Al-Mazeedi, Al-Bejat, Kaka'I and more
22. Indonesia IDN Oil 2,500 LMIC 10 23 0.62 51 59 Candidate	**X**	**X**	**X**	**X**		X 169.6 million 263 nations including Batak, Madurese, Papua, Betawi, Minangkabau, Buginese, Bantenese, Banjarese, Balinese Acehnese, Dayak, Sasak and more
23. Timor Leste TLS Oil 2,730 LMIC* 99 … 0.50 73 … Compliant		**X**			**C**	X More than 1.3 million 12 nations including Bunak, Fataluku, Makasae Tetum Prasa, Mambai, Makasae, Tetum Terik, Baikenu, Kemak, Bunak, tokodede, Bataluku, Walma'a, Galoli, Maueti, Idate, Midiki and more

Country	Mineral	Petroleum	Land Forest	Plant/ Animal	Registered	Indigenous Nations
24. Syrian Arab Republic SYR Oil 2,750 LMIC 36 25 0.63 17 91 Other		**X**				X More than 3 million more than 150 nations including bedouin, Shammar, Aneza ashira, Kurds, Assyrians
25 Guyana GUY Gold & Bauxite 2,900 LMIC* 42 27 0.63 17 7 Other	**X**	**X**	**X**	**X**		X About 395.2 thousand 9 nations including Arawak, Wai Wai, Caribs, Akawaio, Arecuna, Patamona, Wapixana, Macushi and Warao
26. Turkmenistan TKM Oil 3,790 LMIC 91 54 0.69 50 81 Other		**X**				
27. Angola AGO Oil 3,960 LMIC 95 78 0.49 70 10 Other (VH:2.038)	**X**	**X**				X Scores of nations including Ovimbundu, Mbundu, Bakongo, Lunda-Chokwe, Nyaneka-Nkumbi, Ambo, Herero, San, Kwisi
28. Gabon GAB Oil 7,680 UMIC 83 60 0.67 20 10 Candidate (VH:2.036)	**X**	**X**		**X**	**C**	X 4 nations including Baka, Kota Fang and Bongo
29. Equatorial Guinea GNQ Oil 13,720 HIC 99 91 0.54 ...(VH:1.85)	**X**	**X**				X 1.5 million 1 nation including Fang

Shaded Country = Most Corrupt Government List
C = Candidate for registration and listing as compliant for human rights
Blank cell under Registered means not registered

APPENDIX 2

First Nations LNG Alliance and TransCanada Pipeline: British Columbia, Canada (narrative and references extracted from the First Nations LNG Alliance website)

Key Terms

Benefit Agreements

In this guide, the term Benefit Agreement (BA) is used as an umbrella term for agreements that vary in scope, scale, sector and types of parties to the agreement.

Depending on the emphasis, there are over 25 terms that are used to refer to the concept of benefit agreements (See Box 1). Within the literature the concept of benefit agreements (BAs) is varied and tends to be defined as a governance arrangement or as a mechanism for being a 'good' corporate citizen and securing a social licence to operate (Sarkar et al., 2010). Woodward & Co. and the Nanwakolas Council (2009) propose a definition that is more centred on the perspective of Indigenous Peoples:

Benefit agreements describe a written agreement that is the outcome of a consultation process about a proposed resource extraction, project or development that has the potential to impact the Aboriginal rights or interests of one or more Aboriginal groups in Canada.

Box 1: Benefit Agreements Lexicon

• Accommodation Agreements • Benefits Sharing Agreements • Community Contracts • Community Development Agreements • Community Development Initiatives • Community Joint Venture Agreements • Cooperation Agreements • Development Agreements • Empowerment Agreements • Exploration Agreements • Impact Benefit Agreements • Indigenous Land Use Agreements	• Interim Measures Agreements • Investment Agreements • Landowner Agreements • Market Access Agreements • Participation or Partnership Agreements • Project Support agreements • Shared Responsibilities Agreement • Social Responsibility Agreements • Social Trust Funds • Socio-economic Monitoring Agreements • Standard-setting or Certification Agreements

Indigenous

The term Indigenous is a broad term that captures First Nations, Métis and Inuit communities. It is often used now to replace Aboriginal, which is also a broad term that has been historically used to denote First Nations, Métis and Inuit, and is legally defined in section 35(2) of the Constitution Act, 1982 as follows: "In this Act, the 'Aboriginal peoples of Canada' includes the Indian, Inuit and Metis peoples of Canada". The term "Indian" is a statutory term legally defined in the federal Indian Act.

For the purpose of this guide, the term Indigenous is used interchangeably with the

term First Nation(s) and does not refer to Inuit or Métis. If the terms Aboriginal or Indian are used, they apply to specific policies, legislation or organizations, direct quotes from a study or publication, or the term used in a given country context.

Government/State

Reflecting language- in-use by Indigenous Peoples, the guide uses the words government and the state interchangeably. In other communities of practice and disciplines, the term "state" is understood as an organisation or political community with a defined territorial jurisdiction, with specific administrative, legislative and legal bureaucracies through which the state's power is exercised, where as the "government" is composed of individuals who control the state apparatus and employ the power of the state at a given time.

REFERENCES

[1] Adebayo, E., & Werker, E. (2021). How Much are Benefit-sharing Agreements Worth to Communities Affected by Mining? Resources Policy. 71.

[2] Agbaitoro, G. (2018). Legal Strategy for Resolving the Socio-economic and Environmental Symptoms of the Resource curse in Nigeria: The Role of Impact and Benefit Agreements (IBAs). Commonwealth Law Bulletin, 44(3), 381–399.

[3] Aman, A.K. (2020). Community Benefit Agreements: Systematic Literature Review [1990-2020]. University of British Columbia. Accessed at: https://cirdi.ca/wp-content/uploads/2020/10/CBA-Lit-Review-Preliminary-Findings-Report.pdf.

[4] Andrews, T., Elizalde, B., LeBillon, P., Oh, C.H., Reyes, D., & Thomson, I. (2018). The Rise in Conflict Associated with Mining Operations: What Lies Beneath?University of British Columbia. Accessed at: https://cirdi.ca/wp-content/uploads/2017/06/Conflict-Full-Layout-060817.pdf.

[5] Baikie, G., & Dean, L. 2015. Claiming our place: Local women matter in natural resource development. Ottawa: Canadian Research Institute for the Advancement of Women. Accessed February 2018. Accessed at: http://fnn.criaw-icref.ca/images/userfiles/files/ClaimingOurPlace.pdf.

[6] Baird, K. (2021). Peer-review feedback provided via email to research team on behalf of the FNLNGA.

[7] Barrera-Hernández, L., Barton, B., Godden, L., Lucas, A., & Rønne, A. (Eds.). (2016). Sharing the Costs and Benefits of Energy and Resource Activity: Legal Change and Impact on Communities. Oxford University Press.

[8] Bastick, M. (2015). Gender and Complaints Mechanisms: A Handbook for Armed forces and Ombuds Institutions to Prevent and Respond to Gender-related Discrimination, Harassment, Bullying and Abuse. Geneva: DCAF.

[9] Berman, M., Loeffler, R., and Schmidt, J.I. (2020). Long-term Benefits to Indigenous Communities of Extractive Industry Partnerships: Evaluating the Red Dog Mine. Resources Policy, 66, 101609.

[10] Bernauer, W. (2011). Mining and the Social Economy in Baker Lake, Nunavut. University of Saskatchewan, Saskatoon: Prepared for the Northern Ontario, Manitoba, and Saskatchewan Regional Node of the Social Economy Suite.

[11] Blunt, P. (2014). Whose resources are they anyway? 'Development Assistance' and Community Fevelopment Agreements in the Mongolian Mining Sector. Progress in Development Studies, 14(4), 383–399.

[12] Blunt, P., & Sainkhuu, G. (2015). Serendipity and Stealth, Resistance and Retribution: Policy Development in the Mongolian Mining Sector. Progress in Development Studies, 15(4), 371–385.

[13] Boakye, B., Cascadden, M., Kuschminder, J., Szoke-Burke, S., & Werker, E. (2018). Implementing the Ahafo Benefit Agreements: Seeking Meaningful Community Participation at Newmont's Ahafo Gold Mine in Ghana. Canadian International Resources and Development Institute (CIRDI). Accessed at: http://ccsi.columbia.edu/2018/07/25/implementing-the-ahafo-benefit-agreements-seeking-meaningful-community-participation-at-newmonts-ahafo-gold-mine-in-ghana.

[14] Bone, R.M. (2009). The Canadian North: Issues and Challenges. Oxford, UK: Oxford University Press.

[15] Bradshaw, B., Fidler, C., & Wright, A. (2016). Impact and Benefit Agreements & Northern Resource Governance: What We know and What We Still Need to Figure Out. Resources and Sustainable Development in the Arctic. http://yukonresearch.yukoncollege.yk.ca/resda/wp-content/uploads/sites/2/2013/09/9-Bradshaw-Fidler-and-Wright-final-paper2016.pdf.

[16] Brereton, D., Owen, J., & Kim, J. (2011). Good Practice Note: Community Development Agreements. The Centre for Social Responsibility in Mining (CSRM). https://www. csrm.uq.edu.au/Portals/0/docs/CSRM-CDA-report.pdf.

[17] BC Government (Government of British Columbia). (2021). Indigenous Peoples and LNG. Accessed: https://www2.gov.bc.ca/gov/content/industry/natural-gas-oil/lng/indigenous-peoples-and-lng.

[18] BC Government – Ministry of Finance. (2021). Indigenous Procurement and Contract Management Guidelines. Accessed at: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/policiesprocedures/core-policy-manual/policies/indigenous-procurement-contract-guidelines.pdf.

[19] Bruckner, K. D. (2016). Community Development Agreements in Mining Projects. Denver Journal of International Law and Policy, 44(3), 413.

[20] Caine, K. J., & Krogman, N. (2010). Powerful or Just Plain Power-Full? A Power Analysis of Impact and Benefit Agreements in Canada's North. Organization & Environment, 23(1), 76–98.

[21] Campbell, D., & Hunt, J. E. (2013). Achieving Broader Benefits from Indigenous Land Use Agreements: Community Development in Central Australia. Community Development Journal, 48(2), 197–214.

[22] Cascadden, M., Gunton, T., and Rutherford, M. (2021). Best Practices for Impact Beneft Agreements. Resources Policy, 70, 101921.

[23] Conteh, F. M., & Maconachie, R. (2019). Spaces for Contestation: The Politics of Community Development Agreements in Sierra Leone. Resources Policy, 61, 231–240.

[24] Chevron Canada. (2021). Kitimat LNG Project. Accessed at: https://canada.chevron.com/our-businesses/kitimat-lng-project.

[25] Craik, N., Gardner, H., & McCarthy, D. (2017). Indigenous – Corporate Private Governance and Legitimacy: Lessons learned from Impact and Benefit Agreements. Resources Policy, 52, 379–388.

[26] Cueva, V. P. (2017). Impact Benefit Agreements and Economic and Environmental Risk Management in the Arctic. In C. Pelaudeix & E. M. Basse (Eds.), Governance of Arctic Offshore Oil and Gas (1st ed.). Routledge.

[27] Danso, J., Aubynn, E., Coppel, A., John, Z., & Teschne, B. (2016). The Newmont Afaho Development Foundation: Putting Shared Value Into Action. InfoMine. https://s24.q4cdn.com/382246808/files/doc_downloads/operations_projects/africa/quick_links/Danso-Joseph-The-Newmont-Ahafo-Development-Foundation-––putting-share….pdf.

[28] Donihee, J. (2009). Land claim agreements and the North to 2030. Paper presented at the 2030 North National Planning Conference , Ottawa, Ontario, Canada.

[29] Dupuy, K. E. (2017). Corruption and Elite Capture of Mining Community Development Funds in Ghana and Sierra Leone. In A. Williams & P. Le Billon, Corruption, Natural Resources and Development (69–79). Edward Elgar Publishing.

[30] Engineers without Borders-Mining Shared Value (EWB-MSV). The Mining Local Procurement Reporting Mechanism. Accessed at: https://miningsharedvalue.org/mininglprm.

[31] Esteves, A.M., (2008). Mining and Social Development: Refocusing Community Investment Using Multi-Criteria Decision Analysis. Resources Policy. 33. 39-47.

[32] Farris, A. (2012). Natural Gas. Energy BC. Accessed at: http://www.energybc.ca/naturalgas.html.

[33] Fasken. (2018). Environmental Bulletin, February 9, 2018. Accessed at: https://www.fasken.com/en/knowledge/2018/02/2018-02-09-environmental-bulletin.

[34] Findlay, I.M & Wuttunee, W. (2007). Aboriginal Women's Community Economic Development: Measuring and Promoting Success. Institute for Research on Public Policy. Accessed at: https://irpp.org/research-studies/aboriginal-womens-community-economic-development.

[35] First Nations LNG Alliance (FNLNGA). (2021). Accessed at: https://www.fnlngalliance.com

First Nations National Building Officers Association (FNNBOA). (2021). Procurement in Indigenous Communities, Procurement Books. Accessed at: https://www.fnnboa.ca/procurement-in-indigenous-communities.

[36] First Nations Pacific Trail Project Group Limited Partnership (FNLP). (2021). Accessed at: http://bcfnlp.ca

[37] Fumoleau, R. (1975). As Long as this Land Shall Last: A History of Treaty 8 and Treaty 11, 1870-1939. East Lansing: Michigan State University Press.

[37] Galbraith, L., 2003. Understanding the Need for Supraregulatory Agreements in Environmental Assessment: An Evaluation from the Mackenzie Valley, Northwest Territories. MA. Diss. Simon Fraser University.

[38] Gathii, J., & Odumosu-Ayanu, I. T. (2016). The Turn to Contractual Responsibility in the Global Extractive Industry. Business and Human Rights Journal, 1(1), 69–94.

[39] Gibson, G. , & Klinck, J. (2005). Canada's Resilient North: The Impact of Mining on Aboriginal Communities. Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health, 3(1), 115-139.

[40] Gibson, G., & O'Faircheallaigh, C. (2015). IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements. The Gordon Foundation. https://gordonfoundation.ca/resource/iba-community-toolkit.

[41] Gibson, R. (2006). Beyond the Pillars: Sustainability Assessment as a Framework for Effective Integration of Social, Economic, and Ecological Considerations in Significant Decision-Making. Journal of Environmental Assessment Policy and Management. 8 (3): 259-280.

[42] Glasson, J. (2017). Large Energy Projects and Community Benefits Agreements—Some experience from the UK. Environmental Impact Assessment Review, 65, 12–20.

[43] Graben, S., Cameron, A., & Morales, S. (2020). Gender Impact Analysis of Impact Benefit Agreements: Representation Clauses and UNDRIP. Chapter 6 in Ibironke T. Odumosu-Ayanu, Dwight Newman (eds). Indigenous-Industry Agreements, Natural Resources and the Law. New York: Routledge.

[44] Gunton, C., Batson, J., Gunton, T., Markety, S., and Dale, D. (2020). Impact Benefit Agreement Guidebook. Vancouver, Canadian International Resources and Development Institute and Simon Fraser University.

[45] Hania, P. (2019). Revitalizing Indigenous Women's Water Governance Roles in Impact and Benefit Agreement Processes Through Indigenous Legal Orders and Water Stories. Les Cahiers de Droit, 60(2), 519–556.

[46] Harvey, B., & Nish, S. (2005). Rio Tinto and Indigenous Community Agreement Making in Australia. Journal of Energy & Natural Resources Law, 23(4), 499–510.

[47] Hira, A., & Busumtwi-Sam, J. (2018). Mining Community Benefits in Ghana: A Case of Unrealized Potential. Canadian International Resources and Development Institute (CIRDI). https://cirdi.ca/wp-content/uploads/2019/01/Mining_Community_Benefits_in_Ghana_pdf.pdf.

[48] Hitch, M., & Fidler, C. (2007). Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice. Environments Journal, 32(2), 45–69.

[49] Hughes, A. (2020). BC's Carbon Conundrum: Why LNG exports Doom Emissions-reduction Targets and Compromise Canada's Long-term Energy Security. Canadian Centre for Policy Alternatives. Accessed: https://www.policyalternatives.ca/bc-carbon-conundrum.

[50] Hummel, C. (2019). Behind the Curtain, Impact Benefit Agreement Transparency in Nunavut. Les Cahiers de droit, 60(2), 367.

[51] Indigenous Services Canada. (2021). Indigenous Business and Federal Procurement, Procurement Strategy for Aboriginal Business. Accessed at: https://www.sac-isc.gc.ca/eng/1100100032802/1610723869356.

[52] Indigenous Women's Business Network. (2021). About the Network. Accessed at: https://www.indigenouswomenbc.com

[53] International Council on Mining and Metals (ICMM). (2019). Handling and Resolving Local-level Concerns and Grievances: Human Rights in the Mining and Metals Sector. Accessed at: https://www.icmm.com/en-gb/guidance/social-performance/grievance-mechanism.

[54] International Finance Corporation (IFC). (2009). Good Practice Note: Addressing Grievances from Project-Affected Communities. Accessed at: https://www.scribd.com/fullscreen/21356198?access_key=key-d387qdvel3wbc9nnmxk.

[55] Jones, J., & Bradshaw, B. (2015). Addressing Historical Impacts Through Impact and Benefit Agreements and Health Impact Assessment: Why it Matters for Indigenous Well-Being. The Northern Review, 41.

[56] Keenan, J. C., Kemp, D. L., & Ramsay, R. B. (2016). Company–Community Agreements, Gender and Development. Journal of Business Ethics, 135(4), 607–615.

[57] Keenan, J., & Kemp, D. (2014). Mining and local-level development: Examining the gender dimensions of agreements between companies and communities. Centre for Social Responsibility in Mining, The University of Queensland. https://www.csrm.uq.edu.au/publications/mining-and-local-level-development-examining-the-gender-dimensions-of-agreements-between-companies-and-communities.

[58] Keenan, K., & Sosa, I. (2001). Impact Benefit Agreements Between Aboriginal Communities and Mining Companies: Their Use in Canada. Canadian Environmental Law Association. http://metisportals.ca/Metis-Rights/wp/wp-admin/images/Impact%20Benefit%20Agreements%20-%20Mining.pdf.

[59] Kielland, N. (2015). Supporting Aboriginal Participation in Resource Development: The Role of Impact and Benefit Agreements. Legal and Social Affairs Division. Parliamentary Information and Research Service. Publication No. 2015-29-E. Accessed at: https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/InBriefs/PDF/2015-29-e.pdf.

[60] Klinck, R., Bradshaw, B., Sandy, R., Nabinacaboo, S., Mameanskum, M., Guanish, M., Einish, P., Guanish, G., & Pien, S. (2016). Enabling Community Well-being Self-Monitoring in the Context of Mining: The Naskapi Nation of Kawawachikamach. Engaged Scholar Journal: Community-Engaged Research, Teaching, and Learning, 1(2).

[61] Knotsch, C., & Warda, J. (2009). Impact Benefit Agreements: A Toolkit for Healthy Inuit Communities. National Aboriginal Health Organization. Accessed at: http://hdl.handle.net/10393/30210.

[62] Krehbiel, R. (2021). Peer-review feedback provided via email to research team on behalf of the FNLNGA.

[63] Langton, M., &Longbottom, J. (2012). Community Futures, Legal Architecture: Foundations for Indigenous Peoples in the Global Mining Boom (1st ed.). Routledge.

[64] Le Meur, P. Y., Horowitz, L. S., & Mennesson, T. (2012). “Horizontal” and “Vertical” Diffusion: The Cumulative Influence of Impact and Benefit Agreements (IBAs) on Mining Policy-Production in New Caledonia. Resources Policy, 38(4), 648–656.

[65] Loutit, J., Mandelbaum, J., & Szoke-Burke, S. (2016). Emerging Practices in Community Development Agreements. Journal of Sustainable Development Law and Policy, 7(1), 64.

[66] Manning, S., Nash, P., Levac, L., Stienstra, D., & Stinson, J. (2018). Strengthening Impact Assessments for Indigenous Women. Canadian Research Institute for the Advancement of Women. Accessed at: https://www.canada.ca/content/dam/iaac-acei/documents/research/Stengthening-Impact-Assessments-for-Indigenous-Women-November-2018.pdf.

[67] McCreary, T., Mills, S., & St-Amand, A. (2016). Lands and Resources for Jobs: How Aboriginal Peoples Strategically Use Environmental Assessments to Advance Community Employment Aims. Canadian Public Policy, 42(2), 212–223.

[68] Meerveld, D. (2016). Assessing Value: A Comprehensive Study of Impact Benefit Agreements on Indigenous Communities of Canada. University of Ottawa. https://ruor.uottawa.ca/bitstream/10393/34816/4/Meerveld%2C%20Drew%2020161.pdf.

[69] Mills, S., & Sweeney, B. (2013). Employment Relations in the Neostaples Resource Economy: Impact Benefit Agreements and Aboriginal Governance in Canada's Nickel Mining Industry. Studies in Political Economy, 91, 1. 7-33.

[70] Mihesuah, D. A. (2003). Indigenous American Women: Decolonization, Empowerment and Activism. University of Nebraska.

[71] Mortensen, B. O. G. (2017). Impact and Benefit Agreements in Greenland. In C. Pelaudeix & E. M. Basse (Eds.), Governance of Arctic Offshore Oil and Gas (1st ed.). Routledge.

[72] Nightingale, E., Czyzewski, K., Tester, F., & Aaruaq, N. (2017). The effects of resource extraction on Inuit women and their families: Evidence from Canada. Gender & Development 25 (3): 367.

[73] Noble, B.F., & Fidler, C. (2011). Advancing Indigenous community-Corporate Agreements: Lessons from practice in the Canadian Mining Sector. Oil, Gas and Energy Law Intelligence 9(4): 1-30.

[74] Nwapi, C. (2017). Legal and Institutional Frameworks for Community Development Agreements in the Mining Sector in Africa. The Extractive Industries and Society, 4(1), 202–215.

[75] O'Faircheallaigh, C. (1997). Maximising Indigenous Benefits from Resource Development. MM Ross & JO Saunders eds. Disposition of Natural Resources: Options and Issues for Northern Lands, Canadian Institute of Resources Law Calgary, 225-47.

[76] O'Faircheallaigh, C. (2003). Implementing Agreements Between Indigenous Peoples and Resource Developers in Australia and Canada. Aboriginal Politics and Public Sector Management.

[77] O'Faircheallaigh, C. (2004). Evaluating Agreements between Indigenous Peoples and Resource Developers. In M. Langton (Ed.), Honour Among Nations: Treaties and Agreements with Indigenous People. Melbourne University Press.

[78] O'Faircheallaigh, C. (2010). Aboriginal-Mining Company Contractual Agreements in Australia and Canada: Implications for Political Autonomy and Community Development. Canadian Journal of Development Studies / Revue Canadienne d'études Du Dévelopement, 30(1–2), 69–86.

[79] O'Faircheallaigh. C. (2012). Curse or opportunity? Chapter 2: Mineral revenues, rent seeking and development in Aboriginal Australia. In Langton, M and Longbottom, J. (2012). Community Futures, Legal Architecture: Foundations for Indigenous Peoples in the Global Mining Boom (1st ed.). Routledge.

[80] O'Faircheallaigh, C. (2013). Community Development Agreements in the Mining Industry: An Emerging Global Phenomenon. Community Development, 44(2), 222–238.

[81] O'Faircheallaigh, C. (2015). Social Equity and Large Mining Projects: Voluntary Industry Initiatives, Public Regulation and Community Development Agreements. Journal of Business Ethics, 132(1), 91–103.

[82] O'Faircheallaigh, C. (2016). Negotiations in the Indigenous World: Aboriginal Peoples and the Extractive Industry in Australia and Canada. Routledge.

[83] O'Faircheallaigh, C. (2018). Using Revenues from Indigenous Impact and Benefit Agreements: Building Theoretical Insights. Canadian Journal of Development Studies / Revue Canadienne d'études Du Développement, 39(1), 101–118.

[84] O'Faircheallaigh, C. (2020). Impact and benefit agreements as Monitoring Instruments in the Minerals and Energy Industries. The Extractive Industries and Society, 7(4), 1338-1346.

[85] O'Faircheallagih, C. (2021). Explaining Outcomes from Negotiated Agreements in Australia and Canada. Resources Policy. 70, 101922.

[86] O'Faircheallaigh, C., & Corbett, T. (2005). Indigenous participation in environmental management of mining projects: The role of negotiated agreements. Environmental Politics, 14(5), 629–647.

[87] Parlee, B., O'Neil, J., & Lutsel K'e Dene First Nation. (2007). The Dene way of life: Perspectives on health from Canada's North. Journal of Canadian Studies. 41 (3), 112-133,

[88] Papillon, M., & Rodon, T. (2017). Proponent-Indigenous Agreements and the Implementation of the right to Free, Prior, and Informed Consent in Canada. Environmental Impact Assessment Review, 62, 216–224.

[89] Peletz, N., & Hanna. K. (2019). Gender Analysis and Impact Assessment: Canadian and International Experiences. Canadian International Resources and Development Institute (CIRDI), Vancouver.

[90] Prno, J., Bradshaw, B., & Lapierre, D. (2010). Impact and Benefit Agreements: Are they working? Trailhead Consulting. Accessed at: https://www.semanticscholar.org/paper/Impact-and-Benefit-Agreements%3A-Are-they-working-Prno-Bradshaw/87c4f66ec25ee1bd3caedeea8d92002e42525f35.

[91] Rasmussen, D., & Guillou, J. (2012). Developing an Inuit-specific Framework for Culturally Relevant Health Indicators Incorporating Gender-based Analysis. Journal of Aboriginal Health 8 (2): 24.

[92] Rodon, T., Lemus-Lauzon, I., & Schott, S. (2018). Impact and Benefit Agreement (IBA) Revenue Allocation Strategies for Indigenous Community Development. Northern Review, 47(47), 9–29.

[93] Sarkar, S., Gow-Smith, A., Morakinyo, T. A., Frau, R., Kuniholm, M., & Otto, J. M. (2010). Mining Community Development Agreements—Practical Experiences and Field Studies. Accessed at: https://www.semanticscholar.org/paper/Mining-community-development-agreements-practical-Bocoum-Sarkar/9b9cb066d719beccb8fd5f569df8c99dbdcc2316.

[94] Shanks, G., & Lopes, S. (2006). Sharing in the Benefits of Resource Developments: A Study of First Nations-Industry Impact Benefits Agreement. The Public Policy Forum. Accessed at: https://ppforum.ca/wp-content/uploads/2018/05/Sharing-in-the-Benefits-of-Resource-Development-PPF-report.pdf.

[95] Siebenmorgen, P., & Bradshaw, B. (2011). Re-conceiving Impact and Benefit Agreements as instruments of Aboriginal community development in northern Ontario, Canada. Oil, Gas & Energy Law Journal (OGEL), 9.

[96] St-Laurent, G. P., & LeBillon, P. (2015). Staking Claims and Shaking Hands: Impact and Benefit Agreements as a Technology of Government in the Mining Sector. The Extractive Industries and Society, 2(3), 590–602. Sulyandziga, L. (2019). Indigenous Peoples and extractive industry encounters: Benefit-sharing agreements in Russian Arctic. Polar Science, 21, 68–74.

[97] Squamish Nation (Skwx̱wú7mesh Úxwumixw). (2021). Woodfibre LNG and Fortis BC Project Updates. Accessed at: https://www.squamish.net/lng-updates.

[98] Tulaeva, S., & Nysten-Haarala., S. (2019). Resource Allocation in Oil-Dependent Communities: Oil Rent and Benefit Sharing Arrangements. Resources 8, no. 2: 86.

[99] Tysiachniouk, M. S., & Petrov, A. N. (2018). Benefit sharing in the Arctic Energy Sector: Perspectives on Corporate Policies and Practices in Northern Russia and Alaska. Energy Research & Social Science, 39, 29–34.

[100] Tysiachniouk, M., Henry, L. A., Lamers, M., & van Tatenhove, J. P. M. (2018). Oil and Indigenous people in sub-Arctic Russia: Rethinking equity and governance in benefit sharing agreements. Energy Research & Social Science, 37, 140–152.

[101] US DOE. (2017). Guide to Advancing Opportunities for Community Benefits through Energy Project Development. US Department of Energy (USDE). Accessed at: https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit.

[102] United Nations Permanent Forum on Indigenous Issues (UNPFII). (2004). Report on the Third Session. Economic and Social Council Official Records No. 23. Accessed at: https://undocs.org/E/C.19/2004/23

[103] Woodward & Co. and Nanwakolas Council (2009). Benefit Sharing Agreements in British Columbia: A Guide for First Nations, Businesses, and Governments. Woodward and Company. Accessed at: http://www.woodwardandcompany.com/wp-content/uploads/pdfs/4487_bene- fit_sharing_final_report_-_updated.pdf.

[104] World Bank Group – Office of the Compliance Advisor Ombudsman (CAO). (2008). Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. Accessed at: http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf.

[105] World Bank. (2012). Mining Community Development Agreements: Source Book. Washington, DC. Accessed at: https://openknowledge.worldbank.org/handle/10986/12641

This article may be cited as:
Rÿser, R. (2022) Unregulated Corporate and State Capitalization of Nations' Land. *Fourth World Journal.* Vol. 21, N2. pp. 69-102.

ABOUT THE AUTHOR

Rudolph Rÿser, PhD

Dr. Rudolph C. Rÿser grew to maturity in the Cowlitz Indian culture on the US Pacific Northwest coast though he is of Cree/Oneida descent on his mother's side and Swiss descent on his father's. He earned his doctorate in international relations and has served as the Founding Chair of the Center for World Indigenous Studies since 1979. He is widely recognized around the world as the principle architect of theories and the practice of Fourth World Geopolitics. He is the author of the seminal book "Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power" (2012), the Fourth World Geopolitical Reader and the currently released "Biodiversity Wars, Coexistence or Biocultural Collapse in the 21st Century" (2019). He has for more than fifty years worked in the field of Indian Affairs as a writer/ researcher/ and advisor to political leaders of Fourth World nations throughout the world.

Biodiversity Wars

Coexistence or Biocultural Collapse in the 21st. Century

By Dr. Rudolph Rÿser

Dr. Rÿser discusses the foundation for his proposal of a new international mechanism to bridge the economic, social, political and cultural gap between Fourth World nations and the world's 203 states.

DOWNLOAD FOR FREE

Chapters available at cwis.org bookstore

"Our Bodies Are Not Terra Nullius" by Erin Marie Konsmo (from Konsmo & Pacheco, 2016)

Exploiting Indigenous Peoples: Prostitution, Poverty, Climate Change, and Human Rights

By Melissa Farley, Ph.D.
Prostitution Research & Education, San Francisco, and CWIS Associate Scholar

ABSTRACT

This article describes connections between resource extraction, prostitution, poverty, and climate change. Although resource extraction and prostitution have been viewed as separate phenomena, this article suggests that they are related harms that result in multiple violations of indigenous peoples' human rights.

Keywords: resource extraction, prostitution, poverty, indigenous peoples, climate change, human rights, women's rights, sexual exploitation.

Resource Extraction and Climate Change are Connected to Prostitution

Extraction of raw materials on indigenous peoples' lands is linked to prostitution, poverty, and climate change.[1] The centrality of resource extraction to these oppressive harms is clarified by Seiya

[1]Prostitution is the sale of a sex act or the exchange of a sex act for food, shelter, drugs, cash, or something of value. Trafficking is pimping or third-party control over another person. Women are adult human females. Regarding the differences between sex and gender, see Dahlen, 2020; Hilton et al., 2021; Stevenson, 2010; Sullivan, 2020. In this article, we use the term 'women in prostitution' to include any adult in prostitution, simply because most people in prostitution are women.

Morita's diagram in Figure 1.[2] *In the short term*, resource extraction leads to a sudden increase in prostitution, as shown by the arrow on the left side of the diagram. *In the long term*, resource extraction causes climate change, as indicated by the right arrow. Climate change then leads to crises in peoples' ability to survive extreme events such as drought, floods, or agricultural collapse. These climate changes result in poverty which then channels women into the sex trade. The arrow on the bottom of Figure 1 illustrates this process.

Historically, extraction industries have exploited young, poor men who are paid well to perform jobs that no one else wants. The jobs are unpleasant, difficult to perform, and dangerous. The resource extraction phase temporarily results in a boom economy with cash-rich but lonely working-class men. To pacify the workers and

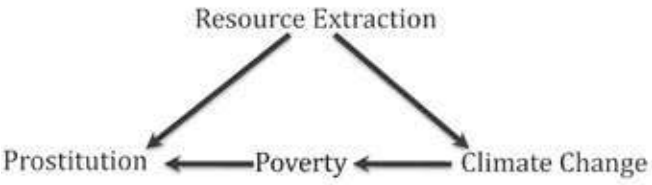


Figure 1. Links between resource extraction, prostitution, poverty, and climate change

enrich the sex trade capitalists, women and girls who are under the control of pimps are delivered to workers in these boom/sacrifice zones such as the Bakken oil fields in USA and Canada, gold mines in South Africa, coltan mining regions in Colombia, and logging regions in Brazil.[3] This movement of trafficked women increases prostitution both in the boomtown and in neighboring communities. "Sex crimes, the sex trade, and anti-woman violence, have become major and predictable by-products of oil, gas and mining extraction operations."[4] Following is an example of this process.

The Bakken oil fields of Montana/North Dakota/Saskatchewan/Manitoba are in lands where the Dakota Access Pipeline causes physical, psychological, and cultural damage to the community and harm to the land and the water by way of ecocide.[5] In 2008, large numbers of pipeline workers moved into the Bakken region's barracks-style housing named man camps. Sexual assaults, domestic violence, and sex trafficking tripled in communities adjacent to the oilfield sacrifice zones,[6] with especially high rates of sexual violence toward Native women.[7] Violence against women and violence against the land are connected, explained Sii-

[2]Seiya Morita's most recent book is Marxism, Feminism, Sex Work (Tokyo: Keio University Press 2021).

[3] Anderson, 2019; Bnamericas, 2016; Hiar, 2012; Stuckler et al., 2013.

[4] Adamson, 2017.

[5] The Dakota Access Pipeline is controlled by Energy Transfer Partners, with minority interests held by oil corporations Phillips 66 and by affiliates of Enbridge and Marathon Petroleum. This pipeline construction is resisted by the Standing Rock Sioux and many others.

[6] Ruddell, et al., 2017; Johnson, 2021.

[7] First Peoples Worldwide, 2019; Corbett, 2021; Johnson, 2021.

am Hamilton, "The femicide is directly linked to the ecocide. No matter what kind of extractive industry is attacking a community, it has the same rippling effect on women."[8] Some of the adverse consequences of living near extractive projects include increased rates of sexually transmitted infections and still-births; general deterioration in health; ecological degradation and climate change; threats to food security; and political corruption – all of which severely impact women.[9]

When an extraction project is stopped, for example when coltan mining was halted in DR Congo because of environmental protests, the newly expanding sex trade remained in operation: an enduring legacy of colonization. Belgium's domination of Congo gradually shifted from state to corporate colonization.[10] The Belgian colonists' commodification of the nation diminished the people's social and political power, leaving them poorer, with fewer resources, and often desperate for a means of survival even before the later phase of climate change occurred. This sequence happens wherever resources are commodified. Initially, a boom economy based on resource extraction creates short-term job opportunities and wealth previously unknown. Prostitution is established both to pacify the workers and to generate money for pimps and traffickers. When the boom economy collapses, the men's demand for continued paid sexual access and women's poverty merge. The consequence of the triple cage of sexism, corporate colonialism, and poverty is that the institution of prostitution expands and flourishes even after the extraction industry has ended.[11]

Pervasive ecological damage, climate change, poverty, and entrenched prostitution become evident in the second phase of harms resulting from resource extraction. For example, in Bangladesh after flooding, and in India after droughts, women had few options to feed their families.[12] Climate heating causes food and water shortages, resulting in poverty and decreased alternatives for survival, all of which are linked to prostitution. This destructive cycle causes great harm to indigenous peoples, threatening their existence.

Accurate Information is a Human Right

In the digital age, access to information is now recognized as a human right. Since awareness of human rights violations usually precedes a demand for protection, accurate information is essential to asserting indigenous peoples' human rights.[13] Inaccurate and deliberately

[8] Brooks, 2021.

[9] Oluduro and Durojaye, 2013.

[10] RT Films, 2017.

[11] See Lakhani, 2020; Mulobelaj, 2016; O'Brien, 2008; Potts, 2013; Pretty Sounding Flute, 2000; Rogelj et al., 2018; Smith, 2015; Swarup et al., 2011; Vidal, 2015.

[12] Simonsson, 2018; Catch News, 2017.

[13] Kravchenko, 2007.

misleading information about climate science and prostitution harms have confused people.[14] For example, the Intergovernmental Panel on Climate Change (1990) produced an early report on risks. Although the oil company Exxon was aware of severe climate change risks as early as 1968,[15] Exxon and other Big Oil lobbyists created the deceptively named Global Climate Coalition for the purpose of raising doubts about climate heating so that resource extraction could continue without interruption. Advocating legal prostitution, the Open Society Foundation (OSF) supports efforts to integrate prostitution (named "the sex sector") into countries' job markets.[16] OSF and the Gates Foundation produce campaigns that function much like Big Oil's climate science denial crusades. In what Hedges described as a 'triumph of misogyny', OSF funding recipient Amnesty International successfully campaigned for men's rights to buy sex and pimp women in prostitution.[17]

Trafficking, which is an ambivalent word for pimping, is prevalent in all forms of prostitution. Noting the impossibility of separating prostitution from trafficking in the real world, the United Nations Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, observed that prostitution as it is practiced "usually satisfies the legal elements for the definition of trafficking."[19] The evidence suggests that legal prostitution is associated with expansion of sex trafficking. Economists Cho, Dreher, and Neumayer found that in 150 countries, trafficking increased when prostitution was made legal.[20] Research from Europe and the United States has also reported the coexistence of legal prostitution and sex trafficking.[21]

---

[14] Postmodern philosophy has confused people and camouflaged the harms of prostitution by mystifying the sex trade via a 'politics of abdication and disengagement' in which for example, incest and rape become 'epistemological quandaries' (MacKinnon, 1999). Under postmodernism, racism, sexism, and lethal poverty become representations of reality, rather than reality itself. To postmodernists, facts are unreliable: the oppressive social forces that harm women in prostitution – racism and sexism and poverty – are considered 'unknowable' (Shimizu, 2006) even though the peer-reviewed research cited here extensively documents those harms. The assumption that material reality is mentally constructed and that nothing is real means that the actual harms of prostitution cease to exist except in a woman's mind. Postmodernists assume that women who have been prostituted or trafficked are narrating just one more version of reality. In postmodern reality, pimps' and pornographers' lies (prostitution is sexy and fun for everyone; prostitutes get rich and meet nice men) are just as valid as survivors' lived experiences of sexual exploitation and abuse, and as valid as peer-reviewed research documenting that abuse. This presumed equivalence of validity reflects a postmodern 'sexual politics of meaninglessness' that has profoundly impacted women's lives because it makes men's violence against women invisible (Jeffreys, 2008). A postmodern philosophical view of the world ultimately brings forth a nihilistic destruction of meaning and a valorization of fragmentation that obscures an evidence-based understanding of the human rights violations of prostitution.

[15] Jennings et al. 2015; Rust, 2019. See also #EXXONKNEW.

[16] Raphael, 2018.

[17] Hedges, 2015.

[18] Moran and Farley, 2019.

[19] United Nations, 2006.

[20] Cho, Dreher, & Neumayer, 2013.

[21] Jakobsson & Kotsadam, 2013; Lee & Persson, 2013; Osmanaj, 2014; Heiges, 2009.

Human Rights are Interdependent

Noting the connections between racial and climate justice, Reverend Martin Luther King, Jr. dryly noted, "It is very nice to drink milk at an unsegregated lunch counter – but not when there's strontium 90 in it."[22] Applying King's perspective to this discussion, it is clear that collective actions that confront corporate and Eurocentric 'climate solutions' must redefine global coexistence on *indigenous people's terms*.[23] Climate change must be understood as linked to other social justice struggles or else we will fail to dismantle the interconnected injustices of carbon capitalism, itself based on "an economic order that systematically exacerbates poverty and inequality while exceeding the limits of the planet's finite ecosystems."[24]

Some human rights instruments that might reduce the harms of sexism, colonialism, prostitution, and climate change. These include the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the European Convention on Human Rights, the Protocol to the African Charter on the Rights of Women, the Declaration on Human Rights Defenders, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination and the Extractive Industries Transparency Initiative (EITI) and the Voluntary Principles on Security and Human Rights (Voluntary Principles). The Mandaluyong Declaration of the Global Conference on Indigenous Women and Climate Change is both a tool for articulating indigenous women's spiritual and political world view and also a call to activism.[25]

The Beijing Declaration and Platform for Action is a global policy framework for women's human rights which recommends taking appropriate measures to: "... address *the root factors* including external factors that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour..."[26] Solutions that address these root factors are programs that help women avoid or escape prostitution via the provision of food, shelter, healthcare (including mental health care and peer support), housing, and job training. Climate refugees need similar programs for survival. Moreover, the provision of survival *needs for all humans* would begin reducing stratospheric economic, race, and sex inequality, including the elimination of prostitution.

A coerced choice between poverty and prostitution should not be women's only alternative. A forced choice between poverty and pollution should not be the governments' only option. During the carbon elimination transition and the transition to the abolition of prostitution, redistribution of wealth is critical. Economies can and must be transformed away from

[22] Dellinger, 2017.

[23] Whyte, 2014.

[24] Gonzales, 2021.

[25] Whyte, 2014

[26] Fourth World Conference on Women, 1995.

predatory colonial expansion in which everyone and every part of nature are commodified. The transformation is doable, as Sachs noted:

> The world income [in 2019] is $90 trillion, more than $11,000 per person. Yet around a billion people still live in conditions of abject poverty. With a transfer of just 1% of the income of the rich countries to the poor countries, roughly $500 billion per year, we could end extreme poverty.[27]

Awareness of the links between resource extraction, poverty, and prostitution may facilitate the application of human rights laws and conventions to reduce those harms. The Rio Declaration on Environment and Development (Principle 10) formulated procedural rights to participate in decision-making about environmental justice. These procedural rights should include indigenous women's determination regarding what constitutes justice for them, for example the right to housing, food, and the right to escape prostitution, the right to land, the right to language and culture, and the right to choose whether to remain or migrate, with a place in which to settle if migration is chosen. Their procedural determinations are unlikely to be enforced unless there is a shift in understanding about the current philosophical and empirical separation between humans and the rest of the natural world. A misguided dualism is at the cold heart of corporate/state actions that harm the planet; dualism is how non-human beings and also human beings are commodified.

Indigenous Women's Human Rights and Land Defense

Increasingly, climate scholars are applying a feminist perspective to intersecting injustices. Climate crises, economic recessions, rural-to-urban migration, and pandemics—all compound existing patriarchal, classed, and racialized violence.[28] Both in and out of prostitution, indigenous women are at the bottom of a brutal race and class hierarchy. The business of sexual exploitation (prostitution, pornography, trafficking) and the business of resource extraction (natural gas fracking, logging, fishing, mining) are connected at the deepest level.

Making the connections between how the earth and women are treated, anthropologist Peggy Sanday compared 156 rape-free and rape-prone cultures. In communities where women were free of rape, the land was free of exploitation and destruction. And where there was environmental degradation, there also were high levels of sexual violence.[29] Sanday's findings may be indicative of the "intangible cultural heritage" that reflects a community's values, identity, cultural knowledge, attachments, and relationship to the earth.[30]

Rape is not just a metaphor: the rape of the earth and the rape of women and children are

[27] Sachs, 2019.

[28] Sultana, 2021.

[29] Sanday, 1981.

[30] Aktürk & Lerski, 2021.

driven by the dynamics of colonial power. Like the predation of a rapist, the colonial exploitation of energy in Indian country is not simply about theft, it is about "making tribal nations into things to be taken altogether."[31] Native women in Minnesota prostitution saw the connection between prostitution and colonization; they explained that the devaluation of women in prostitution was the same as the colonizing devaluation of Native peoples.[32]

Indigenous women human rights defenders who confront extractive industries are challenging corporate power and also patriarchal power. They are targeted both as defenders of rights, land and natural resources, and also as women who resist sex role expectation. Women suffer the hardships of all human rights defenders, but they also face sexual violence. They are sometimes marginalized within their own communities.[33]

Indigenous peoples' analyses have integrated spiritual, cultural, political, and economic awareness regarding the connections between the earth and the women. "They treat Mother Earth like they treat women," said Lisa Brunner, White Earth Ojibwe Program Specialist for the National Indigenous Women's Resource Center,

> They think they can own us, buy us, sell us, trade us, rent us, poison us, rape us, destroy us, use us as entertainment and kill us. I'm happy to see that we are talking about the level of violence that is occurring against Mother Earth because it equates to us. What happens to her happens to us.[34]

Mi'kmaq grandmothers in 2021 resisted the construction of a pipeline that would transport liquefied gas across Canada to ports that would move it to Europe. They protested both the environmental harms of the pipeline and the 'man-camps' linked to increased violence against women. Because of the pipeline, the grandmothers said, people would be "crying for their water, and their lands and their mothers and their sisters and their daughters."[35] Ongoing resistance to these multiple human rights violations is essential. The United Nations Special Rapporteur on the Rights of Indigenous Peoples noted the connection between sexual violence and sovereignty, explaining that "[i]ndigenous communities are at their strongest when women and girls have full and free access to social, cultural, spiritual and political institutions."[36]

---

[31] Deer, & Kronk Warner, 2019.

[32] Farley et al., 2011.

[33] Barcia, 2017.

[34] Graef, 2014.

[35] Moore, 2021.

[36] Report of the Special Rapporteur on the Rights of Indigenous Peoples on Her Mission to the United States of America, 12 (2017), cited by Deer and Kronk Warner, 2019.

REFERENCES

[1] Adamson, R. (2017). Vulnerabilities of women in extractive industries. ANTYAJAA: Indian Journal of Women and Social Change, 2(1), 24-31.

[2] Anderson, J.L. (2019, Nov 11) 'Blood Gold in the Brazilian Rain Forest', New Yorker. https://www.newyorker.com/magazine/2019/11/11/blood-gold-in-the-brazilian-rain-forest

[3] Aktürk, G. & Lerski, M. (2021) Intangible Cultural Heritage: A Benefit to Climate-Dis- placed and Host Communities. Journal of Environmental Studies and Sciences: 1–11

[4] Barcia, I. (2017). Women human rights defenders confronting extractive industries: An overview of critical risks and human rights obligations. Association for Women's Rights in Development (AWID) and Women Human Rights Defenders International Coalition (WHRDIC). https://www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf

[5] Bnamericas (2016, December 20). Colombia Seeking to Spur Coltan Mining. https://www. bnamericas.com/en/news/mining/colombia-seeking-to-spur-coltan-mining/

[6] Brooks, L. (2021, Nov 10). Indigenous women speak out at Cop26 rally: "Femicide is linked to Ecocide." Guardian. https://www.theguardian.com/environment/2021/nov/10/indigenous-women-speak-out-at-cop26-rally-femicide-is-linked-to-ecocide

[7] Catch News (2017, February 17). Women forced into sex trade in drought-hit Andra Pradesh. http://www.catchnews.com/social-sector/women-forced-into-sex-trade-in-drought-hit-andra-pradesh-1464072481.html

[8] Cho, S.-Y., Dreher, A. and Neumayer, E. (2013) Does Legalized Prostitution Increase Human Trafficking? World Development 41: 67–82.

[9] Corbett, J. (2021, January 14). Over 75 Indigenous Women Urge Biden to Stop Climate-Wrecking Pipelines and Respect Treaty Rights. Common Dreams. https://www.commondreams.org/news/2021/

[10] Dahlen, S. (2020). De-sexing the Medical Record? An Examination of Sex Versus Gender Identity in the General Medical Council's Trans Healthcare Ethical Advice. The New Bioethics 26(1): 38–52.

[11] Deer, S., & Kronk Warner, E. A. (2019). Raping Indian Country. Columbia Journal of Gender & Law, 38, 31.

[12] Dellinger, D. (2017, December 17). Dr. King's Interconnected World. New York Times Opinion, https://www.nytimes.com/2017/12/22/opinion/martin-luther-king-christmas.html.

[13]#EXXONKNEW. https:// exxonknew.org/

[14] Farley, M., Matthews, N., Deer, S., Lopez, G., Stark, C., & Hudon, E. (2011). Garden of truth: The prostitution and trafficking of Native women in Minnesota. Minnesota Indian Women's Sexual Assault Coalition and Prostitution Research & Education.

[15] First Peoples Worldwide (2019, March 14). New Report Finds Increase of Violence Coincides with Oil Boom University of Colorado. https://www.colorado.edu/program/fpw/2019/ 03/14/new-report-finds-increase-violence-coincides-oil-boom

[16] Fourth World Conference on Women (1995) Beijing Declaration and Platform for Action. https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_ Action.pdf

[17] Gonzalez, C. G. (2021). Racial capitalism, climate justice, and climate displacement. In Oñati Socio-Legal Series, symposium on Climate Justice in the Anthropocene 11(1): 108-147.

[18] Graef, C. (2014, November 21). Bakken Region Tribes Fight Back Against Human Trafficking. Mint Press News. https://www.mintpressnews.com/bakken-region-tribes-fight- back-human-trafficking/199156/

[19] Hedges, C. (2015, August 17). Amnesty International: Protecting the 'Human Rights' of Johns, Pimps and Human Traffickers. Vox Populi. https://voxpopulisphere.com/2015/08/24/ 8811/

[20] Heiges, M. (2009). From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad. Minnesota Law Review 94: 428.

[21] Hiar, C. (2012, March 15). 'Colombia Vows to Clean Up Coltan Mining', International Consortium of Investigative Journalists. https://www.icij.org/investigations/coltan/colombia-vows- clean-coltan-mining/

[22] Hilton, E., Thompson, P., Wright, C., & Curtis, D. (2021). The reality of sex. Irish Journal of Medical Science, 190(4), 1647-1647.

[23] Jakobsson, N. & Kotsadam, A. (2013) The Law and Economics of International Sex Slavery: Prostitution Laws and Trafficking for Sexual Exploitation, European Journal of Law and Economics 35(1): 87–107.

[24] Jeffreys, S. (2008) The Idea of Prostitution. Melbourne: Spinifex Press.

[25] Jennings, K., Grandoni, D., & Rust, S. (2015, October 23). How Exxon Went from Leader to Skeptic on Climate Change Research. Los Angeles Times, http:// graphics.latimes.com/exxon-research/

[26] Johnson, B. (2021, January 8) Is Sex Trafficking "Inevitable" along Enbridge Pipeline Route? Minneapolis Star-Tribune. https://www.startribune.com/is-sex-trafficking-inevitable- along-enbridge-pipeline-route/600008236/

[27] Kravchenko, S. (2007). Right to Carbon or Right to Life: Human Rights Approaches to Climate Change. Vermont Journal of Environmental Law 9: 513.

[28] Lakhani, N. (2020) Who Killed Berta Caceres?: Dams, Death Squads, and an Indigenous Defender's Battle for the Planet. Verso.

[29] Lee, S. & Persson, P. (2014) Human Trafficking and Regulating Prostitution. No. 996. IFN Working Paper.

[30] MacKinnon, C.A. (1999) Points Against Postmodernism. Chicago-Kent Law Review 75: 687.

[31] Moore, A. (2021) Mi'kmaw Grandmothers Oppose 'Man-Camp' that Goes with Massive LNG Project. APTN National News. https://www.aptnnews.ca/national-news/mikmaw- grandmothers-oppose-man-camp-that-goes-with-massive-lng-project/

[32] Moran, R., & Farley, M. (2019). Consent, coercion, and culpability: is prostitution stigmatized work or an exploitive and violent practice rooted in sex, race, and class inequality? Archives of sexual behavior, 48(7), 1947-1953.

[33] Morita, S. (2021) Marxism, Feminism, Sex Work. Tokyo: Keio University Press.

[34] Mulobelaj, W. (2016, September 7) "Prostitution 'Easiest Way Out' for Zambia's Farmers." Reuters. Available at https://www.reuters.com/article/us-zambia-climatechange-prostitution-idUSKCN11D0S4

[35] Nakashima, D. J., K. Galloway McLean, H. D. Thulstrup, A. Ramos Castillo, & Rubis, J.T. (2012) Weathering uncertainty: Traditional knowledge for climate change assessment and adaptation. Paris: UNESCO and Darwin, Australia: United Nations University.

[36] O'Brien, C. (2008). An analysis of global sex trafficking. Indiana Journal of Political Science, 11, 719.

[37] Poupart, L. M. (2003) The familiar face of genocide: Internalized oppression among American Indians. Hypatia 18, no. 2, 86-100

[38] Oluduro, O. and Durojaye, E. (2013) The Implications of Oil Pollution for the Enjoyment of Sexual and Reproductive Rights of Women in Niger Delta Area of Nigeria. The International Journal of Human Rights 17(7–8): 772–95.

[39] Osmanaj, E. (2014). The Impact of Legalized Prostitution on Human Trafficking. Academic Journal of Interdisciplinary Studies 3(2): 103.

[40] Potts, D. (2013) "Urban economies, urban livelihoods and natural resource-based economic growth in sub-Saharan Africa: The constraints of a liberalized world economy." Local Economy 28(2): 170-187.

[41] Pretty Sounding Flute, S. (2000) In Penman, Sarah, ed. Honor the grandmothers: Dakota and Lakota women tell their stories. Minnesota Historical Society Press, p 47-76

[42] Raphael, J. (2018) Decriminalization of Prostitution: The Soros Effect. Dignity: A Journal on Sexual Exploitation and Violence 3(1): 1

[43] Rogelj, J., Shindell, D., Jiang, K., Fifita, S., Forster, P., Ginzburg, V., & Zickfeld, K. (2018). Mitigation pathways compatible with 1.5 C in the context of sustainable development. In Global warming of 1.5 C (pp. 93-174). Intergovernmental Panel on Climate Change. https://www.ipcc.ch/sr15/

[44] Rust, S. (2019, October 21). Report Details How ExxonMobil and Fossil Fuel Firms Sowed Seeds of Doubt on Climate Change. Los Angeles Times. https://www.latimes.com/environment/story/2019-10-21/oil-companies- exxon-climate-change-denial-report

[45] RT Films, Congo My Precious: The Curse of the 'Conflict Minerals' in the Congo, 2017, https://www.youtube.com/watch?v=dTwzCy0-RTw.

[46] Ruddell, R., Jayasundara, D. S., Mayzer, R., & Heitkamp, T. (2017) 'Drilling Down: An Examination of the Boom-Crime Relationship in Resource-Based Boom Counties', Actual Problems of Economics & Law, 208.

[47] Sachs, J.D. (2019, September 15) Moving the World Towards Sustainable Development. Peace with No Borders: Religions and Cultures in Dialogue. Community Sant' Egidio Madrid. https://www.jeffsachs.org/recorded-lectures/t54fd28l9try3ay8lpg9t4n7t7de2a.

[48] Sanday, P.R. (1981) The Socio-Cultural Context of Rape: A Cross-Cultural Study. Journal of Social Issues 37(4): 5–27.

[49] Shimizu, C.P. (2006) Queens of Anal, Double, Triple, and the Gang Bang: Producing Asian/American Feminism in Pornography. Yale Journal of Law & Feminism 18: 235.

[50] Simonsson, O. (2018, October 17) 'I did it only for the money:' Climate displacement pushes girls into prostitution. Reuters. https://www.reuters.com/article/us-bangladesh-climatechange-displacement/i-did-it-only-for-the-money-climate-displacement-pushes-girls-into-prostitution-idUSKCN1MR1BP.

[51] Smith, A. (2015) Conquest: sexual violence and American Indian genocide. Duke University Press

[52] Smith, A. (2003) Not an Indian tradition: The sexual colonization of native peoples. Hypatia 18, no. 2, 70-85.

[53] Stevenson, A. (Ed.) (2010) Oxford dictionary of English. New York: Oxford University Press.

[54] Stuckler, D., Steele, S., Lurie, M., and Basu, S. (2013) 'Introduction: "Dying for Gold": The Effects of Mineral Mining on HIV, Tuberculosis, Silicosis, and Occupational Diseases in Southern Africa, International Journal of Health Services 43(4): 639–49.

[55] Sullivan, S. (2020) 'Sex and the Census: Why Surveys Should Not Conflate Sex and Gender Identity', International Journal of Social Research Methodology 23(5): 517–24.

[56] Sultana, F. (2021). Climate Change, COVID-19, and the Co-production of Injustices: A Feminist Reading of Overlapping Crises. Social & Cultural Geography 22(4): 447–60.

[57] Swarup, A., Dankelman, I.E.M., Ahluwalia, K., & Hawrylysgym, K. (2011). Weathering the storm: adolescent girls and climate change. http://www.ungei.org/files/weatherTheStorm.pdf

[58] United Nations (2006). Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children. Commission on Human Rights. UN Doc. E/CN.4/2006/62), February 20, 2006, p. 9.

[59] Vidal, J. (2015) "Zambian villagers take mining giant Vedanta to court in UK over toxic leaks." The Guardian. http://www.theguardian.com/global-development/2015/aug/01/vedanta- zambia-copper-mining-toxic-leaks

[60] Whyte, K. P. (2014). Indigenous women, climate change impacts, and collective action. Hypatia, 29(3), 599-616.

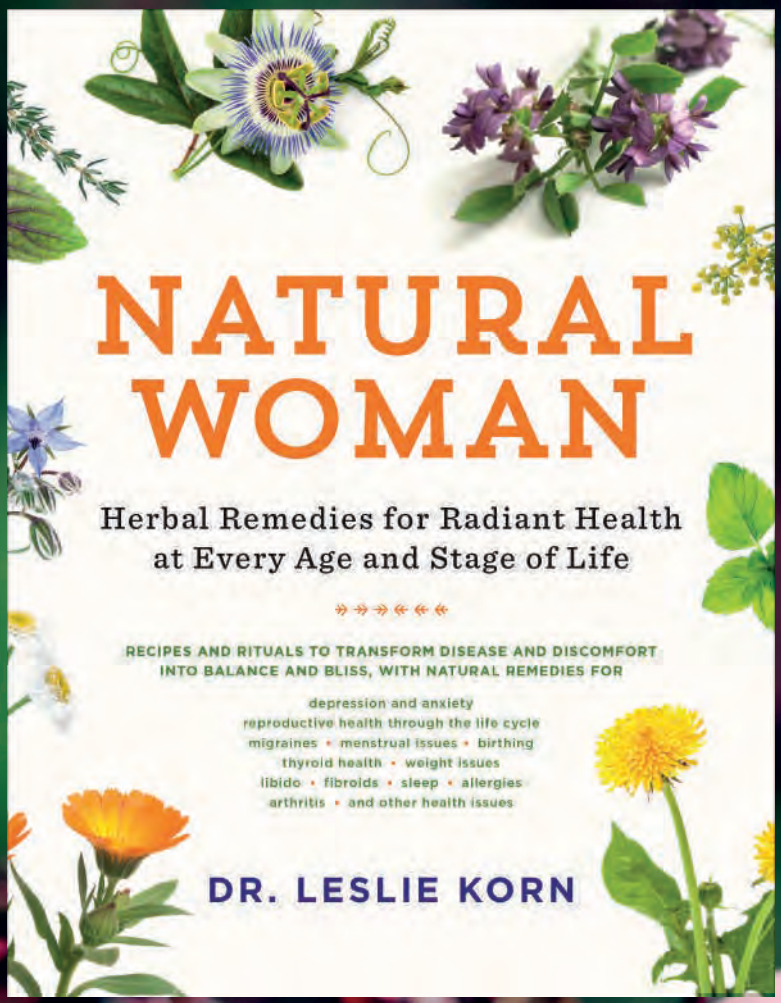
[61] Williams, M. (2013) "Integrating a gender perspective in climate change, development policy and the UNFCCC." South Centre Climate Policy Brief 12, 1-8.

This article may be cited as:
Farley, M. (2022) Exploiting Indigenous Peoples: Prostitution, Poverty, Climate Change, and Human Rights. *Fourth World Journal*. Vol. 21, N2. pp.104-115.

ABOUT THE AUTHOR

Melissa Farley

Melissa Farley is a research and clinical psychologist who has published 50 peer-reviewed articles and 2 books on prostitution, pimping/trafficking, and pornography. She co-authored research on the lives of trafficked Native women in Minnesota, on prostitution and PTSD in nine countries; and research comparing men who buy sex to men who do not buy sex. Dr. Farley founded Prostitution Research & Education in 1995, a nonprofit research institute that conducts original research on the sex trade and provides a free library of information for survivors, advocates, policymakers, and the public at www.prostitutionresearch.com



NATURAL WOMAN

Herbal Remedies for Radiant Health at Every Age and Stage of Life

An herbal guide to support physical, mental, and spiritual health for women and their children at all stages of life—by a healer with over 40 years of experience.

"Weaves together story, tradition, and timeless wisdom into a modern approach that helps us thrive in our live as women."

- Bevin Clare, President, American Herbalists Guild

Green Colonialism

By Sabina Singh PhD
Independent researcher and Associate Scholar with the Center for World Indigenous Studies

ABSTRACT

The neoliberal state of the world is showing a definite inability to be anti-colonial and anything but state government and corporate centric. In Canada, there are the most extractive mining industries in the world and yet we have no new routes to negotiate ethical or responsible global compacts when it comes to indigenous nations and people. On top of not having a way to reign in domestic corporations internationally we are continuing down a road of colonial governance when it comes to new rare earth minerals that are needed to shift away from coal, oil and gas towards electrified vehicles and the like. Analysts will need to be looking toward the possibility of a lithium cartel that may rival OPEC. In Canada, billion-dollar companies turn the heads of state officials who attempt to control the environmental assessments, terms of reference and monetary value to First Nations. Governments scramble to get any control over the new mining industries created for the "green economy" and yet still trample on the land and rights of First Nations. The example in this paper will be negotiations around the so-called "ring of fire", 5,000 km of land near James Bay. The Canadian government says it will make billions of dollars, meanwhile, Nishnabe Aski nations, Treaty 9 nations, that struggle with abdications, suicide, housing, water and mor, have not had input in the talks at all, and with such a dire living condition one wonders how they will "negotiate" at all with these lush companies and governments. There is no free prior or informed consent (FPIC), and the Canadian government claims they are going ahead with the project in two years.

Keywords: extraction, fourth world, first nations Canada, ring of fire, lithium, batteries, neoliberalism, free prior and informed consent

Canadian Mining

Canadian mining is very large. Canada has over half the international extractive mining companies in the world. These companies essentially live by their own rules. They seek out land that has minerals and set up mines. In the meantime, in Canada and elsewhere, women are abused by the men working these mines and the destruction of the earth and clean-up are not well planned. In an area of Canada known as the "ring of fire" there has been found lithium vital to the new economy. The Industries Committee had a meeting on the sale of a company called "Neo lithium" to a Chinese company Zijin

and were frightened about how the Chinese government may be buying up critical industries for the new green economy.[1]

The issue is critical. It is likely that the US and China will compete for dominance over both lithium, mostly found in Bolivia, Argentina and Chile but also in Australia. China also controls the supply chain for turning lithium into car batteries. When the Organization for Oil and Petroleum Exporting Countries (OPEC) formed a cartel during the Cold War, they were able to control the price of oil in the world. If countries or companies can create a Lithium Cartel, then they may be able to control the price of this new critical mineral.[2] It will have consequences for geopolitics and peace in the world. Nevertheless, nowhere in that Canadian government meeting did any of the politicians mention that Treaty 9 nations, where lithium was found in Canada, were not consulted about the project at all.

The Canadian lobbyist for mining called MAC (Mining Association of Canada) wants the federal government to double the mining exploration tax credit.[3] Although they claim to be the largest employer of indigenous people in Canada, there is no mention on their website of collaborating with First Nations on future mining projects, or how wealth, often generated out of indigenous land, would bring them prosperity and stability.[4]

Juno mining company which is said to be independent but may have links to Val d'Or mining in Quebec[5], has signed an MoU with the Webequie Nation in the Ring of Fire.[6] Yet other First Nations have publicly stated that there has been no consultation with them. Kashechewan Chief Gaius Wesley said on the TV show Nation to Nation, "[t]hey need to work with the First Nations people through a co-led and co-enforced approach to ensure that the people in our region also have their say."[7] The Ontario Premier has stated publicly that the Ring of Fire will be mined and create the minerals needed for the new green economy.[8] In his mind consultation with the First Nations has occurred, but three Nations, Attawapiskat, Fort Albany, and Neskantaga, have called for a moratorium on mining. They will

[1] https://ca.news.yahoo.com/zijin-mining-acquire-neo-lithium-232800654.html
https://www.neolithium.ca/index.php
https://www.theglobeandmail.com/business/article-canada-is-playing-catch-up-in-global-frenzy-for-lithium-as-chinas-grip/

[2] https://www.forbes.com/sites/rrapier/2022/01/20/is-a-lithium-cartel-inevitable/?sh=24c16b9c1b0b

[3] https://www.timminspress.com/news/local-news/mining-association-calling-on-ottawa-to-provide-greater-support-to-industry
https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2?fk=11475524

[4] https://mining.ca/resources/

[5] https://www.globenewswire.com/news-release/2020/01/06/1966521/0/en/Val-d-Or-Mining-Corporation-Enters-into-Property-Sale-Agreement.html

[6] https://www.northernontariobusiness.com/industry-news/mining/ring-of-fires-largest-claim-holder-inks-first-nation-cooperation-agreement-3466853

[7] https://www.aptnnews.ca/national-news/chiefs-slam-feds-ring-of-fire-assessment/

[8] https://www.cbc.ca/news/canada/toronto/ontario-electric-vehicle-mining-ring-of-fire-1.6238261

lift the moratorium if the federal and provincial governments " agree to plan and conduct the RIA [reginal impact assessment] on terms that respect our rights."[9] It is not clear from what is going on what role corporations federal and provincial governments have.

There are 16,000 mining claims in the Ring of Fire and Juno holds most of them. In this case they made a deal with the Webequie Nation, and they claim that their consultation with them, closest to the site, was enough to satisfy their duties to consult. Other Nations in the region, however, know that Juno has these claims and will want to work with them in the future. This has been a bad start to regional development in the big picture. The colonial system has always exacerbated and created divisions among First Nations. In this era of Canadian reconciliation, it behooves us to do better and to look at an integrated picture.

One project in the USA and the World Economic Forum is what is called Multi-Stakeholder Governance (MSG). Led in large part by Harris Gleckman, the movement centres around key stakeholders in areas of trade that dominate the global economy.[10] Gleckman argues, that the current multilateral system only allows for governments to negotiate. The United Nations system only allows for governments to agree and their parliaments to ratify the agreements. When we are dealing with international mining industries, what level of participation do stakeholders get? The inevitable flaw with the approach is that indigenous people become "stakeholders", alongside non-profits, governments and corporations. Democracy becomes about who has the money and influence to get involved. Indigenous people should not be mere stakeholders in any new global movement. We must begin to admit that we built states on top of indigenous territory and therefore they are the primary stakeholder in all discussions. Conservatives in Canada have called FPIC a "veto" and therefore displacing the power of the government. If that is what FPIC means, then so be it. It may save our planet.

The Treaty Nine Nations

Treaty Nine Nations are also called James Bay Treaty Nations by Canada. The Treaty was signed in 1905 and 1906 with both the province and the federal government. And Ojibway and Cree nations. The interpretations of this treaty differ vastly between the government of Canada information and that of the Nishnawbe Aski Nation.[11] Determined to push the oral tradition aspect, the indigenous people in northern Ontario believe that the treaty grants them sovereignty over 2/3 of the landmass of Ontario. Although they have been neglected and starved out by Canadian policy regarding First Nations, they show fight and resilience at every turn.

[9] https://www.cbc.ca/news/canada/thunder-bay/ring-of-fire-moratorium-1.5977066

[10] https://www.tni.org/en/profile/harris-gleckman

[11] https://www.oise.utoronto.ca/deepeningknowledge/UserFiles/File/jamesbaytreaty9_realoralagreement.pdf
https://www.nan.ca/treaties/about-treaty-no-9/
https://www.rcaanc-cirnac.gc.ca/eng/1100100028863/1581293189896

Treaty 9 was created by the Canadian government and the province of Ontario, and no one was allowed to change any of the parameters. Commissioners were sent to Ojibway and Cree lands and told to meet with the Hudson's Bay Company (HBC) and explain the Treaty and obtain signatures. There is debate about how the treaty was explained, what the signers may have thought it said, how coercive and non-cooperative the process was.[12] In the North the Ojibway and Cree had coexisted with HBC for two centuries before this treaty was signed. The federal and provincial governments believed it was a treaty that singed these lands over to the King of England. Yet it has been proven that at each HBC post, the commissioners explained the treaty differently and were not clear in its meaning. Again, no one was allowed to be involved in any case.

There have been court cases from First Nations in the area like the Attawapiskat, who are attempting to stop Juno Corp, siting is their territory, and no consultation has been made and because the peat moss there is needed to combat climate change.[13] First Nations have used the courts often in Canada with varying levels of success. They are often required by law in Canada to make a "subsistence living" when it comes to hunting, fishing and trapping while billion- dollar industries stomp once again on their unceded territory. The entire system works against them gaining wealth and profit from their land.

Possible Solutions

Lukas Bednarski has some interesting propositions on the new "green economy." Juno Corp is looking for nickel in the Ring of Fire because it is a central element in the production of lithium batteries for the new electric car push.[14] He makes sure that we understand that there is a huge supply chain to create lithium batteries. Right now, this post-production mining is dominated by China. The electric movement must realize that the basis of this depends on critical minerals often found in non-state territory. We must consider how we will recycle these critical minerals and look at the whole supply chain. We need to fund chemical producers as states and nations. In many parts of the world water is being used to transform the rock to usable minerals. Yet water is scarce. If we are going to change the

[12] Long, John S. "How the Commissioners Explained Treaty Number Nine to the Ojibway and Cree in 1905 https://www.erudit.org/en/journals/onhistory/1900-v1-n1-onhistory04970/1065838ar.pdf

[13] https://financialpost.com/commodities/energy/electric-vehicles/even-amid-bidding-war-for-noront-many-challenges-encircle-ring-of-fire-mining-project
https://www.oise.utoronto.ca/deepeningknowledge/UserFiles/File/jamesbaytreaty9_realoralagreement.pdf
https://www.cbc.ca/news/canada/sudbury/attawapiskat-ring-of-fire-exploration-court-case-1.6200000
https://republicofmining.com/2021/10/05/attawapiskat-first-nation-seeks-court-injunction-against-ring-of-fire-exploration-by-erik-white-cbc-news-sudbury-october-5-2021/

[13] https://soundcloud.com/leadersincleantech/lukasz-bednarski-lithium-the-global-race-for-battery-dominance-and-the-new-energy-revolution-86?utm_source=www.hurstpublishers.com&utm_campaign=wtshare&utm_medium=widget&utm_content=https%253A%252F%252Fsoundcloud.com%252Fleadersincleantech%252Flukasz-bednarski-lithium-the-global-race-for-battery-dominance-and-the-new-energy-revolution-86
https://www.hurstpublishers.com/book/lithium/

world it should noy usher in a new era of 'green colonialism', particularly when it comes to mining but also in the entire system of the battery and look at this new economy. Bednarski asks, are we making the world a better place? Will the waste and tailings created from mining create more trouble for our lives? It is not likely that we stop mining but how we mine is a major issue that we must focus on as a planet.

Webesquie signed an agreement with Juno mining corporation early in 2021. The idea is that mining will benefit First Nations and the Webesquie will gain roads and access points.[15] Yet, as other nearby Nations have said, we need a broad picture of the overall development of the ring of fire and how it may benefit and how it may cause issues for the area. Unfortunately, many First Nations on Turtle Island face poverty, lack of access to health care - food and internet, lack of clean water and housing. For these communities the prospect of wealth and a future for their children is a real pull towards development. Changes must be made in Canada, but we must find a way to create a table where all can sit.

---

[14] https://soundcloud.com/leadersincleantech/lukasz-bednarski-lithium-the-global-race-for-battery-dominance-and-the-new-energy-revolution-86?utm_source=www.hurstpublishers.com&utm_campaign=wtshare&utm_medium=widget&utm_content=https%253A%252F%252Fsoundcloud.com%252Fleadersincleantech%252Flukasz-bednarski-lithium-the-global-race-for-battery-dominance-and-the-new-energy-revolution-86
https://www.hurstpublishers.com/book/lithium/

[15] https://www.osler.com/en/blogs/energy/september-2021/opportunity-knocks-lithium-and-graphite-development-in-canada
https://www.northernontariobusiness.com/industry-news/mining/ring-of-fires-largest-claim-holder-inks-first-nation-cooperation-agreement-3466853

This article may be cited as:
Singh, S. (2022) Green Colonialism. *Fourth World Journal*. Vol. 21, N2. pp.117-122.

ABOUT THE AUTHOR

Sabina Singh

Sabina was born in Kamloops BC to parents who came from India. Her PhD was a case study in Uganda, and she taught African Politics at the University of Victoria. After finishing her degree, Sabina began to research and write about connections between indigenous people throughout the world following the work of George Manuel.

New E-Book:

PREVENTING AND TREATING DIABETES TYPE 2 NATURALLY

Leslie E. Korn & Rudolph C. Rÿser

Learn simple to use, daily strategies to address diabetes and it's symptoms, such as neuropathy, cardiovascular disease, stress, trauma, pain and depression.

Learn Whole Foods Nutrition, Herbal Medicine, Bodywork and Energy Medicine, Guided Visualization (audio provided), Relaxation, Physical Exercise and Detoxification. Everyone can stay healthy and happy with this book as a reference guide!

Get in on **Amazon** The iBook is formatted for Ipad and IPhone.

A Framework for Implementing the Principle of Free, Prior, and Informed Consent (FPIC) – Comity or Conflict

By Rudolph C. Ryser, PhD[1]

Ms. Lannette Nickens contributed suggestions in the final sections of this article. She is a former Assistant Attorney General of the State of Alaska (USA) and is an experienced attorney and mediator. She is of Samoan heritage and a graduate of Seattle University (Seattle, WA, USA)

ABSTRACT

The central issue facing the world's first nations was historically and remains today the question of access to and use of the territory they occupy. Peoples' migrations, occupations, and colonization have continued as part of human relations for more than 60,000 years. Over this time, relations between emerging nations featured one nation being absorbed by another, some becoming associated through social mixing and independent nations remaining independent from one another. Peoples achieve these cultural processes through forced absorption, cultural exchange, or recognition of the equality of power. These changes continue today, except that the establishment of permanent boundaries around nations or combined nations has forced the need for structures and processes for mediating relations between nations that were forced inside bounded areas of states. These circumstance demands determining whether nations will remain "absorbed, associated or become independent of modern states. Nations' claims over their territories come into conflict with States' claims over the same regions—a circumstance exacerbated by the economic and business interests of transnational corporations and commercial enterprises seeking to profit from the location of nations' territories or access to undeveloped subsurface raw materials, lands, forests, surface minerals and soils supportive of agriculture.

Nations and States constitute the primary political systems of human organization required under modern state-based international law to implement the principle of free, prior, and informed consent (FPIC). However, without a formal and enforceable mechanism to carry out international and domestic pledges intended to implement nations' rights to "consent," the imbalance of power between nations and their counterparts in states and corporations leaves nations depending on their opponent's implementation is possible.

[1] Dr. Ryser is the Chairman and Executive Director and the Editor in Chief of the Fourth World Journal of the Center for World Indigenous Studies and is currently Resident Scholar at the Center and Treasurer on the Board of Directors. He is of Cree and Oneida heritage and a graduate in international relations of the Union Institute (Cincinnati, OH, USA).

This article discusses subjects of concern between nations, states, transnational corporations, and commercial businesses. Given limited FPIC details expressed in state-based laws and agreements, neither states nor nations can be assured of an acceptable and defined process for reaching mutual agreements or methods for enforcing commitments made by consenting parties. Defining the establishment and functions of intergovernmental or non-governmental monitoring mechanisms that may serve as agencies for facilitating mediation or negotiations between nations and states, I discuss these in detail.

Keywords: nation, state, corporation, colonization, consent, nation-based law, state-based law, political equals, negotiation.

When a person or a people has been recognized as "having a right," what is occurring here? What does this mean? In law and diplomatic relations, "a right" can be a "grant of permission" where a dependent or subject is allowed to act in a prescribed manner, take possession of something or behave in some otherwise personal fashion not previously recognized. A "right" may also constitute recognition of a just, good, or proper authority either conveyed, recognized, or asserted as inborn.

When a "human right" is proclaimed, the assumption is that we should understand such a "right" as inherent or inborn and therefore "just, good and proper." The right must be enforced as a "shared value" and implemented in good faith. Since the 1960s, the principle of free, prior, and informed consent has been declared a right. State-based international law asserts that "an indigenous nation, group or community has the right to exercise self-determination" in connection with states' government and corporate policies, administrative, legislative, and judicial decisions affecting the lives and property of indigenous people. Variations on this interpretation have been detailed in state-based international conventions and agreements. Notably, states governments have interpreted the FPIC principle as a process that is "free from manipulation or coercion, informed by adequate and timely information and occur(ing) sufficiently prior to a decision that indigenous rights and interests can be incorporated or address effectively"[2] as a product of consultations and without mention of negotiations. Non-governmental indigenous peoples' organizations explain the principle of FPIC asserting "that communities have the right to give or withhold their consent prior to the approval by government, industry or another outside party of any project that may affect the

[2] Canada. (2021) "United Nations Declaration on the Rights of Indigenous Peoples Act" S.C. 2021, c. 14 Assented to 2021-06-21. Department of Justice. Canada.ca/declaration.

lands, territories, and resources" the customarily own, occupy or otherwise use.[3]

The meaning of the "right" to free, prior, and informed consent depends on the perspective one uses. If a state, corporation, and non-governmental organization affirms the "right" to FPIC, the meaning is "permission" that is granted. If a nation asserts the "right" to FPIC, the purpose is just an expression of inherent authority. If a state or corporation states its recognition of inherent authority, it remains the case that they reserve their authority to grant the ability to exercise that authority. A nations' perspective is that there is a difference in power between a state/corporation complex and a nation's. The nation's perspective proceeds from the position of asserting political equality. The principle of FPIC, therefore, constitutes the process of apportioning political power between nations and state-based on political equality—both are sovereign entities. Still, states assert that the process involves the "duty to consult" that informs a nation about an administrative, legislative, policy, or judicial decision. Resolving the difference between "granting permission" and "exercising inherent authority is the requirement at the core of FPIC. Yet, states governments and corporations hold the view that nations do not have a "veto" over government or corporate decisions, even if those decisions may harm nations. Meanwhile, indigenous peoples' organizations assert that "FPIC means communities have a right to decide their future, and not have their future decided for them by anyone else.[4] Nevertheless, other indigenous organizations, nations, and their allies hold that FPIC applied as state-based international law requires that the principle "must be applied on objective grounds, based on consideration of all the rights at stake and the importance of their protection."[5] The idea of an absolute right is a matter of following the law, though it is clear that the law is open to interpretation depending on your interests.

When state-based laws and commitments were made formalizing the principle of FPIC, the expressed reason was to establish a clear intergovernmental or interinstitutional framework. The framework contained objectives, functions, authorities, procedures, and mechanisms for compliance and enforcement between indigenous nations and states. This framework relies on policies and commitments to exercise the principle of free, prior, and informed consent enshrined in international instruments. The principal instruments ratified by states include Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and Article 15 of the International Covenant on

[3] Settle Ghana. "Indigenous People in the Driving Seat, A manual on Free, Prior and Informed Consent (FPIC). https://settleghana.com/

[4] https://settleghana.com/

[5] "Fact Sheet, Free, Prior and Informed Consent endorsed by Amnesty International Canada, Assembly of First Nations, Canadian Friends Service Committee (Quakers), Chiefs of Ontario, Grand Council of the Crees (Eeyou Istchee), Indigenous World Association, KAIROS: Canadian Ecumenical Justice Initiatives, Union of BC Indian Chiefs.

Economic Social and Cultural Rights (ICECSR), the ILO Convention 169 (1989),[6] UN Draft Declaration on the Rights of Indigenous Peoples (1994)[7] International Covenant on the Rights of Indigenous Nations (1994),[8] United Nations Declaration on the Rights of Indigenous Peoples (2007),[9] the Alta Declaration and Alta Outcome Document (2013),[10] the UN World Conference on Indigenous Peoples Outcome Document (2014),[11] and the UN Expert Mechanism on the Rights of Indigenous Peoples (2018).[12]

The UN Permanent Forum on Indigenous Issues, with support from the Special Rapporteur on the Rights of Indigenous Peoples, issued guidance on the implementation of FPIC. Notably, the UNDRIP itself offered the following broad objectives."

- To maintain and strengthen institutions, cultures, and traditions[13]
- To promote development in accordance with aspirations and needs[14]
- To practice and revitalize cultural traditions and customs[15]
- To participate in decision-making matters affecting Indigenous rights[16]
- To determine and develop priorities and strategies for all forms of development[17]
- To not be subjected to forced assimilation or destruction of culture[18]

---

[6] International Labour Organization (1989) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session. Entry into force on 5 September 1991.

[7] United Nations Working Group on Indigenous Populations (1994) "Draft Declaration on the Rights of Indigenous Peoples." as submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

[8] International Covenant on the Rights of Indigenous Nations (1994). Initialed by Nadir Bekir, Political, and Legal Affairs, the Crimean Tatars; A-Bagi Kabeir, Numba People of Sudan; Ron Lameman, Confederacy of Treaty Six First Nations; and Judy Sayer, Apethesaht First Nation; Viktor Kaisiepo, West Papua Peoples Front/OPM. Geneva, Switzerland. Subsequently ratified by nations located in West Asia, North Africa.

[9] United Nations General Assembly. (2007). "Declaration on the Rights of Indigenous Peoples" drafted by the UN Working Group on Indigenous Populations 1980 – 1994, reviewed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the UN Human Rights Council before submission to the UN General Assembly for approval. A/61/L.67 and Add. 1.

[10] Global Indigenous Preparatory Conference. (2013) "Alta Outcome Document." Conference preparatory for the United Nations High-Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples. The Conference convened in Sami Territory in Alta, Norway, with over 400 delegates from indigenous peoples and nations from seven global geo-political regions plus a Women's caucus and a Youth Caucus.

[11] UN General Assembly (2014) "Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples." Sixty-ninth Session Agenda item 65. A/RES/69/2.

[12] UN EMRIP (2018) "Free, Prior and Informed Consent: A Human rights-based Approach. Human Rights Council. A/HRC/39/62

[13] UN General Assembly, (2007) Declaration on the Rights of Indigenous Peoples. Preamble.

[14] Ibid.

[15] Ibid., Article 11

[16] Ibid., Article 18

[17] Ibid., Article 32

[18] Ibid., Article 8

• To not be forcibly removed from lands or territories[19]

The principal focus of the UN Declaration on the Rights of Indigenous Peoples and other similar instruments has been to conceive of FPIC as a "safeguard" to ensure that the rights of indigenous peoples are positively fulfilled and to prevent violations of indigenous peoples' rights. The guidance by the UN Permanent Forum on Indigenous Peoples Issues and the Special Rapporteur on the Rights of Indigenous Peoples takes a decidedly narrow perspective placing the burden on the State to fulfill indigenous peoples' rights. The UNPFII guidance seeks to prevent violating those rights through consultations and obtaining consent in the light of State administrative, legislative, or judicial actions that affect the interests of the specific peoples. The Principle of Free, Prior, and Informed Consent is rooted in ethics and law affirming the right to engage parties to receive information, ask questions, and obtain agreeable decisions. Two or more parties seeking to obtain or exercise powers must engage in voluntary decision-making. The principle of FPIC requires a bi-directional process of decision-making. Thus, the nation and the State must benefit from the exercise of voluntary, appropriately timed sharing of information resulting in a mutual determined decision resulting from politically equal engagement.

As I wrote on the 3 June 2021 in a communication to the leaders of the Congress of Nations and States:

> … nations, states, NGOs, and academics present a wide range of opinions and policy views demonstrating there is confusion and a general misunderstanding of what are the applications of Free, Prior and Informed Consent in relations between nations and other entities. Between the policy views of Australia and the United States asserting there is no definition of "free, prior and informed consent" stating that the principle provides for consultation, but not necessarily agreement and the policy views suggested by Mohawk Nation international relations diplomat Kenneth Deer and the First Nations Assembly (Canada) where they assert the process is one of mutual benefit between nations and states and a "negotiation" as in the process of treaty making there are many who simply don't know what it means.

Supplemental to the commitments made by Nations and States to implement FPIC, transnational corporations, and commercial enterprises sought affirmation of their intentions to comply with international human rights principles by registering their commitment to the principle. The United Nations organized the Global Compact and published a document entitled *Indigenous Peoples' Rights and the role of Free, Prior and Informed Consent: A Good*

[19] Ibid., Article 10

Practice Note, issued in 2014.[20] As of early 2018, some 9,704 companies across 161 countries voluntarily committed to adhering to the Global Compact's principles. The Global Compact essentially restates the broad objectives of the principle originally stated in the UN Declaration of 2007, emphasizing "safeguarding" the rights of indigenous peoples. Unfortunately, the text of the Global Compact includes numerous conflicting statements focusing primarily on obtaining consent without stating the iterative process and procedures. The compact fails to recognize the fulfillment of self-determination as an outcome but instead emphasizes consent without control over results. Therefore, the Global Compact adds to the confusion and allows industries to interpret how and with whom consent is obtained (selecting an individual or subgroup sympathetic to a business' interests could give consent without following the nation's political and cultural practices, for example).

Since 1920 when 42 states founded the League of Nations, and 1945 when 51 states founded the United Nations. These sovereign states have remained concerned about the political status of "unconsenting peoples" included inside the boundaries of an existing state—peoples under previous colonial rule or control of Imperial rule included in newly formed states without their agreement. The political status of "unconsenting peoples" inside existing states has remained unresolved to the present date. The very existence of the state now depends on its claimed sovereignty. This claim affirms economic and political security by exercising control over territories originally claimed by nations. The unanticipated consequence of "decolonization" and maintaining existing states with unconsenting nations inside their boundaries resulted in nations and states claiming separate sovereignty over the same territories within the same political space. The presence of contention and the potential for conflict between nations and states within the boundaries of existing states demands a clear and detailed guide for resolving existing or potential disputes. In particular, those disputes arising from potential governmental decisions (either by the nation or the state) may conflict with the social, economic, political, and cultural interests of either the nation's peoples or the state. Accordingly, the Congress of Nations and States finds that international treaty norms require that contending parties enter discussions or negotiations based on free decisions, advanced knowledge, complete information, and mutual agreement. The existence of overlapping territorial and political claims between nations and states demands the formal establishment of intergovernmental mechanisms implementing

[20] The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment, and anti-corruption. In June 2006, the Global Compact Board established a Human Rights Working Group. Considering the growing recognition that labour rights are human rights and to ensure a coherent approach, the Chairs and members of the Human Rights Working Group and Labour Working Group merged to create the Human Rights and Labour Working Group in 2013. The goal of the Working Group is to provide strategic input to the Global Compact's human rights and labour work.

conflict resolution mechanisms. The principle of "free, prior, and informed consent" offers the opportunity to establish mutually beneficial and binding agreements to resolve potentially adverse consequences of administrative, legislative, or judicial governmental decisions conflicting with either a state or a nation's interests.

The world's original nations have organized into complex societies for more than 50,000 years. And today, the number of nations is estimated to be no fewer than 5000 distinct peoples, with a combined estimate of 1.9 billion people located on all habitable continents. In 2021 there are 207 states, with 191 having claimed sovereignty undisputed by the other states and 15 states with disputed sovereignty. The combined estimated population of states is 6 billion people located on all habitable continents. Today these nations (variously referred to as Adivasi, Indigenous, Aboriginal, or Tribal, etc.) comprise about 24% of the world's present human population. Over the last 350 years, when the idea of the state as an organizing framework for human societies emerged in Europe, they have slowly become the dominant political agency seeking to regulate access to territories and the organization of societies. The state political system includes 76% of the world's population.

Emphasis is placed on the requirement of parties as political equals to implement the principle of free, prior, and informed consent in support of advancing the exercise of self-determination, self-government, and peaceful relations between nations and states. That nations and states have governing authorities is not questioned. How those governmental authorities are exercised as they affect the interests of either nations or states is a dominant theme throughout.

Nations and states are equally required under existing state-based international law to invoke the principle of free, prior, and informed consent (FPIC) when circumstances arise that an impending governmental decision or action poses a consequential or adverse effect on the interests of the other. For example, a nation may invoke the principle to require a state, or a state may invoke the principle to require a nation to enter negotiations to resolve a dispute. Similarly, FPIC should be implemented in all instances when peaceful dispute resolution between nations and states is the intended outcome. In accord with international norms invoking the principle of FPIC is required of nations and states when circumstances arise that an impending governmental decision or action poses a consequential or adverse effect on the interests of another nation or state. A state may invoke the principle or a nation may invoke the principle to require negotiations to formalize a binding agreement. By so doing, they may prevent or mitigate the adverse effects of impending adverse governmental action. States or nations applying the principle of engaging each other as political equals to honorably negotiate their commitment and affirm an agreement to peacefully resolve or mitigate disputes respectfully in the spirit of comity. Therefore, implementing the principle of free, prior, and informed consent can promote peaceful and mutually beneficial decisions between nations and states.

Controlling Principles and Commitments of Nations and States

Nations and States occupy much of the same territory and political space where governing decisions are made affecting the distinct peoples' social, economic, environmental, cultural, political, security and justice interests. When international actors contend over control of territory or political decisions it becomes necessary for the parties to undertake effective and mutually beneficial measures to directly engage and negotiate solutions—thus promote peace and mutual benefit. And where negotiations are convened or become unsuccessful provision must be made for a third-party oversight and mediation to ensure fair and balanced conciliation between the parties preserving the authorities and rights of parties.

The Nations possess the original authority to govern their territories and peoples and the States possess derived authority to govern territories and peoples. The principle of distinct peoples' right to free, prior, and informed consent ("FPIC") provides contending actors a framework for negotiating mutually beneficial outcomes in matters of dispute while affirming each party's political authority and control over the sustainability of communities, territories and the use of land, water, and air resources.

This framework to implement FPIC must provide for these elements:

- Determination that a third-party mediator or agent of compliance with agreements is to be incorporated into the negotiations between nation parties and state parties.
- mutual recognition by parties of the self-defined decision-making and governing powers and
- processes exercised to establish agreement on the methods and free exchange of information,
- timing of exchanging information (subject, description, value assessments, etc.) in the form useful to each party, and
- mutually determined mechanism (public ceremony, negotiations, etc.) by each party for formulating and communicating consent and or approval according to the traditions and institutional systems of each party to the terms of a final agreement
- a mutually defined compliance, accountability, and enforcement agent that may be an institution, mediator, or multi-lateral organization.

When there is an imbalance of economic, military, policing and institutional supports between parties to an FPIC engagement, steps must be taken to balance the power between the parties. This may be accomplished by conducting exchanges through a mutually agreed institutional or political third party that becomes responsible for overseeing the official procedures put into action by both parties.

Terminology and Definitions

The Principle of Free Prior and Informed Consent – FPIC:

The principle of Free, Prior and Informed Consent is an international norm recognized as a framework for ensuring accountability and

mutual agreement between national or state parties for the consequences of government administrative, legislative, or judicial actions that affect the interests of national or state parties. Accordingly, the principle requires that parties respect and apply the following elements in an intergovernmental engagement conducted to formalize agreements and commitments to limit or eliminate the existing or potential adverse effects of governmental decisions that may impose social, economic, environmental, political and or cultural burdens that undermine or prevent the exercise of self-determination.

- Participation and engagement without encumbrance and intimidation.
- with notification in a timely fashion before an action is taken.
- with information provided in a form and manner useful and accessible to the recipient; and
- subject to agreement by negotiations.
- The principle of free, prior, and informed consent is linked to treaty norms, including the right to self-determination affirmed in common Article 1 of the International Human Rights Covenants. When affirming that the requirement flows from other rights, including the right to develop and maintain cultures, under article 27 of the International Covenant on Civil and Political Rights (ICCPR) and article 15 of the International Covenant on Economic Social and Cultural Rights (ICECSR), the treaty bodies have increasingly framed the requirement also considering the right to self-determination. (UN Office of the Human Rights Commissioner. 2013)

Governing Authority

The means by which a nation or state exercises its power of decision on behalf of the polity.

People

A People possesses a territory governed by inherent powers exercised by a distinct population practicing a common culture, with a shared heritage, common language, exercising customary laws, and the capacity to enforce those laws.

Nation

A people practicing a culture, with a shared heritage, common language, exercising customary laws, and the capacity to enforce those laws

Political Space

An avenue, opportunity and entry point available to parties to express their voice and influence political processes and outcomes.

Sovereignty

Absolute authority or power over governance of a territory and people.

State

A polity with fixed boundaries, a fixed population, exercising a monopoly over the use of force, imposing universal law within the boundaries and recognition by other states.

Territory

A geographic area belonging to or under the jurisdiction of a governmental authority

Territorial Space

Territorial space refers to all the waters, land surface, subsurface and space above surface under the jurisdiction of administrative units but placing more emphasis on its functional diversity than on the territory itself.

There is an apparent divergence of interpretations by diplomats and scholars on the subject of an international as opposed to domestic implementation of free, prior, and informed consent. Both, states, and nations, repeatedly call for the establishment of a mechanism or framework to implement the principle in agreements and commitments, thus suggesting recognition of limitations in existing state-based multilateral instruments. The Congress of Nations and States provides the opportunity for nations and states to prepare a new international pathway where nations located in existing states will engage states on an equal political plane to define and implement measures for conducting relations with respect and knowledge that cooperation is essential to meet global and domestic social, economic, political, and cultural challenges.

European Decisions from 1830–2014

Peoples within the boundaries of existing states and empires have been subject to "promises of freedom" by empires and states throughout history —particularly in the last 170 years. Outcomes from nineteenth century congresses (Vienna [1814-1815],[21] Paris [1856] and Berlin [1878]) included treaty provisions for the security and rights of minority peoples who would be recognized today as "indigenous peoples." The Concert of Europe[22] failed to enforce the treaty's commitments despite well recognized acts of oppression of such peoples by old empires and newly functioning states. The subsequent treaties in the 19th century failed as well.[23] Evidence of the early failures are reflected in the nearly thirty year process begun in the international community beginning in 1970 to internationalize and thus elevate indigenous nations as a subject demanding new rules and commitments as finally exhibited in the UN Declaration on the Rights of Indigenous Peoples (2007) and the Outcome Document of the High Level Assembly of the United Nations called the World Conference on Indigenous Peoples in 2014.

[21] After the fall of Napoleon four European powers (Britain, Russia, Prussia and Austria) convened the Congress to reorganize the peace in Europe under the rule of the "great powers." The European Imperial powers added France as an equal and together they set about reordering territorial and political claims in Europe. Included in this effort was a focus on "ethnic minorities" whose distinct languages and cultures set them apart from so called dominant populations. Croatians, Magyars, Czechs, Slovaks, Bohemians, Moravians, and many other nations became a subject for the great powers to address as populations requiring protection.

[22] The Concert of Europe was a post-Napoleonic (1830s) consensus by European monarchies intent on preserving the territorial and political status quo contained in the Congress of Vienna, Congress of Paris and the Congress of Berlin. The Concert of Europe was viewed as necessary to reorder Europe after nearly two centuries of war and the Napoleonic dictatorship. The consensus reflected the assumption that monarchs retained responsibility and the right to intervene and impose their collective will on states threatened by internal rebellions. This early 19th Century collective consensus formed the basis of what is today referred to as the responsibility of the great powers of state to dominate international behaviors of all other states.

[23] Fink, C. (1995) The League of Nations and the Minorities Question. Vol.157, No. 4, Woodrow Wilson, and the League of Nations: Part One (Spring 1995), pp. 197-205.

The Political Status of Peoples Challenge

In the 20th Century, nations with a collective population of 750 million people that were remote from the states that colonized them, gained their freedom because of the 1946 United Nations General Assembly Resolution on decolonization. Nations "inside" the boundaries of existing states such as Russia, Brazil, South Africa, United States of America, Australia, México, and Canada comprised another billion people in 1946, but were exempted from decolonization.

The states with borders encompassing these nations claimed the same territory and political authority over peoples and lands as the nations. Thus, creating the present-day political challenge nations asserting sovereign authority over territory and states asserting sovereign authority over much of the same territory.

The States' typical response to this challenge has been to

- "absorb" nations socially, politically, and culturally,
- establish an autonomous relationship with a nation based on a "free association agreement," or
- negotiate or establish a nation as an "independent state."

Additionally, states have set an international standard of "non-interference" for relations between states declaring that states may not interfere in the internal affairs of a state in a manner that may violate the state's territorial integrity or sovereign integrity. There is no international declaration or standard prohibiting nations within state borders from separating their territories politically from a state or conducting autonomous control over their territories within the boundaries or across boundaries of a state. The contest over territory and sovereignty between nations and states intervenes on a broad range of social, economic, political, and cultural matters concerning the continuity of the nation and the state.

The challenge political leaders have sought, but only partially resolved is how can a government of a ruling state and the governments of indigenous nations conduct equitable and constructive relations when the state and the nations occupy the same territorial and political space? States were established on top of indigenous nations' territories and benefit from their resources. Indeed, the wealth of many of the world's states is based on using resources from nations' territories either by virtue of treaties or confiscation.

The goals of the state and the nations relating to land and natural resources and political governance do not always converge. This problem was partially addressed in the 20th century when states and nations agreed to "decolonize" non-self-governing territories that were geographically separated from the colonizing power by "blue water." The question put before the League of Nations, and more succinctly at the United Nations thirty years later, was "what should be the political status[24] of non-self-governing peoples

whose colonial status is changed?" Between 1946 and 2020, more than eighty non-self-governing territories were identified and "decolonized"[25] and most became independent states while many decided to absorb into another nation or state. The political status of 750 million people was the subject of the UN decolonization process. Still seventeen "non-self-governing territories" did not have their political status resolved. The United Kingdom, France and the United States continue to "administer" peoples (combined population of 2 million) in mainly island territories while the question of political status remains an open question.

The political status of another 1.9 billion people in more than 5000 nations located inside the boundaries of 206 UN member states remains an unresolved matter because the UN has focused on European colonized "non-self-governing peoples" located outside the territories of existing states—mainly islands, African, Melanesian, and Asian territories. Conscious of the unresolved political status of nations located inside the boundaries of existing states the issues political autonomy, self-government and exclusive territorial control have been policy issues introduced to the international community since 1923. The Haudenosaunee and Maori peoples, much aware of this unresolved political status question, took the initiative to carry the issue of hundreds of millions of people to the international forums of the League of Nations, United Nations and many regional multilateral state and nation forums.

Nation and State Political Structures

The political structures of nations and states may be conducive to constructive negotiations between governing bodies and the organization of political alternatives. If nations are to become or remain autonomous (governing their territory under their direct authority) then mechanisms of negotiation are necessary to effect working solutions to differences between states and nations. If nations and states agree to a free association then a negotiated agreement can form

[24] Three categories under state-based international law set the initial boundaries for what is meant by "political status:" 1. Independent countries, 2. internally independent countries under the protection of another country in matters of defense and foreign affairs and 3. Colonies or dependent political entities absorbed into an existing state. Beyond this definition there are nations or countries that where there is a territorial dispute or entities have declared the separation and independence as they seek diplomatic recognition from the international community as de jure sovereign states. Under existing state-based international law a state or distinct country exists by declaration if it has a defined territory, permanent population, a ruling government and the capacity to enter into relations with other states or countries. Such declarations are not dependent on recognition by other states. However, under what is referred to as "consultative theory" a state becomes a person of international law only if it is recognized as a state by other states that have attained recognition in the international community. Variations on state personality exist where a state like the Republic of Korea is not recognized by the government of North Korea, the Republic of Armenia is not recognized by Pakistan and Azerbaijan. The Republic of China (Taiwan) is not recognized by the Peoples' Republic of China though it is recognized by fourteen states including Guatemala, Honduras, Holy See, Haiti, Paraguay, Nicaragua, Eswatini, Tuvalu, Nauru, Saint Vincent and the Grenadines, St. Kitts and Nevis, St. Lucia, Belize, Marshal Islands and Palau. Bhutan is the UN member state that has never explicitly recognized either the PR China or the Republic of China. The State of Israel is not recognized by 28 UN member state including Algeria, Bangladesh, Brunei, Comoros, Cuba, Djibouti, Indonesia, Iraq, Kuwait, Lebanon, Libya, Mali, Pakistan, Somalia and Malaysia among others.

[25] The UN under the Declaration on the Granting of Independence to Colonial Countries and Peoples (UN General Assembly Resolution 1541) The resolution characterized foreign rule of peoples as a violation of human rights. Colonizing powers included, United Kingdom, United States of America, Spain, France, New Zealand at the time of the Resolution.

the basis for conducting domestic and foreign affairs. Finally, if nations and states agree to join in a common political, social, economic, and cultural union then it is possible that the governing mechanisms could join into one "federated" body where political decision making is mutual determined.

Subjects of Concern Between Nations and States

There are many subjects of concern between nations and states that may be identified through conduct of Nation and State engagements employing the FPIC framework and may include but not be limited to:[26]

- **Negotiations**
  Negotiations for binding settlement (treaties, agreements, compacts) of disputes through each Nation's representatives and each State's representatives (1977 Int'l NGO Indg Rights, UNWCIP 2014).

- **Lands**
  Land (Rights, uses, authority) – any action that has the effect of depriving a people or population of their distinct cultural or ethnic identities (1977 Int'l NGO Indg. Rights, ALTA UNDRIP, 1977 Int'l NGO Indg Rights).

- **Imposed Assimilation**
  Any form of indirect or forced assimilation or integration imposed by administrative, legislative, or judicial measures (1977 Int'l NGO Indg. Rights, ILO, UNDRIP, Alta, UNWCIP).

- **Disabilities**
  Promotion and Protection of peoples' and populations' rights with disabilities and improve their social and economic conditions. (UNDRIP, ALTA UNWCIP 2014)

- **Propaganda**
  Any form of propaganda directed through public media, education or means of organization (UNDRIP, ILO Convention 169).

- **Deprivation of People or Population**
  Any actions that deprive a people or population of the ability to maintain and develop their political, economic, and social systems. (1977 Int'l NGO Indg. Rights, UNDRIP, ALTA, UNWCIP 2014).

- **Resources Development**
  Natural resource development (commercial purposes), and life supporting water, soils, minerals, flora, fauna.
  And the following categories included but not limited to:

- **Raw Materials Extraction**
  Minerals, metals, petroleum, wildlife, forests, and lands are the subjects of state, nation, and corporate extraction for commercial purposes.

- **Ethnocide, Ecocide**
  The breakdown of biodiversity, in particular flora and fauna life, colonization,

[26] This is by no means a comprehensive listing of subjects, but is intended to illustrate the range of subjects that may arise or already exist and may in particular circumstances be taken up within the framework of the process of Free, Prior and Informed Consent.

displacement, and removal of peoples resulting in their destruction in whole or in part.

• Population Relocation
Forced relocation of populations because of imposed development, commercialization of raw materials, lands, and waters

• Preservation of the Territorial and Sovereignty Integrity
The exercise of customary or codified jurisdiction and authority to govern over territories ensuring the life, security, and prosperity of a people.

• Destruction of Life and Culture
Actions that directly or indirectly result in the destruction or deterioration of ecosystems, peoples, cultures, or life supporting resources through the effects of unrestrained development

• Government Actions and Interests of Nations or States
Any Administrative, Legislative or Judicial action taken by the government of a Nation or a State that is determined by the parties to adversely affect the interests of either the nation or state.

Negotiation within an FPIC Framework

Negotiation is a means of dispute resolution in which the parties engage in an exchange of information that may or may not lead to mutual achievement all the parties' goals or a complete resolution of the disputed issues. Indeed, under existing international norms negotiation between nations and states is required under existing internationally agreed treaties and conventions on matters that affect the interests of either a nation or state in advance of administrative, legislative, or judicial actions. Negotiations is a form of dispute resolution that can readily be conducted within the framework of the principle of free, prior, informed consent. The "consent" element of Free, Prior and Informed Consent ensures a "process of negotiation between parties acting as political equals." The goal is to achieve agreement based on freely exercised participation, relying on information obtained before engaging in negotiations. Mechanisms for negotiation implementing the principle of Free, Prior and Informed Consent may include:

• Voluntary Framework - No party is forced to participate in a negotiation. The parties are free to accept or reject the scope of the negotiations, the outcome of negotiations, and may withdraw at any point during the process. Parties may participate directly in the negotiations, or they may designate representatives.

• Bilateral/Multilateral - Negotiations can involve two, three or dozens of parties.

• Non-adjudicative - parties may engage directly in negotiations or may secure a neutral third party to facilitate the negotiations.

• Informal - there are no formal rules, the parties are free to adopt rules as they choose.

• Confidential - The parties have the option of negotiating publicly or privately. In the government context, negotiations would be subject to the criteria governing disclosure.

• **Flexible -** The scope of a negotiation depends on the choice of the parties. The parties can determine not only the topic or the topics that will be the subject of the negotiations, but also whether they will adopt a positional-based bargaining approach or an interest-based approach.

Nations engaging nations, states engaging states or nations engaging states, or nations engaging transnational corporations may enter freely defined negotiations and establish a temporary mechanism for the conduct of such engagement or a permanent framework. Of particular importance to consider the parties may mutually decide to include a mediator or third-party guarantor as an active participant in the negotiations. This approach can provide the means for enforcing the negotiated outcome.

• **Freedom of Parties** - Free, prior, informed consent means that parties must be engaged and participate free of intimidation or coercion through the implied use of force, social or economic reprisals before, during and after the engagement.

• **Advance Notice** - Free, prior, informed consent means that all parties must have ample advance notice of discussions or negotiations sufficient to the needs of the subject parties to participate in an informed and meaningful manner.

• **Information Types, Transmission and Form** - Free, prior, informed consent means that information must be provided in a suitable format. Information may exist in digital sources, paper sources, video, person communicators and information must be conveyed in the appropriate language and narrative readily accessible to each of the parties.

10. Consent - Consent is the basis for "agreement" and agreement is the intended result of negotiations where the parties engage to achieve beneficial outcomes. The six modes of negotiation early referenced are predicated on the political equality of the parties motivated by the intention to achieve comity.

Binding Agreement Methods and Mechanisms

Implementation of the principle of free, prior and informed consent in relations between nations and states preserves, or in some instances advances, the exercise of self-determination and the conduct of self-government by both parties. Stable, amicable relations are built upon the parties' adherence to agreements and norms that exist between the parties. Binding agreements are essential to the process of attaining stable relations and a necessary early condition for engagement. A binding agreement requires that both parties have a stake in the outcome and may be reached through different mechanisms. The alternatives to negotiated relations are indigenous nations' political resistance to occupation and exploitation of their peoples and territories; and the use of violence as a means breaking nations' resistance by the state and or corporate

powers.[27] While the principle of free, prior and informed consent is defined as being focused on obtaining nations' consent to state government, administrative, legislative and judicial actions before they are brought into force, the mechanism of FPIC has broader potential benefit for stable and peaceful relations.

Nations may need to secure structured agreements with states' governments, transnational corporations, businesses, and non-governmental organizations to manage mutually beneficial social, economic, environmental, or political disputes that go beyond administrative, legislative or judicial acts. Independent mechanisms acting to facilitate negotiations are essential to operationalize the process of FPIC. To do so a spirit of comity between contending parties is an essential requirement. Furthermore, an internationally sanctioned embrace of mechanisms providing impartial monitoring of emerging disputes on a global scale must be formalized as a further elaboration of the principle of free, prior and informed consent. Toward that end we may consider one or a combination of the following mechanisms to effectuate compliance with the principle.

Mediation – Mediation is a form of dispute resolution between parties that is structured and facilitated by a neutral third party. Mediation may be bilateral or multilateral. The parties must engage in mediation through free, prior, informed consent to the mediation, the scope of the mediation, and to be bound by any potential agreements. However, mediation may not produce any agreement that is enshrined in a mutually agreed declaration, or it may only result in partial agreement that is nevertheless memorialized in a declaration.

Arbitration – Arbitration is a form of dispute resolution in which the parties agree to submit a dispute, through argument and evidence – including testimony, documentation, expert opinion, etc. to a neutral third party (individual or panel) for resolution. Arbitration may be included as a defined mechanism for enforcement or dispute resolution in agreements and treaties or available as an option or otherwise requested on an ad hoc basis. Arbitration may be bilateral or multilateral. Outcomes may be binding or non-binding. Binding arbitration occurs when the parties agree to accept the decision of the arbitrator as the final resolution.

Monitoring – An independent "monitoring mechanism" can be an effective means of ensuring implementation of the principle of free, prior and informed consent. The independent and permanent mechanism may be established by nation(s) and state mutual agreement as a temporary or permanent organization.[28] Such a mechanism can independently identify potential conflicts and serve as an independent mediating

[27] Conflicts resulting in violent destruction of property and communities in Burma, Ethiopia, the Democratic Republic of Congo, Afghanistan, Yemen, Colombia, Somalia, Nigeria, Iraq, Syria, Turkey, South Sudan, Balochistan (Pakistan), Israel, Papua (Indonesia), Moro (the Philippines), Northern Chad are locations where nations, states, and corporate militias are engaged in armed conflicts resulting in up to 10,000 violent deaths per year. Subject of land control and access, exploitation of resources and controls over governing structures are among the reasons for these unresolved conflicts.

[28] Recognizing the need for an independent and permanent mechanism may be a complicated process and may require the intervention of an outside, disinterested, body that may have influence on the decisions of the governing authorities of the nations and states.

body for the conduct of negotiations. Within the domestic environment of the state or in the international environment, the monitoring mechanism also may serve as the recipient of nation or state appeals to aid in the process of establishing a forum for negotiations.

To implement the mechanism either such a body may be created and authorized by decision of nation and state governments, or a non-governmental body may establish the mechanism. Nations may "register" with the mechanism indicating their willingness to cooperate in the monitoring process (identifying existing or potential matters of dispute); and mechanism may be asked to diplomatically bring all interested parties together for the possibility of organizing talks and negotiations.

Intergovernmental Affairs Commission

An intergovernmental affairs commission provides a mechanism for the ongoing monitoring and communication of domestic and international events and actions that may affect the member nations and states. This may be accomplished with a tri-party commission consisting of one member appointed by each nation and state, and a third member selected and agreed to by both nation and state governments that may be a non-governmental personality. Members must be experienced and knowledgeable in intergovernmental affairs or relationships. The Intergovernmental Mechanism will require a small staff that can monitor pending Administrative, Legislative or Judicial nation or state actions that may affect the interests of the parties. The Intergovernmental Commission staff may complete its review and issue a report to the decision-making body that in turn may authorize transmission of a communication to affected nations and states that they are required to enter a process to exploratory talks to assess whether the parties require a formal process of mediation and or negotiations. If there is a controversy the parties may ask the Intergovernmental Mechanism to provide the setting for mediation or negotiations or other processes. If there is no need for resolution beyond discussions, then the Intergovernmental Mechanism simply declares the matter settled. Both the state and the nation(s) must provide the financial support necessary for the intergovernmental mechanism to function independently. The shared costs may be distributed based on the ability to provide funds according to the budget of the mechanism and a proportion paid by each party.[29]

Nongovernmental Mechanism

Nongovernmental organizations that are skilled and knowledgeable about the workings of a states' government and or nations' governments may be invited by nations and states within the boundaries of a state to form a "monitoring and mediation" mechanism established to inform nations and states when and if potential conflicts may arise from governmental administrative,

[29] By way of illustration a nation may have limited capacity to generate revenues as compared to the state so it might be required that the nation pay 2% of the Intergovernmental Mechanism budget and the state pay 98%. Since the ability to generate funds must first be determined the measure will vary but the focus of funding must be measured overall by the budget requirements of the intergovernmental mechanism.

legislative or judicial actions by either a nation(s) or the state. The significant difference between an intergovernmental monitoring mechanism and a non-governmental organization, is that the non-governmental organization will select the governing and decision-making body and designate the staff. Once again, the budget for the mechanism will determine the ratio of funding provided by nations and states to ensure the independence of the body.

Nation and State Options for Implementation

The governing authorities of nations and states function according to customary or codified practices and procedures. Since these vary from nation to nation and from state to state, mechanisms of decision must be thoroughly understood when crafting implementation measures for the principle of free, prior, and informed consent. Some of the following mechanisms may inform best approaches:

- **Administrative**
  Ministerial, or bureaucratic decisions giving direction to facilitate agreed talks and exchanges can facilitate cooperation leading to constructive relations.
- **Executive Order**
  The executive officer of the nation, state and or business may simply decide to engage in direct communications to identify the elements of a dispute and offer solutions.
- **Presidential Order**
  The President or principal spokesperson of the nation, state and or business may simply decide to engage in direct communications to identify the elements of a dispute and offer solutions.
- **Chairman Order**
  The Chair of the nation, state and or business may simply decide to engage in direct communications to identify the elements of a dispute and offer solutions.
- **Prime Minister Order**
  The Prime Minister officer or principal spokesperson of the nation, state and or business may simply decide to engage in direct communications to identify the elements of a dispute and offer solutions.
- **Chief**
  The Chief or principal spokesperson of the nation, state and or business may simply decide to engage in direct communications to identify the elements of a dispute and offer solutions.
- **Head**
  The Head leader of the nation, state and or business may simply decide to engage in direct communications to identify the elements of a dispute and offer solutions.
- **Legislative, Parliament, Bicameral, Unicameral, Council, Ceremonial Body, Multi-lateral Body**
  Where a council, hereditary chiefs, board of directors, elected officials to representative posts decide the laws governing the nation,

state or corporation an emissary may be designated supported by a documented decision of cooperation can facilitate definition of a dispute and offer a solution.

• Judicial

A Council, designated judges, Sheiks, Mirs or other interpreters of nation, state, or corporate policies and laws may engage as a special commission to facilitate a mutually beneficial decision.

Nations, states, and corporate bodies organize and maintain systems for deciding acceptable policies and laws leading to outcomes resulting from controversies over the conduct of governance, social life, cultural life, economics, environment, etc. As with executive and legislative mechanisms of government, the judicial process mediating human differences varies from nation to nation and state to state.

Outcomes

A treaty or other form of intergovernmental documentation such as an intergovernmental compact, memorandum of understanding, or convention with embedded terms for compliance and enforcement must be the result of negotiations conducted implementing FPIC. The instrument may simply declare the subject of controversy, the understood and agreed effects of the administrative, legislative, or judicial action and the remedy may be as simple an outcome. A balanced and respectful relationship between nations with states, transnational corporations and businesses, based on the principle of political equality, ensures the peace and secure environment for nations and states to conduct their historic purposes. The agreed FPIC mechanism allows the parties to an decide to share their ongoing responsibility and commitment to fair and balanced relations through an intergovernmental mechanism or nongovernmental mechanism. The selected mechanism can provide advance notification to parties when and under what conditions a future policy, administrative, legislative, or judicial action or decision may affect the interest of the other party. Such a condition necessarily triggers the requirement to undertake negotiations within the framework of FPIC. The failure to seek and conduct freely determined negotiations leaves one alternative: Conflict and unresolved disputes. The principle of free prior and informed consent operationalized with a mutually agreed mechanism offers peaceful and mutually beneficial outcomes.

REFERENCES

[1] INTERNATIONAL NGO CONFERENCE ON DISCRIMINATION Against Indigenous Populations in the Americas – September 20-23, 1977.

[2] Draft Declaration of Principles for the Defense of the Indigenous National and Peoples of the Western Hemisphere – 1977

[3] International Covenant on the Rights of Indigenous Nations (1994)

[4] A Call to Action from Indigenous Peoples in Asia to the World Conference on Indigenous Peoples (Bangkok. ASIA Nov 8 - 9 2012)

[5] Proceedings Report: Africa Preparatory Meeting for the World Conference on Indigenous Peoples (Hosted in Nairobi, Kenya by Mainyoito Pastoralist Integrated Development Organization AFRICA (2012))

[6] Decisions and Recommendations of the North American Indigenous Peoples' Caucus (hosted by Kumeyaay Nation sponsored by Sycuan Band of the Kumeyaay Nation, the Haudenosaunee, the Viejas Band of the Kumeyaay Nation and the Lummi Nation, AMERICA, NORTH March 1,2,3 2013)

[7] Foro Indígena de Abya Yala, Declaration of the Indigenous Forum of Abya Yala, AMERICA, SOUTH (Iximulew, Guatemala April 11-13, 2013)

[8] Nuuk Arctic Declaration on the World Conference on Indigenous Peoples, ARCTIC 2014 (Adopted in Nuuk, Greenland, October 23 -24, 2012)

[9] Discrimination against indigenous small-numbered peoples of North, Siberia and the Far East of the Russian Federation, EUROPE, EASTERN (CERD 82nd Session 11 February to 1 March 2013)

[10] The Pacific Declaration of the Preparatory Meeting for Pacific Indigenous Peoples on the World Conference on Indigenous Peoples 2014, PACIFIC REGION (Redfern, Sydney, Australia. National Centre for Indigenous Excellence, 19-21 March 2013)

[11] Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (Alta, Saamiland, 10-12 June 2013)

[12] Alta Outcome Document (Alta, Saamiland 2013)

[13] Resolution on Treaties and Implementation of the UN Declaration on the Rights of Indigenous Peoples and other International Human rights Standards. (IITC 40th Annual Conference (2014).

[14] UN Declaration of Human Rights (1948) [adopted by 48 of 58 UN members with eight abstaining and two not voting]

[15] Convention on the Prevention and Punishment of the Crime of Genocide (1948)

[16] European Convention on Human rights (1953)

[17] Convention Relating to the Status of Refugees (1954)

[18] Convention on the Elimination of All Forms of Racial Discrimination (1969)

[19] African Charter on Human and Peoples' Rights (1986)

[20] International NGO Conference on Discrimination Against Indigenous Populations in the Americas (September 20-23, 1977)

[21] American Convention on Human Rights (1978)

[22] UN Convention Against Torture (1987)

[23] ILO Convention on Indigenous and Tribal Peoples (1989)

[24] Convention on the Rights of the Child (1990)

[25] Convention on Biodiversity (1992)

[26] UN Framework Convention on Climate Change (1992)

[27] Draft UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (1994)

[28] International Convention on the Protection of the rights of All Migrant Workers and Members of their Families (2003)

[29] UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2007)

[30] International Convention for the Protection of All Persons from Enforced Disappearance (2010)

[31] United Nations Global Compact: Indigenous Peoples' Rights and the Role of Free, Prior and Informed Consent, 20 February 2014 (Prepared by Amy K. Lehr. Endorsed by the Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group.)

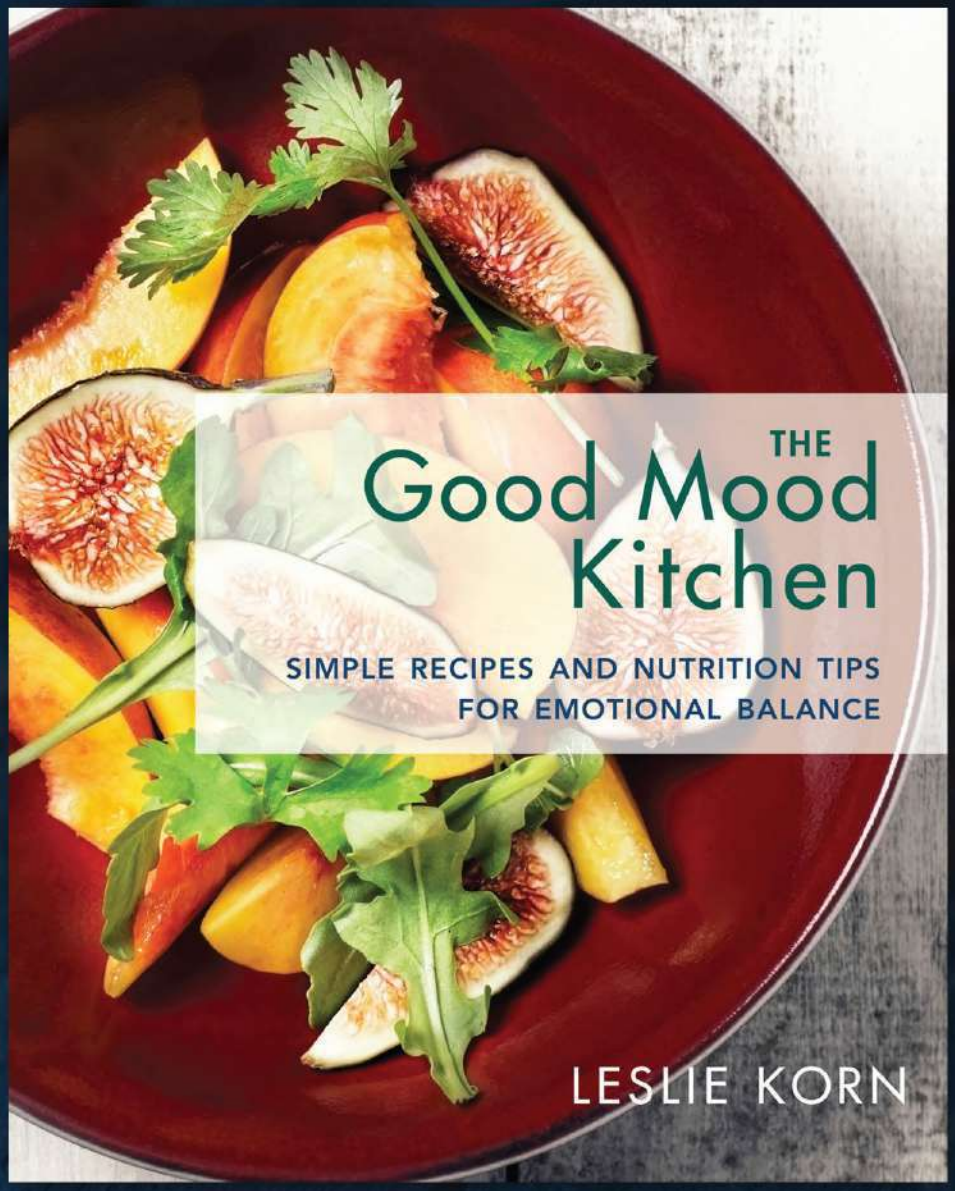
[32] WORLD CONFERENCE ON INDIGENOUS PEOPLES – Outcome Statement (2014)

This article may be cited as:
Rÿser, R. (2022) A Framework for Implementing the Principle of Free, Prior, and Informed Consent (FPIC) – Comity or Conflict. *Fourth World Journal.* Vol. 21 N2 pp. 124-145.

ABOUT THE AUTHOR

Rudolph Rÿser, PhD

Dr. Rudolph C. Rÿser grew to maturity in the Cowlitz Indian culture on the US Pacific Northwest coast though he is of Cree/Oneida descent on his mother's side and Swiss descent on his father's. He earned his doctorate in international relations and has served as the Founding Chair of the Center for World Indigenous Studies since 1979. He is widely recognized around the world as the principle architect of theories and the practice of Fourth World Geopolitics. He is the author of the seminal book "Indigenous Nations and Modern States: The Political Emergence of Nations Challenging State Power" (2012), the Fourth World Geopolitical Reader and the currently released "Biodiversity Wars, Coexistence or Biocultural Collapse in the 21st Century" (2019). He has for more than fifty years worked in the field of Indian Affairs as a writer/ researcher/ and advisor to political leaders of Fourth World nations throughout the world.



The Good Mood Kitchen

Simple Recipes and Nutrition tips for Emotional Balance

Revolutionize your personal cooking and eating habits for optimal energy, health, and emotional well-being. Find mood-savvy tips, tools, and delicious recipes to guide you step by step through all the essentials.

Dr. Leslie Korn is a traumatologist working in the fields of Traditional Medicine and Mental Health Nutrition.

Find it on the CWIS Bookstore

Un Marco para Implementar el Principio del Consentimiento Libre, Previo e Informado (CLPI): Cortesía o Conflicto

Por Rudolph C. Rÿser, PhD[1]
Traducción al Español por Aline Castañeda Cadena

La Sra. Lannette Nickens contribuyó con sugerencias en las secciones finales de este artículo. Es ex Fiscal General Adjunta del Estado de Alaska (EE. UU.) y es abogada y mediadora con experiencia. Ella es de ascendencia samoana y se graduó de la Universidad de Seattle (Seattle, WA, EE. UU.)

RESUMEN

El problema central al que se enfrentaron las primeras naciones del mundo fue históricamente y sigue siendo hoy la cuestión del acceso y uso del territorio que ocupan. Las migraciones, ocupaciones y colonizaciones de los pueblos han continuado como parte de las relaciones humanas durante más de 60.000 años. Durante este tiempo, las relaciones entre las naciones emergentes se caracterizaron por la absorción de una nación por otra, algunas asociándose a través de la mezcla social y las naciones independientes permanecieron independientes entre sí. Los pueblos logran estos procesos culturales a través de la absorción forzada, el intercambio cultural o el reconocimiento de la igualdad de poder. Estos cambios continúan hoy, excepto que el establecimiento de fronteras permanentes alrededor de naciones o naciones combinadas ha forzado la necesidad de estructuras y procesos para mediar las relaciones entre naciones que fueron forzadas dentro de áreas limitadas de estados. Esta circunstancia exige determinar si las naciones permanecerán "absorbidas, asociadas o se independizarán de los estados modernos. Los reclamos de las naciones sobre sus territorios entran en conflicto con los reclamos de los Estados sobre las mismas regiones, una circunstancia exacerbada por los intereses económicos y comerciales de las corporaciones transnacionales y las empresas comerciales que buscan lucrar con la ubicación de los territorios de las naciones o el acceso a materias primas subsuperficiales no desarrolladas, tierras, bosques, minerales superficiales y suelos que sustentan la agricultura.

Las naciones y los Estados constituyen los principales sistemas políticos de organización humana requeridos por el derecho internacional moderno basado en el estado para implementar el principio del consentimiento libre, previo e informado (CLPI). Sin embargo, sin un mecanismo formal y exigible para llevar a cabo las promesas nacionales e internacionales destinadas a implementar los derechos de las naciones al "consentimiento", el desequilibrio de poder entre las

[1] Dr. Ryser is the Chairman and Executive Director and the Editor in Chief of the Fourth World Journal of the Center for World Indigenous Studies and is currently Resident Scholar at the Center and Treasurer on the Board of Directors. He is of Cree and Oneida heritage and a graduate in international relations of the Union Institute (Cincinnati, OH, USA).

naciones y sus contrapartes en los estados y corporaciones deja a las naciones dependiendo de la implementación de su oponente.

Este artículo aborda temas de interés entre naciones, estados, corporaciones transnacionales y empresas comerciales. Dados los detalles limitados del CLPI expresados en leyes y acuerdos estatales, ni los estados ni las naciones pueden estar seguros de un proceso aceptable y definido para llegar a acuerdos mutuos o métodos para hacer cumplir los compromisos asumidos por las partes que dan su consentimiento. Al definir el establecimiento y las funciones de los mecanismos de monitoreo intergubernamentales o no gubernamentales que pueden servir como agencias para facilitar la mediación o las negociaciones entre naciones y estados, los analizo en detalle.

Palabras clave: nación, estado, corporación, colonización, consentimiento, derecho nacional, derecho estatal, igualdad política, negociación.

Cuando se ha reconocido que una persona o un pueblo "tiene un derecho", ¿qué está ocurriendo aquí? ¿Qué significa esto? En la ley y las relaciones diplomáticas, "un derecho" puede ser una "concesión de permiso" en la que se le permite a un dependiente o súbdito actuar de una manera prescrita, tomar posesión de algo o comportarse de alguna otra manera personal no reconocida previamente. Un "derecho" también puede constituir el reconocimiento de una autoridad justa, buena o adecuada, ya sea transmitida, reconocida o afirmada como innata.

Cuando se proclama un "derecho humano", se supone que debemos entender ese "derecho" como inherente o innato y, por lo tanto, "justo, bueno y propio". El derecho debe hacerse valer como un "valor compartido" e implementarse de buena fe. Desde la década de 1960, el principio del consentimiento libre, previo e informado se ha declarado un derecho. El derecho internacional afirma que "una nación, un grupo o una comunidad indígena tiene derecho a ejercer la libre determinación" en relación con las políticas gubernamentales y corporativas de los estados, las decisiones administrativas, legislativas y judiciales que afectan la vida y la propiedad de los pueblos indígenas. Las variaciones de esta interpretación se han detallado en convenios y acuerdos internacionales basados en los estados. En particular, los gobiernos de los estados han interpretado el principio de CLPI como un proceso que está "libre de manipulación o coerción, informado por información adecuada

[2] Canada. (2021) "United Nations Declaration on the Rights of Indigenous Peoples Act" S.C. 2021, c. 14 Aprobada el 21-06-2021. Departmento de Justicia. Canada.ca/declaration.

y oportuna y que ocurre suficientemente antes de una decisión para que los derechos e intereses indígenas puedan incorporarse o abordarse de manera efectiva"[2] como producto de consultas y sin mención de negociaciones. Las organizaciones no gubernamentales de pueblos indígenas explican el principio del CLPI afirmando que "las comunidades tienen derecho a dar o negar su consentimiento antes de la aprobación por parte del gobierno, la industria u otra parte externa de cualquier proyecto que pueda afectar las tierras, territorios y recursos " los que habitualmente poseen, ocupan o utilizan de otro modo.[3]

El significado del "derecho" al consentimiento libre, previo e informado depende de la perspectiva que se utilice. Si un estado, corporación y organización no gubernamental afirma el "derecho" al CLPI, el significado es "permiso" que se otorga. Si una nación afirma el "derecho" al CLPI, el propósito es solo una expresión de autoridad inherente. Si un estado o una corporación declara su reconocimiento de autoridad inherente, se mantiene el caso de que se reservan su autoridad para otorgar la capacidad de ejercer esa autoridad. La perspectiva de una nación es que existe una diferencia de poder entre un complejo estatal/corporativo y el de una nación. La perspectiva de la nación parte de la posición de afirmación de la igualdad política. El principio de CLPI, por lo tanto, constituye el proceso de distribución del poder político entre las naciones y el estado sobre la base de la igualdad política, ambos son entidades soberanas. Aún así, los estados afirman que el proceso implica el "deber de consultar" que informa a una nación sobre una decisión administrativa, legislativa, política o judicial. Resolver la diferencia entre "otorgar permiso" y "ejercer autoridad inherente" es el requisito central del CLPI. Sin embargo, los gobiernos estatales y las corporaciones sostienen que las naciones no tienen "veto" sobre las decisiones gubernamentales o corporativas, incluso si esas decisiones pueden dañar a las naciones. Mientras tanto, las organizaciones de pueblos indígenas afirman que "CLPI significa que las comunidades tienen derecho a decidir su futuro y que nadie más decida su futuro por ellas.[4] Sin embargo, otras organizaciones indígenas, naciones y sus aliados sostienen que el CLPI aplicado como derecho internacional requiere que el principio "debe aplicarse sobre bases objetivas, basadas en la consideración de todos los derechos en juego y la importancia de su protección".[5] La idea de un derecho absoluto es una cuestión de seguir la ley, aunque está claro que la ley está abierta a interpretación según sus intereses.

Cuando se hicieron leyes y compromisos estatales que formalizaron el principio de CLPI, la razón expresada fue establecer un marco intergubernamental o interinstitucional claro. El marco contenía objetivos, funciones,

[3] Settle Ghana. "Indigenous People in the Driving Seat, A manual on Free, Prior and Informed Consent (FPIC). https://settleghana.com/

[4] https://settleghana.com/

[5] "Hoja Informativa, Consentimiento libre, previo e informado aprobados por Amnistía Internacional Canadá, Asamblea de Pueblos Originarios, Comité de Servicios de Amigos de Canadá (Quakers), Jefes de Ontario, Gran Concejo de los Cree (Eeyou Istchee), Asociación Mundial Indígena, KAIROS: Iniciativas de Justicia Ecuménica Canadiense, Union de Jefes Indígenas de la Columbia Británica.

autoridades, procedimientos y mecanismos para el cumplimiento y la aplicación entre las naciones indígenas y los estados. Este marco se basa en políticas y compromisos para ejercer el principio de consentimiento libre, previo e informado consagrado en instrumentos internacionales. Los principales instrumentos ratificados por los estados incluyen el artículo 27 del Pacto Internacional de Derechos Civiles y Políticos (PIDCP) y el artículo 15 del Pacto Internacional de Derechos Económicos, Sociales y Culturales (ICECSR), el Convenio 169 de la OIT (1989),[6] el Proyecto de Declaración de la ONU sobre los Derechos de los Pueblos Indígenas (1994),[7] el Pacto Internacional sobre los Derechos de las Naciones Indígenas (1994),[8] la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas (2007),[9] la Declaración de Alta y el Documento Final de Alta (2013),[10] la Conferencia Mundial de las Naciones Unidas sobre Documento Final de los Pueblos Indígenas (2014),[11] y el Mecanismo de Expertos de la ONU sobre los Derechos de los Pueblos Indígenas (2018).[12]

El Foro Permanente de las Naciones Unidas para las Cuestiones Indígenas, con el apoyo del Relator Especial sobre los Derechos de los Pueblos Indígenas, emitió una guía sobre la implementación del CLPI. En particular, la propia UNDRIP ofreció los siguientes objetivos generales".

- Mantener y fortalecer instituciones, culturas y tradiciones[13]
- Promover el desarrollo de acuerdo con las aspiraciones y necesidades[14]

[6] Organización Internacional del Trabajo (1989) Convención (No. 169) referente a los Pueblos Indígenas y Tribales en Países Independientes. Adoptada el 27 de junio de 1989 por la Conferencia de la Organización Internacional del Trabajo en su setenta y seis sesión. Entrada en vigor el 5 de septiembre de 1991.

[7] Grupo de Trabajo de las Naciones Unidas de Poblaciones Indígenas (1994) "Draft Declaration on the Rights of Indigenous Peoples." Como se present al Sub-Comisionado en la Prevención de la Discriminación y Protección de las Minorías.

[8] Pacto Internacional sobre los Derechos de las Naciones Indígenas (1994). Iniciado por Nadir Bekir, Asuntos Políticos y Legales, los Tártaros de Crimea; A-Bagi Kabeir, Pueblo Numba de Sudan; Ron Lameman, Confederación del Tratado de Seis Pueblos Originarios; y Judy Sayer, Pueblo Originario Apethesaht; Viktor Kaisiepo, Frente de Pueblos de Papue del Oeste /OPM. Ginebra, Suiza. Ratificado de manera subsiguiente por las naciones ubicadas en Asia Oriental, Norte de Africa.

[9] Asamblea General de las Naciones Unidas. (2007). "Declaration on the Rights of Indigenous Peoples" redactada por el Grupo de Trabajo de las Naciones Unidas sobre Pueblos Indígenas 1980 – 1994, revisada por el Sub-Comisionado sobre la Prevención de la Discriminación y Protección de Minorías y el Consejo de Derechos Humanos de las Naciones Unidas antes de la presentación a la Asamblea General de las Naciones Unidas para aprobación. A/61/L.67 y Adición. 1.

[10] Conferencia Preparatoria Indígena Global. (2013) "Alta Outcome Document." Conferencia preparatoria para la Reunión Plenaria de Alto Nivel de las Naciones Unidas de la Asamblea General conocida como la Conferencia Mundial sobre Pueblos Indígenas. La Conferencia llevada a cabor en territorio Sami Territory en Alta, Noruega, con más de 400 delegados de pueblos y naciones indígenas de regiones globales geo-políticas más un Grupo de Mujeres y Grupo de Jóvenes.

[11] Asamblea General de las Naciones Unidas (2014) "Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples." Sesenta y nueve Sesión punto 65 de la Agenda. A/RES/69/2.

[12] UN EMRIP (2018) "Free, Prior and Informed Consent: A Human rights-based Approach. Human Rights Council. A/HRC/39/62

[13] Asamblea General de las Naciones Unidas, (2007) Declaración sobre los Derechos de los Pueblos Indígenas. Preámbulo.

[14] Ibid.

[15] Ibid., Artículo 11

- Practicar y revitalizar las tradiciones y costumbres culturales[15]
- Participar en la toma de decisiones sobre asuntos que afecten los derechos indígenas[16]
- Determinar y desarrollar prioridades y estrategias para todas las formas de desarrollo[17]
- A no ser objeto de asimilación forzada o destrucción de la cultura[18]
- A no ser expulsado por la fuerza de tierras o territorios[19]

El enfoque principal de la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas y otros instrumentos similares ha sido concebir el CLPI como una "salvaguardia" para garantizar que los derechos de los pueblos indígenas se cumplan positivamente y prevenir violaciones de los derechos de los pueblos indígenas. La orientación del Foro Permanente de las Naciones Unidas sobre Cuestiones de los Pueblos Indígenas y el Relator Especial sobre los Derechos de los Pueblos Indígenas adopta una perspectiva decididamente estrecha que coloca la carga sobre el Estado para cumplir con los derechos de los pueblos indígenas. La guía del UNPFII busca prevenir la violación de esos derechos a través de consultas y la obtención del consentimiento a la luz de las acciones administrativas, legislativas o judiciales del Estado que afectan los intereses de los pueblos específicos. El Principio del Consentimiento Libre, Previo e Informado tiene sus raíces en la ética y la ley que afirman el derecho de involucrar a las partes para recibir información, hacer preguntas y obtener decisiones aceptables. Dos o más partes que buscan obtener o ejercer poderes deben participar en la toma de decisiones voluntarias. El principio de CLPI requiere un proceso bidireccional de toma de decisiones. Por lo tanto, la nación y el Estado deben beneficiarse del ejercicio de un intercambio de información voluntario y en el momento adecuado que dé como resultado una decisión mutua determinada que resulte de un compromiso políticamente equitativo.

> Como escribí el 3 de junio de 2021 en una comunicación a los líderes del Congreso de Naciones y Estados:
>
> ... naciones, estados, ONG y académicos presentan una amplia gama de opiniones y puntos de vista políticos que demuestran que existe confusión y un malentendido general sobre cuáles son las aplicaciones del consentimiento libre, previo e informado en las relaciones entre naciones y otras entidades. Entre las opiniones políticas de Australia y Estados Unidos que afirman que no existe una definición de "consentimiento libre, previo e informado" que establece que el principio prevé la consulta, pero no necesariamente el acuerdo y las opiniones políticas sugeridas por el diplomático de relaciones internacionales de la Nación Mohawk Kenneth Deer y la Asamblea de las Primeras Naciones (Canadá) donde

[16] Ibid., Artículo 18

[17] Ibid., Artículo 32

[18] Ibid., Artículo 8

[19] Ibid., Artículo 10

afirman que el proceso es de beneficio mutuo entre las naciones y los estados y una "negociación", ya que en el proceso de elaboración de tratados hay muchos que simplemente no saben lo que significa.

Además de los compromisos asumidos por las naciones y los Estados para implementar el CLPI, las empresas transnacionales y las empresas comerciales buscaron la afirmación de sus intenciones de cumplir con los principios internacionales de derechos humanos mediante el registro de su compromiso con el principio. Las Naciones Unidas organizaron el Pacto Mundial y publicaron un documento titulado *Los derechos de los pueblos indígenas y el papel del consentimiento libre, previo e informado: una nota de buenas prácticas*, emitido en 2014.[20] [1] A principios de 2018, unas 9704 empresas en 161 países se comprometió voluntariamente a adherirse a los principios del Pacto Mundial. El Pacto Mundial esencialmente reafirma los amplios objetivos del principio establecido originalmente en la Declaración de la ONU de 2007, enfatizando la "salvaguardia" de los derechos de los pueblos indígenas. Desafortunadamente, el texto del Pacto Mundial incluye numerosas declaraciones contradictorias que se centran principalmente en obtener el consentimiento sin indicar el proceso y los procedimientos iterativos. El pacto no reconoce el cumplimiento de la autodeterminación como un resultado, sino que enfatiza el consentimiento sin control sobre los resultados. Por lo tanto, el Pacto Mundial se suma a la confusión y permite que las industrias interpreten cómo y con quién se obtiene el consentimiento (seleccionar a un individuo o subgrupo que simpatice con los intereses de una empresa podría dar consentimiento sin seguir las prácticas políticas y culturales de la nación, por ejemplo).

Desde 1920 cuando 42 estados fundaron la Sociedad de Naciones, y 1945 cuando 51 estados fundaron las Naciones Unidas. Estos estados soberanos siguen preocupados por el estatus político de los "pueblos que no dan su consentimiento" incluidos dentro de los límites de un estado existente, pueblos bajo el dominio colonial anterior o el control del dominio imperial incluidos en estados recién formados sin su consentimiento. El estatus político de los "pueblos que no consienten" dentro de los estados existentes ha permanecido sin resolver hasta la fecha actual. La existencia misma del estado ahora depende de su soberanía reclamada. Este reclamo afirma la seguridad económica y política al ejercer control sobre los territorios originalmente reclamados por las naciones. La consecuencia imprevista de la "descolonización" y el mantenimiento de estados existentes con naciones que no dieron su consentimiento dentro

[20] El Convenio Global de las Naciones Unidas es una iniciativa de política estratégica para compañías que están comprometidas con alinear sus operaciones y estrategias con diez principios aceptados universalmente en las áreas de derechos humanos, trabajo, ambiente, y anti corrupción. En junio de 2006, el Consejo del Convenio Global estableció un Grupo de Trabjo de Derechos Humanos. Considerando el creciente reconocimiento que los derechos de trabajo son derechos humanos y para asegurar una aproximación coherente, los Presidentes y miembros del Grupo de Trabajo de Derechos Humanos y el Grupo de Trabajo se fusionaron para crear el Grupo de Trabajo y de Derechos Humanos en 2013. El objetivo del Grupo de Trabajo es proporcionar una aportación estratégica al grupo de trabajo y de derechos humanos del Convenio Global.

de sus fronteras dio como resultado que naciones y estados reclamaran soberanía separada sobre los mismos territorios dentro del mismo espacio político. La presencia de disputas y el potencial de conflicto entre naciones y estados dentro de los límites de los estados existentes exige una guía clara y detallada para resolver disputas existentes o potenciales. En particular, aquellas disputas que surjan de posibles decisiones gubernamentales (ya sea de la nación o del estado) pueden entrar en conflicto con los intereses sociales, económicos, políticos y culturales de los pueblos de la nación o del estado. En consecuencia, el Congreso de las Naciones y los Estados considera que las normas de los tratados internacionales requieren que las partes contendientes inicien discusiones o negociaciones basadas en decisiones libres, conocimientos avanzados, información completa y acuerdo mutuo. La existencia de reclamos territoriales y políticos superpuestos entre naciones y estados exige el establecimiento formal de mecanismos intergubernamentales que implementen mecanismos de resolución de conflictos. El principio de "consentimiento libre, previo e informado" ofrece la oportunidad de establecer acuerdos mutuamente beneficiosos y vinculantes para resolver las consecuencias potencialmente adversas de las decisiones gubernamentales administrativas, legislativas o judiciales en conflicto con los intereses de un estado o una nación.

Las naciones originales del mundo se han organizado en sociedades complejas durante más de 50.000 años. Y hoy, el número de naciones se estima en no menos de 5000 pueblos distintos, con una estimación combinada de 1,9 mil millones de personas ubicadas en todos los continentes habitables. En 2021 hay 207 estados, de los cuales 191 han reclamado soberanía indiscutible por parte de los demás estados y 15 estados con soberanía en disputa. La población estimada combinada de los estados es de 6 mil millones de personas ubicadas en todos los continentes habitables. Hoy en día, estas naciones (denominadas diversamente como adivasi, indígenas, aborígenes o tribales, etc.) comprenden alrededor del 24% de la población humana actual del mundo. Durante los últimos 350 años, cuando surgió en Europa la idea del Estado como marco organizador de las sociedades humanas, éstas se han convertido lentamente en la agencia política dominante que busca regular el acceso a los territorios y la organización de las sociedades. El sistema político estatal incluye al 76% de la población mundial.

Se hace hincapié en el requisito de que las partes, como iguales políticos, implementen el principio del consentimiento libre, previo e informado para promover el ejercicio de la libre determinación, el autogobierno y las relaciones pacíficas entre naciones y estados. No se cuestiona que las naciones y los estados tengan autoridades gobernantes. La forma en que se ejercen esas autoridades gubernamentales en la medida en que afectan los intereses de las naciones o los estados es un tema dominante en todo momento.

Las naciones y los estados están igualmente obligados en virtud del derecho internacional existente a invocar el principio del consentimiento libre, previo e informado (CLPI) cuando surjan circunstancias en las que una decisión o acción gubernamental inminente

tenga un efecto consecuente o adverso en los intereses de la otra parte. Por ejemplo, una nación puede invocar el principio para exigir a un estado, o un estado puede invocar el principio para exigir a una nación que inicie negociaciones para resolver una disputa. De manera similar, el CLPI debe implementarse en todos los casos cuando el resultado deseado es la resolución pacífica de disputas entre naciones y estados. De acuerdo con las normas internacionales, invocar el principio de CLPI se requiere de las naciones y estados cuando surgen circunstancias en las que una decisión o acción gubernamental inminente presenta un efecto consecuente o adverso en los intereses de otra nación o estado. Un estado puede invocar el principio o una nación puede invocar el principio para exigir negociaciones para formalizar un acuerdo vinculante. Al hacerlo, pueden prevenir o mitigar los efectos adversos de una acción gubernamental adversa inminente. Estados o naciones que aplican el principio de comprometerse entre sí como iguales políticos para negociar honorablemente su compromiso y afirmar un acuerdo para resolver pacíficamente o mitigar disputas con respeto y espíritu de cortesía. Por lo tanto, implementar el principio del consentimiento libre, previo e informado puede promover decisiones pacíficas y mutuamente beneficiosas entre naciones y estados.

Principios Dominantes y Compromisos de las Naciones y los Estados

Naciones y Estados ocupan gran parte del mismo territorio y espacio político donde se toman las decisiones de gobierno que afectan los intereses sociales, económicos, ambientales, culturales, políticos, de seguridad y de justicia de los distintos pueblos. Cuando los actores internacionales compiten por el control del territorio o las decisiones políticas, se hace necesario que las partes tomen medidas efectivas y mutuamente beneficiosas para comprometerse directamente y negociar soluciones, promoviendo así la paz y el beneficio mutuo. Y cuando las negociaciones se convoquen o no tengan éxito, se debe prever la supervisión y mediación de un tercero para garantizar una conciliación justa y equilibrada entre las partes, preservando las autoridades y los derechos de las partes.

Las Naciones poseen la autoridad original para gobernar sus territorios y pueblos y los Estados poseen la autoridad derivada para gobernar territorios y pueblos. El principio del derecho de los distintos pueblos al consentimiento libre, previo e informado (“CLPI”) proporciona a los actores contendientes un marco para negociar resultados mutuamente beneficiosos en asuntos de disputa al tiempo que afirma la autoridad política y el control de cada parte sobre la sostenibilidad de las comunidades, territorios y el uso de los recursos tierra, agua y aire.

Este marco para implementar el CLPI debe proporcionar estos elementos:

- Determinación de la incorporación de un tercero mediador o agente de cumplimiento de acuerdos en las negociaciones entre naciones partes y estados partes.
- El reconocimiento mutuo por las partes de los poderes autodefinidos de toma de decisiones y de gobierno y

• Procesos ejercidos para establecer acuerdos sobre los métodos y el libre intercambio de información,

• Tiempo de intercambio de información (tema, descripción, evaluaciones de valor, etc.) en la forma útil para cada parte, y

• Mecanismo mutuamente determinado (ceremonia pública, negociaciones, etc.) por cada parte para formular y comunicar el consentimiento y/o aprobación de acuerdo con las tradiciones y sistemas institucionales de cada parte a los términos de un acuerdo final

• Un agente de cumplimiento, rendición de cuentas y ejecución mutuamente definido que puede ser una institución, un mediador o una organización multilateral.

Cuando existe un desequilibrio de apoyo económico, militar, policial e institucional entre las partes de un compromiso de CLPI, se deben tomar medidas para equilibrar el poder entre las partes. Esto puede lograrse mediante la realización de intercambios a través de un tercero institucional o político mutuamente acordado que se haga responsable de supervisar los procedimientos oficiales puestos en marcha por ambas partes.

Terminología y Definiciones

El Principio del Consentimiento Libre, Previo e Informado – CLPI:

El principio de Consentimiento Libre, Previo e Informado es una norma internacional reconocida como un marco para asegurar la rendición de cuentas y el acuerdo mutuo entre los partidos nacionales o estatales por las consecuencias de las acciones gubernamentales administrativas, legislativas o judiciales que afectan los intereses de los partidos nacionales o estatales. En consecuencia, el principio requiere que las partes respeten y apliquen los siguientes elementos en un compromiso intergubernamental llevado a cabo para formalizar acuerdos y compromisos para limitar o eliminar los efectos adversos existentes o potenciales de las decisiones gubernamentales que pueden imponer cargas sociales, económicas, ambientales, políticas o culturales. que menoscaben o impidan el ejercicio de la libre determinación.

• Participación y compromiso sin obstáculos ni intimidación.

• Con notificación oportuna antes de que se tome una acción.

• Con información proporcionada en una forma y manera útil y accesible para el destinatario; y

• Sujeto a acuerdo por negociaciones.

• El principio del consentimiento libre, previo e informado está vinculado a las normas de los tratados, incluido el derecho a la libre determinación afirmado en el artículo 1 común de los Pactos Internacionales de Derechos Humanos. Al afirmar que el requisito se deriva de otros derechos, incluido el derecho a desarrollar y mantener culturas, en virtud del artículo 27 del Pacto Internacional de Derechos Civiles y Políticos (PIDCP) y el artículo 15 del Pacto Internacional de Derechos Económicos,

> Sociales y Culturales (ICECSR), los órganos creados en virtud de tratados han enmarcado cada vez más el requisito considerando también el derecho a la libre determinación. (Oficina del Comisionado de Derechos Humanos de la ONU. 2013)

Autoridad Gobernante

Los medios por los cuales una nación o estado ejerce su poder de decisión en nombre del cuerpo social.

Pueblo

Un Pueblo posee un territorio gobernado por poderes inherentes ejercidos por una población distinta que practica una cultura común, con un patrimonio compartido, un idioma común, que ejerce leyes consuetudinarias y la capacidad de hacer cumplir esas leyes.

Nación

Un pueblo que practica una cultura, con un patrimonio compartido, un idioma común, que ejerce leyes consuetudinarias y la capacidad de hacer cumplir esas leyes.

Espacio Político

Una vía, oportunidad y punto de entrada disponible para que los partidos expresen su voz e influyan en los procesos y resultados políticos.

Soberanía

Autoridad o poder absoluto sobre el gobierno de un territorio y un pueblo.

Expresar

Una forma de gobierno con límites fijos, una población fija, que ejerce un monopolio sobre el uso de la fuerza, que impone la ley universal dentro de los límites y el reconocimiento por parte de otros estados.

Territorio

Un área geográfica que pertenece o está bajo la jurisdicción de una autoridad gubernamental

Espacio Territorial

El espacio territorial se refiere a todas las aguas, terrenos superficiales, subterráneos y superficiales bajo jurisdicción de unidades administrativas pero poniendo más énfasis en su diversidad funcional que en el propio territorio.

Existe una aparente divergencia de interpretaciones por parte de diplomáticos y académicos sobre el tema de una implementación internacional en oposición a la implementación nacional del consentimiento libre, previo e informado. Tanto los estados como las naciones piden repetidamente el establecimiento de un mecanismo o marco para implementar el principio en los acuerdos y compromisos, sugiriendo así el reconocimiento de las limitaciones en los instrumentos multilaterales estatales existentes. El Congreso de Naciones y Estados brinda la oportunidad para que las naciones y los estados preparen un nuevo camino internacional en el que las naciones ubicadas en los estados existentes involucren a los estados en un plano político equitativo para definir e implementar medidas para llevar a cabo las relaciones con respeto y conocimiento de que la cooperación es esencial para enfrentar los desafíos sociales, económicos, políticos y culturales globales y nacionales.

Decisiones Europeas desde 1830 – 2014

Los pueblos dentro de los límites de los estados e imperios existentes han estado sujetos a "promesas de libertad" por parte de imperios y estados a lo largo de la historia, particularmente en los últimos 170 años. Los resultados de los congresos del siglo XIX (Viena [1814-1815],[21] París [1856] y Berlín [1878]) incluyeron disposiciones de tratados para la seguridad y los derechos de los pueblos minoritarios que serían reconocidos hoy como "pueblos indígenas". El Concierto de Europa[22] no logró hacer cumplir los compromisos del tratado a pesar de los reconocidos actos de opresión de tales pueblos por parte de los viejos imperios y los nuevos estados en funcionamiento. Los tratados posteriores en el siglo XIX también fracasaron.[23] La evidencia de los primeros fracasos se refleja en el proceso de casi treinta años iniciado en la comunidad internacional a partir de 1970 para internacionalizar y así elevar a las naciones indígenas como un sujeto que exige nuevas reglas y compromisos, como finalmente se exhibe en la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas (2007) y el Documento Final de la Asamblea de Alto Nivel de las Naciones Unidas denominada Conferencia Mundial sobre los Pueblos Indígenas en 2014.

El Desafío del Estatus Político de los Pueblos

En el siglo XX, las naciones con una población colectiva de 750 millones de personas que estaban alejadas de los estados que las colonizaron, obtuvieron su libertad gracias a la Resolución de la Asamblea General de las Naciones Unidas de 1946 sobre la descolonización. Las naciones "dentro" de los límites de estados existentes como Rusia, Brasil, Sudáfrica, Estados Unidos de América, Australia, México y Canadá comprendían otros mil millones de personas en 1946, pero estaban exentas de la descolonización. Los estados con fronteras que abarcan estas naciones reclamaron el mismo territorio y autoridad política sobre pueblos y tierras que las naciones. Por lo tanto, creando el desafío político actual, las naciones que afirman la autoridad soberana sobre el territorio y los estados que afirman la autoridad soberana sobre gran parte del mismo territorio.

La respuesta típica de los Estados a este desafío ha sido:

[21] Después de la caída de Napoleón, cuatro poderes europeos (Reino Unido, Rusia, Prusia y Austria) organizaron el Congreso para reorganizar la paz en Europa bajo la regla de los "grandes poderes". Los poderes europeos imperials añadieron Francia como un igual y juntos reordenaron las demandas políticas y territoriales en Europa. En este esfuerzo se incluía un enfoque en las "minorías étnicas" cuyos distintos idiomas y culturas los apartaban de las poblaciones llamadas dominantes. Croatas, Magiares, Checos, Eslovacos, Bohemios, Moravianos, y muchas otras naciones se volvieron objeto de los grandes poderes para dirigirse como poblaciones que requieren protección.

[22] El Concierto Europeo fue un acuerdo post-napoleónico (1830) por medio del intento de las monarquías europeas de preservar el status quo territorial y político contenido en el Congreso de Viena, Congreso de París y el Congreso de Berlín. El Concierto Europeo fue visto como necesario para reordenar Europa después de cerca de dos siglos de guerra y dictadura Napoleónica. El consenso reflejó la suposición de que los monarcas retuvieran la responsabilidad y el derecho de intervenir e imponer su voluntad colectiva en los estados amenazados por rebeliones internas. Este consenso colectivo de principios del siglo 19 formó la base de lo que se menciona actualmente como la responsabilidad de los grandes poderes de estado para dominar los comportamientos internacionales de todos los otros estados.

[23] Fink, C. (1995) The League of Nations and the Minorities Question. Vol.157, No. 4, Woodrow Wilson, and the League of Nations: Part One (Primavera 1995), pp. 197-205.

- "Absorber" a las naciones social, política y culturalmente,
- Establecer una relación autónoma con una nación basada en un "acuerdo de libre asociación", o
- Negociar o establecer una nación como un "estado independiente".

Además, los estados han establecido un estándar internacional de "no interferencia" para las relaciones entre estados, declarando que los estados no pueden interferir en los asuntos internos de un estado de una manera que pueda violar la integridad territorial o la integridad soberana del estado. No existe una declaración o estándar internacional que prohíba a las naciones dentro de las fronteras estatales separar políticamente sus territorios de un estado o ejercer un control autónomo sobre sus territorios dentro o fuera de las fronteras de un estado. La disputa por el territorio y la soberanía entre naciones y estados interviene en una amplia gama de asuntos sociales, económicos, políticos y culturales relacionados con la continuidad de la nación y el estado.

El desafío que han buscado los líderes políticos, pero parcialmente resuelto, es ¿cómo un gobierno de un estado gobernante y los gobiernos de las naciones indígenas pueden llevar a cabo relaciones equitativas y constructivas cuando el estado y las naciones ocupan el mismo espacio territorial y político? Los Estados se establecieron sobre los territorios de las naciones indígenas y se benefician de sus recursos. De hecho, la riqueza de muchos de los estados del mundo se basa en el uso de recursos de los territorios de las naciones, ya sea en virtud de tratados o confiscaciones.

Los objetivos del estado y las naciones relacionados con la tierra y los recursos naturales y la gobernanza política no siempre convergen. Este problema se abordó parcialmente en el siglo XX cuando los estados y las naciones acordaron "descolonizar" los territorios no autónomos que estaban separados geográficamente del poder colonizador por el "agua azul". La pregunta planteada ante la Liga de las Naciones, y más sucintamente ante las Naciones Unidas treinta años después, fue "¿cuál debería ser el estatus político[24] de los pueblos sin gobierno propio cuyo estatus colonial se cambia?" Entre 1946 y 2020,

[24] Tres categorías bajo el derecho internacional establecen los límites iniciales de lo que se entiende por "estatus político": 1. Países independientes, 2. países internamente independientes bajo la protección de otro país en asuntos de defensa y relaciones exteriores y 3. Colonias o entidades políticas dependientes absorbidas en un estado existente. Más allá de esta definición existen naciones o países que en donde existe una disputa territorial o entidades han declarado la separación e independencia buscando el reconocimiento diplomático de la comunidad internacional como estados soberanos de jure. Según el derecho internacional existente, un estado o país distinto existe por declaración si tiene un territorio definido, población permanente, un gobierno gobernante y la capacidad de entablar relaciones con otros estados o países. Tales declaraciones no dependen del reconocimiento por parte de otros estados. Sin embargo, bajo lo que se conoce como "teoría consultiva", un estado se convierte en una persona de derecho internacional solo si es reconocido como tal por otros estados que han obtenido reconocimiento en la comunidad internacional. Existen variaciones en la personalidad del estado donde un estado como la República de Corea no es reconocido por el gobierno de Corea del Norte, la República de Armenia no es reconocida por Pakistán y Azerbaiyán. La República de China (Taiwán) no es reconocida por la República Popular de China, aunque es reconocida por catorce estados, incluidos Guatemala, Honduras, Santa Sede, Haití, Paraguay, Nicaragua, Esuatini, Tuvalu, Nauru, San Vicente y las Granadinas, San Cristóbal y Nieves, Santa Lucía, Belice, Islas Marshall y Palau. Bután es el estado miembro de la ONU que nunca ha reconocido explícitamente ni a la RP China ni a la República de China. El Estado de Israel no es reconocido por 28 estados miembros de la ONU, incluidos Argelia, Bangladesh, Brunei, Comoras, Cuba, Djibouti, Indonesia, Irak, Kuwait, Líbano, Libia, Malí, Pakistán, Somalia y Malasia, entre otros.

más de ochenta territorios no autónomos fueron identificados y "descolonizados"[25] y la mayoría se convirtieron en estados independientes, mientras que muchos decidieron absorberse en otra nación o estado. El estatus político de 750 millones de personas fue objeto del proceso de descolonización de la ONU. Todavía diecisiete "territorios no autónomos" no tenían resuelto su estatus político. El Reino Unido, Francia y los Estados Unidos continúan "administrando" pueblos (población combinada de 2 millones) en territorios principalmente insulares, mientras que la cuestión del estatus político sigue siendo una pregunta abierta.

El estatus político de otros 1.900 millones de personas en más de 5000 naciones ubicadas dentro de los límites de 206 estados miembros de la ONU sigue siendo un asunto sin resolver porque la ONU se ha centrado en los "pueblos no autónomos" colonizados europeos ubicados fuera de los territorios de los estados existentes: principalmente islas, territorios africanos, melanesios y asiáticos. Conscientes del estatus político no resuelto de las naciones ubicadas dentro de los límites de los estados existentes, los temas de autonomía política, autogobierno y control territorial exclusivo han sido temas de política presentados a la comunidad internacional desde 1923. Los pueblos haudenosaunee y maorí, muy conscientes de este problema no resuelto, tomó la iniciativa de llevar el tema de cientos de millones de personas a los foros internacionales de la Liga de las Naciones, las Naciones Unidas y muchos foros regionales multilaterales de estados y naciones.

Estructuras Políticas de la Nación y el Estado

Las estructuras políticas de las naciones y los estados pueden propiciar negociaciones constructivas entre los órganos de gobierno y la organización de alternativas políticas. Si las naciones han de volverse o permanecer autónomas (gobernando su territorio bajo su autoridad directa), entonces se necesitan mecanismos de negociación para lograr soluciones operativas a las diferencias entre estados y naciones. Si las naciones y los estados acuerdan una asociación libre, entonces un acuerdo negociado puede formar la base para llevar a cabo los asuntos internos y externos. Finalmente, si las naciones y los estados acuerdan unirse en una unión política, social, económica y cultural común, entonces es posible que los mecanismos de gobierno se unan en un cuerpo "federado" donde la toma de decisiones políticas se determine mutuamente.

Temas de Preocupación entre Naciones y Estados

Hay muchos temas de preocupación entre las naciones y los estados que pueden identificarse

[25] La ONU bajo la Declaración sobre la Concesión de la Independencia a los Países y Pueblos Coloniales (Resolución 1541 de la Asamblea General de la ONU) La resolución caracterizó el gobierno extranjero de los pueblos como una violación de los derechos humanos. Las potencias colonizadoras incluían, Reino Unido, Estados Unidos de América, España, Francia, Nueva Zelanda en el momento de la Resolución.

mediante la realización de compromisos de las naciones y los estados que emplean el marco de CLPI y pueden incluir, entre otros: [26]

• Negociaciones
Negociaciones para la resolución vinculante (tratados, acuerdos, pactos) de disputas a través de los representantes de cada nación y los representantes de cada estado (1977 Int'l NGO Indg Rights, UNWCIP 2014).

• Tierras
Tierra (Derechos, usos, autoridad): cualquier acción que tenga el efecto de privar a un pueblo o población de sus distintas identidades culturales o étnicas (1977 Int'l NGO Indg. Rights, ALTA UNDRIP, 1977 Int'l NGO Indg Rights).

• Asimilación Impuesta
Cualquier forma de asimilación o integración indirecta o forzada impuesta por medidas administrativas, legislativas o judiciales (1977 Int'l NGO Indg. Rights, ILO, UNDRIP, Alta, UNWCIP).

• Discapacidades
Promoción y Protección de los derechos de las personas y poblaciones con discapacidad y mejorar sus condiciones sociales y económicas. (UNDRIP, ALTA UNWCIP 2014)

• Propaganda
Cualquier forma de propaganda dirigida a través de medios públicos, educativos o de organización (UNDRIP, Convenio 169 de la OIT).

• Privación de Personas o Población
Cualquier acción que prive a un pueblo o población de la capacidad de mantener y desarrollar sus sistemas políticos, económicos y sociales. (1977 Int'l NGO Indg. Rights, UNDRIP, ALTA, UNWCIP 2014).

• Desarrollo de Recursos
Desarrollo de recursos naturales (fines comerciales) y agua, suelos, minerales, flora y fauna que sustentan la vida.
Y las siguientes categorías incluyen pero no se limitan a:

• Extracción de Materias Primas
Los minerales, los metales, el petróleo, la vida silvestre, los bosques y las tierras son objeto de extracción estatal, nacional y corporativa con fines comerciales.

• Etnocidio, Ecocidio
La destrucción de la biodiversidad, en particular de la vida de la flora y la fauna, la colonización, el desplazamiento y la eliminación de los pueblos, con el resultado de su destrucción total o parcial.

• Reubicación de Población
Reubicación forzada de poblaciones por desarrollo impuesto, comercialización de materias primas, tierras y aguas

[26] Esta no es una lista completa de temas, pero pretende ilustrar la gama de temas que pueden surgir o que ya existen y que, en circunstancias particulares, pueden abordarse en el marco del proceso de consentimiento libre, previo e informado.

• Preservación de la Integridad Territorial y Soberana
El ejercicio de la jurisdicción y autoridad consuetudinaria o codificada para gobernar territorios asegurando la vida, la seguridad y la prosperidad de un pueblo.

• Destrucción de la Vida y la Cultura
Acciones que directa o indirectamente resultan en la destrucción o deterioro de ecosistemas, pueblos, culturas o recursos que sustentan la vida a través de los efectos del desarrollo desenfrenado

• Acciones de Gobierno e Intereses de Naciones o Estados
Cualquier acción administrativa, legislativa o judicial tomada por el gobierno de una nación o un estado que las partes determinen que afecta adversamente los intereses de la nación o del estado.

Negociación en un Marco de CLPI

La negociación es un medio de resolución de disputas en el que las partes se involucran en un intercambio de información que puede conducir o no al logro mutuo de todos los objetivos de las partes o a una resolución completa de los asuntos en disputa. De hecho, según las normas internacionales existentes, se requiere la negociación entre naciones y estados en virtud de los tratados y convenciones acordados internacionalmente existentes sobre asuntos que afectan los intereses de una nación o estado antes de las acciones administrativas, legislativas o judiciales. Las negociaciones son una forma de resolución de disputas que puede llevarse a cabo fácilmente en el marco del principio del consentimiento libre, previo e informado. El elemento de "consentimiento" del consentimiento libre, previo e informado garantiza un "proceso de negociación entre las partes que actúan como iguales políticos". El objetivo es lograr un acuerdo basado en la participación libremente ejercida, apoyándose en la información obtenida antes de entablar negociaciones. Los mecanismos de negociación que implementan el principio del Consentimiento Libre, Previo e Informado pueden incluir:

Marco Voluntario - Ninguna parte está obligada a participar en una negociación. Las partes son libres de aceptar o rechazar el alcance de las negociaciones, el resultado de las negociaciones y pueden retirarse en cualquier momento durante el proceso. Las partes pueden participar directamente en las negociaciones o pueden designar representantes.

• Bilateral/Multilateral: Las negociaciones pueden involucrar a dos, tres o docenas de partes.

• No Adjudicativo: las partes pueden participar directamente en las negociaciones o pueden obtener un tercero neutral para facilitar las negociaciones.

• Informal: no hay reglas formales, las partes son libres de adoptar las reglas que deseen.

• Confidencial: Las partes tienen la opción de negociar en público o en

privado. En el contexto gubernamental, las negociaciones estarían sujetas a los criterios que rigen la divulgación

• **Flexible:** el alcance de una negociación depende de la elección de las partes. Las partes pueden determinar no solo el tema o los temas que serán objeto de las negociaciones, sino también si adoptarán un enfoque de negociación basado en posiciones o un enfoque basado en intereses.

Las naciones que se comprometan con naciones, los estados que se comprometan con estados o las naciones que se comprometan con estados, o las naciones que se comprometan con empresas transnacionales pueden entablar negociaciones libremente definidas y establecer un mecanismo temporal para la realización de dicho compromiso o un marco permanente. Es de particular importancia considerar que las partes pueden decidir mutuamente incluir un mediador o un tercero garante como participante activo en las negociaciones. Este enfoque puede proporcionar los medios para hacer cumplir el resultado negociado.

• **Libertad de las Partes:** el consentimiento libre, previo e informado significa que las partes deben comprometerse y participar libres de intimidación o coerción mediante el uso implícito de la fuerza, represalias sociales o económicas antes, durante y después del compromiso.

• **Aviso Anticipado:** El consentimiento libre, previo e informado significa que todas las partes deben recibir un aviso amplio y por adelantado de las discusiones o negociaciones suficiente para las necesidades de las partes sujetas a participar de manera informada y significativa.

• **Tipos de Información, Transmisión y Forma:** El consentimiento libre, previo e informado significa que la información debe proporcionarse en un formato adecuado. La información puede existir en fuentes digitales, fuentes en papel, video, comunicadores personales y la información debe transmitirse en el idioma y la narrativa apropiados y fácilmente accesibles para cada una de las partes.

• **Consentimiento:** El consentimiento es la base para el “acuerdo” y el acuerdo es el resultado previsto de las negociaciones en las que las partes se comprometen a lograr resultados beneficiosos. Los seis modos de negociación a los que se hizo referencia anteriormente se basan en la igualdad política de las partes motivada por la intención de lograr la cortesía.

Métodos y Mecanismos de Acuerdos Vinculantes

La implementación del principio del consentimiento libre, previo e informado en las relaciones entre naciones y estados preserva, o en

algunos casos promueve, el ejercicio de la libre determinación y la conducción del autogobierno por ambas partes. Las relaciones estables y amistosas se construyen sobre la adhesión de las partes a los acuerdos y normas que existen entre las partes. Los acuerdos vinculantes son esenciales para el proceso de lograr relaciones estables y una condición temprana necesaria para el compromiso. Un acuerdo vinculante requiere que ambas partes tengan interés en el resultado y se puede alcanzar a través de diferentes mecanismos. Las alternativas a las relaciones negociadas son la resistencia política de las naciones indígenas a la ocupación y explotación de sus pueblos y territorios; y el uso de la violencia como un medio para romper la resistencia de las naciones por parte del estado o los poderes corporativos.[27] Si bien el principio del consentimiento libre, previo e informado se define como centrado en obtener el consentimiento de las naciones para las acciones gubernamentales, administrativas, legislativas y judiciales estatales antes de que entren en vigor, el mecanismo de CLPI tiene un beneficio potencial más amplio para las relaciones estables y pacíficas.

Es posible que las naciones necesiten asegurar acuerdos estructurados con los gobiernos de los estados, corporaciones transnacionales, empresas y organizaciones no gubernamentales para gestionar disputas sociales, económicas, ambientales o políticas de beneficio mutuo que van más allá de los actos administrativos, legislativos o judiciales. Los mecanismos independientes que actúan para facilitar las negociaciones son esenciales para hacer operativo el proceso de CLPI. Para hacerlo, un espíritu de cortesía entre las partes contendientes es un requisito esencial. Además, debe formalizarse una aceptación internacionalmente sancionada de mecanismos que proporcionen un seguimiento imparcial de las controversias emergentes a escala mundial como una elaboración más detallada del principio del consentimiento libre, previo e informado. Con ese fin, podemos considerar uno o una combinación de los siguientes mecanismos para lograr el cumplimiento del principio.

Mediación: la mediación es una forma de resolución de disputas entre partes que está estructurada y facilitada por un tercero neutral. La mediación puede ser bilateral o multilateral. Las partes deben participar en la mediación a través del consentimiento libre, previo e informado a la mediación, el alcance de la mediación y estar obligados por cualquier acuerdo potencial. Sin embargo, es posible que la mediación no produzca ningún acuerdo que esté consagrado en una declaración de mutuo acuerdo, o que solo resulte en un acuerdo parcial que, no obstante, se consigne en una declaración.

Arbitraje: el arbitraje es una forma de resolución de disputas en la que las partes

[27] Los conflictos que resultaron en la destrucción violenta de propiedades y comunidades en Birmania, Etiopía, República Democrática del Congo, Afganistán, Yemen, Colombia, Somalia, Nigeria, Irak, Siria, Turquía, Sudán del Sur, Baluchistán (Pakistán), Israel, Papua (Indonesia) , Moro (Filipinas), el norte de Chad son lugares donde las naciones, los estados y las milicias corporativas participan en conflictos armados que provocan hasta 10.000 muertes violentas al año. El tema del control y acceso a la tierra, la explotación de los recursos y los controles sobre las estructuras de gobierno se encuentran entre las razones de estos conflictos no resueltos.

acuerdan presentar una disputa, a través de argumentos y pruebas, incluidos testimonios, documentación, opiniones de expertos, etc., a un tercero neutral (individuo o panel) para su resolución. El arbitraje puede estar incluido como un mecanismo definido para el cumplimiento o la resolución de disputas en acuerdos y tratados o estar disponible como una opción o solicitarse de otra manera en forma ad hoc. El arbitraje puede ser bilateral o multilateral. Los resultados pueden ser vinculantes o no vinculantes. El arbitraje vinculante ocurre cuando las partes acuerdan aceptar la decisión del árbitro como la resolución final.

Monitoreo: un "mecanismo de monitoreo" independiente puede ser un medio eficaz para garantizar la implementación del principio del consentimiento libre, previo e informado. El mecanismo independiente y permanente puede ser establecido por acuerdo mutuo de la(s) nación(es) y el estado como una organización temporal o permanente.[28] Tal mecanismo puede identificar de forma independiente posibles conflictos y servir como un órgano de mediación independiente para la conducción de las negociaciones. Dentro del entorno doméstico del estado o en el entorno internacional, el mecanismo de monitoreo también puede servir como receptor de los llamamientos de la nación o del estado para ayudar en el proceso de establecimiento de un foro de negociaciones.

Para implementar el mecanismo, dicho organismo puede ser creado y autorizado por decisión de los gobiernos nacionales y estatales, o un organismo no gubernamental puede establecer el mecanismo. Las naciones pueden "registrarse" en el mecanismo indicando su voluntad de cooperar en el proceso de monitoreo (identificando asuntos de disputa existentes o potenciales); y se puede solicitar un mecanismo para reunir diplomáticamente a todas las partes interesadas para la posibilidad de organizar conversaciones y negociaciones.

Para implementar el mecanismo, dicho organismo puede ser creado y autorizado por decisión de los gobiernos nacionales y estatales, o un organismo no gubernamental puede establecer el mecanismo. Las naciones pueden "registrarse" en el mecanismo indicando su voluntad de cooperar en el proceso de monitoreo (identificando asuntos de disputa existentes o potenciales); y se puede solicitar un mecanismo para reunir diplomáticamente a todas las partes interesadas para la posibilidad de organizar conversaciones y negociaciones.

Comisión de Asuntos Intergubernamentales

Una comisión de asuntos intergubernamentales proporciona un mecanismo para el monitoreo y la comunicación continuos de eventos y acciones nacionales e internacionales que pueden afectar a las naciones y estados

[28] Reconocer la necesidad de un mecanismo independiente y permanente puede ser un proceso complicado y puede requerir la intervención de un organismo externo, desinteresado, que pueda tener influencia en las decisiones de las autoridades gubernamentales de las naciones y estados.

miembros. Esto se puede lograr con una comisión tripartita compuesta por un miembro designado por cada nación y estado, y un tercer miembro seleccionado y aceptado por los gobiernos de la nación y del estado que puede ser una personalidad no gubernamental. Los miembros deben tener experiencia y conocimientos en asuntos o relaciones intergubernamentales. El Mecanismo Intergubernamental requerirá un pequeño personal que pueda monitorear las acciones administrativas, legislativas o judiciales pendientes de la nación o del estado que puedan afectar los intereses de las partes. El personal de la Comisión Intergubernamental puede completar su revisión y emitir un informe al órgano de toma de decisiones que, a su vez, puede autorizar la transmisión de una comunicación a las naciones y estados afectados en el sentido de que deben iniciar un proceso de conversaciones exploratorias para evaluar si las partes requieren una proceso formal de mediación yo negociaciones. Si hay una controversia, las partes pueden solicitar al Mecanismo Intergubernamental que proporcione el escenario para la mediación o negociaciones u otros procesos. Si no hay necesidad de una resolución más allá de las discusiones, entonces el Mecanismo Intergubernamental simplemente declara el asunto resuelto. Tanto el estado como la(s) nación(es) deben brindar el apoyo financiero necesario para que el mecanismo intergubernamental funcione de manera independiente. Los costos compartidos podrán distribuirse en función de la capacidad de provisión de fondos de acuerdo con el presupuesto del mecanismo y una proporción pagada por cada parte.[29]

Mecanismo no Gubernamental

Las naciones y los estados dentro de los límites de un estado pueden invitar a las organizaciones no gubernamentales que son capacitadas y conocedoras del funcionamiento del gobierno de un estado y/o de los gobiernos de las naciones para formar un mecanismo de "supervisión y mediación" establecido para informar a las naciones y los estados cuando y si pueden surgir conflictos potenciales de acciones gubernamentales administrativas, legislativas o judiciales por parte de una(s) nación(es) o del estado. La diferencia significativa entre un mecanismo de seguimiento intergubernamental y una organización no gubernamental es que la organización no gubernamental seleccionará el órgano rector y de toma de decisiones y designará al personal. Una vez más, el presupuesto del mecanismo determinará la proporción de fondos proporcionados por las naciones y los estados para garantizar la independencia del organismo.

Opciones de Nación y Estado para la Implementación

Las autoridades gubernamentales de las naciones y los estados funcionan de acuerdo con

[29] A modo de ilustración, una nación puede tener una capacidad limitada para generar ingresos en comparación con el estado, por lo que podría ser necesario que la nación pague el 2% del presupuesto del Mecanismo Intergubernamental y el estado pague el 98%. Dado que primero debe determinarse la capacidad de generar fondos, la medida variará, pero el enfoque de la financiación debe medirse en general por los requisitos presupuestarios del mecanismo intergubernamental.

prácticas y procedimientos consuetudinarios o codificados. Dado que estos varían de una nación a otra y de un estado a otro, los mecanismos de decisión deben entenderse a fondo cuando se elaboran medidas de implementación para el principio de consentimiento libre, previo e informado. Algunos de los siguientes mecanismos pueden informar los mejores enfoques:

- **Administrativo**
  Las decisiones ministeriales o burocráticas que dan instrucciones para facilitar conversaciones e intercambios acordados pueden facilitar la cooperación que conduce a relaciones constructivas.

- **Orden Ejecutiva**
  El funcionario ejecutivo de la nación, el estado o la empresa puede simplemente decidir participar en comunicaciones directas para identificar los elementos de una disputa y ofrecer soluciones.

- **Orden Presidencial**
  El presidente o el vocero principal de la nación, el estado y/o la empresa puede simplemente decidir participar en comunicaciones directas para identificar los elementos de una disputa y ofrecer soluciones.

- **Orden del Presidente**
  El presidente de la nación, el estado y/o la empresa puede simplemente decidir participar en comunicaciones directas para identificar los elementos de una disputa y ofrecer soluciones.

- **Orden del Primer Ministro**
  El funcionario del Primer Ministro o el vocero principal de la nación, el estado o la empresa puede simplemente decidir participar en comunicaciones directas para identificar los elementos de una disputa y ofrecer soluciones.

- **Jefe**
  El Jefe o el vocero principal de la nación, el estado y/o la empresa puede simplemente decidir participar en comunicaciones directas para identificar los elementos de una disputa y ofrecer soluciones.

- **Cabeza**
  El líder principal de la nación, el estado o la empresa puede simplemente decidir participar en comunicaciones directas para identificar los elementos de una disputa y ofrecer soluciones.

- **Legislativo, Parlamento, Bicameral, Unicameral, Consejo, Cuerpo Ceremonial, Cuerpo Multilateral**
  Cuando un consejo, jefes hereditarios, juntas directivas, funcionarios electos para cargos representativos decidan las leyes que rigen la nación, el estado o la corporación, se puede designar un emisario respaldado por una decisión documentada de cooperación que puede facilitar la definición de una disputa y ofrecer una solución.

- **Judiciales**
  Un consejo, jueces designados, jeques, mirs u otros intérpretes de las políticas y leyes

nacionales, estatales o corporativas pueden participar como una comisión especial para facilitar una decisión mutuamente beneficiosa.

Las naciones, estados y entidades corporativas organizan y mantienen sistemas para decidir políticas y leyes aceptables que conducen a resultados resultantes de controversias sobre la conducción de la gobernanza, la vida social, la vida cultural, la economía, el medio ambiente, etc. Al igual que con los mecanismos ejecutivos y legislativos del gobierno, el proceso judicial que media en las diferencias humanas varía de una nación a otra y de un estado a otro.

Resultados

Un tratado u otra forma de documentación intergubernamental, como un pacto intergubernamental, un memorando de entendimiento o una convención con términos incorporados para el cumplimiento y la aplicación, debe ser el resultado de negociaciones realizadas para implementar el CLPI. El instrumento puede simplemente declarar el objeto de la controversia, los efectos entendidos y convenidos de la acción administrativa, legislativa o judicial y el remedio puede ser como simple resultado. Una relación equilibrada y respetuosa entre las naciones con los estados, las corporaciones transnacionales y las empresas, basada en el principio de la igualdad política, garantiza la paz y el entorno seguro para que las naciones y los estados lleven a cabo sus propósitos históricos. El mecanismo de CLPI acordado permite que las partes decidan compartir su responsabilidad y compromiso continuos con relaciones justas y equilibradas a través de un mecanismo intergubernamental o un mecanismo no gubernamental. El mecanismo seleccionado puede proporcionar notificación anticipada a las partes cuándo y bajo qué condiciones una acción o decisión política, administrativa, legislativa o judicial futura puede afectar el interés de la otra parte. Tal condición desencadena necesariamente el requisito de emprender negociaciones en el marco del CLPI. El fracaso en buscar y conducir negociaciones libremente determinadas deja una alternativa: Conflicto y disputas no resueltas. El principio del consentimiento libre, previo e informado, operacionalizado con un mecanismo mutuamente acordado, ofrece resultados pacíficos y mutuamente beneficiosos.

REFERENCES

[1] INTERNATIONAL NGO CONFERENCE ON DISCRIMINATION Against Indigenous Populations in the Americas – September 20-23, 1977.

[2] Draft Declaration of Principles for the Defense of the Indigenous National and Peoples of the Western Hemisphere – 1977

[3] International Covenant on the Rights of Indigenous Nations (1994)

[4] A Call to Action from Indigenous Peoples in Asia to the World Conference on Indigenous Peoples (Bangkok. ASIA Nov 8 - 9 2012)

[5] Proceedings Report: Africa Preparatory Meeting for the World Conference on Indigenous Peoples (Hosted in Nairobi, Kenya by Mainyoito Pastoralist Integrated Development Organization AFRICA (2012))

[6] Decisions and Recommendations of the North American Indigenous Peoples' Caucus (hosted by Kumeyaay Nation sponsored by Sycuan Band of the Kumeyaay Nation, the Haudenosaunee, the Viejas Band of the Kumeyaay Nation and the Lummi Nation, AMERICA, NORTH March 1,2,3 2013)

[7] Foro Indígena de Abya Yala, Declaration of the Indigenous Forum of Abya Yala, AMERICA, SOUTH (Iximulew, Guatemala April 11-13, 2013)

[8] Nuuk Arctic Declaration on the World Conference on Indigenous Peoples, ARCTIC 2014 (Adopted in Nuuk, Greenland, October 23 -24, 2012)

[9] Discrimination against indigenous small-numbered peoples of North, Siberia and the Far East of the Russian Federation, EUROPE, EASTERN (CERD 82nd Session 11 February to 1 March 2013)

[10] The Pacific Declaration of the Preparatory Meeting for Pacific Indigenous Peoples on the World Conference on Indigenous Peoples 2014, PACIFIC REGION (Redfern, Sydney, Australia. National Centre for Indigenous Excellence, 19-21 March 2013)

[11] Global Indigenous Preparatory Conference for the United Nations High Level Plenary Meeting of the General Assembly to be known as the World Conference on Indigenous Peoples (Alta, Saamiland, 10-12 June 2013)

[12] Alta Outcome Document (Alta, Saamiland 2013)

[13] Resolution on Treaties and Implementation of the UN Declaration on the Rights of Indigenous Peoples and other International Human rights Standards. (IITC 40th Annual Conference (2014).

[14] UN Declaration of Human Rights (1948) [adopted by 48 of 58 UN members with eight abstaining and two not voting]

[15] Convention on the Prevention and Punishment of the Crime of Genocide (1948)

[16] European Convention on Human rights (1953)

[17] Convention Relating to the Status of Refugees (1954)

[18] Convention on the Elimination of All Forms of Racial Discrimination (1969)

[19] African Charter on Human and Peoples' Rights (1986)

[20] International NGO Conference on Discrimination Against Indigenous Populations in the Americas (September 20-23, 1977)

[21] American Convention on Human Rights (1978)

[22] UN Convention Against Torture (1987)

[23] ILO Convention on Indigenous and Tribal Peoples (1989)

[24] Convention on the Rights of the Child (1990)

[25] Convention on Biodiversity (1992)

[26] UN Framework Convention on Climate Change (1992)

[27] Draft UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (1994)

[28] International Convention on the Protection of the rights of All Migrant Workers and Members of their Families (2003)

[29] UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (2007)

[30] International Convention for the Protection of All Persons from Enforced Disappearance (2010)

[31] United Nations Global Compact: Indigenous Peoples' Rights and the Role of Free, Prior and Informed Consent, 20 February 2014 (Prepared by Amy K. Lehr. Endorsed by the Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group.)

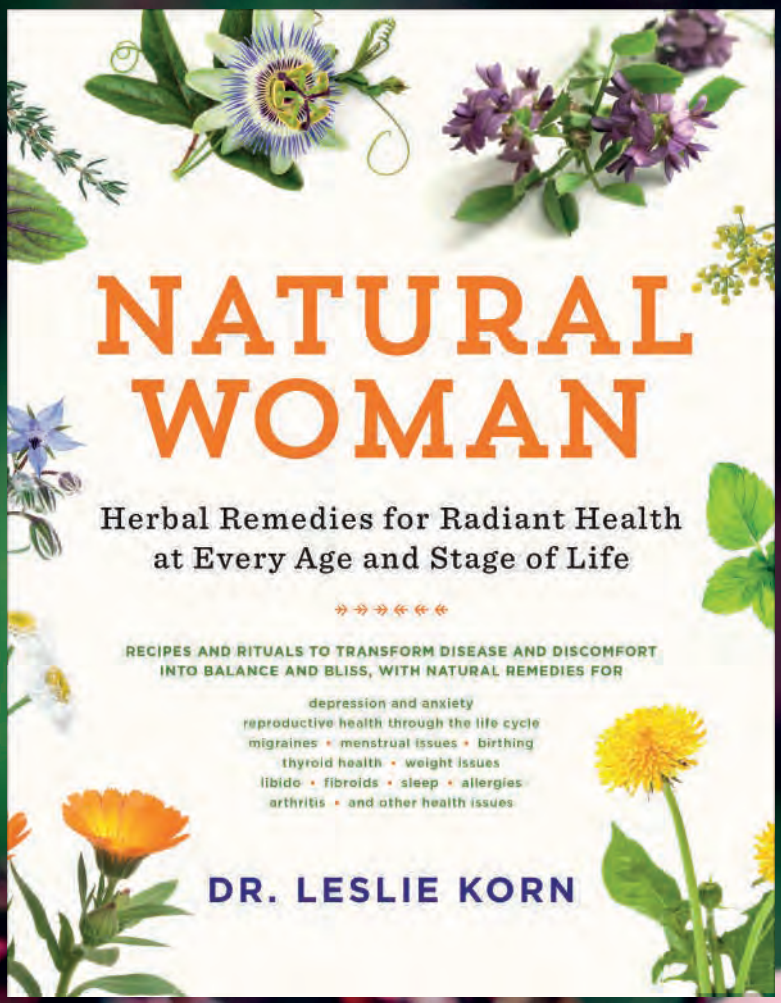
[32] WORLD CONFERENCE ON INDIGENOUS PEOPLES – Outcome Statement (2014)

Este artículo debe citarse como:
Rÿser, R. (2022) Un marco para Implementar el Principio del Consentimiento Libre, Previo e Informado (CLPI): Cortesía o Conflicto. *Fourth World Journal*. Vol. 21 N2 pp. 147-170.

SOBRE EL AUTOR

Rudolph Rÿser, PhD

El Dr. Rudolph Rÿser creció hasta la madurez en la cultura Cowlitz en el noroeste del pacífico de los Estados Unidos aunque es descendiente Cree/Oneida por el lado de su madre y suizo por el lado de su padre. Obtuvo su doctorado en relaciones internacionales y sirvió como el Presidente Fundador del Centro de Estudios Indígenas del Mundo desde 1979. Es mundialmente reconocido como el principal arquitecto de las teorías y práctica de la Geopolítica del Cuarto Mundo. Es autor del influyente libro "Indigenous Nations and Modern State: The Political Emergence of Nations Challenging State Power" (2012), "Fourth World Geopolitical Reader" y el recién publicado "Biodiversity Wars, Coexistence or Biocultural Collapse in the 21st Century" (2019). Tiene más de cincuenta años trabajando en el campo de los Asuntos Indígenas como escritor/investigador y consultor de líderes politicos de las naciones del Cuarto Mundo alrededor del mundo.



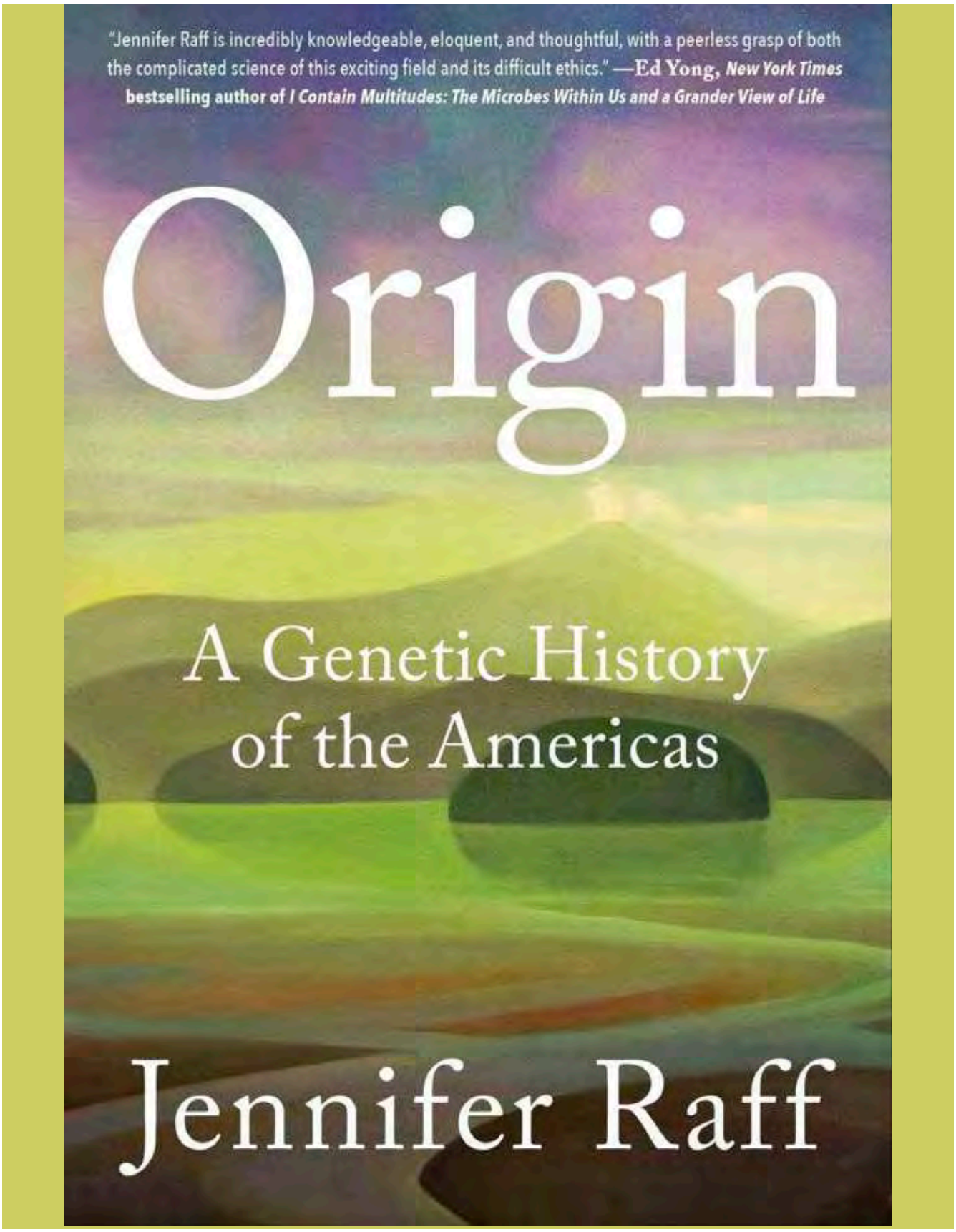
NATURAL WOMAN

Remedios herbales para una salud radiante a cualquier edad y etapa de la vida

Una guía de hierbas para mantener la salud física, mental y espiritual para mujeres y sus hijos en todas las etapas de la vida – por una sanadora con más de 40 años de experiencia.

"Mezcla historia, tradición y sabiduría atemporal en un enfoque moderno que nos ayuda a florecer en nuestra vida como mujeres".

-Bevin Clare, Presidenta de la Asociación Americana de Herbolarios


"Jennifer Raff is incredibly knowledgeable, eloquent, and thoughtful, with a peerless grasp of both the complicated science of this exciting field and its difficult ethics." —Ed Yong, New York Times bestselling author of I Contain Multitudes: The Microbes Within Us and a Grander View of Life
Origin
A Genetic History of the Americas
Jennifer Raff

BOOK REVIEW

Origin

By Jennifer Raff

Hatchet Book Group
12 New York
First Edition February 2022
ISBN 9781538749715 (hardcover) | ISBN 9781538749708 (ebook)

The authors of Spanish conquest histories repeatedly report that the Spanish incursions into Mexico and the American southwest were followed a century later by the Pueblo Revolt. Francisco Vasquez de Coronado entered on horseback leading "conquistadors" in 1540, giving King Philip II of Spain the opening to permit Juan de Onate in 1595 to settle and explore the lands of the Hopi, Zuni, Keres, and Jemez. The search for wealth (gold and other minerals) prompted the Spaniards to establish settlements among the peoples they found. By doing so, their horses became a significant factor in their lives. Horses quickly became influential in social, economic, and strategic relations between the different peoples even as the Spaniards withdrew. By the late 1700s, wild horses and domesticated horses became a critical part of the cultural systems of Shoshone, Cayuse, and the Yakima—nations in territories a few thousand miles to the north of the Pueblos. Indeed, the Cayuse are said to have been the first of the many nations in the northwest of the United States to acquire horses giving them powerful mobility and warrior strength. When reminded that the Cayuse introduced the horse to the Yakima, longhouse traditional leader Kiaux (English name Russell Jim) exploded in laughter! "No!" Kiaux corrected. "It is true that the Cayuse brought us horses from the South just a few centuries ago, but we had horses thousands of years before." Indeed, the horse did originate in North America for at least 60,000 million years when about ten or eleven thousand years ago, the horse came to an end. Kiaux's partner relied on the contemporary sense of time while Kiaux relied on the oral histories of his people. These stories of the "now and then" connect the history of memory as **Jennifer Raff** quotes Pawnee historian Roger Echo-Hawk in her wonderful, just-released book, **Origins, The Genetic History of the Americas**.

Kiaux and Raff, it turns out, agree with each other though from different sources of information. Raff recounts how she learned peoples have lived in the western hemisphere for at least 41,000 years instead 12,000 to 25,000 years usually claimed. Raff's documented push back in time gives Kiaux's ancestors ample opportunity to visit the horses. According to Raff, the early presence of peoples in the western hemisphere extends deeper into western hemispheric human history. Raff also calls into

question the single focus story that peoples from Asia entered North America through the Bering Land Bridge about 10,000 years ago. That was the beginning of the end of the "ice age," as conventional researchers have claimed, and yet Raff's research now confirms evidence shows the early relatives of the Tlingit and Haida were living in the area of the Shuká Káa Cave (located on the south-eastern coast of Alaska).

Raff recounts in the early chapters of her book the discoveries made by amateur naturalist and formerly enslaved person George McJunkin in 1908 near Folsom, New Mexico, digging up the bones of extinct bison. While McJunkin made a remarkable discovery because of his ancestry, no one would help him or pay attention to what he had discovered. Carl Schwachheim and Fred Howarth were two naturalists McJunkin had earlier consulted about his find. Still, it wasn't until after he died that Schwachheim and his friend decided in 1920 to investigate the ancient bison bones. As Raff narrates the story, she reveals that what had been discovered was a site containing not only the bones of an extinct bison, but an arrowhead lodged in the bones suggesting that human beings had lived at the time of the bison. This find was only discovered after a formal excavation of the site took place in 1926. Archaeologists and other researchers began to

offer their guesses as to the time humans arrived in North America, and some immediately offered 5,000 years. Yet another, Jesse Figgins, thought that 200,000 years could be considered. Not until the 1950s, Raff explains, did radiocarbon dating come into being were researchers able to approximate the date range for the earliest human entry into the hemisphere.

The common wisdom for 50 years was that at best 12,500 years was considered the earliest time of human entry into the hemisphere. Still, scholars wrestled over that number since increasingly discovered archaeological evidence strongly questioned the year. Attempts at settling on a realistic "origin number" continued until Raff's genetics-based work was published, where she points to that the appropriate evolutionary framework for human populations is "a biological one, connected to the broader dispersal of anatomically modern Homo Sapiens out of Africa." Based on that perspective, Raff argues that "genetic evidence" is the most advanced and appropriate method for investigating and testing evidence—genetic materials from bones and teeth.

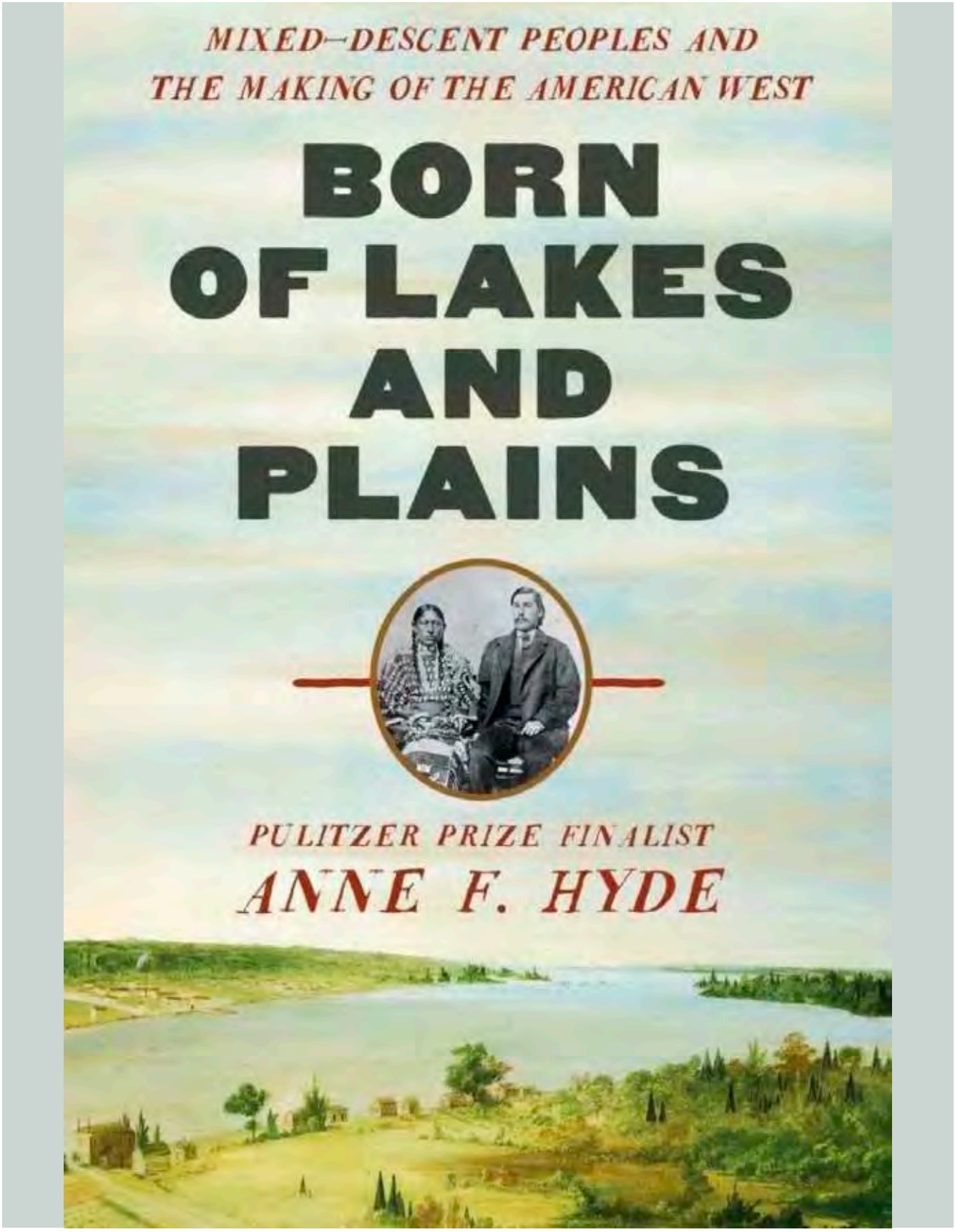
Emphasizing the biological and the cultural aspects of human evolution, Raff turned to Tlingit and Haida and other tribes to hear their stories their histories for further details about migrations and adaptations made by their ancestors. She enthusiastically charts the relationship between peoples in Africa and Asia and then into the Americas—all the while remaining true to her reliance on biological and cultural evidence. Raff caps her analysis by stating that the genetic characteristics of the earliest arrivals in the Americas render them most closely related to modern American Indian descendants.

Her discussion also discloses how she understood the importance that modern descendants of ancient family members must be accorded ceremonial honors due to all members who have passed into the Spirit World. Furthermore, Raff demonstrates that close collaboration with American Indian nations is a valuable element of her research, and she points to how mutual benefits result. Sometimes the results of her research were possible only after years of consultations with communities, elders in those communities, and collaborating tribal leaders.

Paleogenomics is the label Raff gives to her work and demonstrates how new pathways exist for researchers, and American Indian peoples can improve the accuracy of knowledge for conventional sciences and native sciences. Her book shows the benefits of hearing the Yakima Longhouse leader Kiaux and the indigenous peoples descendant from the "ancient ones" for the deep and profound knowledge they hold that can render our knowledge more accurate.

This article may be cited as:

Book Review. (2022). Origin. *Fourth World Journal*. Vol. 20, N2. pp. 178-181.


MIXED-DESCENT PEOPLES AND
THE MAKING OF THE AMERICAN WEST
BORN OF LAKES AND PLAINS
PULITZER PRIZE FINALIST
ANNE F. HYDE

BOOK REVIEW

Born of Lakes and Plains

Mixed-descent Peoples and the Making of the American West

By Anne F. Hyde

W.W. Norton and Company
First Edition February 2022
ISBN 9780393634099 (hardcover) | ISBN 9780393634105 (epub)

The Wyandot (known also as Huron) north of Great Lakes in southeastern Canada and northeastern United States of America are said to have set up permanent communities in what is now referred to as the St Lawrence Valley 7,000 years before the present. While living foragers and as hunters of caribou in the spruce forests the changing landscape caused the Wyandot in about AD 800 to become cultivators of corn (mahiz in the language of the Taino in the Caribbean) squash and various beans. They eventually became a confederation of communities people numbering more than 30,000. They were cultivating 7,000 acres of land and controlling trade exchanging furs, meat, and corn. But how did the Wyandot become cultivators of mahiz when this enormously productive cereal was first domesticated 10,000 years before the present in the far southwest of what is now the state of México? And what is the significance of mahiz as a factor in the Wyandot and then the Anishinaabe, Cree and Haudenosaunee history and ultimately the history of French, Dutch and English history in the making of the United States and Canada?

Corn was traded north by the Yucatecs from the Yucatan peninsula in the Caribbean up what was later called the Mississippi River to the Great Lakes Region beginning in about AD 800. Between about AD 1100 and 1500 the Haudenosauee had pushed north engaging battles and wars with the Seneca and other nations including the Oneidas, and Cayugas that had also moved north from the coasts. Along the way contests of strength in wars and need for foods, shelter and security drove these nations into the territories of the Wyandot, Anishinaabe, nations of the Nitassinan and the Cree. The Great Law of Peace negotiated by the Wyandot spiritual leader Dekanawida (who had lived among the Kanienkehaka – Mohawk) settling conflicts between the Seneca, Oneida, Cayuga, Mohawk, and Onondaga established the Five Nation confederacy. Dubbed the “Great Peace Maker” Dekanawida demonstrated the virtues of peace by breaking a single arrow in two pieces but took five arrows between his hands showing they would not break. Onondaga was reluctant to join in the confederation until they were given central authority in the new confederation.

Spiritual elder Tadodaho had to be convinced by spokesmen from the Seneca and Cayuga offered the Great White Roots for the Tree of Great Peace that would be planted among the Onondaga. The Onondaga would from that point on serve as the central authority from the village of Ganondagan—the Peace had been confirmed.

This was the world that the French and Dutch followed by the English and later the Americans entered in the 16th and 17th Centuries. This was a world defined by its own history and its own practices evolved over thousands of years.

Historian and professor of history at the University of Oklahoma and editor-in-chief of the Western Historical Quarterly Anne Hyde tells a portion of this story in her remarkable, revealing book Born of Lakes and Plains. Hyde writes easy to read initial chapters setting the cultural, political, and geographic stage in the 17th and 18th centuries. This period was when the Wyandot, Haudenosaunee, Cree, Weskarini, and the Dutch, French, and English contested valuable beaver, ermine, foxes, and rabbit furs in what was first called the Beaver Wars and wars that followed. The story she weaves centers on native women and their dominant social, cultural, and political influences in the vast geographic expanse of the Great Lakes and St. Lawrence Valley. Through their decisive role as "makers of life," the women of virtually all the different peoples in the Great Lakes region before the Europeans arrived in the 16th century determined the organization of communities. They peopled the communities and managed the transition of the various nations to sustained and enriched nations in many instances. Hyde's Prologue sets the tone for her narration leading to stories of European men currying favor and benefits from native women to gain access to valued beaver skins for transport to the commercial markets in Europe. Hyde writes,

> When warm bodies lay close in winter, they created new hearts beating by summer. Too often, only one body was willing, and the other was captive, raped, or abandoned. But sex has stunning generative power, and that power to make kin, blend villages, and build clans anchors this account of mixed-descent families and how war, trade, and love extended them across North America.

Born of Lakes and Plains explains the untold story of how long before the Europeans arrived, women were instrumental in forging alliances between nations, creating trade arrangements, and affecting outcomes to wars. And from this telling, Hyde explains how the same practice was applied in the commercial fur trade, diplomatic and warfare interactions between America's nations and Europe's commercial, military, and diplomatic relations.

Hyde writes the history of five "mixed-descent" families. She tells the stories of Otoe, Wyandot, Cree, Ojibwe (Anishinaabe), Cheyenne, Cayuse, Chinook women "blending" through sexual, social, and cultural connections with French, Dutch, English, Irish, German hunter, military, and fur trading men. She explains how these connections changed the trajectory of native peoples and European kingdoms and what would become Canada and the United States. Relying on letters, family account books, diaries, deeds,

financial accounts, memoirs, drawings, and the narratives of Jesuit records, Hyde explains how over the sweep of time from the 15th century to the early 20th century, the native women absorb many European men into native communities. She describes how they produced "mixed offspring." The children would become productive social, economic, cultural, and political go-betweens for native and non-native societies. They became interlocutors (between nations and the French, Dutch, English, and later the American commercial, military, and diplomatic representatives seeking access to lands, wild and cultivated foods, medicines, and materials for building European-like villages and towns.

According to the US and Canadian census for 2022, more than 8 million people of American Indian and Canadian Indian descent identify with their heritage rooted in the original peoples of North America. Most hid their identity until recently. Hiding their heritage and family relations by registering as "white" in the records of both the United States and Canada revelations about their existence is, for some readers, a surprise. Due to racial discrimination born from these countries' bigotry and racial policies, native people and their relatives who are mixed-descent, according to Hyde's reporting, could obtain educational, commercial, and political opportunities only if they were documented as other than "Indian." The families of mixed descendants and their relatives living on and near traditional territories played and continue to play a critical role in the survival of North America's Indian peoples today. They determined by many of their relatives serving as "go-betweens" the rise of the social, economic, political, and strategic existence of Canada and the United States.

This article may be cited as:

Book Review (2022): Born of Lakes and Plains. Mixed-descent Peoples and the Making of the American West. *Fourth World Journal*. Vol. 20, N2. pp. 183-186.