FOURTH WORLD JOURNAL

CENTER FOR WORLD INDIGENOUS STUDIES

WINTER 2023 VOLUME 22 NUMBER 2

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Imagen by Brigitte Werner from Pixabay

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.


Licensing agents:
EBSCO PUBLISHING, Inc. Ipswich, Massachusetts,
USA GALE GROUP, Inc. Farmington Hills, Michigan, U.S.A.
INFORMIT, RMIT PUBLISH, Ltd. Melbourne, Australia,
ProQuest LLC, Ann Arbor, Michigan USA

# LUKANKA

**Lukanka is a Miskito word for "thoughts"**

**FWJ V22 N2 – WINTER 2023**

**RUDOLPH C. RŸSER**
Editor in Chief
Fourth World Journal

Relations between Fourth World Nations and the world's states that were formed on top of their ancestral territories are complicated. Political activists leading non-governmental organizations, scholars in academic institutions, and governing representatives of Fourth World nations are daily attempting to describe and explain the challenges these nations on every occupied continent face. Many of these activists, scholars, and representatives engage in unending debates at the United Nations and other state-based international bodies seeking to establish recognition of the myriad social, economic, political, and cultural encounters between nations and states that can and do result in nations' troubles requiring solutions. While states' governments have allowed new international agreements such as the International Labor Organization Indigenous and Tribal Peoples Convention 169 (1989), the U.N. Declaration on the Rights of Indigenous Peoples (2007), the U.N. Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples are important achievements. These measures advance the principle of free, prior, and informed consent (FPIC)—a process of establishing negotiated consent agreements between Fourth World Nations to support their self-determination. But these are merely symbolic gestures by the States' governments since there are no mechanisms to implement self-determination provisions, prevent genocides against nations, or protect nations' ancestral territories that allow Fourth World Nations to restore their cultures and make decisions without external interference.

The limited diplomatic progress over the last fifty years is essential. Still, most states continue to work to implement assimilation policies that contemplate the disappearance of Fourth World Nations (i.e., India, United States, Australia, Mexico, Kenya, Nigeria, Iraq, Russia, and China). However, now is the time to establish diplomatic, economic, and structural mechanisms to implement the commitments made over the last fifty years.

The Center for World Indigenous Studies is working to establish a mechanism that can facilitate Fourth World self-determination to implement the process of free, prior, and informed consent. For example, the CWIS has developed a proposal for ALDMEM (Ancestral Land Decolonization Monitoring Mechanism) that would be established to arrange consent negotiations between Fourth Nations and states' governments or their transnational corporations seeking to access peoples and resources inside ancestral territories. ALDMEM would implement an agreed-upon policy and advance self-determination.

Our authors in this issue offer clear options for organizing and enforcing policies to implement Fourth World self-determination rooted in accepted international principles.

The concept of Genocide, as it is currently understood, contemplates mass murder as the principal criterion for prosecuting the crime. In **Cultural Death, Destroying a People in Whole or in Part, Rudolph C. Rÿser** argues that it is essential to reestablish culturcide and ecocide as was initially contemplated by Rafaël Lemkin when he first defined Genocide. The U.N. Secretariat and the Ad Hoc Committee on Genocide are discussed, emphasizing how the proposal for "cultural genocide" as one of three crimes was initially included in the first draft of the Genocide Convention. However, it is further explained that objections by states' governments (in Africa and the United States included) resulted in removing cultural Genocide as a crime under the Convention. The essay contends that establishing cultural Genocide as the first crime of Genocide is essential for prosecuting perpetrators committing the crime since the beginning of the 20th Century. With 160 alleged crimes of Genocide committed against Fourth World nations for which no perpetrators have been held accountable since 1945, as indicated in this essay, the author urges action.

**A Voice at the Table: Strengthening Collaboration in the Governance of Environmental Agreements** is the product of scholarly collaboration between **Beatrice Hamilton, Jason Baldes, Gary Morishima, Elize Shakalela, Jeji Varghese, and Roger Zetter**. Their essay offers a concrete set of measures to overcome obstacles to the negotiation and enforcement of intergovernmental environmental, biodiversity, human rights, and health agreements between States' governments and Fourth World nations' governments. The authors point out that while there are Inter-State Agreements covering these and other matters, Fourth World nations. The essay notes the non-existence of institutional mechanisms that bridge the gap between nations and states, limitations of governance capacities in Fourth World nations to support collaborations with states, and state societal norms that obstruct recognition, respect, or value for Fourth World environmental knowledge systems. The authors offer a significant discussion and a proposed mechanism with the prospect of overcoming the obstacles.

**Coca Cola and Coca Leaves, A Case Study on the use of FPIC** is a unique exploration of a process of implementing the principle of free, prior, and informed consent with a significant transnational corporation. **Irene Delfanti**, MA, is a "thought" designer and researcher in Edinburgh, Scotland, working to create a pathway for implementing and enforcing the international requirement for transnational corporations to carry out FPIC in relations with Fourth World Nations. The author notes that the Coca Cola corporation states that it is committed to protecting human rights and implementing FPIC. However, she notes that there is a degree of obfuscation acted out by the corporation when it presents to the U.N. Global Compact as a member. Delfanti notes that Coca Cola is not directly involved in dealing with Fourth World nations. Still, its subsidiaries and partners that support Coca Cola's beverage production do—and they do not implement FPIC.

Professor **Veronica Tawhai** of Matike Mai Aotearoa, a Māori nation. She is a scholar at the School of Māori Knowledge, Te Pūtahi a Toi campus of Massey University in Palmerston North, New Zealand. Dr. Tawhai lectures in policy and politics with a strong emphasis on the Treaty of Waitangi, Māori, and youth political engagement, constitutional change, and electoral, civics, and citizenship education. In her essay **Recognition of Indigenous Citizenship and Nationhood: Challenges for Educators in Aotearoa** she examines proposals for "co-governance" based in part on the provisions of the 1853 Te tiriti o Waitangi (the Māori language version of the text that places the original peoples in a primary governing role and British subjects second) (Treaty of Waitangi) concluded with the British government. Tawhai discusses the key provisions of the Treaty from the Māori point of view as issues to be focussed on by the efforts of educators to reveal the elements of Aotearoa citizenship.

In **Five Horsemen of the Apocalypse in Indian Country, Strategizing to strengthen Nations' Sovereignty**, FWJ presents an updated Open Letter... pointing to major points of concern considered in a day-long conversation between National Congress of American Indians **President Fawn Sharp** and CWIS Chair **Rudolph Rÿser**. As the NCAI President prepared to meet with tribal leaders in August 2022, the two evaluated the significant threats to tribal sovereignty facing American Indian Tribes in the United States and Fourth World nations around the world. As the letter reports, "Indigenous nations of the Northern Hemisphere and nations worldwide are facing the gravest challenges to their existence since the later 19th century." The two leaders explore the threats and the need for a working strategy, including implementing existing agreements with states, such as the process of free, prior, and informed consent to counter state terrorism, corporate destruction of ancestral territories and state, and international policies denying self-determination and sovereignty.

**Sabina Singh**, Ph.D. **Hiroshi Fukurai**, Ph.D., **Melissa Farley**, Ph.D., **Rudolph C. Ryser**, Ph.D., and **Mathieu Demont**, MA, collaborated to provide presentations in the CWIS audio/video platform **Fourth World Nations and the process of Free, Prior, and Informed Consent**. Recognizing that the process of free, prior, and informed consent (FPIC) can be confusing and overly burdened with international "legalese," the Center for World Indigenous Studies media team with the "thought design" of Irene Delfanti and graphic management of CWIS's Sam Stoker and editing by Max Montalban developed an online version of this presentation. In an effort to create online access to the central elements of the FPIC process shared with Fourth World Nations, the interactive website is previewed here with links to the online interactive platform.

With an emphasis on proactive solutions, this issue of the Fourth World Journal shares the pages to come.

# Cultural Death

## Destruction of a People in Whole or In Part

By Rudolph C. Ryser, PhD
Center for World Indigenous Studies

## ABSTRACT

Genocide is a term now commonly used to refer to the mass murder of a group resulting in their destruction in whole or in part. The inventor of the word "genocide" did not originally conceive the concept in narrow terms but in broad and inclusive terms. Mass murder as a crime is a narrow reading of the term that prevents state-based legal and political institutions from holding perpetrators accountable for the destruction of indigenous peoples. The phrase "cultural genocide" was initially contemplated as one of three forms of genocide by the drafters of the 1948 state-based International Convention on the Prevention and Punishment of the Crime of Genocide. When the United Nations finally adopted the new Convention that came into force in 1951, the phrase "cultural genocide" was not included. Cultural genocide means "cultural death" for millions of individuals, their families, and their communities in the Fourth World. Rafaël Lemkin, his legal colleagues, United Nations diplomats, and political leaders decided instead of including cultural genocide in the Convention, they would view violations of culture as a matter of "human rights" to be appropriately discussed, evaluated, and remedied as a policy within and under domestic state laws. The decision directly prevented Fourth World peoples from being considered and understood as a distinct subject of international law when their cultures were violated. In this essay, we consider the meaning of "cultural death" and the decisions that led to Fourth World peoples becoming dismissed as populations to be ignored as targets of genocide.

**Keywords:** Culture, Cultural Genocide, Historical Trauma, Rafaël Lemkin

Fourth World peoples worldwide are under intense social, economic, political, and cultural pressures to assimilate into state populations and abandon their cultures. The result is that the dominant Fourth World peoples are made to become indistinguishable from the dominant population. State, business, and religious-sponsored educational systems and public propaganda coercively undermine the distinct cultural societies' values, ideas, behaviours, and economic and social practices against the will of Fourth World communities. The process of

coercive assimilation can occur over generations leading to a point where a Fourth World society can completely disappear—Cultural Death.

What do we mean by the word "culture?" Culture is the dynamic and evolving relationship between a people, the land, and the cosmos.[1] The common Fourth World definition of "culture" is cult-*worship* of the ure-*earth*. When the relationship between a people, the land, and the cosmos lived over many generations is destroyed (replaced) by coercive assimilation, the people individually and collectively experience "cultural death"—a trauma that carries forward for generations. Dr. Rafaël Lemkin recognized this essential reality when he wrote in his 1944 book:

> This trend is quite natural, when we conceive that nations are essential elements of the world community. The world represents only so much culture and intellectual vigour as are created by its component national groups. Essentially the idea of a nation signifies constructive cooperation and original contributions, based upon genuine traditions, genuine culture, and a well-developed national psychology. The destruction of a nation, therefore, results in the loss of its future contributions to the world. Moreover, such destruction offends our feelings of morality and justice in much the same way as does the criminal killing of a human being: the crime in one case as in the other is murder, though on a vastly greater scale. Among the basic features which have marked progress in civilization are the respect for and appreciation of the national characteristics and qualities contributed to world culture by the different nations - characteristics and qualities which, as illustrated in the contributions made by nations weak in defence and poor in economic resources, are not to be measured in terms of national power and wealth.[2]

When you are forced not to speak the language of your ancestors and tell your family's stories, wear your people's clothes, eat foods like your relatives, or have your hair braided like your aunties or uncles, you are experiencing "cultural death." Denied your identity when you are forcibly separated from family and your ancestral homeland and punished for practising spiritual rituals taught by the *sagamores* you are a victim of "cultural death." Native peoples living on every continent and island, children, and adults, know with a sense of profound loss some or all these acts perpetrated against whole groups and individuals—resulting in the death of their culture. Suffering from the trauma of "cultural death" can and does continue to disable individuals and their communities for generations.

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[1] Rÿser, RC., Gilio-Whitaker, D. and Bruce, HG. (2017) "Fourth World Theory and Methods of Inquiry." In Handbook of Research on Theoretical Perspectives on Indigenous Knowledge System in Developing Countries. Edited by Dr. Patrick Ngulube (University of South Africa, South Africa) DOI: 10.4018/978-1-5225-0833-5 Page 35. https://www.igi-global.com/chapter/fourth-world-theory-and-methods-of-inquiry/165739

[2] Lemkin, E, (1944) Chapter IX: "Genocide." in Axis Rule in Occupied Europe, Laws of Occupation Analysis of Government Proposals for Redress. Washington, D.C.: Carnegie Endowment for International Peace. p. 79-51

After an alien people invades and occupies the ancestral territories of a people originating in that territory, imposing foreign policies and practices intended to dominate or replace a people's way of life, is that destructive of the original people?

When a state establishes in its law that children of a people must be forced to be schooled in a language, culture, and social system alien to the language, culture, and social system of their native culture, is that destructive of a people? When a state employs its military to force different peoples to leave their ancestral territories and concentrate their communities in a smaller and non-productive land. Is that destructive of a people? When state-created businesses or corporations establish their enterprise in the ancestral territory of a people to extract raw materials for the benefit of their profits resulting in the forced removal of people from their communities, is that destructive of a people? Moreover, if those corporations and businesses provide resources that permit commercial enterprises to profit from products manufactured from those raw materials, is that destructive of a people? Furthermore, when investors receive financial returns from corporations extracting raw materials from ancestral territories that result in disrupted biodiversity and climate change, is that destructive of a people? If a state accepts taxes or officials accept bribes resulting from this economic activity and extraction, is that activity destructive "of a people" in those territories?

All these actions have been or are now forced upon Fourth World peoples. Acts of progressively created cultural death are currently occurring in many peoples' ancestral territories, communities, and families worldwide. Indigenous peoples consider these actions "destructive of their people in whole or in part." Nevertheless, state-based international law fails to recognize any of these acts as a violation of the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the fifty-eight-member United Nations General Assembly[3] on 9 December 1948.

## The States Move to Adopt a Genocide Convention

If many countries promote policies and practices that have the effect of cultural death for indigenous peoples, why are these policies and practices not prosecuted as crimes of genocide? A brief review of the actions taken at the United Nations leading up to the state-based Genocide Convention that does not consider cultural genocide is in order.

The UN General Assembly adopted Resolution E/734 on 3 March 1948 to establish an Ad Hoc Committee on Genocide with representatives from China, France, Lebanon, Poland, the United States of America, the Union of Soviet Socialist

[3] Members of the UN in 1948 included 58 members: Afghanistan, Argentina, Australia, Belgium, Burma, Bolivia, Brazil, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Pakistan, Paraguay, Peru, Philippine Republic, Poland, Saudi Arabia, Siam, Syria, Sweden, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom, United States, Uruguay, Venezuela, Yemen, Yugoslavia.

Republics, and Venezuela. The Ad Hoc Committee discussed the inclusion of "cultural genocide"[4] as a crime and the UN Secretariat's 1947 draft. The Secretariat and Ad Hoc Committee listed three acts[5] in Article I of the draft that would qualify as genocide:

> 1. Physical genocide – causing the death of members of a group or injuring their health or physical integrity.
>
> 2. Biological genocide – Restricting births by way of sterilization and or compulsory abortion, segregation of the sexes, or obstacles to marriage.
>
> 3. Cultural genocide – Destroying the specific characteristics of the group by forcible transfer of children to another human group; or forced and systematic exile of individuals representing the culture of a group; or prohibition of the use of the national language even in private intercourse; or the systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or the systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and objects used in religious worship.

The authors[6] of the Convention on Genocide introduced the destruction of culture as a crime based on Lemkin's original arguments that the crime of cultural genocide would be essential in a new Convention. The Union of Soviet Socialist Republics Ad Hoc Committee member Platon D. Morzov urged the UN Convention on Genocide drafting Committee to include cultural genocide as an essential concept in principle in the draft convention. France's representative Pierre Ordonneau argued that the definition of genocide needed to include all violent measures used to destroy the cultural elements of a group. The United States delegate objected to the inclusion of references to the prohibited use of "language and

[4] Ad Hoc Committee on Genocide (1948) "Meeting Held on 3 May 1948. Portions of Report Adopted in First Reading." United Nations Economic and Social Council (E/AC.25/Q.4). p. 9-10. The United States delegation made a declaration noted in the report on the matter of "cultural genocide": "The prohibition of the use of language systematic destruction of books, and destruction and dispersion of documents and objects of historical or artistic value commonly known in this Convention to those who wish to include it as "cultural genocide" is a matter which certainly should not be included in this Convention. The act of creating the new international crime of genocide is one of extreme gravity and the United States feels that it would be confined to those barbarous acts directed against individuals which form the basic concept of public opinion on this subject. The acts provided for in these paragraphs are acts which should appropriately be dealt with in connection with the protection of minorities." The Ad Hoc Committee accepted the inclusion of "cultural genocide" as a crime with a vote of five votes to two. The United States and France opposed it. On the second reading, the entire article was adopted by four votes to three abstentions, with Venezuela joining the US and France to abstain.

[5] United Nations. (1947) "Convention on the Prevention and Punishment of the Crime of Genocide – the Secretariat and Ad Hoc Committee Drafts. First Draft of the Genocide Convention, Prepared by the UN Secretariat, May 1947. E/447.

[6] Members of the Ad Hoc Committee were: Mr. John Maktos, Chairman (United States of America); Mr. Platon D. Morzov, Vice Chairman (Union of Soviet Socialist Republics); Mr. Karim Azkool, Rapporteur (Lebanon); Mr. Lin Mousheng, (China); Mr. Pierre Ordonneau, (France); Mr. Aleksander Rudzininski, (Poland); and Mr. Victor M. Perez Perozo, (Venezuela). The Committee conducted nine meetings for discussions and then proceeded to prepare the articles of the Convention. The government of PR China offered the Committee-adopted "basic text" (document E/AC.25/9) with submissions by the United States, France, and the UN Secretariat considered by the Committee as amendments. The Ad Hoc Committee considered the Convention draft over twelve subsequent meetings. At the twenty-fifth meeting of the Ad Hoc Committee, the Convention was adopted for submission to the UN General Assembly.

systematic destruction of books, and destruction and dispersion of documents and objects of historical or artistic value" in the description of cultural genocide.

The US delegate argued that the crime of genocide is one of extreme gravity and that the article should be confined to "barbarous acts" directed against individuals. The Committee voted 4 in favour and 3 abstentions, with the United States, Venezuela, and France voting to abstain on "cultural genocide."[7] The Ad Hoc Committee ultimately decided to retain the idea of "cultural genocide" in the Convention. However, due to objections by the United States Ad Hoc Committee member John Maktos said he could not commit his government beyond "conspiracy and incitement to commit genocide."[8] Depending on the United States officials' reading of the United States Constitution and the expressed views of other UN delegations the definition of genocide was ultimately limited in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide[9] to recognized crimes:

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;

5. Forcibly transferring children of the group to another group.

The specific acts identified as punishable in the Convention[10] are limited to these listed crimes of genocide:

a) Genocide;

b) Conspiracy to commit genocide;

c) Direct and public incitement to commit genocide;

d) Attempt to commit genocide;

e) Complicity in genocide.

The Genocide Convention also narrows punishment to individuals who are leaders or officials of a country, other public officials, or private individuals. States, corporations, militias, and organizations are not identified as potential perpetrators. Cultural Genocide, all forms of propaganda intended to promote genocide, and the execution of genocide as a political crime disappeared from the final Convention. What happened? A significant concern directly affecting the survival and existence of nations—of indigenous peoples—vanished.

In his drive to establish a Convention on Genocide, Raphaël Lemkin gradually compromised his broader, culture-inclusive

[7] IBID. 9

[8] Abtahi, H. and Web, P. (2008) The Genocide Convention: The Travaux Préparatoires. Martinus Nijhoff Publishers. P. 736 referencing E/AC.25/SR.5.

[9] Convention on the Prevention and Punishment of the Crime of Genocide – UN General Assembly resolution 260 A (III) of December 1948 – Article II

[10] IBID. Article III

definition of genocide.[11] A Convention that had the potential to revolutionise international law proved to result in a "hollowed out international humanitarian treaty," as Anton Weiss-Wendt observed. The new international law limited its focus to mass murder but left cultural, political, ecological, and biological crimes in empty space. Lemkin's compromises initially eliminated political groups from the list of crimes against groups.[12] The removal of political groups from the Convention's protection also proved influential when the United States made removal a condition for ratification.

Dropping "political groups" made it possible to take further steps to remove cultural genocide and narrow the Convention's crimes to mass murder. Lemkin's approach to each country while seeking approval for ratification further restricted the scope of the Convention to avoid opposition from governments that had recent violent histories that could open them to charges against them for one form or other of genocide. For example, Italy's agreement to ratify hinged on an anti-colonial argument that concerned crimes committed by colonial powers against indigenous populations. In Italy's case, the argument against colonialism was changed to express concerns about the safety of the Italian minority in the colony of Eritrea as Britain withdrew its troops.

The indigenous peoples of Africa were characterized as threats to the colonial occupants from Britain, Germany, Italy, and France. By way of this argument, these countries would be considered the victims or potential victims instead of the potential perpetrators of crimes. The US government feared the Soviet Union charging the United States with the crime of genocide. Ratification of the Convention was cast in doubt, and Lemkin worked to promote further compromises to attract support from the US Congress. Arguing that genocide is what the Nazis did in Germany and the Soviet Union did during the war against peoples in Europe and Russia, Lemkin began to win the US government's support for ratification. Lemkin characterized the United States' racial segregation policies as a form of slander against the country since he suggested that the treatment of a "racial group of America" was different from annihilation.[13] Lemkin's effort to obtain the United States' ratification of the Convention drove him to argue that the United States' treatment of "negros" was a matter of civil rights. Lemkin's evolved analysis of genocide turned from protecting political, biological, and cultural groups to stating that neither racial discrimination nor lynching constituted genocide and that ratification by UN member states was more important than including protection for indigenous peoples and political groups. The Genocide Convention of 1948 had become but a shadow and pretence, lacking the force to protect peoples from destruction in whole or in part. The

[11] Weiss-Wendt, (2019) "A. When the End Justifies the Means: Raphaël Lemkin and the Shaping of a Popular Discourse on Genocide." International Association of Genocide Scholars. Genocide Studies and Prevention: An International Journal Vol. 13 Issue 1 Revisiting the Life and Work of Raphaël Lemkin. Article 15. P. 174.

[12] IBID. Removing "political groups" from the Convention resulted from Lemkin's acceptance of the World Jewish Congress' recommendation and his personal intervention in the UN Secretariat draft of the Genocide Convention to cast doubt on the need to include political groups. Lemkin, according to Weiss-Wendt, considered opposition also from Britain, Latin American countries, and the Soviet Union as powerfully influential in the striking of political groups from the groups.

[13] IBID. 182.

license to commit cultural genocide—cultural death—has remained open and available.

## Cultural Crime, Lemkin, and the Ad Hoc Committee

Language for the Convention was drafted initially in three steps: First three experts, Raphael Lemkin[14], Vespasian Pella[15], and Henri Donnedieu de Vabres[16], prepared a compilation of principles and concepts intended to provide the UN General Assembly with guidance for the actual drafting. The second step required an Ad Hoc Committee on Genocide to work with the UN Secretariat to prepare a draft. Finally, the UN General Assembly considered the Draft and made revisions before the Convention was adopted.

Writing later, Lemkin argued that the Nuremberg trials decided a case against the "past Hitler" and not the possibility of "future Hitlers." His thinking strongly influenced the development of a United Nations-approved Convention on Genocide that would contain some but not all of his ideas about the commission of crimes against groups and not simply individuals. Lemkin later wrote, "Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group."[17]

Relying on the terms and experience of the Nuremberg Trial, Lemkin, Pella, and de Vabres considered it too limited in scope and encouraged the Ad Hoc Committee to take a broader perspective. In the end, the Committee[18] its report on 30 April 1948, prepared by Rapporteur Karim Azkoul of Lebanon, containing five draft articles drafted by the U.S. representative John Maktos serving as the Committee Chair "with a few changes"[19]:

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[14] Raphael Lemkin originated the term "genocide," having worked for decades to provide the rationale for the recognition of mass destruction of a people in whole or in part beginning when he was a student in the 1920s after he learned about the massacres of Armenians during World War I. He was horrified to learn that there was no international sanction to prosecute the Ottoman leaders or the Young Turks who, in 1914-1925, intentionally forced the removal and killing of more than 2 million Armenians, Yezidi, Christians, Assyrians, Roma, and other peoples living in their ancestral lands in what is now eastern Turkey and in Mesopotamia. As a Polish attorney, Lemkin suffered the murder of his family in the Holocaust. He was among many Jews to flee Europe to the United States in the face of Nazi civil and war atrocities. He authored the 1944 book "Axis rule in Occupied Europe, delivering a legal analysis of German rule in occupied countries and defining the term "genocide." Lemkin served in 1944 as an advisor to Justice Robert H. Jackson, the lead prosecutor of the Nuremberg trials.

[15] Vespasian Pella was a Romanian legal expert between the Great War and World War II, advocating the necessity for formalizing international criminal proceedings against heads of state found guilty of crimes against humanity in special international tribunals. He served as the President of the Committee on Legal Questions of the League of Nations and, in 1944, served as the Romanian Ambassador to Switzerland, actively engaged in the protection and saving of several Romanian Jews from being deported by the Nazis to occupied Poland. After working with the U.N. Genocide documents, he worked on proposals to establish an international criminal court.

[16] Henri Donnedieu de Vabres was a French jurist who advocated establishing an International Criminal court while serving as a professor of Criminal Law at the University of Paris. As a participant in the Nuremberg trials, he objected to charges of "Conspiracy to Wage War" advanced by prosecutors against Nazi defendants. He considered the charge too general to effectively respond to crimes described in such a critical trial. He objected to the conviction of Colonel-General Alfred Jodi, who held no allegiance to Nazism. A Canadian legal scholar John Peters Humphrey (jurist and human rights advocate who became the principal author of the Universal Declaration of Human Rights first draft), was a consultant to Vabres.

[17] Lemkin, R. (1944) Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress. 2nd ed. Clark, Nj: Lawbook Exchange, 2008, 79.

[18] U.N. Economic and Social Council. E/AC,25/W.4 2 May 1948 ENGLISH. Original FRENCH.

[19] Maktos.J. (1973) Oral History Interview with John Maktos. Memoir memorandum concerning his work at the Department of State p. 2 of pp.1-16. Truman Library Washington. D.C. 28 May 1973.

Article 2: Physical Genocide

Article 3: Cultural Genocide

Article 4: Conspiracy, indictment, attempt, complicity

Article 5: Persons liable

Article 6: Obligation for contracting parties to harmonize their legislation with the Convention.

The Ad Hoc Committee voted on each article after a debate among the members. Bearing in mind that the draft articles produced by Maktos were based in the Nuremberg prosecutions and generally took into consideration comments and positions taken by members of the Ad Hoc Committee during their debate.

While Physical Genocide did not pose serious controversy among the Ad Hoc Committee members, the representatives of China and the Soviet Union objected to Article 2, which was initially drafted to define genocide as "... deliberate acts committed with the intention of destroying a national, racial, religious or political group, on grounds of national or racial origin, religious belief, or political opinion."[20] Mousheng of China expressed opposition and voted against Article 2 absent the description of the destruction of a group emphasizing "physical existence of such group, while Morzov of the Soviet Union objected he voted against Article 2 arguing that "it is a mistake to include political groups among the groups protected by the Convention on Genocide, just as it is a mistake to include political opinions among the grounds for perpetrating the crime of genocide." Notably, the Soviet Union representative was particularly concerned that destroying a group for political differences should not be considered genocide. Such political groups, Morzov argued, should not be protected under the new Convention and that Article 2 should be drafted to state, "...genocide means any of the following acts aimed at the physical destruction of racial, national and religious groups and committed on grounds of racial, national or religious persecutions."[21]

## "Cultural Genocide" Appears and Disappears from the Genocide Convention

The Ad Hoc Committee on Genocide was formed in April 1948 and constituted seven members to prepare a draft Convention on the Crime of Genocide. The Committee was given a week and at most two weeks to prepare the draft and submit it to the UN Economic and Social Council at its session on 19 July 1948. The Ad Hoc Committee with representatives from China – Mr. Lin Mousheng, France – Mr. Pierre Ordonneau, Lebanon - Mr. Karim Azkoul (Rapporteur), Poland – Mr. Aleksander Rudzinski, the USSR – Mr. Platon D. Morzov (Vice Chair), USA – Mr. John Maktos (Chair)[22]

[20] WUN Economic and Social Council. E/AC,25/W.4 2 May 1948 ENGLISH. Original FRENCH. Article 2. p. 4.

[21] IBID. p.7.

[22] John Maktos was the Chief of the legal office of the Division of t International Organization Affairs, 1945-1947 of the US Department of State. He had served as the Assistant legal adviser in charge of international organization affairs. https://www.trumanlibrary.gov/library/oral-histories/maktosj

and Venezuela – Mr. Victor M. Perez Perozo)[23] relied on a series of UN General Assembly resolutions[24] to prepare their draft for submission to the UN Economic and Social Council within two weeks. At the submission of the first report, the Ad Hoc Committee noted that "relatively few Governments have presented their comments on the question of genocide" and that with only seven members, the Committee thought it "advisable to follow the suggestion made in the Economic and Social Council to submit alternative texts and leave the final choice to the Economic and Social Council and General Assembly."[25]

## The Cultural Trauma Spreads

Since the adoption of the state-based UN Convention on Genocide, more than 160 alleged genocides committed against Fourth World nations since 1945 perpetrated by governments, armed groups, business-supported militias, and mass violence by angry and religious motivated mobs just one tribunal has been convened to hold perpetrators accountable. The International Criminal Tribunal for Rwanda, established in 1995, indicted 92 high-ranking Hutu military and other government officials, politicians, businesspeople, religious, militia, and media leaders. During 100 days of mass violence perpetrated in Rwanda in 1994, eight hundred thousand Tutsi, Twa, Hutu, and a minority of others were systematically massacred—a torrent of killing that was justified by the claims the Hutu President that the Tutsi had deliberately used rockets to shoot down the plane carrying Rwanda's predecessor President. While it might be argued that the killing of the Hutu presidential predecessor, the reality is that what was declared the Rwanda Genocide in 1995 had begun as a "colonization genocide" perpetrated by the German government in 1894[26], succeeded by the Belgium government in 1918—two colonizing powers. The trauma of the late 19th century and early 20th century burst into mass violence in 1959 and then with greater virulence in 1995,

[23] UN Economic and Social Council. E/AC,25/W.4 2 May 1948 ENGLISH. Original FRENCH. p. 2.

[24] UN Economic and Social Council. E/AC.25/2 1 April 1948 ENGLISH. Original FRENCH.: GA Resolution No. 180 (III) of 21 November 1947 (reaffirming resolution 96(I) of 11 December 1946 on the crime of genocide; and the Economic and Social Council Resolution No. 117(VI) of 3 March 1928 (taking into consideration "in preparation of the draft convention, the draft convention prepared by the Secretary-General, the comments of the Member Governments on this draft convention and other drafts).

[25] IBID. page 6.

[26] Succeeding European imperial powers recognized the German East Africa Company that obtained an imperial charter in 1885. The German government subsequently declared the vast area of Rwanda, Burundi, and Tanzania as its protectorate. Germany's semi-military administration of the colony was augmented by missionary schools that were encouraged to foster the development of a labour force working to produce rubber and cotton. World War I ended the German occupation, and Belgium was granted control over Rwanda/Burundi under the Treaty of Versailles, signed in June 1919. Under Belgium's control, colonization meant the conversion of Hutu, Tutsi, and Twa into favoured and less favoured groups. Belgium's colonial administration gave preference to the Hutu over the Tutsi. Indeed, this arrangement of Hutus over Tutsi reflected the system of monarchy that is recorded to have existed in the 15th century. European intervention in eastern Africa contributed to hostilities in Rwanda that eventually exploded with the killing of 20,000 Hutu in 1959. Ultimately the hostilities toward Tutsi, Twa, and others by Hutu perpetrators had deep colonial roots that continue to the present with mass violence in Uganda and the Democratic Republic of Congo, where Hutu refugees formerly involved in the mass killings fled after the 1995 mass violence in Rwanda.

with social, cultural, and economic repercussions continuing to the present day with millions of people displaced and killed in Uganda, the Democratic Republic of Congo and Rwanda.[27]

Other alleged crimes of genocide and mass violence have been recorded after the adoption of the Convention on Genocide. However, only the Rwanda Tribunal has tried and issued indictments of individuals committing crimes against indigenous peoples. However, it is essential to note that in the Rwanda Tribunal, culture was not a consideration, and efforts to destroy Hutu, Tutsi, or Twa communities and families were long carried out with impunity before the mass violence that saw 20,000 Hutu killed by Tutsi in 1959 and 800,000 Tutsi, Twa and their supporters killed in 1994. Indeed, as the killing goes on without external interventions inside the Democratic Republic of Congo, it is vital to consider the early signs of genocide that take the form of occupations, forced population removals, forced internments, and re-education programs. These factors must now be recognized, and interventions organized to prevent mass violence in numerous countries where Indigenous peoples are under threat. These factors directly promote "cultural death" and lead to mass violence against different peoples.[28]

- Emergent Authoritarianism
- Extremism – propaganda, organized
- Breakdown of political and social institutions
- Breakdown of group and individual security
- Organized vilification, denigration, and character assassination of a group
- Presence of Non-state security forces committing abuses with impunity
- Non-state or state-led perpetration of mass destruction
- Competition between Political Factions
- Competition for wealth

The common feature joining these nine factors leading to cultural death is that they target the disruption of social, economic, political, and family bonds that define a society. Countries where indigenous peoples are at greatest risk of cultural death and eventual mass violence include Pakistan, where the Pashtun originated, and Saudi Arabian schooled Taliban (students)[29] actively impose their religious views on other Pashtuns, Balochs, and Hazaras, among many other peoples. In the Peoples' Republic of China, the Han-dominated government and communist party the 12 million Uyghurs, along with other Muslim peoples, are forced into "mass internment camps, prisons and other penal institutions

[27] The trauma that is Rwanda continues to spread in east Africa—SEE https://www.bbc.com/news/world-africa-13431486

[28] United States Holocaust Memorial Museum. Countries at Risk for a New Mass Killing, 2022-23 Statistical Risk Assessment. https://www.ushmm.org/genocide-prevention/blog/countries-at-risk-for-mass-killing-2022-23 (Accessed 8 January 2023).

[29] Schooled in a brand of fundamentalist Islam in Islamic schools—madaris—sponsored by the Saudi government's emphasis on Wahhabism—a Sunni Islamic revivalist and fundamentalist movement originating in the 18th century.

where they are subjected to psychological stress, torture, and, as recently reported by the BBC, systematic rape."[30] The government of the People's Republic of China is engaged in classical policies to promote "cultural death" of the Uyghurs—to make them disappear as a cultural identity.

In Burma (Myanmar), Rohingya people are denied their identity by the ruling military government[31] that systematically seeks to force them outside the country. In addition, the military dictatorship has commandeered raw materials inside the traditional territories of the Karen, Shan, Kan, and Mo among the many peoples in Burma while engaging in efforts to force compliance with the dictatorship's social, economic, and political policies.

Other countries that have fallen under dictatorships or command policies to change the cultures of indigenous nations include Ethiopia, Nigeria, India, Sudan, Somalia, Syria, Iraq, the Central African Republic, and the Democratic Republic of Congo. The countries of Canada, the United States, Guatemala, Russia, Azerbaijan, Indonesia, Australia, and Ecuador are also engaged in systematic re-education, propaganda, and cultural reconstruction efforts to absorb indigenous peoples under state control through integration programs–these are all forms of cultural death.

[30] Roberts, SR. (2021) "The Roots of Cultural Genocide in Xinjiang. China's Imperial Past Hangs over the Uyghurs." Foreign Affairs. February 10, 2021. United States Holocaust Memorial Museum. Countries at Risk for a New Mass Killing, 2022-23 Statistical Risk Assessment. https://www.ushmm.org/genocide-prevention/blog/countries-at-risk-for-mass-killing-2022-23 (Accessed 8 January 2023).

[31] The Tatmadaw is the Burman-dominated military that overthrew the Myanmar government in February 2022 to establish a military dictatorship.

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**This article may be cited as:**
Rÿser, R., (2023) Cultural Death: Destruction of a People in Whole or In Part. *Fourth World Journal*. Vol. 22, N2. pp.01-13.

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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.

# Fourth World Nations' Ancestral Lands

are being targeted for their natural resources to enrich transnational corporations and corrupt political interests. Because of this Fourth World peoples' foods and medicines have been destroyed and Fourth World communities have been forcibly removed. Fourth World nations must negotiate their consent to grant access to their peoples and their territories.

We have a mechanism to implement honest and fair decisions,

## Free, Prior and Informed Consent (FPIC).

FPIC is enshrined in international law, assuring our right to control our ancestral territories. Fourth World nations, through their own governing systems, must enforce international law.

We can defend our lands and cultures.

Fourth World Nations have the power to make their own decisions.

cwis.org/fpic

# A Voice At the Table

## Strengthening Collaboration in the Governance of Environmental Agreements

By Beatrice Hamilton[1], Jason Baldes[2], Gary Morishima[3], Elize Shakalela[4], Jeji Varghese[5], Roger Zetter[6]

## ABSTRACT

A variety of Inter-State Agreements (ISA) have been developed to establish policies and expectations regarding environmental policy and management. However, governance mechanisms have not been developed to provide for the substantive involvement of Indigenous Nations within States to participate in the development and implementation of these policies.

Indigenous knowledge systems, rights, and interests are critical to the development of practical and effective approaches to address complex socio-economic-political issues involved in the sustainable management of effects on the environment.

Obstacles and challenges that inhibit the effective engagement of Indigenous Nations are symptomatic of the wider and substantial power imbalances and asymmetries that underlie the relationship with States. Governance of the relationship between Indigenous Nations and States over environmental matters can be improved by: adopting guiding principles to re-invigorate the modalities of collaboration between the Nations and States in mobilizing ISAs; and by establishing a new, permanent governance body, an Intergovernmental Relations Council for the Environment (IRCE) to facilitate and promote formal collaboration in Intra and Inter State-Nation working relationships involving cross-jurisdictional environmental issues involving shared resources.

**Keywords:** Indigenous nations, environmental governance, Inter-State Agreements (ISA), environmental rights

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## Introduction

Several agreements between States contain provisions that affect the environment, biodiversity, human rights, health, and the rights of Indigenous Nations and their citizens. A meaningful and comprehensive governance framework is needed to enable Indigenous Nations to participate in their implementation substantively.

The intergenerational wisdom and place-based insights that Indigenous Nations provide are especially crucial to understanding relationships between human communities and their environments. Indigenous community cultures are marked by holistic world views based on principles of interconnectedness, respect, and reciprocity that have enabled Indigenous Peoples to adapt and survive socio-economic-political-environmental changes. This experience can significantly contribute to the understanding and discourse needed to chart a path to a sustainable and resilient future.

Despite the existence of Inter-State Agreements (ISA), major obstacles to substantive participation of Indigenous Nations in their implementation include:

(a) the lack of mechanisms to resolve differences between Indigenous Nations and States;

(b) The lack of effective governance frameworks that support collaborative relationships between Indigenous Nations and States; and

(c) Institutionalized societal norms that fail to recognize, value, respect, and support contributions of alternative knowledge systems to environmental issues.

Two proposals are offered to overcome these obstacles: a) a set of guiding principles to re-invigorate the modalities of collaboration between the two parties in mobilizing Inter-State Agreements on the environment (ISAs); and b) a new, formally constituted, and permanent institutional body for the governance of environmental issues, an Intergovernmental Relations Council for the Environment (IRCE), with a comprehensive remit and responsibilities to facilitate and promote formal collaboration in State-Nation working relationships, policies and actions on environmental matters, and to reconcile differences.

## Embracing the Environmental Knowledge and Wisdom of Indigenous Nations

The territories occupied by States encompass Indigenous Nations whose cultures, traditions, religions/spirituality, health, livelihoods, and prosperity are inextricably intertwined with their relationships to the land, water, air, plants, animals, sun, moon, and stars. These relationships are under increasing pressure from, among other things, economic development, population growth, climate change, resource extraction, commoditization-based scarcity, and pollution. These processes are depleting the quality and stock of environmental resources and diminishing the quality, availability, abundance, and productivity of the environmental heritage of all humanity.

By their nature, environmental matters are complex and wicked because they involve interactions between social, economic, legal, and political considerations that are nuanced by local circumstances. The ability to find common ground to address these matters is further complicated by legacies of colonialist institutional and educational processes that have displaced the decision-making, worldviews, and traditional knowledge systems of Indigenous Nations.

There is growing recognition of the value of and need for consideration of traditional science and indigenous knowledge systems when addressing matters affecting the environment and the need to respect relationships with non-humans, such as the increasing interest in recognizing rights of nature. Indigenous Nations have acted as stewards of the environment for millennia and have accumulated science and wisdom over generations. Their local, place-based information is vital to developing sustainable solutions to complex environmental problems and difficult resource use and sustainability decisions based on long-term stewardship. This knowledge base is critical to developing practical, effective approaches to address complex environmental challenges. Moreover, at a practical level, Indigenous Nations still have the major responsibility to manage 38 million square miles of land in 87 States, including about 36% of intact forest landscapes that are vital for maintaining biological diversity and resilience in a rapidly changing environment (Garnett, et al., 2018).

Indigenous Nations and States have a shared responsibility for stewardship of the public trust for future generations, which comes with a duty to develop and advance mutually beneficial solutions to the plethora of environmental challenges they must confront at various scales ranging from local to regional and international.

At some local and regional levels involving matters within the territorial jurisdiction of an individual State, environmental issues can be addressed by engagement between Indigenous Nations. For some environmental issues, such as those involving cross-boundary matters such as air, water, fish, and wildlife, multiple States and Indigenous Nations within their territorial boundaries must be involved. At whatever scale, there is a critical need for formal mechanisms that provide substantive engagement between States and the knowledge, wisdom, knowledge, and interests of Indigenous Nations.

## The Inadequacy of Current Governance Frameworks for Indigenous Nations

In several ways, current governance frameworks inadequately embrace the interests of Indigenous Nations.

The language and wording of various ISAs which pertain to matters involving economic, cultural, spiritual, and physical relationships between human communities and their environments leave room for ambiguity and flexibility in interpretation. Adoption practices involve a variety of provisions and reservations, and the mechanisms to enforce these provisions are rare. ISA implementation is left to domestic processes effected through domestic law, policies, and administrative rules and regulations administered by various entities.

The policies and principles embodied in these ISAs can critically affect the rights and interests of both States and the Indigenous Nations within overlapping or shared boundaries. Individual ISAs have been deliberated and approved by domestic governmental processes of States without substantive involvement of Indigenous Nations. Indigenous Nations within States are sovereigns with cultural norms, expressed in various forms, such as written laws, rules, and regulations, or practiced through traditions, customs, languages, and practices appropriate for their communities.

Formal mechanisms exist to solicit the perspectives and secure the concurrence of Indigenous Nations prior to adoption or implementation by States, but these mechanisms are problematic. The authors[7] surveyed Indigenous Nations' representatives to solicit views on the most significant challenges they faced in protecting the environment and their interests. Over half of the 60 responses[8] identified issues involving the need for mechanisms to provide substantive participation of Nations in the development and implementation of ISAs. "Lack of consultation with and/or participation of Nations impacted by relevant international agreements in the drafting of said agreements" was noted as one of the critical barriers to the implementation of ISAs.

Not only are there substantial impediments to meaningful participation in drafting the agreements, the majority of participants also noted that Nations were not consulted in implementing the ISAs. In this respect, respondents noted, inter alia: the lack of organizational, administrative, and governance infrastructure to implement agreements – given the reality that Indigenous Nations rarely have sufficient resources for these functions compared to States; the weakness of environmental protection agreements to recognize rights, combined with the lack of conflict resolution mechanisms and processes to pursue recourse to damage compensation or to mitigate security threats against those pursuing their rights under relevant agreements; varying interpretations of rights and obligations under relevant international agreements; the over-generality of agreements which, thereby, are not adaptable to local conditions or, worse still, fail to address contextual aspects of specific local or regional issues.

These extensive limitations and challenges to the participation of Indigenous Nations in the negotiation, development, and implementation of ISAs are symptomatic of the wider and substantial power imbalances that underlie the relationship between Nations and States. They reinforce the limitations of recognized jurisdictional authority that Indigenous Nations have over their territories, the disadvantageous distribution of rights and obligations between Indigenous Nations and States, and the deferential assumption of responsibility and authority of States towards environmental protection.

[7] This survey was undertaken by the authors, in their role as Environmental Commissioners, as preparatory work for their recommendations to the 2022 Congress of Nations and States.

[8] Approximately half from the Middle East and North Africa and half from Africa and Asia.

## Re-envisioning the Governance of Nation and State Environmental Interests

Given the current limitations of ISAs to effectively represent and protect the environmental heritage and interests of Indigenous Nations, we now argue for a re-envisioning of the governance of the relationship between Indigenous Nations and States over environmental matters, comprised of two elements: guiding principles to enhance current processes for collaboration, and proposals for new institutional development. The first is a call to re-invigorate the modalities of collaboration between States and Nations in mobilizing ISAs; the second is a new, permanent institutional body for the governance of environmental issues, an Intergovernmental Relations Council for the Environment (IRCE), with a comprehensive remit and responsibilities to facilitate and promote formal collaboration in State-Nation working relationships, policies and actions on environmental matters, and to reconcile differences that arise.

### Guiding Principles for Improving Collaboration Between Nations and States in Mobilizing ISAs

There is a need for an effective and practical collaborative framework to mediate conflicts between Indigenous Nations and States. We contend that a commitment to a more collaborative process is needed to forge mutual development and understanding of the mechanisms, policies, and programs to implement the principles and tenets set out in ISAs. A more collaborative process should include:

a) Respectful deliberation between States and Indigenous Nations to identify and share perspectives on the development and interpretation and effective mechanisms, systems, policies, and programs for implementing ISAs (for example, Free, Prior, and Informed Consent, benefit sharing);

b) Development and support of formal agreements between Indigenous Nations and States that include institutional practices and mechanisms to build and sustain working relationships based on shared visions and objectives and that provide financial support, training, communication, and information sharing needed for coordinated, collective action through the exercise of joint responsibilities and authority of participating actors;

c) Effective and efficient mechanisms for the resolution of specific disputes and disagreements between sovereigns that arise on a site or project-specific basis; and

d) Undertake restorative justice to heal relations between Nations, States, and the Environment by disclosing all pertinent facts, empathic understanding, reaching agreement on truths and providing for acknowledgment, appropriate public mourning, and forgiveness.

Successful examples of types of collaborative processes that align with our intentions and on which we have drawn exist.[9] It is anticipated that mutually acceptable values and standards for representation, procedures, and processes would be developed that better accord with cultural and legal norms. Committing States and

the Indigenous Nations within their territorial boundaries to develop and agree upon these procedures and mechanisms collaboratively would strengthen intergovernmental deliberation and actions to implement ISAs.

*An Intergovernmental Relations Council for the Environment (IRCE)*

To address environmental issues that transcend the boundaries of individual States, a new institutional initiative is proposed to consolidate and better harmonize States' and Indigenous Nations' governance over environmental issues. To this end, the feasibility and utility of establishing a permanent, formally constituted, Intergovernmental Relations Council for the Environment (IRCE) should be investigated. The IRCE would be mandated to facilitate and promote formal collaboration in State-Nation working relationships, policies, and actions on environmental matters and to reconcile differences that arise in matters pertaining to conflicts over environmental issues. The IRCE mechanism would provide a neutral and independent governance forum with a wide-ranging remit and responsibilities to facilitate the development of a comprehensive knowledge base and agreement on tools, policies, priorities, and approaches for sustaining relationships with the environment that are culturally sensitive, equitable, and environmentally responsible.

The details for the form and substance of the IRCE are important, and considerable deliberation for its design and operation will be required. We propose a framework for a structure, objectives, and modalities consisting of, inter alia, the following tasks:

- Provide technical support and assistance to develop a mutually agreed factual basis for decision-making and policy development, including monitoring, evaluation, and reporting systems; commissioning open and transparent reviews by experts, Nations' and State governments' representatives to identify and prioritize research;

- Support capacity-building and awareness-raising initiatives on environmental matters of common interest;

In due course, as participants determine,

- Facilitate problem-solving and resolution of differences;

[9] Include the following:

- Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington, 1989 and Centennial Accord Millennium Agreement.

- The 1985 Compact of Free Association (CFA) between the US, Marshall Islands, and Micronesia. The CFA is broad, encompassing 472 sections in 4 Titles - Governmental Relations (7 articles - see especially Article vi on Environmental Protection), Economic Relations (5 articles), Security and Defense (4 articles), and General Provisions (7 articles). As an over-arching agreement of relations between sovereign States and Nations, it contains many of the elements that the EC has been thinking would be developed under Resolution 1. This complex agreement represents a modern analog to the 19th Century treaties between the United States and Indian Nations.

- Indigenous Protected and Conserved Areas (IPCAs)provide examples of Indigenous Laws in the Context of Conservation

- Natural Resource Co-management Agreement-e.g., between the State of Oregon and the Coquille Indian Tribe

- Master Stewardship Agreements

- Step into the River - a framework for economic reconciliation being developed in the area known as Canada

• Develop governance systems and processes that monitor, arbitrate, and ensure compliance on environmental issues and standards pertaining to the interests of Nations and States. We recommend that these governance functions encompass the capacity to:

  ▪ Promote the implementation, monitoring, and reporting of ISAs, conventions, and treaties as they relate to the joint interests of Indigenous Nations and States.

  ▪ Undertake or promote, where necessary or as appropriate, country/regional studies, monitoring, fact-finding, or investigative missions to further examine environmental impacts or in response to a particular situation.

  ▪ Promote the establishment of temporary non-judicial Commissions to establish facts and develop recommendations regarding compliance with agreements and commitments (e.g., mapping violations, taking testimonies).

  ▪ Product public reports on the IRCE findings to provide impartial records of the events examined with conclusions on accountability and recommendations on reconciliation and reparations.

  ▪ Promote the establishment of dispute resolution mechanisms for environmental disagreements between Indigenous Nations and States.

The remit of the global IRCE could be strengthened, in time, by extending its capacity to regional councils based on regional groupings of common interest and priorities and with a strong representation of Indigenous Nations. Regional councils would tailor the governance of environmental policies and strategies to the interests of Indigenous Nations and member States, better capturing the divergent and evolving perspectives on these matters and further helping to redress the current power imbalances. The modalities for such groupings could draw on pre-existing models and templates of multilateral groupings (See e.g. Balsiger and Prys 2016). Furthermore, additional modalities could be developed for types of environmental issues that are amenable to regional approaches such as biological diversity and threatened species, climate change; ocean acidification, hypoxia, harmful algal blooms; air and water quality; forestry resources (forest (deforestation, wildfire, insects, disease, illegal logging, supply train verification, tariffs/taxation); pollution and waste; and overfishing (depletion of ocean fish stocks).

Properly constituted, we contend that the IRCE and its regional bodies could provide a more effective governance process for designing and implementing environmental policies and programs, including ISAs, in several respects. It would ensure more equitable treatment of Indigenous Nations. Moreover, by establishing a formal platform that would enable Indigenous Nations to articulate their interests at both global and regional levels, the IRCE would help to redress the current imbalance between States and Nations in environmental decision-making. Further, by reducing conflicting and competing claims, the IRCE would ensure better cooperation, trust, and reciprocity between the

parties. Finally, by establishing a mechanism that draws more effectively on under-represented environmental discourses and value systems of Indigenous Nations, the IRCE would enable States to enhance longer-term sustainability agendas that reflect the interconnected needs of all human and non-human communities.

### In Sum, the Value Added by the IRCE is Threefold

First, it provides a means to deploy the extensive knowledge and expertise of Indigenous Nations in development and resource usage policies, strategies, and decisions in ways that respects their beliefs regarding relationships with and stewardship of their environments. Currently, this wisdom, expertise, and the underpinning value systems of adaptability are insufficiently deployed in such decision-making. The lack of such contributions results in the excessive depletion of environmental resources, availability, and quality. In addition, such a body would help to highlight human rights and environmental justice concerns and give a stronger voice to socio-economic-cultural dimensions of environmental issues.

Second, the ICRE would seek to overcome structural barriers to Indigenous Nations' participation by providing a process and formal institutional entity to identify and reconcile divergent perspectives, priorities, values, and knowledge systems regarding relationships and responsibilities toward the environment.

Third, by establishing a formal platform for Indigenous Peoples to articulate their interests at both global and regional levels, the IRCE will help to redress the current imbalance between States and Indigenous Nations in environmental decision-making, thereby reducing conflicting and competing claims and building collaboration, cooperation and trust between the parties. The IRCE would establish a mechanism that draws more effectively on under-represented environmental discourses and value systems of Indigenous Nations, enabling States to enhance longer-term sustainability agendas that reflect the interconnected needs of communities of humans and non-humans.

## Conclusion

Holistic world views, based on principles of interconnectedness, respect, and reciprocity that have enabled Indigenous Nations to adapt and survive socio-economic-political-environmental changes, can contribute significantly to the dialogue needed to chart a path for a sustainable environment. Our proposals – guiding principles to enhance collaborative efforts between Indigenous Nations and States and new intra- and inter-organizations would establish a more formal and comprehensive framework for the governance of environmental interests. Collaborative, respectful, cooperative relationships at multiple levels with political sovereigns are needed to care for the environment. A new schema of problem solving, governance and decision-making that gives Indigenous Nations a substantive voice in decision-making would help identify and reconcile differences, effectuate the principles and objectives espoused in ISAs and enhance the implementation of sustainable environmental policies.

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**This Article may be cited as:**
Hamilton B., Baldes J., Morishima G., Shakalela E., Varghese J., Zetter R., (2023) A Voice At the Table: Strengthening Collaboration in the Governance of Environmental Agreements. *Fourth World Journal*. Vol. 22, N2. pp. 15-25.

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Jason Baldes, an enrolled member of the Eastern Shoshone Tribe, received both his bachelor's and master's degrees in Land Resources & Environmental Sciences from Montana State University, where he focused on the restoration of buffalo/bison to Tribal lands. In 2016 he spearheaded the successful effort to restore buffalo to the Wind River Indian Reservation and works with the East-ern Shoshone and Northern

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# Una Voz en la Mesa

## Fortalecimiento de la Colaboración en la Gestión de los Acuerdos Ambientales

**Por Beatrice Hamilton[1], Jason Baldes[2], Gary Morishima[3], Elize Shakalela[4], Jeji Varghese[5], Roger Zetter[6]**


## RESUMEN

Se han desarrollado una variedad de Acuerdos Interestatales (ISA, por sus siglas en inglés) para establecer políticas y expectativas con respecto a la política y gestión ambiental. Sin embargo, no se han desarrollado mecanismos de gestión para prever la participación sustantiva de las Naciones Indígenas dentro de los Estados para participar en el desarrollo e implementación de estas políticas.

Los sistemas de conocimiento, derechos e intereses indígenas son críticos para el desarrollo de enfoques prácticos y efectivos para abordar cuestiones socioeconómicas y políticas complejas involucradas en la gestión sostenible de los efectos sobre el medio ambiente.

Los obstáculos y desafíos que inhiben el compromiso efectivo de las Naciones Indígenas son sintomáticos de los desequilibrios y asimetrías de poder más amplios y sustanciales que subyacen en la relación con los Estados. La gestión de la relación entre las Naciones Indígenas y los Estados sobre asuntos ambientales puede mejorarse mediante: la adopción de principios rectores para revitalizar las modalidades de colaboración entre las Naciones y los Estados en la movilización de las ISA; y mediante el establecimiento de un nuevo órgano de gobierno permanente, un Consejo de Relaciones Intergubernamentales para el Medio Ambiente (IRCE, por sus siglas en inglés) para facilitar y promover la colaboración formal en las relaciones de trabajo intra e interestatal-nación que involucren cuestiones ambientales interjurisdiccionales que involucren recursos compartidos.


**Palabras clave**: Pueblos indígenas, gestión ambiental, Acuerdos Interestatales (ISA), derechos ambientales

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## Introducción

Varios acuerdos entre Estados contienen disposiciones que afectan el medio ambiente, la biodiversidad, los derechos humanos, la salud y los derechos de las Naciones Indígenas y sus ciudadanos. Se necesita un marco de gestión significativo e integral para permitir que las Naciones Indígenas participen sustancialmente en su implementación.

La sabiduría intergeneracional y los conocimientos basados en el lugar que brindan las Naciones Indígenas son especialmente cruciales para comprender las relaciones entre las comunidades humanas y sus entornos. Las culturas de las comunidades indígenas están marcadas por visiones holísticas del mundo basadas en principios de interconexión, respeto y reciprocidad que han permitido a los Pueblos Indígenas adaptarse y sobrevivir a los cambios socioeconómicos, políticos y ambientales. Esta experiencia puede contribuir significativamente a la comprensión y el discurso necesarios para trazar un camino hacia un futuro sostenible y resiliente.

A pesar de la existencia de Acuerdos Interestatales (ISA), los principales obstáculos para la participación sustantiva de las Naciones Indígenas en su implementación incluyen:

(a) la falta de mecanismos para resolver las diferencias entre las Naciones Indígenas y los Estados;

(b) La falta de marcos de gestión efectivos que apoyen las relaciones de colaboración entre las Naciones Indígenas y los Estados; y

(c) Normas sociales institucionalizadas que no reconocen, valoran, respetan ni apoyan las contribuciones de los sistemas de conocimiento alternativos a las cuestiones ambientales.

Se ofrecen dos propuestas para superar estos obstáculos: a) un conjunto de principios rectores para revitalizar las modalidades de colaboración entre las dos partes en la movilización de Acuerdos Interestatales sobre el Medio Ambiente (ISA); y b) un nuevo órgano institucional permanente y formalmente constituido para la gestión de los asuntos ambientales, un Consejo de Relaciones Intergubernamentales para el Medio Ambiente (IRCE), con competencias y responsabilidades integrales para facilitar y promover la colaboración formal en las relaciones de trabajo Estado-Nación, políticas y acciones en materia ambiental, y para conciliar las diferencias.

## Adoptar el Conocimiento Ambiental y la Sabiduría de las Naciones Indígenas

Los territorios ocupados por los Estados abarcan Naciones Indígenas cuyas culturas, tradiciones, religiones/espiritualidad, salud, medios de vida y prosperidad están inextricablemente entrelazados con sus relaciones con la tierra, el agua, el aire, las plantas, los animales, el sol, la luna y las estrellas. Estas relaciones están bajo una presión creciente, entre otras cosas, por el desarrollo económico, el crecimiento de la población, el cambio climático, la extracción de recursos, la escasez basada en la mercantilización y la contaminación. Estos procesos están agotando la calidad y las reservas

de los recursos ambientales y disminuyendo la calidad, disponibilidad, abundancia y productividad del patrimonio ambiental de toda la humanidad.

Por su naturaleza, los asuntos ambientales son complejos y perversos porque involucran interacciones entre consideraciones sociales, económicas, legales y políticas que se ven matizadas por las circunstancias locales. La capacidad de encontrar un terreno común para abordar estos asuntos se complica aún más por los legados de los procesos institucionales y educativos colonialistas que han desplazado la toma de decisiones, las visiones del mundo y los sistemas de conocimiento tradicional de las Naciones Indígenas.

Cada vez se reconoce más el valor y la necesidad de tener en cuenta la ciencia tradicional y los sistemas de conocimientos indígenas cuando se abordan cuestiones que afectan al medio ambiente y la necesidad de respetar las relaciones con los no humanos, como el creciente interés por reconocer los derechos de la naturaleza. Las naciones indígenas han actuado como guardianes del medio ambiente durante milenios y han acumulado ciencia y sabiduría durante generaciones. Su información local basada en el lugar es vital para desarrollar soluciones sostenibles a problemas ambientales complejos y decisiones difíciles de uso y sostenibilidad de los recursos basadas en la administración a largo plazo. Esta base de conocimientos es fundamental para desarrollar enfoques prácticos y efectivos para abordar desafíos ambientales complejos. Además, a un nivel práctico, las Naciones Indígenas aún tienen la responsabilidad principal de administrar 38 millones de millas cuadradas de tierra en 87 Estados, incluido alrededor del 36 % de los paisajes forestales intactos que son vitales para mantener la diversidad biológica y la resiliencia en un entorno que cambia rápidamente (Garnett , et al., 2018).

Las naciones y los estados indígenas tienen la responsabilidad compartida de la administración del fideicomiso público para las generaciones futuras, lo que conlleva el deber de desarrollar y promover soluciones mutuamente beneficiosas para la plétora de desafíos ambientales que deben enfrentar en diversas escalas, desde local hasta regional e internacional.

En algunos niveles locales y regionales que involucran asuntos dentro de la jurisdicción territorial de un Estado individual, los problemas ambientales pueden abordarse mediante el compromiso entre las Naciones Indígenas. Para algunos problemas ambientales, como aquellos que involucran asuntos transfronterizos como el aire, el agua, los peces y la vida silvestre, deben involucrarse múltiples Estados y Naciones Indígenas dentro de sus límites territoriales. En cualquier escala, existe una necesidad crítica de mecanismos formales que proporcionen un compromiso sustantivo entre los Estados y el conocimiento, la sabiduría, el conocimiento y los intereses de las Naciones Indígenas.

## La Isuficiencia de los Marcos de Gestión Actuales para las Naciones Indígenas

De varias maneras, los marcos de gestión actuales adoptan inadecuadamente los intereses de las Naciones Indígenas.

El lenguaje y la redacción de varias ISAs que se refieren a asuntos relacionados con las relaciones económicas, culturales, espirituales y físicas entre las comunidades humanas y sus entornos dejan espacio para la ambigüedad y la flexibilidad en la interpretación. Las prácticas de adopción involucran una variedad de disposiciones y reservas, y los mecanismos para hacer cumplir estas disposiciones son raros. La implementación de ISA se deja a los procesos nacionales efectuados a través de leyes, políticas y normas y reglamentos administrativos administrados por diversas entidades.

Las políticas y los principios incorporados en estas ISAs pueden afectar críticamente los derechos e intereses tanto de los Estados como de las Naciones Indígenas dentro de fronteras superpuestas o compartidas. Las ISAs individuales han sido deliberadas y aprobadas por procesos gubernamentales nacionales de los Estados sin una participación sustancial de las Naciones Indígenas. Las Naciones Indígenas dentro de los Estados son soberanos con normas culturales, expresadas en diversas formas, como leyes escritas, normas y reglamentos, o practicadas a través de tradiciones, costumbres, idiomas y prácticas apropiadas para sus comunidades.

Existen mecanismos formales para solicitar las perspectivas y asegurar la concurrencia de las Naciones Indígenas antes de la adopción o implementación por parte de los Estados, pero estos mecanismos son problemáticos. Los autores[7] encuestaron a los representantes de las Naciones Indígenas para solicitar opiniones sobre los desafíos más importantes que enfrentaron en la protección del medio ambiente y sus intereses. Más de la mitad de las 60 respuestas[8] identificaron problemas relacionados con la necesidad de mecanismos para proporcionar una participación sustantiva de las naciones en el desarrollo e implementación de las ISAs. “La falta de consulta y/o participación de las naciones afectadas por acuerdos internacionales relevantes en la redacción de dichos acuerdos” se señaló como una de las barreras críticas para la implementación de las ISA.

No solo existen impedimentos sustanciales para una participación significativa en la redacción de los acuerdos, sino que la mayoría de los participantes también señalaron que no se consultó a las naciones sobre la implementación de las ISAs. A este respecto, los encuestados señalaron, entre otras cosas: la falta de infraestructura organizativa, administrativa y de gestión para implementar los acuerdos, dada la realidad de que las Naciones Indígenas rara vez tienen suficientes recursos para estas funciones en comparación con los Estados; la debilidad de los acuerdos de protección ambiental para reconocer derechos, combinada con la falta de mecanismos y procesos de resolución de conflictos para recurrir a la compensación por daños o para mitigar las amenazas a la seguridad contra quienes ejercen sus derechos en virtud de los acuerdos pertinentes; diversas interpretaciones de los derechos y obligaciones en virtud de

[7] Esta encuesta fue realizada por los autores, en su papel de Comisionados Ambientales, como trabajo preparatorio para sus recomendaciones al Congreso de Naciones y Estados de 2022.

[8] Aproximadamente la mitad de Oriente Medio y África del Norte y la otra mitad de África y Asia.

los acuerdos internacionales pertinentes; la generalidad excesiva de acuerdos que, por lo tanto, no son adaptables a las condiciones locales o, peor aún, no abordan aspectos contextuales de problemas locales o regionales específicos.

Estas extensas limitaciones y desafíos a la participación de las Naciones Indígenas en la negociación, desarrollo e implementación de las ISAs son sintomáticos de los desequilibrios de poder más amplios y sustanciales que subyacen en la relación entre las Naciones y los Estados. Refuerzan las limitaciones de la autoridad jurisdiccional reconocida que tienen las Naciones Indígenas sobre sus territorios, la distribución desventajosa de derechos y obligaciones entre las Naciones Indígenas y los Estados, y la asunción deferente de responsabilidad y autoridad de los Estados hacia la protección ambiental.

## Repensar la Gestión de los Intereses Ambientales de la Nación y el Estado

Dadas las limitaciones actuales de las ISAs para representar y proteger de manera efectiva el patrimonio ambiental y los intereses de las Naciones Indígenas, ahora defendemos una nueva visión de la gestión de la relación entre las Naciones Indígenas y los Estados sobre asuntos ambientales, que consta de dos elementos: principios rectores potenciar los procesos actuales de colaboración, y propuestas de nuevo desarrollo institucional. El primero es un llamado a revitalizar las modalidades de colaboración entre Estados y Naciones en la movilización de las ISA; el segundo es un nuevo órgano institucional permanente para la gestión de los asuntos ambientales, un Consejo de Relaciones Intergubernamentales para el Medio Ambiente (IRCE), con competencias y responsabilidades integrales para facilitar y promover la colaboración formal en las relaciones de trabajo Estado-Nación, políticas y acciones sobre ambientales, y conciliar las diferencias que surjan.

*Principios rectores para mejorar la colaboración entre naciones y estados en la movilización de las ISA*

Existe la necesidad de un marco de colaboración efectivo y práctico para mediar en los conflictos entre las Naciones Indígenas y los Estados. Sostenemos que se necesita un compromiso con un proceso más colaborativo para forjar el desarrollo mutuo y la comprensión de los mecanismos, políticas y programas para implementar los principios y principios establecidos en las ISAs. Un proceso más colaborativo debería incluir:

a) Deliberación respetuosa entre los Estados y las Naciones Indígenas para identificar y compartir perspectivas sobre el desarrollo e interpretación y mecanismos, sistemas, políticas y programas efectivos para implementar las ISAs (por ejemplo, Consentimiento Libre, Previo e Informado, distribución de beneficios);

b) Desarrollo y apoyo de acuerdos formales entre Naciones Indígenas y Estados que incluyan prácticas y mecanismos institucionales para construir y sostener relaciones de trabajo basadas en visiones y objetivos compartidos y que brinden apoyo financiero, capacitación, comunicación e

intercambio de información necesarios para la acción colectiva coordinada. a través del ejercicio de responsabilidades y autoridad conjunta de los actores participantes;

c) Mecanismos efectivos y eficientes para la resolución de disputas y desacuerdos específicos entre soberanos que surjan en un sitio o proyecto específico; y

d) Ejercer la justicia restaurativa para sanar las relaciones entre las Naciones, los Estados y el Medio Ambiente mediante la divulgación de todos los hechos pertinentes, la comprensión empática, la concertación de verdades y el reconocimiento, duelo público adecuado y perdón.

Existen ejemplos exitosos de tipos de procesos colaborativos que se alinean con nuestras intenciones y en los que nos hemos basado.[9] Se anticipa que se desarrollarán valores y estándares mutuamente aceptables para la representación, los procedimientos y los procesos que concuerden mejor con las normas culturales y legales. Comprometer a los Estados y las Naciones Indígenas dentro de sus límites territoriales a desarrollar y acordar estos procedimientos y mecanismos en colaboración fortalecería la deliberación y las acciones intergubernamentales para implementar las ISAs.

*Un Consejo de Relaciones Intergubernamentales para el Medio Ambiente (IRCE)*

Para abordar los problemas ambientales que trascienden los límites de los Estados individuales, se propone una nueva iniciativa institucional para consolidar y armonizar mejor la gestión de los Estados y las Naciones Indígenas sobre los problemas ambientales. Para ello, se debe investigar la factibilidad y utilidad de establecer un Consejo de Relaciones Intergubernamentales para el Medio Ambiente (IRCE) permanente y formalmente constituido. El IRCE tendría como mandato facilitar y promover la colaboración formal en las relaciones de trabajo Estado-Nación, políticas y acciones en materia ambiental y conciliar las diferencias que surjan en materia de conflictos en materia ambiental. El mecanismo IRCE proporcionaría un foro de gestión neutral e independiente con un mandato y responsabilidades de amplio

[9] Incluye lo siguiente:

- Acuerdo del Centenario entre las Tribus Indígenas Reconocidas Federalmente en el Estado de Washington y el Estado de Washington, 1989 y Acuerdo del Milenio del Acuerdo del Centenario.
- El Pacto de Libre Asociación (CFA) de 1985 entre los Estados Unidos, las Islas Marshall y Micronesia. El CFA es amplio, abarca 472 secciones en 4 Títulos - Relaciones Gubernamentales (7 artículos - ver especialmente el Artículo vi sobre Protección Ambiental), Relaciones Económicas (5 artículos), Seguridad y Defensa (4 artículos), y Disposiciones Generales (7 artículos). Como un acuerdo general de relaciones entre Estados y naciones soberanos, contiene muchos de los elementos que la CE ha estado pensando que se desarrollarían bajo la Resolución 1. Este acuerdo complejo representa un análogo moderno a los tratados del siglo XIX entre los Estados Unidos y naciones indias.
- Las Áreas Indígenas Protegidas y Conservadas (IPCAs) brindan ejemplos de Leyes Indígenas en el Contexto de la Conservación
- Acuerdo de cogestión de recursos naturales: por ejemplo, entre el estado de Oregón y la tribu indígena Coquille
- Acuerdos Maestros de Mayordomía
- Step into the River - un marco para la reconciliación económica que se está desarrollando en el área conocida como Canadá

alcance para facilitar el desarrollo de una base de conocimientos integral y un acuerdo sobre herramientas, políticas, prioridades y enfoques para mantener relaciones con el medio ambiente que sean culturalmente sensibles. equitativo y ambientalmente responsable.

Los detalles de la forma y sustancia de la IRCE son importantes, y se requerirá una deliberación considerable para su diseño y operación. Proponemos un marco de estructura, objetivos y modalidades que consta, entre otras, de las siguientes tareas:

- Proporcionar apoyo técnico y asistencia para desarrollar una base fáctica mutuamente acordada para la toma de decisiones y el desarrollo de políticas, incluidos los sistemas de seguimiento, evaluación y presentación de informes; encargar revisiones abiertas y transparentes por parte de expertos, representantes de los gobiernos de las naciones y los estados para identificar y priorizar la investigación;

- Apoyar iniciativas de creación de capacidad y sensibilización sobre cuestiones ambientales de interés común;

A su debido tiempo, según determinen los participantes,

- Facilitar la resolución de problemas y la resolución de diferencias;

- Desarrollar sistemas y procesos de gestión que monitoreen, arbitren y aseguren el cumplimiento de las cuestiones y normas ambientales relacionadas con los intereses de las naciones y los estados. Recomendamos que estas funciones de gobierno abarquen la capacidad de:

  - Promover la implementación, el seguimiento y la presentación de informes de las ISAs, convenciones y tratados en la medida en que se relacionen con los intereses conjuntos de las Naciones y los Estados Indígenas.

  - Emprender o promover, cuando sea necesario o apropiado, estudios nacionales/regionales, misiones de monitoreo, investigación o investigación para examinar más a fondo los impactos ambientales o en respuesta a una situación particular.

  - Promover el establecimiento de Comisiones extrajudiciales temporales para establecer hechos y desarrollar recomendaciones sobre el cumplimiento de acuerdos y compromisos (por ejemplo, mapeo de violaciones, toma de testimonios).

  - Producir informes públicos sobre los hallazgos del IRCE para proporcionar registros imparciales de los hechos examinados con conclusiones sobre rendición de cuentas y recomendaciones sobre reconciliación y reparación.

  - Promover el establecimiento de mecanismos de solución de controversias por desacuerdos ambientales entre los Pueblos Indígenas y los Estados.

El mandato del IRCE global podría fortalecerse, con el tiempo, extendiendo su capacidad a los consejos regionales basados en agrupaciones regionales de intereses

y prioridades comunes y con una fuerte representación de las Naciones Indígenas. Los consejos regionales adaptarían la gestión de las políticas y estrategias ambientales a los intereses de las Naciones Indígenas y los Estados miembros, capturando mejor las perspectivas divergentes y en evolución sobre estos asuntos y ayudando aún más a corregir los desequilibrios de poder actuales. Las modalidades para tales agrupaciones podrían basarse en modelos y plantillas preexistentes de agrupaciones multilaterales (ver, por ejemplo, Balsiger y Prys 2016). Además, se podrían desarrollar modalidades adicionales para tipos de problemas ambientales que sean susceptibles de enfoques regionales, como la diversidad biológica y las especies amenazadas, el cambio climático; acidificación de los océanos, hipoxia, proliferación de algas nocivas; calidad del aire y del agua; recursos forestales (bosque (deforestación, incendios forestales, insectos, enfermedades, tala ilegal, verificación de trenes de suministro, tarifas/impuestos); contaminación y desechos; y sobrepesca (agotamiento de las poblaciones de peces del océano).

Debidamente constituido, sostenemos que el IRCE y sus organismos regionales podrían brindar un proceso de gestión más efectivo para diseñar e implementar políticas y programas ambientales, incluidas las ISAs, en varios aspectos. Aseguraría un tratamiento más equitativo de las Naciones Indígenas. Además, al establecer una plataforma formal que permitiría a las Naciones Indígenas articular sus intereses a nivel mundial y regional, la IRCE ayudaría a corregir el actual desequilibrio entre Estados y Naciones en la toma de decisiones ambientales. Además, al reducir los reclamos conflictivos y competitivos, la IRCE garantizaría una mejor cooperación, confianza y reciprocidad entre las partes. Finalmente, al establecer un mecanismo que aproveche de manera más efectiva los discursos ambientales y los sistemas de valores subrepresentados de las Naciones Indígenas, la IRCE permitiría a los Estados mejorar las agendas de sostenibilidad a más largo plazo que reflejen las necesidades interconectadas de todas las comunidades humanas y no humanas.

## En Suma, el Valor Agregado por el IRCE es Triple

En primer lugar, proporciona un medio para implementar el amplio conocimiento y la experiencia de las Naciones Indígenas en políticas, estrategias y decisiones de desarrollo y uso de recursos de manera que respete sus creencias con respecto a las relaciones y la administración de sus entornos. Actualmente, esta sabiduría, experiencia y los sistemas de valores de adaptabilidad que sustentan no están suficientemente implementados en tal toma de decisiones. La falta de tales aportes resulta en el agotamiento excesivo de los recursos ambientales, disponibilidad y calidad. Además, tal organismo ayudaría a resaltar los derechos humanos y las preocupaciones de justicia ambiental y daría una voz más fuerte a las dimensiones socioeconómicas y culturales de los problemas ambientales.

En segundo lugar, la ICRE buscaría superar las barreras estructurales a la participación de las Naciones Indígenas proporcionando un proceso y una entidad institucional formal para identificar y conciliar perspectivas, prioridades, valores y sistemas de conocimiento divergentes con respecto a las relaciones y responsabilidades hacia el medio ambiente.

En tercer lugar, al establecer una plataforma formal para que los Pueblos Indígenas articulen sus intereses a nivel mundial y regional, la IRCE ayudará a corregir el desequilibrio actual entre los Estados y las Naciones Indígenas en la toma de decisiones ambientales, reduciendo así los reclamos conflictivos y competitivos y fomentando la colaboración. , cooperación y confianza entre las partes. La IRCE establecería un mecanismo que aproveche de manera más efectiva los discursos ambientales y los sistemas de valores subrepresentados de las Naciones Indígenas, lo que permitiría a los Estados mejorar las agendas de sostenibilidad a más largo plazo que reflejen las necesidades interconectadas de las comunidades de humanos y no humanos.

## Conclusión

Las visiones holísticas del mundo, basadas en los principios de interconexión, respeto y reciprocidad que han permitido a las Naciones Indígenas adaptarse y sobrevivir a los cambios socioeconómicos, políticos y ambientales, pueden contribuir significativamente al diálogo necesario para trazar el camino hacia un medio ambiente sostenible. Nuestras propuestas: principios rectores para mejorar los esfuerzos de colaboración entre las Naciones Indígenas y los Estados y las nuevas organizaciones internas e interorganizaciones establecerían un marco más formal y completo para la gestión de los intereses ambientales. Se necesitan relaciones colaborativas, respetuosas y cooperativas en múltiples niveles con los soberanos políticos para cuidar el medio ambiente. Un nuevo esquema de resolución de problemas, gestión y toma de decisiones que le dé a las Naciones Indígenas una voz sustantiva en la toma de decisiones ayudaría a identificar y reconciliar las diferencias, hacer efectivos los principios y objetivos propugnados en las ISAs y mejorar la implementación de políticas ambientales sostenibles.

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**Este artículo debe citarse como:**
Hamilton B., Baldes J., Morishima G., Shakalela E., Varghese J., Zetter R., (2023) Una Voz en la Mesa: Fortalecimiento de la Colaboración en la Gestión de los Acuerdos Ambientales. *Fourth World Journal.* Vol. 22, N2. pp. 27-38.

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# Coca Cola and Coca Leaves

## A Case Study on the use of FPIC

**By Irene Delfanti, MA**
**Designer and Researcher**
**Edinburgh, Scotland**

## ABSTRACT

This article considers how system knowledge from a production point of view can interact with international law in such ways as to uphold the international principle of free, prior informed consent (FPIC).

Although some categories, such as designers, are used to thinking through production systems when they create goods, the question of how the people inside and outside these systems are affected is often overlooked. That is the point when international human rights research can come to support a field that otherwise can seem quite large in scope.

Specifically, the case study presented here analyzes how the production of the Coca Cola beverage interacts with indigenous peoples[1] through the lens of the internationally recognized principle of FPIC.

The analysis indicates that the FPIC framework can be the starting point to evaluate touch points between current production systems and society at large and provide practical ways for people from different disciplines and backgrounds to create a discourse around it. Ultimately, this would benefit indigenous peoples and human rights defenders to understand whom to engage with at the negotiation table while also exploring ways to strengthen the communication from an activist and a public opinion point of view.

**Keywords:** Free, Prior and Informed Consent, Coca Cola, production line, coca leaf

It is widely understood that states' governments lack current legislative to implement the internationally required process of FPIC but we build on the work of the Center for World Indigenous Studies theorizing how to implement a new international regulatory mechanism referred to as ALDMEM (Ancestral Land Decolonization Monitoring Mechanism). The current article seeks to advance the international dialogue about FPIC by applying

[1] The word "people" or "peoples" is used throughout this article meaning a nation, a linguistic or cultural group with traditional or historical ties as distinct from racial or political ties as associated with a population of a state.

relational thought diagrams to see how this can be used.[2] Working through a thought process similar to a design exercise professionals will go through a trial and error process. This article reflects the author's efforts to apply "thought diagramming" as a way to bring us closer to the understanding how to create such a framework.

While the process of FPIC has applied to relations between indigenous nations and states since 1989[3] predicated in international law[4 5 6] and adopted by indigenous nations and states' governments thought UN member states have not implemented the process in their legislation. Sovereignty is at the core of this matter: indigenous nations and state governments are competing over it, claiming access and land use. However, the land is one, and the matter gets even more complicated when companies require indigenous land and knowledge to produce goods that can benefit the State. It is at this crossover that this article exists.

The following case study argues that although this methodological inspection of the use of FPIC can first and foremost benefit indigenous people, it can also be a tool for communication between indigenous nations and the states. The process of FPIC can also benefit communications between climate activists of different regions and business people who are actively taking a stand to change *"business as usual"* practices towards an active eradication of human and environmental rights abuse of companies' operational systems. We explore how the efforts to implement such an FPIC framework needs to move away from being solely discussed in political and diplomatic circles and urges for them to be incorporated into systematic thinking. This is why activists, designers, and business people can be good target groups to enlarge these conversations. The wish is that FPIC will become a widespread topic, spoken about in indigenous peoples and non-indigenous peoples' circles alike.

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[2] You can find more information about ALDMEM and ways to implement FPIC in Dr. Rÿser's recent article "Green Energy Mining and Indigenous Peoples' Troubles: Negotiating the Shift from the Carbon Economy to Green Energy with FPIC" *Fourth World Journal V22 N2*(2022).

[3] International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169. Article 6 Para 2 "The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures." Article 16 Para 2. "Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent."

[4] International Covenant on the Rights of Indigenous Nations. July 28, 1994. Geneva, Switzerland. Initiated by The Crimean Tartar, Numba People of Sudan, Confederacy of Treaty Six First Nations, Opethesaht First Nation and West Papua Peoples Front/OPM and subsequently ratified by 60 indigenous nations in Africa, and West Asia. Part I Para 9, Part II Para 9, Para11. Part V Para 18. Part VI Para 25, Para 28. Part IX Para 43.

[5] United Nations Declaration on the Rights of Indigenous Peoples (2007) Article 10 "Indigenous peoples shall not be forcibly removed from their lands or territories ... without the free, prior and informed consent of the indigenous peoples concerned...," Article 2 Para 2. "States shall provide redress through effective mechanisms, ... with respect to their cultural intellectual, religious, and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs." Article 19, "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative3 measures that may affect them." Article 28 "Indigenous peoples have the right to redress ... for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent." Article 29 Para 2. "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent." Article 30 Para 2. "States shall undertake effective consultations with the indigenous peoples concerned ... prior to using their lands or territories for military activities." Article 32 Para 2. "States shall ... obtain their free and informed consent prior to the approval of any projects affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

[6] Alta Outcome Document, 10-12 June 2013. Global Indigenous Preparatory Conference. Alta, Sami Land. Theme 1 Para 3, Para 5, Para 6, Para 8. Theme 2 Para 9. Theme 3 Para 4, Para 13. Theme 4 Para 3.

The Coca Cola Company was taken as a case study for such a task for two main reasons: its worldwide fame and the number of resources on which the company relies. In this sense, this analysis builds strongly on the work of *Citizen Coke: An Environmental and Political History of the Coca-Cola Company* (Elmore, 2013) which already framed the company as an extractive industry, an argument supported by the company membership in the UN Global Compact.[7] After studying the topic of the extractive industry for over a year, it was, in fact, the membership of Coca Cola in such a partnership that inspired the starting question of this essay.

The research group at the Center for World Indigenous Studies started from the idea that a first way to identify companies that may be approachable by human rights activists could be by looking into this UN Global Compact. The Oxfam International press release that pointed out Coca Cola willingness to "adhere to the principle of Free, Prior and Informed Consent across its operations" (2013) and its suppliers added a new insight: because of its fame, Coca Cola seemed more responsive to change than other companies in such a transnational corporation group (which includes companies like Shell Oil, Lukoil, British Petroleum). Finally, a company like Coca Cola is more accessible to track than a traditional mineral or oil extractive company, where things quickly get smoky when researchers start to follow the money path. Banks, inventors, beneficiaries start to multiply rapidly and, although not impossible, it is more difficult to find a pattern and clearly communicate it.

Because of these reasons, early into the process, the question that inspired this article shifted focus from "does Coca Cola uphold free, prior informed consent?" to "can Coca Cola uphold free, prior informed consent?"

## How Does Coca Cola Work?

The first necessary step in the process was to understand how the production of the Coca Cola beverage works.

Coca Cola follows a franchise model, with the main company operating in Atlanta and regional franchises worldwide. In Atlanta, the ingredients that the company purchases from its partners are put together to create the famous secret recipe, which gets distributed to the regional companies under the form of nine "merchandisers" which then get mixed with sweeteners, flavors and water depending on the version of the beverage that is being produced. Subsequently, the beverage is bottled and distributed (Elmore, 2013). The relationships between franchisers and the main company can be visualized as shown in Figure 1.

[7] The Global Compact is the United Nations registry of more than 15,000 businesses and corporations committed to align their strategies and operations with international human rights laws and declarations, and internationally established environment, labour, and anti-corruption policies and laws. (See: https://www.unglobalcompact.org/what-is-gc)

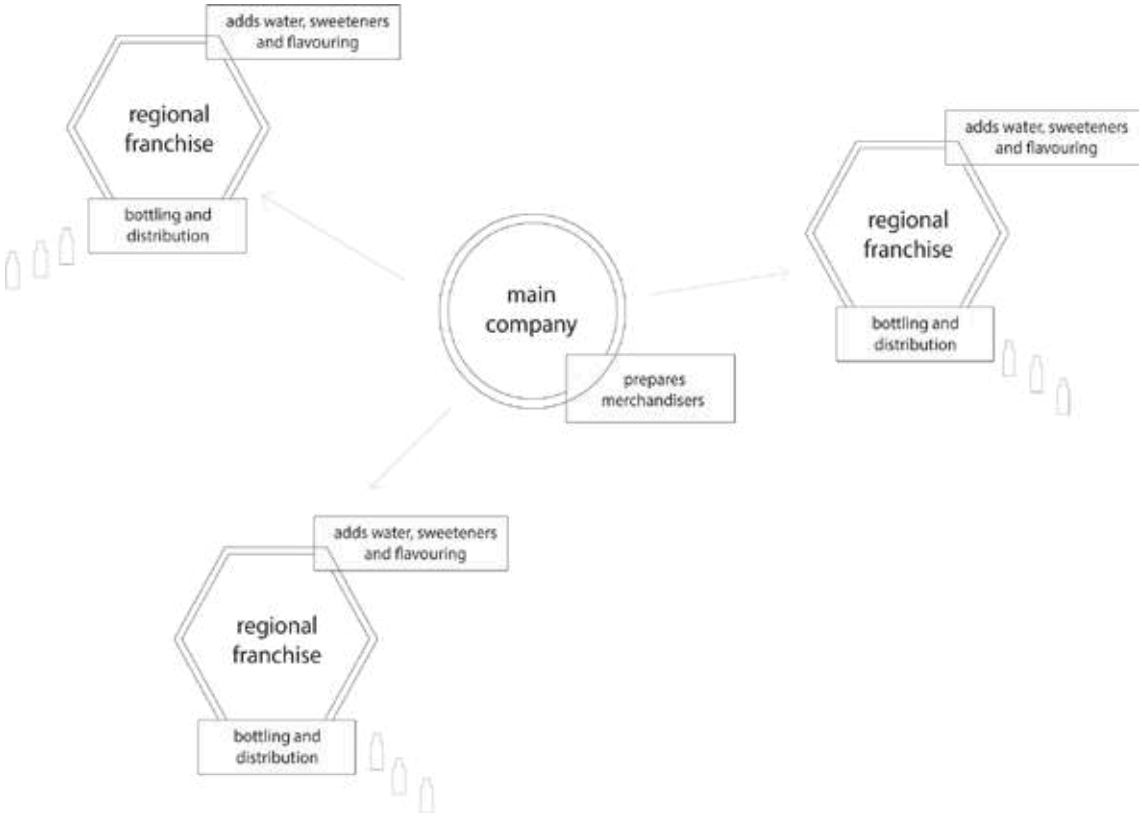


Figure 1. Coca Cola and its Franchises

## The Historical Meaning of "Franchise"

Franchising globally has a fundamental importance both from a historical and a practical point of view. Given the weight and volume of water, by transporting mainly dry substances (even to U.S.-based franchises), Coca Cola saves a considerable amount of money. Secondly, and most importantly, by bottling in regional industries, Coca Cola can make use of the local water resources present in the area rather than having to transport it to a centralized processing plant.

Suppose we follow the way the company has expanded itself through the years. In that case, we see that this is a model Coca Cola used from the beginning, with the company deciding to expand in areas where big water infrastructure projects were taking place. In this sense, Coca Cola was advantaged by history, given that its expansion occurred at the time that big cities like New York were initiating major public water projects (Elmore, 2013, p12). We could argue that Coca Cola developed with capitalism giving the company a great advantage from its competitors. Through its attentive reading of social development, Coca Cola prevented itself from having to *produce water* but instead became a (public) *consumer of water*. This approach implied good rates and the avoidance of both construction and maintenance costs.

Coca Cola followed the same pattern of organization worldwide. Nowadays, this is reflected in the company being part of "development" projects in collaboration with the US government. The latest case is represented by WADA (Water and Development Alliance), a program aiming at showcasing the strength of the alliance between the public and private sectors made up of USAID and Coca Cola (Elmore, 2013), which is aimed at giving support to communities in need of hydrological development. Rather often, though, these projects take place in areas where Coca Cola has a bottling franchise, such as the case of Erbin, in Iraq (H.M.H Group, 2022), and "many of these projects, USAID admits, have helped to improve production facilities of Coca-Cola" (Elmore, 2013, p.77).

## A Public Solution to a Private Problem

The intertwining between public and private is particularly important because it reveals a pattern that the company tends to use often: finding a public solution to an internal problem (Elmore, 2013). It is the same reason why, although the company is one of the top plastics polluters in the world (McVeigh, 2020), Coca Cola has always been lobbying for recycling centers. From the 1960s, together with other soft drink producers, the company fought hard in the US to make recycling the legislative norm as a solution to the increasing amount of waste that these companies were responsible for. "In the end, industry lobbyists were victorious, pushing through legislation at the federal, state, and municipal levels that established recycling programs as the cure-all for the nation's solid waste problems": rather than imposing restrictions on the production of one-way containers or giving the responsibility back to the polluters (Elmore, 2013, p.211). The repercussions of this lobbying and alliances are now being paid worldwide.

Nevertheless, as an added value from a marketing and strategic point of view, by framing itself as a supporter of recycling facilities Coca Cola managed to come through to the public as a positive actor in the social sphere. Is this wind changing now? It could be, but just as long as the public is given the possibility to deeply understand the systematic issues at the base of current climate-related issues, a responsibility that lies to communicators. Failure to do so will give such companies another opportunity to reframe themselves as positive social actors, and efforts will have been in vain.

A difference between current climate related discourse and past human rights advocacy is that some of the issues highlighted here are starting to be sensitive in the global north as well. Although this is an unfortunate circumstance because the legitimacy of the global south and minority voices should not be validated by how they relate to the north but simply by what they stand for, changemakers can use this dynamic to their advantage. By collaborating across borders, greater mediatic resonance can be created while still being able to act at numerous very local levels with coordinated actions.

Episodes like the recent droughts in the north of Italy, a summer event that is bound to repeat itself due to the climate crisis, have brought people to question Coca Cola's access to water in Nogara, near the city of Verona. While

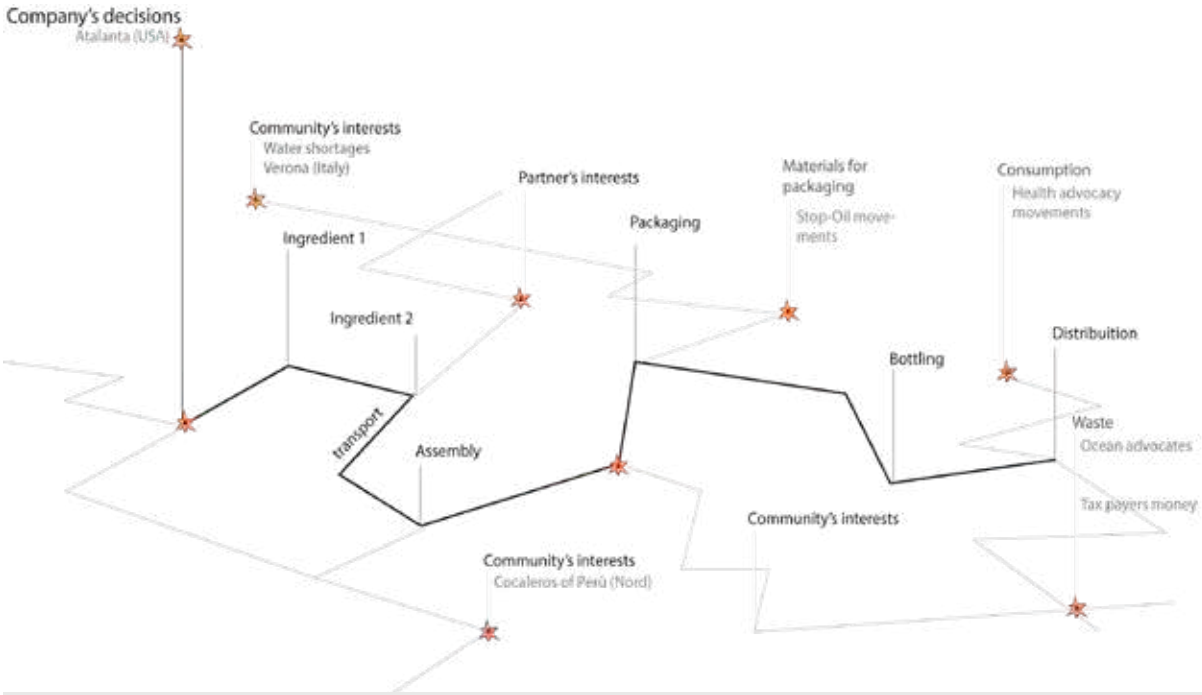


Figure 2. Communities and Causes connections Over a Production Process

residents were imposed restrictions on water use, the biggest Coca Cola bottling center in Italy had full access to water. This is made worse by the economic side of the problem: the company pays just a symbolic amount for such water use, although it creates enormous profit from it (Bauducco, 2022)

Although the discourse around water is fundamental to understanding the potential of the production chain approach, the focus is now to be shifted to another ingredient that holds special importance to the company and one which has not yet entered the public discourse as much: the coca leaf.

## Coca Leaf

Historically for the Coca Cola company, cocaine was used in the original recipe of the commercially sold beverage. The practice followed the late 19th century trend when it was fashionable for including cocaine in soft drinks in the Global North. Using cocaine in commercial products was possible due to German chemist Albert Nieman's isolation of the alkaloid. Niemann's success made it possible to commercially promoted the positive effects of cocaine on the human body. The positive wave was, nevertheless, short-lived. The substance was purposely removed from commercial products in 1903 because of the growing controversies linked to its consumption.

To preserve the story of the secret recipe, though, the then head of the company Coca Cola, A. Calder, was careful not to remove the coca leaf completely by keeping it as a natural flavoring mixed with caffeine (Elmore, 2013). The worry was that Coca Cola would have compromised its public credibility without the ingredient, and the

myth of the secret recipe would have disappeared. This proved to be a sensible worry. In 1985 Coca Cola released the "new coke" (a coca-free version of the beloved beverage), sales dropped. Coca leaf was re-introduced, and to this day it remains an essential ingredient in the drink (Elmore, 2013, p.167).

The restored ingredient is of crucial importance for two reasons. The first is that, according to historian P. Gootenberg, this was a reason for the company "to become involved in a largely hidden transnational trade in coca leaves ...." throughout the 20th century (Elmore, 2013, p.133). The second reason is the advertising leverage that this offers: if keeping coca in its recipe is so important, can this soft point be used by indigenous people and change makers in their favor using the process of free, prior and informed consent?

## Finding a Space in Trade for Coca Leaves

But how did this happen? With restrictions and fears of addiction-related problems, Coca Cola had to find a solution to its need for coca leaf while moving away from being associated with cocaine from a public perspective. Once more, Coca Cola slowly started to look for a public solution to an internal problem, and once again, the company would reinforce its position as a *consumer*. *This approach* proved key to the successful.

The company decided to reinforce its connection with the pharmaceutical company Maywood Chemical Company (today called Stepan), who would have provided a better reason to justify the import of the leaf in the face of a legislative ban by government. For Maywood, it was the perfect opportunity to turn waste, the leftover decocainized coca leaves of their pharmaceutical production, into profit and it hence support the public posture of the company. The trade was already in place, the Maywood Company and Coca Cola focused on strengthening their commercial relationship with growers from La Libertad´s Sacamanca and Otuzco districts, who specialized in the Trujillo quality, the only one which flavor was considered appropriate for the beverage. According to Gootenberg´s research these districts were mainly organized by regional merchants' clans such as the Goicochea´s and Pinillos (2001). Although officially not involved directly, the protection of this trade network between Maywood and Peruvian suppliers would remain a top priority for Coca Cola executives (Elmore, 2013, p.133).

Coca Cola operated behind the curtains by lobbying government policy and by ensuring that Maywood would give them exclusive access to their excess leaves. In fact, this worked so well that by the 1920s, when prohibition in the US had been established, "only two New Jersey firms (nationalized Merck and Coca-Cola partner to Maywood Chemical Works) dealt with coca and cocaine, and the business assumed a monopoly character" (P. Gootenberg, 2001, p.7), a monopoly Coca Cola keeps to this day.

## Criminalization

Although Coca Cola retained its business, the US prohibition, and the criminalization of coca in Europe and North America had disastrous repercussions for small coca growers in Perú—

mainly indigenous people engaged in coca leaf growing. But to understand this fully, it's worth contextualizing the long history of the coca plant compared to its brief interaction with the soda pop company.

The coca plant has been used for millennia by Indigenous Andean peoples who found its anti-fatigue properties effective for working at high altitudes. Regulation of coca leaf use was in place among the Quechua-speaking peoples during the time of the Inca empire. In the early 1500s, because of internal problems in the Inca empire and due to the interventions of the Spaniards, chewing coca leaves became more common. Although "in 1618, a manuscript by Don Felipe Guaman Poma de Ayala describes coca leaf chewing as an unauthorized social activity engaged in by the Indians when they were expected to be working" (Allen, 1987, p.8). Its use was legalized because "other explorers reported that chewing coca leaves increased the endurance of the Indians' (Allen, 1987, p.8). As terrible as the motivation was, this contributed to the coca as a tradition to survive through a time of cultural oppression introduced by the Spaniards.

Although these hallucinogenic properties were recognized and small quantities of leaves were taken to Europe, it wasn't until the 19th century that European interest began to develop in the public. This was probably because, unlike tobacco, coca leaves deteriorate quickly, and by the time they arrived in Europe, they weren't good enough to be used (Allen, 1987, p.8).

When in 1859, Albert Niemann isolated the alkaloid--which he called cocaine—things changed. Suddenly the leaves could be used, and public and commercial interest increased dramatically.

Perú wagered on a growing international cocaine trade, starting to create a national industry based on the coca leaf. The way coca was consumed would leave Perù divided in two markets: the mainly dry leaves were marketed in North America and "crude cocaine" (a jungle cocaine sulfate cake) was sent to Europe for processing by pharmaceutical companies serving the German market. (Gootenberg, 2001).

## The Effects on the Peruvian Economy

Unfortunately for Peru the crude cake cocaine economy generated by this second trade was based on the willingness of European powers to use cocaine, not coca leaves. When the substance started to be targeted because of its addictive and adverse health issues, the traditional use and beneficial effects of the consumption of the coca leaf were ignored even by the North American market as well as their European partners.

The ignorance and self-centrism of colonial powers had once more proved short sighted and oppressive for the Andean peoples. A lot of the cocaleros[8] in Peru who had invested in

[8] This is the term used to designate the coca leaf growers in Peru and Bolivia. The coca leaf has been cultivated for 8,000 years by the indigenous peoples in the Andes. The cosaleros farm the coca leaf for medicinal and religious purposes. The leaf provides a stimulant. It is helpful in overcoming altitude sickness in the high Andes and can be chewed and made into tea. Other medicinal uses include pain relief, staunching blood flow, combating malaria, ulcers, asthma and improving digestion. It is also configured in many religious ceremonies as offerings to Apus, Inti, and the Pachamama and as a method of divination by many of the indigenous peoples of the Andes.

the emerging industry were left with no work, and the increasing international pressure was putting Perú in a position of having to ban the traditional use of coca leaves domestically as well. Even on the US market, the bans that were put in place were not advocating the interruption of the cocaine trade, but stopping the coca leave production (Gootenberg, 2001).

## ENACO

The US support for imported coca leaves by Maywood Chemical Works and Merk remained the only lifeline for the now reduced Peruvian market. To moderate the pressure coming from legislation and to respond to an increased opposition to drugs in 1949, Perú established ENACO (López, 2022, p.9) the *Empresa Nacional de Coca*. ENACO became the only enterprise in Perú legally authorized to sell cocaine abroad, obliging all the small growers to sell to it directly rather than *cocaleros* making deals with each possible customer themselves. According to Gootenberg, as of 2001, most of the sales of coca leaves from ENACO were going to Stepan,[9] the company that now heads Maywood Chemical--the provider of coca leaves to Coca Cola.

The problem with a nationalized coca industry was, and still is, the pressure that such a company is under from an international perspective. Gootenberg proceeds to write that "in the latter half of the twentieth century, many *cocaleros* wanted to revive the international trade in coca and hoped to sell leaves to legal buyers for inclusion in a variety of commercial products, such as tea and flour, but the illicit trade was controlled by the state-sponsored monopoly ENACO" which had the freedom to set prices at its own discretion. As a result, *cocaleros* were not able to make much money. (Elmore, 2013)

## Contemporary Issues

From an online review of the contemporary issues around coca growers in Perù, problems between ENACO and cocaleros continue unabated. More on-site research needs to be conducted to understand the dynamics fully. On the blog of CONPACCP[10] (the official representative of Peruvian *cocaleros*) it seems that ENACO is not issuing enough permission to grow coca to farmers, who in turn require it loudly, both through protesting and legal ways.

As of April 2022, an article from Gèstion reported an official *cocalero* request to call on the Peruvian government to not elect Sr. Jesús Oswaldo Quispe Arone, the deputy minister of governance of the office of the President of Ministers to the position of Chairman of the board of directors of ENACO. The motivation

[9] Stepan (https://www.stepan.com/) is an industrial chemicals company located in Northbrook, Illinois. It makes end products for numerous industries including agriculture, beverages, construction, flavors, food, household, nutrition, and household cleansing among others. The company is the only commercial entity in the United States authorized by the US government's Food and Drug Administration to import coca leaves primarily from Peru. The "cocaine-free" extract produced from coca leaves by Stepan is sold to The Coca Cola Company for use in soft drinks, and the cocaine produced by Stepan is sold to Mallinckrot (https://www.mallinckrodt.com/ ), a pharmaceutical company with headquarters in Dublin, Ireland.

[10] Prominent cocaleros from the Upper Huallaga, Aguaytía and Apurímac Valleys, led by Nelson Palomino, decided to establish a national union of coca cultivators. Some 1,200 delegates founded the National Association of Peruvian Coca Producers (CONPACCP) in January 2003. The delegates chose Palomino, who is from the Apurímac Valley, as the organization's Secretary General, and Nancy Obregón as Vice Secretary. Here is a report on developments involving cocaleros in Peru: https://nacla.org/article/peru%E2%80%99s-cocaleros-march

for the opposition was due to his inability to deal with the current coca crisis. And, it was reasoned, this decision will favor illegal trade rather than protecting and supporting the historical traditional use of coca in Perú. The document claims that recent governmental policies mixed with international pressure have favored illegal coca production rather than making ENACO a profitable way through which *cocaleros* can sustain themselves.

These fears are backed by the repetitive episodes in which the Peruvian government backed US-led initiatives for eradicating the plant. Although the United States economy is the primary beneficiary of the coca trade through ENACO, it also has a strong position on the war on drugs and cooperates with the Peruvian government in efforts of eradication. These policies create instability for the *cocaleros* who have not been given permission to grow coca legally and reports say they feel like they have been abandoned. Sometimes these people find coca a more reliable crop, given recent problems related to the cacao and coffee trade (Andean Information Network, 2020).

In a 2011 blog post on the CONPACCP blog[11], someone was complaining that a significant amount of the permits to grow coca were given to parents or grandparents of current growers, people who are currently not able to work or are dead now

A few questions can arise as we consider this dynamic: 1. If many growers complain of a lack of permits and stability, how does ENACO still get enough leaves for export? How does it ensure the legality of coca production under its own laws? And most importantly for or analysis: how does Coca Cola ensure that its coca leaves production comes from legal sources?

## Connection with FPIC

According to research so far, the issues highlighted in this article that are related to the implementation of the free, prior, and informed consent (FPIC) are connected to the process in two main ways:

1. to advance constructive relations between companies and

2. the indigenous coca leaf farms—the *cocaleros*.

The first is the question of the illegality of some farmers that used to hold a license or that practice it consciously but did not get a permit from ENACO because of the bureaucratic or expensive procedures. Could we argue that the consent of the *cocaleros* is violated because they are not given the right to fully experience their traditional or preferred way of living?

The second question is linked to the problem of the illegal coca leaf trade, which may also be related to the making of cocaine. We know that the illegal production of cocaine is linked to deforestation (Romo, 2019) and human rights abuse, both of which can fall under the subject of FPIC. If the border between legal and illegal growing is blurred even under a bureaucratic point of view, how does ENACO ensure that the coca leaves it buys are not compromised by such behaviors?

[11] https://conpaccp.blogspot.com/

Under these blurred circumstances, and by not being the actual producers of its ingredients: *can the Coca Cola Company uphold its claims to support FPIC* while it does not directly interact with the *cocaleros*? Or is it claiming compliance with human rights standards even though its partners who directly deal with cocaleros and obtain coca leaves fail to obtain cocalero consent under FPIC? The Coca Cola company appears to be engaged in subterfuge portraying itself to the public as a human rights defender? Arguably, as one of the main beneficiaries of Peru's ENACO

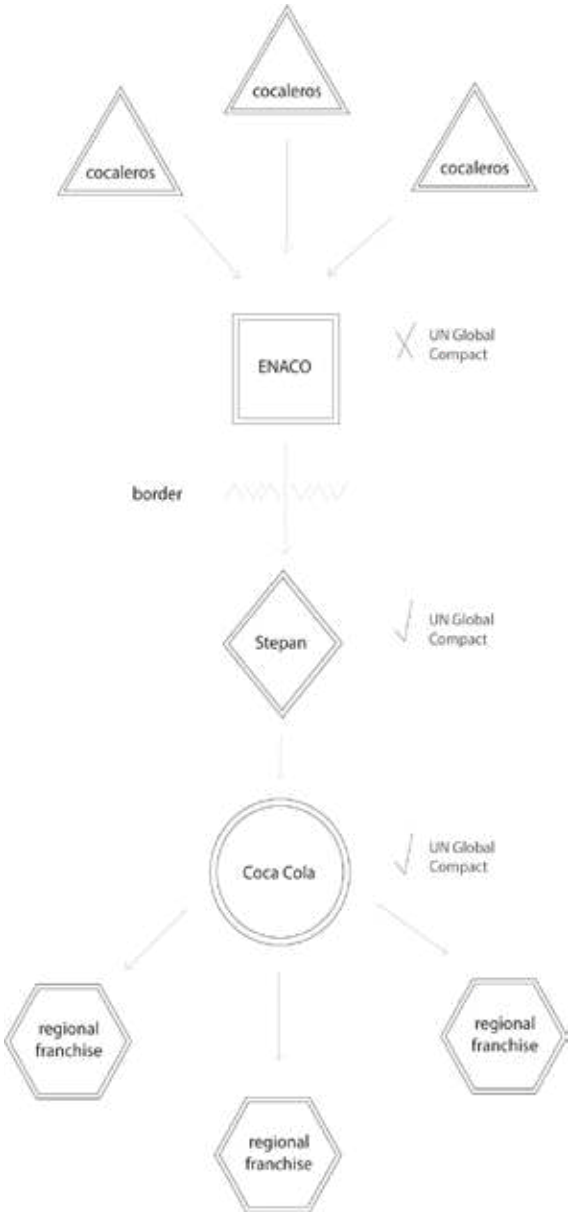


Figure 3. Coca Cola and ENACO Obtaining the FPIC of *Cocaleros*

and as one of the main beneficiaries of the legal coca trade in the world, the company holds a lot of power on the matter. It would be interesting to hear what their strategy is, given that on their Business & ESG Report,[12] they claim a willingness to lobby for climate solutions and admit to having the "influence to drive meaningful policy changes in partnership with peer companies" (Coca Cola, 2021, p.20). Unfortunately, though, when analyzing the report, most of these efforts revolve around recycling plastic, and there is no mention of obtaining free, prior and informed consent of the *cocaleros*.

There is a process to mediate relations between the Coca Cola Company and the cocaleros by way of the Stepan and ENACO. Coca Cola and Stepan are pledged under the UN Global Compact to implement human rights policies and FPIC. It would appear that Coca Cola may feel shielded from this obligation since ENACO is not registered with the UN Global Compact. It would be faulty reasoning to conclude that Coca Cola is not obligated to empress on ENACO the importance of negotiating consent with the *cocaleros*. As the primary beneficiary of the raw materials produced by the ENACO enterprise, Coca Cola would have no alternative but to implement its obligations given the corporate connections illustrated in Figure 3. From here on, more research needs to be done in order not to speculate, but from here on the research already in place can be used to ask CC clarification on their coca leaves trade.

## Making Alliances Across the Production Lines

To conclude, the reader may be reminded that at the beginning of this article, we considered the claim that FPIC can evolve into a methodology for designers, business owners, activists, and indigenous people to work together.

The history of the Coca Cola Company is intertwined with the long and rich history of coca and the indigenous peoples of the Andes. Advocates for biodiversity, indigenous peoples rights and other practitioners of the global north may consider that there can be a way to understand possible approaches they can support and cooperate with indigenous activists in advocating for climate justice by tackling big polluters and, ultimately, the system that legitimizes them. FPIC as a method can be a good way for people to ask the right questions to unify those who are trying to tackle the same issues but at different ends of the production lines.

Research shows how people worldwide are often struggling against the same company, but for different reasons. In this case, the similarities highlighted relate to the right of people, indigenous or not, to choose how to use their own natural resources, may it be water or coca, at a time of a changing climate where we need new laws and urgent, responsive action.

The question readers may now consider: Can we create activism that aims at companies' production lines, that sees coordination among

[12] Business and Environmental, Social and Governance Report issued in April 2022: https://www.coca-colacompany.com/reports/business-environmental-social-governance-report-2021

communities in different localities for a shared aim? On top of the ingredients here highlighted, additional touching points between the social sphere and the Coca Cola production line could be with the communities that suffer or are active against plastic pollution and those who are impacted by oil production: two faces of the one-way bottling system of the beverage.

Although FPIC and self-determination are extremely important tools that indigenous people can and need to use in their fight for justice, their use needs to be understood by non-indigenous actors if we want appropriate solutions and legislation to be implemented.

For young business people who want to create an economy that does not reflect the horrors of the past, it is important to know the existence of these issues and tools to scrutinize the production they are creating and make sure it does not embody such issues. And if it does? Negotiation is the key element of free, prior informed consent. Dialogue, clear contracts, and especially acceptance of boundaries are all tools that all parties can benefit from. Although legislative issues remain, FPIC can be implemented between parties before state law requires it, and there are sources available to help navigate this issue. For this, it may be useful to refer to Dr. Ryser's Fourth World Journal article about ALDMEM and the upcoming international platform on FPIC, which is being planned by the Centre for World Indigenous Studies.

Ultimately FPIC needs to become popular, and there needs to be a public discussion, one which is focused on the historical responsibilities of states

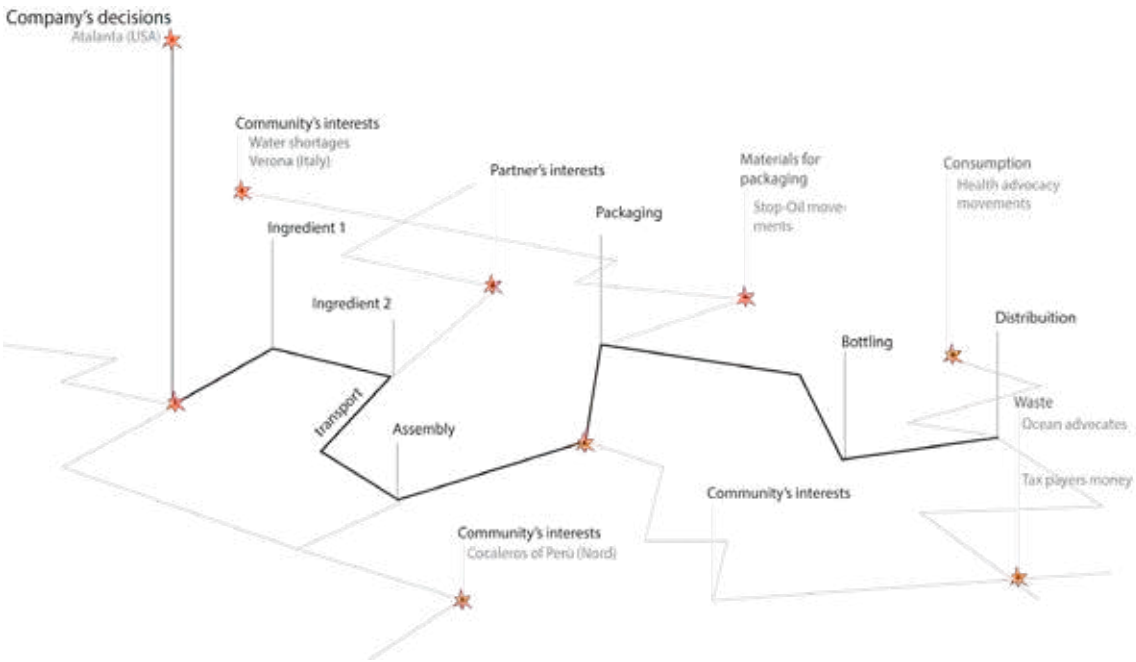


Figure 4 . Production lines connection

and companies in creating the destruction that we see all around us.

Compared to other human rights laws, the [rpcess pf free, prior, and informed consent has the advantage of being a concept easily understood. Making it mandatory to ask people for permission to use the land and the resources they depend on would seem entirely reasonable. As a designer of the global north, we recognize that the state, the companies, and the people who hold the most privileges in the world now benefit by not implementing FPIC, but the planet is changing, and so the new generation of thinkers needs to change with it.

Analyzing the world around through the eyes of FPIC can offer a shift of paradigm that in the long run can prove to be revolutionary. Apart from the imperative of keeping governments accountable for their own actions, a good place to operate is by looking at how different worlds are connected by the same production lines and act upon it.

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**This article may be cited as:**
Delfanti, I., (2023) Coca Cola and Coca Leaves, a Case Study on the use of FPIC. *Fourth World Journal*. Vol. 22, N2. pp. 40-54.

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Irene is fascinated by complex interactions and ways of influencing them. Her work lies in the intersection between design and research. Her work focuses on the development and application of design methodologies that facilitate systematic changes employing thought diagrams and relational reasoning. She is a native of Spagnolo, Italy and studied with distinction in the field of "design for change" at the University of Edinburgh. She has practical and academical experience in the topics of indigenous peoples' rights, environmental issues and design education.

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# Coca Cola y Hojas de Coca

## Un Caso de Estudio Sobre el Uso del Consentimiento Libre, Previo e Informado (CLPI)

**Por Irene Delfanti, MA**
**Diseñador e Investigador**
**Edinburgh, Escocia**

## RESUMEN

Este artículo considera cómo el conocimiento del sistema desde el punto de vista de la producción puede interactuar con el derecho internacional de tal manera que se respete el principio internacional del consentimiento libre, previo e informado (CLPI). Aunque algunas categorías, como el diseño, están acostumbradas a pensar en los sistemas de producción cuando crean bienes, a menudo se pasa por alto la cuestión de cómo se ven afectadas las personas dentro y fuera de estos sistemas. Ese es el punto en el que la investigación internacional sobre derechos humanos puede llegar a respaldar un campo que, de otro modo, podría parecer de un alcance bastante amplio.

Específicamente, el cado de estudio presentado aquí analiza cómo la producción de la bebida Coca-Cola interactúa con los pueblos indígenas[1] a través de la lente del principio internacionalmente reconocido de consentimiento libre, previo e informado.

El análisis indica que el marco del CLPI puede ser el punto de partida para evaluar los puntos de contacto entre los sistemas de producción actuales y la sociedad en general y proporcionar formas prácticas para que personas de diferentes disciplinas y orígenes creen un discurso en torno a él. En última instancia, esto beneficiaría a los pueblos indígenas y los defensores de los derechos humanos para comprender con quién involucrarse en la mesa de negociación y, al mismo tiempo, explorar formas de fortalecer la comunicación desde el punto de vista de un activista y de la opinión pública.

**Palabras clave:** Consentimiento Libre, Previo e Informado, Coca-Cola, línea de producción, hoja de coca.

[1] La palabra "pueblo" o "pueblos" se usa a lo largo de este artículo para referirse a una nación, un grupo lingüístico o cultural con lazos tradicionales o históricos a diferencia de los lazos raciales o políticos asociados con la población de un estado.

Se entiende ampliamente que los gobiernos de los estados carecen de legislación actual para implementar el proceso del CLPI requerido internacionalmente, pero nos basamos en el trabajo del Centro de Estudios Indígenas del Mundo (CWIS) que teoriza cómo implementar un nuevo mecanismo regulatorio internacional denominado ALDMEM (Mecanismo de Monitoreo de Dscolonización de Tierras Ancestrales). El presente artículo busca avanzar en el diálogo internacional sobre el CLPI mediante la aplicación de diagramas de pensamiento relacional para ver cómo se puede utilizar.[2] Al trabajar con un proceso de pensamiento similar a un ejercicio de diseño, los profesionales pasarán por un proceso de prueba y error. Este artículo refleja los esfuerzos del autor para aplicar el "diagrama de pensamiento" como una forma de acercarnos a la comprensión de cómo crear dicho marco.

Si bien el proceso del CLPI se ha aplicado a las relaciones entre las naciones indígenas y los estados desde 1989[3], afirmadas en el derecho internacional[4 5 6] y adoptadas por los gobiernos de las naciones indígenas y los estados, los estados miembros de la ONU no han implementado el proceso en su legislación. La soberanía está en el centro de este asunto: las naciones indígenas y los gobiernos estatales compiten por ella, reclamando acceso y uso de la tierra. Sin embargo, la tierra es una, y el asunto se complica aún más cuando las empresas requieren de la tierra y del conocimiento indígena para producir bienes que puedan beneficiar al Estado. Es en este contexto que existe este artículo.

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[2] Puede encontrar más información sobre ALDMEM y formas de implementar el CLPI en el artículo reciente del Dr. Rÿser "Minería de energía verde y problemas de los pueblos indígenas: Negociar el cambio de la economía del carbono a la energía verde con el CLPI" *Fourth World Journal V22 N2* (2022).

[3] Organización Internacional del Trabajo (OIT), *Convenio sobre Pueblos Indígenas y Tribales*, C169, 27 de junio de 1989, C169. Artículo 6 Párrafo 2 "Las consultas llevadas a cabo en aplicación de este Convenio se llevarán a cabo, de buena fe y en una forma apropiada a las circunstancias, con el objetivo de lograr un acuerdo o consentimiento para las medidas propuestas." Artículo 16 Párrafo 2. "Cuando la reubicación de estos pueblos se considere necesaria como medida excepcional, dicha reubicación se llevará a cabo únicamente con su consentimiento libre e informado".

[4] Pacto Internacional sobre los Derechos de las Naciones Indígenas. 28 de julio de 1994. Ginebra, Suiza. Iniciado por The Crimean Tartar, Numba People of Sudan, Confederacy of Treaty Six First Nations, Opethesaht First Nation y West Papua Peoples Front/OPM y posteriormente ratificado por 60 naciones indígenas en África y Asia occidental. Parte I Párrafo 9, Parte II Párrafo 9, Párrafo 11. Parte V Párrafo 18. Parte VI Párrafo 25, Párrafo 28. Parte IX Párrafo 43.

[5] Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas (2007) Artículo 10 "Los pueblos indígenas no serán desplazados por la fuerza de sus tierras o territorios... sin el consentimiento libre, previo e informado de los pueblos indígenas interesados...", Artículo 2 Párrafo 2. "Los Estados proporcionarán reparación a través de mecanismos efectivos,... con respecto a sus bienes culturales, intelectuales, religiosos y espirituales tomados sin su consentimiento libre, previo e informado o en violación de sus leyes, tradiciones y costumbres." Artículo 19, "Los Estados consultarán y cooperarán de buena fe con los pueblos indígenas interesados a través de sus propias instituciones representativas a fin de obtener su consentimiento libre, previo e informado antes de adoptar e implementar medidas legislativas o administrativas3 que puedan afectarlos". Artículo 28 "Los pueblos indígenas tienen derecho a la reparación... por las tierras, territorios y recursos que tradicionalmente han poseído u ocupado o utilizado de otro modo, y que han sido confiscados, tomados, ocupados, utilizados o dañados sin su libre, previa y consentimiento informado." Artículo 29 Párrafo 2. "Los Estados tomarán medidas efectivas para garantizar que no se almacene ni elimine materiales peligrosos en las tierras o territorios de los pueblos indígenas sin su consentimiento libre, previo e informado". Artículo 30, párrafo 2. "Los Estados realizarán consultas efectivas con los pueblos indígenas interesados... antes de utilizar sus tierras o territorios para actividades militares". Artículo 32 Párrafo 2. "Los Estados deberán... obtener su consentimiento libre e informado antes de la aprobación de cualquier proyecto que afecte sus tierras o territorios y otros recursos, particularmente en relación con el desarrollo, utilización o explotación de minerales, agua u otros recursos ."

[6] Documento Final de Alta, 10-12 de junio de 2013. Conferencia Preparatoria Indígena Global. Alta, Tierra Sami. Tema 1 Párrafo 3, Párrafo 5, Párrafo 6, Párrafo 8. Tema 2 Párrafo 9. Tema 3 Párrafo 4, Párrafo 13. Tema 4 Párrafo 3.

El siguiente caso de estudio argumenta que si bien esta inspección metodológica del uso del CLPI puede beneficiar ante todo a los pueblos indígenas, también puede ser una herramienta de comunicación entre las naciones indígenas y los estados. El proceso del CLPI también puede beneficiar las comunicaciones entre los activistas ambientales de diferentes regiones y los empresarios que están tomando una posición activa para cambiar las prácticas de "negocios hechos como siempre" hacia una erradicación activa del abuso de los derechos humanos y ambientales de los sistemas operativos de las empresas. Exploramos cómo los esfuerzos para implementar dicho marco del CLPI deben dejar de ser discutidos únicamente en los círculos políticos y diplomáticos e instamos a que se incorporen al pensamiento sistemático. Es por eso que los activistas, diseñadores y empresarios pueden ser buenos grupos objetivo para ampliar estas conversaciones. El deseo es que el CLPI se convierta en un tema generalizado, del que se hable tanto en los círculos de los pueblos indígenas como en los de los pueblos no indígenas.

The Coca Cola Company fue tomada como caso de estudio para tal tarea por dos razones principales: su fama mundial y la cantidad de recursos de los que depende la empresa. En este sentido, este análisis se basa fuertemente en el trabajo de Citizen Coke: An Environmental and Political History of the Coca-Cola Company (Elmore, 2013) que ya enmarcaba a la empresa como una industria extractiva, argumento apoyado por la membresía de la empresa en la Pacto Mundial de la ONU.[7] Después de estudiar el tema de la industria extractiva durante más de un año, fue, de hecho, la pertenencia de Coca Cola a tal asociación lo que inspiró la pregunta inicial de este ensayo.

El grupo de investigación del Centro de Estudios Indígenas del Mundo partió de la idea de que una primera forma de identificar empresas a las que los activistas de derechos humanos pudieran acercarse podría ser investigando este Pacto Mundial de las Naciones Unidas. El comunicado de prensa de Oxfam Internacional que señaló la voluntad de Coca Cola de "adherirse al principio del Consentimiento Libre, Previo e Informado en todas sus operaciones" (2013) y sus proveedores agregó una nueva perspectiva: debido a su fama, Coca Cola parecía más sensible al cambio que otras compañías en un grupo de empresas transnacionales (que incluye compañías como Shell Oil, Lukoil, British Petroleum). Finalmente, una empresa como Coca Cola es más accesible de rastrear que una empresa tradicional de extracción de minerales o petróleo, donde las cosas rápidamente se vuelven nebulosas cuando los investigadores comienzan a seguir el camino del dinero. Los bancos, los inventores, los beneficiarios comienzan a multiplicarse

[7] The Global Compact is the United Nations registry of more than 15,000 businesses and corporations committed to align their strategies and operations with international human rights laws and declarations, and internationally established environment, labour, and anti-corruption policies and laws. (See: https://www.unglobalcompact.org/what-is-gc)

rápidamente y, aunque no es imposible, es más difícil encontrar un patrón y comunicarlo claramente.

Por estas razones, al comienzo del proceso, la pregunta que inspiró este artículo cambió el enfoque de "¿Coca Cola defiende el consentimiento previo, libre e informado?" a "¿Puede Coca Cola defender el consentimiento previo, libre e informado?

## ¿Cómo Funciona Coca Cola?

El primer paso necesario en el proceso fue comprender cómo funciona la producción de la bebida Coca Cola.

Coca Cola sigue un modelo de franquicia, con la empresa principal operando en Atlanta y franquicias regionales en todo el mundo.

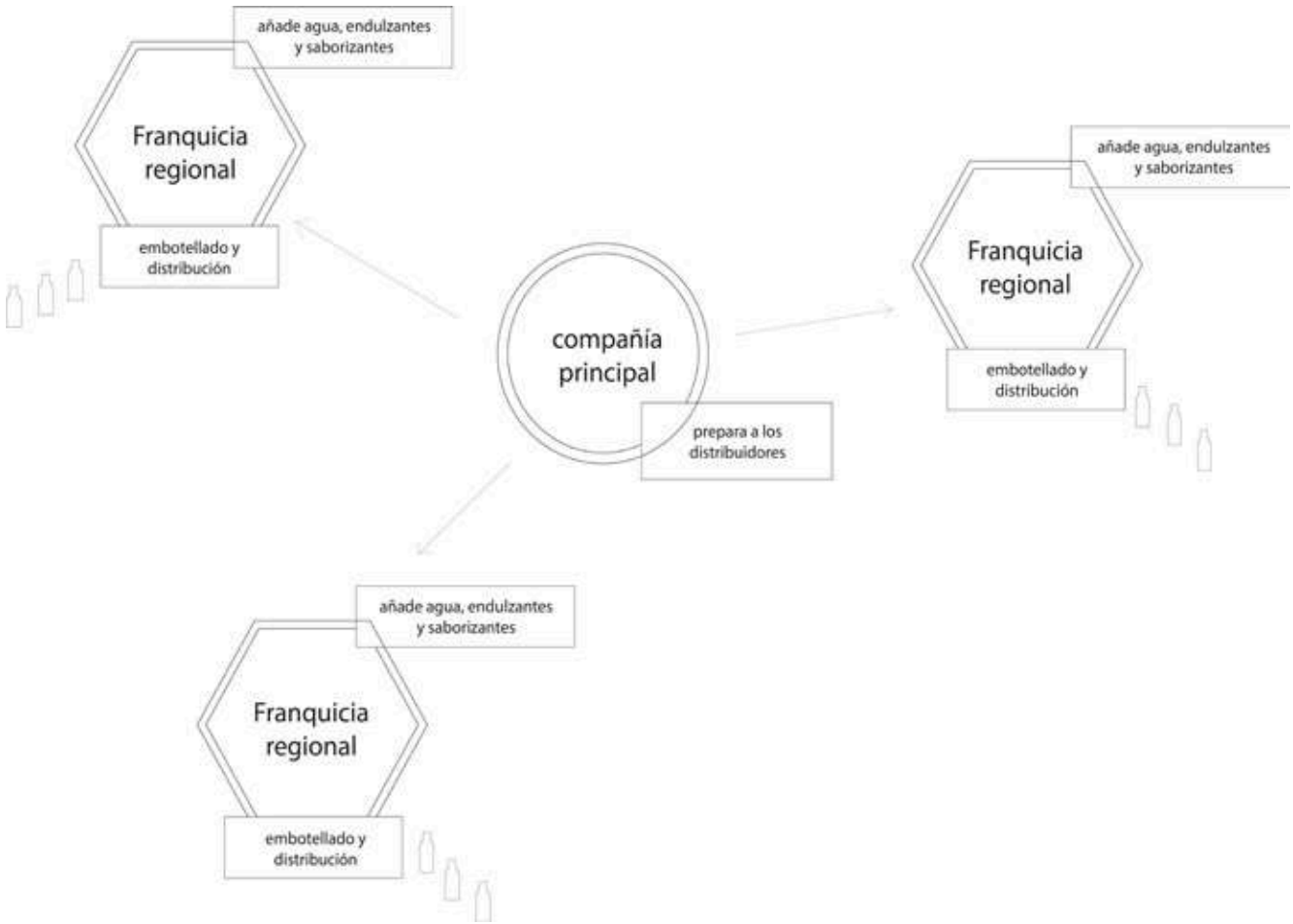


Figura 1. Coca Cola y sus Franquicias

En Atlanta, los ingredientes que la empresa compra a sus socios se juntan para crear la famosa receta secreta, que se distribuye a las empresas regionales bajo la forma de nueve "distribuidores" que luego se mezclan con edulcorantes, sabores y agua dependiendo de la versión de la bebida que se está produciendo. Posteriormente, la bebida es embotellada y distribuida (Elmore, 2013). Las relaciones entre los franquiciadores y la empresa principal se pueden visualizar como se muestra en la Figura 1.

## El Significado Histórico de "Franquicia"

La franquicia a nivel mundial tiene una importancia fundamental tanto desde un punto de vista histórico como práctico. Dado el peso y volumen del agua, al transportar principalmente sustancias secas (incluso a franquicias con sede en EE. UU.), Coca Cola ahorra una cantidad considerable de dinero. En segundo lugar, y más importante, al embotellar en industrias regionales, Coca Cola puede hacer uso de los recursos hídricos locales presentes en el área en lugar de tener que transportarla a una planta de procesamiento centralizada.

Supongamos que seguimos la forma en que la empresa se ha expandido a lo largo de los años. En ese caso, vemos que este es un modelo que Coca Cola usó desde el principio, y la compañía decidió expandirse en áreas donde se estaban realizando grandes proyectos de infraestructura de agua. En este sentido, Coca Cola se vio favorecida por la historia, dado que su expansión se dio en el momento en que grandes ciudades como Nueva York iniciaban grandes proyectos públicos de agua (Elmore, 2013, p12). Podríamos argumentar que Coca Cola se desarrolló con el capitalismo dándole a la empresa una gran ventaja sobre sus competidores. A través de su atenta lectura del desarrollo social, Coca Cola se evitó tener que producir agua, sino que se convirtió en un consumidor (público) de la misma. Este enfoque implicaba buenas tarifas y la evitación de costos de construcción y mantenimiento.

Coca Cola siguió el mismo patrón de organización en todo el mundo. Hoy en día, esto se refleja en que la empresa es parte de proyectos de "desarrollo" en colaboración con el gobierno de los Estados Unidos. El último caso lo representa WADA (Alianza para el Agua y el Desarrollo), un programa que busca mostrar la fortaleza de la alianza entre los sectores público y privado conformada por USAID y Coca Cola (Elmore, 2013), cuyo objetivo es dar apoyo a comunidades necesitadas de desarrollo hidrológico. Sin embargo, con bastante frecuencia, estos proyectos tienen lugar en áreas donde Coca Cola tiene una franquicia de embotellado, como el caso de Erbin, en Irak (H.M.H Group, 2022), y "muchos de estos proyectos, admite USAID, han ayudado a mejorar la producción instalaciones de Coca-Cola" (Elmore, 2013, p.77).

## Una Solución Pública a un Problema Privado

El entrelazamiento entre lo público y lo privado es particularmente importante porque revela un patrón que la empresa tiende a utilizar con frecuencia: encontrar una solución pública a un problema interno (Elmore, 2013). Es la misma razón por la que, aunque la empresa es una de las principales contaminadoras de plásticos del mundo (McVeigh, 2020), Coca

Cola siempre ha estado presionando para que haya centros de reciclaje. Desde la década de 1960, junto con otros productores de refrescos, la empresa luchó arduamente en los EE. UU. para que el reciclaje fuera una norma legislativa como una solución a la creciente cantidad de desechos de los que eran responsables estas empresas. “Al final, los cabilderos de la industria obtuvieron la victoria, impulsando leyes a nivel federal, estatal y municipal que establecieron programas de reciclaje como la panacea para los problemas de desechos sólidos de la nación”: en lugar de imponer restricciones a la producción de desechos sólidos de una vía contenedores o devolver la responsabilidad a los contaminadores (Elmore, 2013, p.211). Las repercusiones de este cabildeo y alianzas ahora se están pagando en todo el mundo.

No obstante, como valor añadido desde el punto de vista comercial y estratégico, al enmarcarse como partidaria de las instalaciones de reciclaje, Coca Cola consiguió mostrarse ante el público como un actor positivo en el ámbito social. ¿Está cambiando este viento ahora?

Podría ser, pero siempre y cuando se le dé al público la posibilidad de comprender en profundidad los temas sistemáticos que están en la base de los temas actuales relacionados con el clima, responsabilidad que recae en los comunicadores. Si no lo hacen, esas empresas tendrán otra oportunidad de reformularse como actores sociales positivos, y los esfuerzos habrán sido en vano.

Una diferencia entre el discurso actual relacionado con el clima y la defensa de los derechos humanos en el pasado es que algunos de los temas destacados aquí también comienzan a ser sensibles en el norte global. Si bien esta es una circunstancia desafortunada porque la legitimidad del sur global y las voces de las minorías no debe validarse por la forma en que se relacionan con el norte, sino simplemente por lo que representan, los agentes de cambio pueden utilizar esta dinámica a su favor. Al colaborar a través de las fronteras, se puede crear una mayor resonancia mediática sin dejar de actuar en numerosos niveles muy locales con acciones coordinadas.


Figura 2. CConexiones entre comunidades y causas en un proceso de producción

Episodios como las recientes sequías en el norte de Italia, un evento de verano que seguramente se repetirá debido a la crisis climática, han llevado a cuestionar el acceso al agua de Coca Cola en Nogara, cerca de la ciudad de Verona. Mientras que a los residentes se les impusieron restricciones en el uso del agua, el centro de embotellado de Coca Cola más grande de Italia tenía pleno acceso al agua. Esto se agrava por el lado económico del problema: la empresa paga solo una cantidad simbólica por tal uso del agua, aunque genera una enorme ganancia de ello (Bauducco, 2022)

Si bien el discurso sobre el agua es fundamental para comprender el potencial del enfoque de la cadena productiva, el enfoque ahora se desplazará a otro ingrediente que tiene una importancia especial para la empresa y que aún no ha entrado tanto en el discurso público: la hoja de coca.

## Hoja de Coca

Históricamente, para la empresa Coca Cola, la cocaína se usaba en la receta original de la bebida vendida comercialmente. La práctica siguió la tendencia de finales del siglo XIX cuando estaba de moda incluir cocaína en los refrescos en el Norte Global. El uso de cocaína en productos comerciales fue posible gracias al aislamiento del alcaloide por parte del químico alemán Albert Nieman. El éxito de Niemann hizo posible promocionar comercialmente los efectos positivos de la cocaína en el cuerpo humano. La ola positiva fue, sin embargo, de corta duración. La sustancia se eliminó deliberadamente de los productos comerciales en 1903 debido a las crecientes controversias vinculadas a su consumo.

Sin embargo, para preservar la historia de la receta secreta, el entonces jefe de la compañía Coca Cola, A. Calder, tuvo cuidado de no eliminar la hoja de coca por completo manteniéndola como un saborizante natural mezclado con cafeína (Elmore, 2013). La preocupación era que Coca Cola habría comprometido su credibilidad pública sin el ingrediente y el mito de la receta secreta habría desaparecido. Esto resultó ser una preocupación sensata. En 1985, Coca Cola lanzó la "nueva coca cola" (una versión sin coca de la querida bebida), las ventas cayeron. Se reintrodujo la hoja de coca, y hasta el día de hoy sigue siendo un ingrediente esencial en la bebida (Elmore, 2013, p.167).

El ingrediente restaurado es de crucial importancia por dos razones. La primera es que, según el historiador P. Gootenberg, esta fue una razón para que la empresa "se involucrara en un comercio transnacional de hojas de coca en gran medida oculto..." a lo largo del siglo XX (Elmore, 2013, p. 133). La segunda razón es el apalancamiento publicitario que esto ofrece: si mantener la coca en su receta es tan importante, ¿pueden los pueblos indígenas y los agentes de cambio utilizar este punto débil a su favor mediante el proceso de consentimiento libre, previo e informado?

## Encontrar un Espacio en el Comercio de Hojas de Coca

Pero, ¿cómo ha ocurrido esto? Con restricciones y temores de problemas relacionados con la adicción, Coca Cola tuvo que encontrar una solución a su necesidad de hoja de coca mientras se alejaba de la asociación con la

cocaína desde una perspectiva pública. Una vez más, Coca Cola lentamente comenzó a buscar una solución pública a un problema interno, y una vez más, la empresa reforzaría su posición como consumidor. Este enfoque resultó clave para el éxito.

La empresa decidió reforzar su vínculo con la farmacéutica Maywood Chemical Company (hoy llamada Stepan), quien habría brindado una mejor razón para justificar la importación de la hoja ante una prohibición legislativa por parte del gobierno. Para Maywood, era la oportunidad perfecta para convertir los desechos, las hojas de coca decocainizadas sobrantes de su producción farmacéutica, en ganancias y, por lo tanto, respaldar la postura pública de la empresa. El comercio ya estaba en marcha, Maywood Company y Coca Cola se enfocaron en fortalecer su relación comercial con productores de los distritos de Sacamanca y Otuzco de La Libertad, quienes se especializaron en la calidad Trujillo, la única cuyo sabor se consideró apropiado para la bebida. Según la investigación de Gootenberg estos distritos estaban organizados principalmente por clanes de comerciantes regionales como los Goicochea y Pinillos (2001). Aunque oficialmente no está involucrado directamente, la protección de esta red comercial entre Maywood y los proveedores peruanos seguiría siendo una prioridad para los ejecutivos de Coca Cola (Elmore, 2013, p. 133).

Coca Cola operaba detrás de las cortinas presionando la política del gobierno y asegurándose de que Maywood les diera acceso exclusivo a sus excedentes. De hecho, esto funcionó tan bien que en la década de 1920, cuando se estableció la prohibición en los Estados Unidos, “solo dos empresas de Nueva Jersey (Merck nacionalizada y Coca-Cola socia de Maywood Chemical Works) se ocupaban de la coca y la cocaína, y el negocio asumía un carácter de monopolio” (P. Gootenberg, 2001, p.7), monopolio que mantiene Coca Cola hasta el día de hoy.

## Criminalización

Aunque Coca Cola mantuvo su negocio, la prohibición estadounidense y la criminalización de la coca en Europa y América del Norte tuvieron repercusiones desastrosas para los pequeños cultivadores de coca en Perú, principalmente los indígenas dedicados al cultivo de la hoja de coca. Pero para comprender esto completamente, vale la pena contextualizar la larga historia de la planta de coca en comparación con su breve interacción con la compañía de gaseosas.

La planta de coca ha sido utilizada durante milenios por los pueblos indígenas andinos que descubrieron que sus propiedades antifatiga son efectivas para trabajar en altitudes elevadas. La regulación del uso de la hoja de coca existía entre los pueblos de habla quechua durante la época del imperio inca. A principios del siglo XVI, debido a problemas internos en el imperio Inca y debido a las intervenciones de los españoles, se hizo más común masticar hojas de coca. Aunque “en 1618, un manuscrito de don Felipe Guaman Poma de Ayala describe el mascado de la hoja de coca como una actividad social no autorizada que realizaban los indígenas cuando se esperaba que estuvieran trabajando” (Allen, 1987, p. 8). Su uso fue legalizado porque “otros exploradores informaron que masticar hojas de coca aumentaba la

resistencia de los indígenas" (Allen, 1987, p. 8). A pesar de lo terrible que fue la motivación, esto contribuyó a que la coca sobreviviera como tradición durante una época de opresión cultural introducida por los españoles.

Aunque se reconocieron estas propiedades alucinógenas y se llevaron pequeñas cantidades de hojas a Europa, no fue hasta el siglo XIX que el interés europeo comenzó a desarrollarse en el público. Esto probablemente se debió a que, a diferencia del tabaco, las hojas de coca se deterioran rápidamente y, cuando llegaron a Europa, no eran lo suficientemente buenas para ser utilizadas (Allen, 1987, p.8).

Cuando en 1859, Albert Niemann aisló el alcaloide, al que llamó cocaína, las cosas cambiaron. De repente, las hojas se pudieron usar y el interés público y comercial aumentó dramáticamente.

Perú apostó por un creciente comercio internacional de cocaína, comenzando a crear una industria nacional basada en la hoja de coca. La forma en que se consumía la coca dejaría a Perú dividido en dos mercados: las hojas principalmente secas se comercializaban en América del Norte y la "cocaína cruda" (una torta de sulfato de cocaína de la selva) se enviaba a Europa para que las empresas farmacéuticas que abastecían al mercado alemán la procesaran. (Gootenberg, 2001).

## Los Efectos en la Economía Peruana

Desafortunadamente para Perú, la economía de la torta cruda de cocaína generada por este segundo comercio se basó en la voluntad de las potencias europeas de usar cocaína, no hojas de coca. Cuando la sustancia comenzó a ser un objetivo debido a sus problemas de salud adictivos y adversos, el uso tradicional y los efectos beneficiosos del consumo de la hoja de coca fueron ignorados incluso por el mercado norteamericano y sus socios europeos.

La ignorancia y el egocentrismo de las potencias coloniales habían demostrado una vez más ser miopes y opresivos para los pueblos andinos. Muchos de los cocaleros[8] en Perú que habían invertido en la industria emergente se quedaron sin trabajo, y la creciente presión internacional estaba poniendo a Perú en una posición de tener que prohibir el uso tradicional de hojas de coca también a nivel nacional. Incluso en el mercado estadounidense, las prohibiciones que se establecieron no abogaban por la interrupción del comercio de cocaína, sino por detener la producción de hoja de coca (Gootenberg, 2001).

## ENACO

El apoyo estadounidense a las hojas de coca importadas por parte de Maywood Chemical Works y Merk siguió siendo el único salvavidas para el ahora reducido mercado peruano. Para moderar la presión proveniente de la legislación y para responder a una mayor oposición a las drogas en 1949, Perú estableció ENACO (López, 2022, p.9) la Empresa Nacional de Coca.

[8] Este es el término utilizado para designar a los cultivadores de hoja de coca en Perú y Bolivia. La hoja de coca ha sido cultivada durante 8.000 años por los pueblos indígenas de los Andes. Los cosaleros cultivan la hoja de coca con fines medicinales y religiosos. La hoja proporciona un estimulante. Es útil para superar el mal de altura en los Andes altos y se puede masticar y preparar en té. Otros usos medicinales incluyen el alivio del dolor, el estancamiento del flujo sanguíneo, la lucha contra la malaria, las úlceras, el asma y la mejora de la digestión. También se configura en muchas ceremonias religiosas como ofrendas a los Apus, Inti y la Pachamama y como método de adivinación por parte de muchos de los pueblos indígenas de los Andes.

ENACO se convirtió en la única empresa en Perú legalmente autorizada para vender cocaína en el extranjero, obligando a todos los pequeños cultivadores a venderle directamente en lugar de que los cocaleros hicieran tratos con cada posible cliente. Según Gootenberg, a partir de 2001, la mayor parte de las ventas de hojas de coca de ENACO iban a Stepan[9], la empresa que ahora dirige Maywood Chemical, el proveedor de hojas de coca de Coca Cola.

El problema de una industria cocalera nacionalizada era, y sigue siendo, la presión a la que se ve sometida dicha empresa desde una perspectiva internacional. Gootenberg procede a escribir que "en la segunda mitad del siglo XX, muchos cocaleros querían revivir el comercio internacional de coca y esperaban vender hojas a compradores legales para incluirlas en una variedad de productos comerciales, como té y harina, pero el el comercio ilícito estaba controlado por el monopolio estatal ENACO" que tenía la libertad de fijar los precios a su propia discreción. Como resultado, los cocaleros no pudieron ganar mucho dinero. (Elmore, 2013)

## Temas Contemporaneos

A partir de una revisión en línea de los problemas contemporáneos en torno a los cultivadores de coca en Perú, los problemas entre ENACO y los cocaleros continúan sin cesar. Es necesario realizar más investigaciones in situ para comprender la dinámica por completo. En el blog de CONPACCP[10] (el representante oficial de los cocaleros peruanos) parece que ENACO no está dando suficientes permisos para cultivar coca a los campesinos, quienes a su vez lo exigen a gritos, tanto a través de protestas como de manera legal.

A partir de abril de 2022, un artículo de Gestion informó una solicitud oficial de cocalero para pedir al gobierno peruano que no elija al Sr. Jesús Oswaldo Quispe Arone, viceministro de Gobernación de la Presidencia de Ministros para el cargo de Presidente de la directorio de ENACO. La motivación de la oposición se debió a su incapacidad para hacer frente a la actual crisis de la coca. Y, se razonó, esta decisión favorecerá el comercio ilegal en lugar de proteger y apoyar el uso tradicional histórico de la coca en el Perú. El documento afirma que las políticas gubernamentales recientes combinadas con la presión internacional han favorecido la producción ilegal de coca en lugar de hacer de ENACO una forma rentable a través de la cual los cocaleros pueden mantenerse.

Estos temores están respaldados por los episodios repetitivos en los que el gobierno peruano respaldó iniciativas lideradas por Estados Unidos para erradicar la planta. Aunque

[9] Stepan (https://www.stepan.com/) es una empresa de productos químicos industriales ubicada en Northbrook, Illinois. Fabrica productos finales para numerosas industrias, incluidas la agricultura, las bebidas, la construcción, los sabores, la alimentación, el hogar, la nutrición y la limpieza del hogar, entre otras. La compañía es la única entidad comercial en los Estados Unidos autorizada por la Administración de Drogas y Alimentos del gobierno de los EE. UU. para importar hojas de coca principalmente de Perú. El extracto "sin cocaína" producido a partir de hojas de coca por Stepan se vende a The Coca Cola Company para su uso en refrescos, y la cocaína producida por Stepan se vende a Mallinckrot (https://www.mallinckrodt.com/), una compañía farmacéutica con sede en Dublín, Irlanda.

[10] Destacados cocaleros de los valles del Alto Huallaga, Aguaytía y Apurímac, encabezados por Nelson Palomino, decidieron constituir un sindicato nacional de cocaleros. Unos 1.200 delegados fundaron la Asociación Nacional de Productores de Coca del Perú (CONPACCP) en enero de 2003. Los delegados eligieron a Palomino, quien es del Valle de Apurímac, como Secretario General de la organización, ya Nancy Obregón como Vicesecretaria. Aquí hay un informe sobre los acontecimientos que involucran a los cocaleros en Perú: https://nacla.org/article/peru%E2%80%99s-cocaleros-march

[11] https://con

la economía de Estados Unidos es la principal beneficiaria del comercio de coca a través de ENACO, también tiene una fuerte posición en la guerra contra las drogas y coopera con el gobierno peruano en los esfuerzos de erradicación. Estas políticas crean inestabilidad para los cocaleros a quienes no se les ha dado permiso para cultivar coca legalmente y los informes dicen que se sienten abandonados. A veces, estas personas encuentran que la coca es un cultivo más confiable, dados los problemas recientes relacionados con el comercio de cacao y café (Red Andina de Información, 2020).

En una publicación de blog de 2011 en el blog de CONPACCP, alguien se quejaba de que una cantidad significativa de los permisos para cultivar coca se otorgaban a los padres o abuelos de los cultivadores actuales, personas que actualmente no pueden trabajar o que ya están muertas.

Pueden surgir algunas preguntas al considerar esta dinámica: 1. Si muchos productores se quejan de la falta de permisos y estabilidad, ¿cómo consigue ENACO suficientes hojas para exportar? ¿Cómo asegura la legalidad de la producción de coca bajo sus propias leyes? Y lo más importante para el análisis: ¿cómo asegura Coca Cola que su producción de hojas de coca proviene de fuentes legales?

## Conexión con el CLPI

Según la investigación realizada hasta el momento, los problemas destacados en este artículo que están relacionados con la implementación del consentimiento libre, previo e informado están conectados con el proceso de dos maneras principales:

1. promover relaciones constructivas entre empresas y

2. las fincas indígenas de hoja de coca—los cocaleros.

La primera es la cuestión de la ilegalidad de algunos agricultores que antes tenían una licencia o que la practicaban conscientemente pero no obtuvieron el permiso de ENACO debido a los trámites burocráticos o costosos. ¿Podríamos argumentar que se viola el consentimiento de los cocaleros porque no se les otorga el derecho a experimentar plenamente su forma de vida tradicional o preferida?

La segunda pregunta está relacionada con el problema del comercio ilegal de hoja de coca, que también puede estar relacionado con la elaboración de cocaína. Sabemos que la producción ilegal de cocaína está relacionada con la deforestación (Romo, 2019) y el abuso de los derechos humanos, los cuales pueden ser objeto del CLPI. Si la frontera entre cultivos legales e ilegales se difumina incluso bajo un punto de vista burocrático, ¿cómo se asegura ENACO de que las hojas de coca que compra no se vean comprometidas por tales conductas?

Bajo estas circunstancias borrosas, y al no ser los productores reales de sus ingredientes: ¿puede Coca Cola Company mantener sus reclamos de apoyo al CLPI mientras no interactúe directamente con los cocaleros? ¿O está afirmando el cumplimiento de los estándares de derechos humanos a pesar de que sus socios que tratan directamente con los cocaleros y obtienen hojas de coca no obtienen el consentimiento de los cocaleros bajo el CLPI? ¿La empresa Coca Cola

parece estar involucrada en un subterfugio presentándose ante el público como una defensora de los derechos humanos? Podría decirse que, como uno de los principales beneficiarios de ENACO de Perú y como uno de los principales beneficiarios del comercio legal de coca en el mundo, la empresa tiene mucho poder en la materia. Sería interesante saber cuál es su estrategia, dado que en su Business & ESG Report,[12] afirman estar dispuestos a cabildear por soluciones climáticas y admiten tener la "influencia para impulsar cambios de política significativos en asociación con empresas pares" (Coca Cola , 2021, p.20). Lamentablemente, sin embargo, al analizar el informe, la mayoría de estos esfuerzos giran en torno al reciclaje de plástico y no se menciona la obtención del consentimiento libre, previo e informado de los cocaleros.

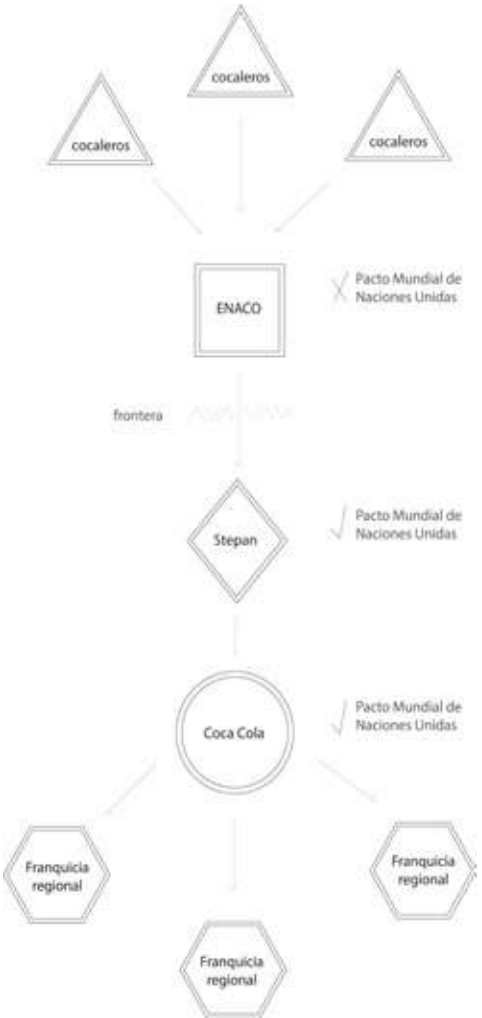


Figura 3. Coca Cola y ENACO Obteniendo el CLPI de Cocaleros

[12] Informe empresarial y ambiental, social y de gobierno emitido en abril de 2022: https://www.coca-colacompany.com/reports/business-environmental-social-governance-report-2021

Existe un proceso para mediar en las relaciones entre Coca Cola Company y los cocaleros a través del Stepan y ENACO. Coca Cola y Stepan se comprometieron en virtud del Pacto Mundial de las Naciones Unidas a implementar políticas de derechos humanos y CLPI. Parecería que Coca Cola puede sentirse protegida de esta obligación ya que ENACO no está registrada en el Pacto Mundial de la ONU. Sería un razonamiento erróneo concluir que Coca Cola no está obligada a enfatizar en ENACO la importancia de negociar el consentimiento con los cocaleros. Como principal beneficiario de las materias primas producidas por la empresa ENACO, Coca Cola no tendría otra alternativa que cumplir con sus obligaciones dadas las conexiones corporativas ilustradas en la Figura 3. De aquí en adelante, se necesita más investigación para no especular. pero a partir de aquí, la investigación ya realizada se puede utilizar para pedir aclaraciones a CC sobre su comercio de hojas de coca.

## Hacer Alianzas en las Líneas de Producción

Para concluir, se le puede recordar al lector que al comienzo de este artículo, consideramos la afirmación de que el CLPI puede convertirse en una metodología para que diseñadores, empresarios, activistas y pueblos indígenas trabajen juntos.

La historia de Coca Cola Company está entrelazada con la larga y rica historia de la coca y los pueblos indígenas de los Andes. Los defensores de la biodiversidad, los derechos de los pueblos indígenas y otros profesionales del norte global pueden considerar que puede haber una manera de comprender los posibles enfoques que pueden apoyar y cooperar con los activistas indígenas para abogar por la justicia climática al abordar a los grandes contaminadores y, en última instancia, el sistema que los legitima. El CLPI como método puede ser una buena manera para que las personas hagan las preguntas correctas para unificar a aquellos que están tratando de abordar los mismos problemas pero en diferentes extremos de las líneas de producción.

La investigación muestra cómo las personas en todo el mundo a menudo luchan contra la misma empresa, pero por diferentes razones. En este caso, las similitudes resaltadas se relacionan con el derecho de las personas, indígenas o no, a elegir cómo usar sus propios recursos naturales, ya sea agua o coca, en un momento de un clima cambiante donde necesitamos nuevas leyes y urgente, acción de respuesta.

La pregunta que los lectores pueden considerar ahora: ¿Podemos crear un activismo que apunte a las líneas de producción de las empresas, que vea la coordinación entre las comunidades en diferentes localidades para un objetivo compartido? Además de los ingredientes aquí destacados, los puntos de contacto adicionales entre la esfera social y la línea de producción de Coca Cola podrían ser las comunidades que sufren o están activas contra la contaminación plástica y aquellas que se ven afectadas por la producción de petróleo: dos caras de la dirección única del sistema de embotellado de la bebida.


Figura 4 . Conexión de líneas de producción

Si bien el CLPI y la autodeterminación son herramientas extremadamente importantes que los pueblos indígenas pueden y necesitan usar en su lucha por la justicia, los actores no indígenas deben entender su uso si queremos que se implementen soluciones y leyes adecuadas.

Para los jóvenes empresarios que quieren crear una economía que no refleje los horrores del pasado, es importante conocer la existencia de estos problemas y herramientas para examinar la producción que están creando y asegurarse de que no incorpore tales problemas. ¿Y si lo hace? La negociación es el elemento clave del consentimiento libre, previo e informado. El diálogo, los contratos claros y, especialmente, la aceptación de los límites son herramientas de las que todas las partes pueden beneficiarse. Aunque persisten los problemas legislativos, el CLPI se puede implementar entre las partes antes de que la ley estatal lo requiera, y hay fuentes disponibles para ayudar a navegar este problema. Para esto, puede ser útil consultar el artículo del Diario del Cuarto Mundo del Dr. Rÿser sobre ALDMEM y la próxima plataforma internacional sobre CLPI, que está siendo planificada por el Centro de Estudios Indígenas del Mundo.

En última instancia, el CLPI debe volverse popular y debe haber una discusión pública, que se centre en las responsabilidades históricas de los estados y las empresas en la creación de la destrucción que vemos a nuestro alrededor.

En comparación con otras leyes de derechos humanos, el proceso de consentimiento libre, previo e informado tiene la ventaja de ser un concepto de fácil comprensión. Hacer que sea

obligatorio pedir permiso a las personas para usar la tierra y los recursos de los que dependen parecería completamente razonable. Como diseñador del norte global, reconocemos que el estado, las empresas y las personas que tienen la mayor cantidad de privilegios en el mundo ahora se benefician al no implementar el CLPI, pero el planeta está cambiando, por lo que la nueva generación de pensadores debe cambia con eso.

Analizar el mundo que nos rodea a través de los ojos del CLPI puede ofrecer un cambio de paradigma que, a la larga, puede resultar revolucionario. Además del imperativo de hacer que los gobiernos rindan cuentas por sus propias acciones, un buen lugar para operar es observar cómo los diferentes mundos están conectados por las mismas líneas de producción y actúan en consecuencia.

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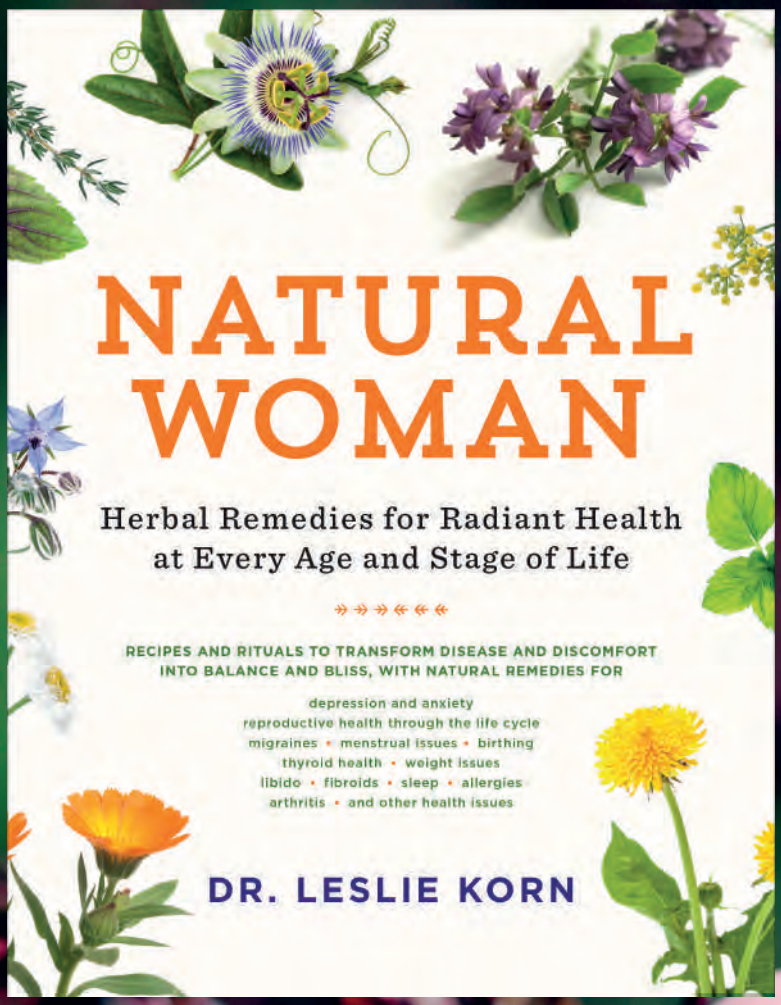
**Este artículo debe citarse como:**
Delfanti, I., (2023) Coca Cola y Hojas de Coca, un Caso de Estudio sobre el uso del Consentimiento Libre, Previo e Informado (CLPI). *Fourth World Journal*. Vol. 22, N2. pp. 56-71.

## SOBRE EL AUTOR

### Irene Delfanti

A Irene le fascinan las interacciones complejas y las formas de influir en ellas. Su trabajo se encuentra en la intersección entre el diseño y la investigación. Su trabajo se enfoca en el desarrollo y aplicación de metodologías de diseño que facilitan cambios sistemáticos empleando diagramas de pensamiento y razonamiento relacional. Es nativa de Spagnolo, Italia y estudió con distinción en el campo del “diseño para el cambio” en la Universidad de Edimburgo. Tiene experiencia práctica y académica en los temas de derechos de los pueblos indígenas, temas ambientales y educación en diseño.

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# Recognition of Indigenous Citizenship and Nationhood

## Challenges for Educators in Aotearoa

By Veronica Tawhai


## ABSTRACT

In Aotearoa (New Zealand), the nations that make up the Indigenous Māori population enjoy a limited form of recognition by the state, based on the Treaty of Waitangi signed between these nations and the British Crown in 1840. This recognition, however, falls far short of the relationship agreed to in Te Tiriti o Waitangi (the Indigenous language treaty texts), as well as other Indigenous rights instruments such as the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP) and rights to self-determination. The current controversy in New Zealand regarding proposals for co-governance on certain national matters has, again, highlighted anxieties amongst New Zealand's citizenry regarding Māori nationhood and citizenship and the need for education on these matters should we hope to continue to progress toward greater realization of Te Tiriti's provisions. This article shares the findings of doctoral research, supported by the Center for World Indigenous Studies (CWIS), on issues to be addressed by educators in our efforts to conscientize Aotearoa's citizenry on these matters.


**Keywords:** Māori, Treaty of Waitangi, Co-governance, UNDRIP, Aotearoa

The 1840 treaty signed between Māori nations[1] and the British Crown stipulates the terms upon which our relationship, formed around the mutual benefits of trade and exchanging of materials and knowledge, was to progress further. Māori-British engagements had progressed significantly throughout the early 1800s, with Māori dignitaries traveling abroad to develop relationships with the British governors in Sydney and, later, directly with the monarchs of England[2]. By the late 1830s, several issues causing tension in our relationship, including the unruly behavior of British subjects and their disciplining by Māori authorities according to Māori law, led to the more formal treaty agreement. The British Crown would exercise *kāwanatanga*, the enforcement of British law and order over British subjects residing in Aotearoa.

[1] WHapū, the political-economic unit of Māori society - what in contemporary times is referred to as sub-tribes.

[2] See: Healy, S., Huygens, I., & Murphy, T. (2012). *Ngāpuhi* speaks. Whangarei, New Zealand: Network Waitangi Whangarei, Te Kawariki.

At the same time Māori were guaranteed ongoing recognition of our *tino rangatiratanga*, ultimate authority, and independence over our lands and affairs. Māori were also offered ngā *tikanga katoa rite tahi*, all the rights and protections afforded British subjects, addressing concerns about the mistreatment by some Britons of Māori and other Indigenous peoples[3], and formalizing Māori access to British trading ports.[4] As per *tino rangatiratanga*, *ngā tikanga katoa rite tahi* did not make Māori British subjects, nor did British *kāwanatanga* extend over internal Māori matters. Instead, Te Tiriti o Waitangi (the Indigenous language treaty texts) set out the conditions by which Māori could confidently continue to pursue opportunities that progressed our aspirations for development, with Britain as a powerful ally in our endeavors.

More British migrants arrived in Aotearoa following the establishment of a formal British presence. However, they did not share the humanitarian views of those with whom we entered the treaty agreement. Following the election of the first Settler Parliament in 1853, by 1863, legislation such as the Native Lands Act[5], Suppression of Rebellion Act[6] and New Zealand Settlements Act[7] had set the foundations for settler colonialism: the removal of Māori by any means from our lands, and the transfer of those lands and base for livelihoods to the mass influx of settlers arriving from Europe. Through the state-run native school system, Māori children were to acquire the skills suited for roles as laborers and domestic servants of the newfound colony and be introduced to "European customs and ways of thinking, and so fitting them for becoming orderly and law-abiding citizens"[9]. Along with our language, laws, knowledge, values, and political systems, our political identities as citizens of our own independent nations with rights to self-determination were subsumed within the Colony and then the State.

## Challenges for Aotearoa's Educators

In Aotearoa, the goal of transforming our constitutional arrangements into one that again provides for the exercise of *tino rangatiratanga* by our people requires a return to Indigenous

[3] specifically, the treatment of First Nation Aboriginal peoples in Australia and the African peoples enslaved in England that Māori had observed during our travels abroad.

[4] For more on the provisions of Te Tiriti o Waitangi (the Indigenous language treaty texts) see: Waitangi Tribunal (2014). He Whakaputanga and Te Tiriti, The Declaration and the Treaty: The report on Stage 1 of the Te Paparahi o Te Raki Inquiry (Wai-1040). https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_85648980/Te%20RakiW_1.pdf; Waitangi Tribunal, (2022). Tino Rangatiratanga me Kawanatanga: The report on Stage 2 of the Te Paparahi o Te Raki Inquiry (Wai-1040). https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_192668456/Te%20Raki%20W.pdf

[5] See: http://www.nzlii.org/nz/legis/hist_act/nla186226v1862n42251/

[6] See: http://www.nzlii.org/nz/legis/hist_act/sora186327v1863n7403/

[7] See: http://www.nzlii.org/nz/legis/hist_act/nzsa186327v1863n8377/

[8] See: Simon, J. A., and Smith, L. T. (Eds.) (2001), A civilizing mission: Perceptions and representations of the Native Schools system, Auckland University Press; Walker, R. (2016), Reclaiming Māori education, in J. Hutchings, & J. Lee-Morgan, (eds.), Decolonisation in Aotearoa: Education, research and practice. Te Wāhanga, NZCER Press, pp. 19-38.

[9] J. H. Pope, Inspector of Native Schools - see Education: Native Schools, Appendix to the Journals of the House of Representatives, 1888, In continuation of E.-2, 1887, p. 9.

understandings of nationhood and citizenship. After 160 years, the task of conscientisation[10] to revive subjugated knowledge, reverse internalised colonialisms, and address inherent white supremacist views, amongst others, is fraught with many challenges. As highlighted by Dr. Moana Jackson from the Ngāti Kahungunu, Ngāti Porou, Rongomaiwahine nations:

> They [Settler society] never use terms like 'the government of an *iwi*'. They never use terms like 'the constitution of an *iwi*', 'citizens of an *iwi*', because they have depoliticised what those structures are and privileged those words, 'government', 'citizen' and so on, as only being reserved for *Pākehā* [Settler] power. When for example our *tipuna* (ancestors) adopted *Pākehā* into the *iwi*, there was always a ritual about that. They didn't just say "Jim Blogs, you can come and live with us and be a member of our *iwi*", there was actually a ritual, and the ritual to me was a citizenship ceremony. It was requiring that if you were going to be a citizen of this iwi polity, this *hapū* polity, then you accept these obligations. Whereas now, when we talk about a citizenship ceremony, its people holding the Bible and swearing loyalty to Queen Elizabeth.[11]

One subsequent effect of the oppression of Indigenous understandings of political belonging, rights, and responsibilities, raised by expert Indigenous educators in Aotearoa, was the poor conduct of our people according to *kawa* and *tikanga* (Māori law). As highlighted by Dr. Leonie Pihama from the Te Ātiawa, Ngāti Mahanga, and Ngā Mahanga a Tairi nations, acknowledgment of peoples, territories, and the responsibilities we might have on those territories as guests have been mainly subsumed by hegemonic economic individualism that now characterizes our wider society:

> Due to an economic context, our people do that too now, in terms of go and live uninvited on someone else's territory. We are in a context "to have a job you have to go somewhere else and live", so you go somewhere else and live, but we're not actually invited to that territory... In a day we could drive from the top of the Island to the bottom and we could cross all of these tribal boundaries, all of these *iwi* and *hapū* (nation) boundaries and never once have to say hello to the *hau kainga* (home people), that's what the context is that we're in now. I don't know that that would have happened in another time, where we would have felt an ability to go and live on someone else's land and act as though we have some fundamental right to that land.[12]

As highlighted by Emeritus Professor Sir Mason Durie of the Ngāti Kauwhata, Rangitane, and Ngāti Raukawa nations, reconciliation of this individualism with recognition of and provisions

[10] The fundamental teaching and learning approach emerging from Freire's work (1970) in which learners become actively engaged in identifying problems, questioning, analyzing and developing strategies for change. Teachers serve as facilitators and resources to support student inquiry. Learn more in: Transformative Learning.

[11] See: V. MH. Tawhai. (2020). A red-tipped dawn: Teaching and learning about Indigeneity and the implications for citizenship education [doctoral dissertation]. Massey University, New Zealand. p. 282.

[12] See Tawhai, (2020). p. 291.

for collectives in citizenship terms is one task for Aotearoa into the future. Provision for Indigenous collective rights, as Durie suggests, would better reflect Te Tiriti o Waitangi in Aotearoa but is also necessary for democracies worldwide. However, as Durie highlights, this will require reconceptualizing citizenship to overcome the dominant individual-state framing:

> Modern democracies need also to consider that within their society there are groups that have rights… to say that "there are groups that are part of our society and we've got to recognise them, and there are individuals, every individual has certain rights as well". So the notion of citizenship as linked only to individuals is not consistent with where modern democracies will be heading… We have an idea of individual citizenship rights but we also recognise through the Treaty that a group, *Māori* or *hapū* or *iwi*, have rights too as a group, not as individuals, but as a group, and that's a different connotation.... As long as you clarify that citizenship is more than individual rights, it's the way that people relate to each other and the rights that people have individually and collectively. Now the problem with that is that citizenship rights are so much linked to individuals, the rights of individuals, that you have difficulty incorporating the collective right into it and that's what modern democracies are facing.[13]

Being critically aware of the negative effects that an individualistic framing of citizenship has on Māori today, not just historically, was supported by Professor Graham Smith of the Ngāti Porou, Kai Tahu, and Ngāti Apa nations. As a part of overcoming state hegemony and the socio-political and economic dynamics that perpetuate colonialism in Māori lives, Smith urges the reimagining of citizenship that reflects Māori values and priorities in contemporary contexts. Smith refers to this as our 'cultural citizenship':

> There is a need to identify our 'cultural citizenship' and to struggle to develop that… What counts as a good Māori citizen today? What are the things that we need to survive as a Māori citizen? We need our reo (language), we need to resurrect some of our cultural nuances that are about sharing and protecting our cultural preferences… I don't want to be just captured by the government rhetoric of "We must produce people who will pick up good jobs", a very individualised meritocratic idea that you study to get good credentials to get a good job. It's a picture of individualised advancement, is built off the capitalist notion of the possessive individual, that people naturally want to accumulate property and to build, if you like, their individual freedom through individual freedoms, their wealth and so forth… I think that immediately that is a contestation with our cultural preference - in other words it is colonising… So that's part of our struggle

[13] See Tawhai, (2020). p. 297.

> here. All that stuff that I'm talking about to me is part of that cultural citizenship… creating people who have got good skills to go to work, but really people who can make an impact on the socio-economic condition of our communities.[14]

Jackson also emphasizes the need to reconceptualize our notions of citizenship in Aotearoa, specifically to return to Indigenous knowledges, systems, and values that embody Māori understandings of our world. This restoration of Indigenous citizenship knowledges in Aotearoa, argued Jackson, is essential to moving past a critique of the limits of colonial-state citizenship and the damage its imposition has inflicted upon our peoples and communities. Instead, as Jackson emphasized, there is immense value in reconnecting to notions of political belonging, rights, and responsibilities Indigenous to these lands that connect us not only to others in the present but those past and future, such as *whakapapa* (genealogy):

> What citizenship education in the twenty first century in Māori terms means for me is that you deconstruct what that term has come to mean in the Pākehā [Settler] nation-state, but it's never enough just to deconstruct. I think you have to sit alongside it, the reconstruction of what we are, what we were, so to no longer privilege the term. If we just critique Pākehā and don't posit something Māori in its place then even that critique is a privileging of them. I think deconstruct citizenship in Pākehā terms of what it's done to us, but reconstruct what our notion of citizenship is, and that's tied up with whakapapa (genealogy)… Haunani Kay Trask was the first I heard say something similar, when she said "I am not American, I am Kanaka Maoli". That's a very bold and definitive citizenship statement. So for me every time you talk whakapapa (genealogy) to the iwi (nation), we are talking about it in a different context, our citizenship in an iwi. Whakapapa has quite different connotations because it's more than just citizenship, but that's what citizenship is a part of.[15]

The importance of Māori knowledges to citizenship on these lands was also raised concerning the citizenship of non-Māori here in Aotearoa. Specifically, non-Māori should also be mindful of Māori knowledges as a requisite to a fuller sense of citizenship formed part of the analyses from expert Indigenous educators about citizenship in Aotearoa. As argued by Professor Margaret Mutu of Ngāti Kahu, Te Rarawa, and Ngāti Whatua nations:

> … when the State turned up here or the British Crown turned up here, they didn't come here to be citizens. They came here to take over this country and to turn it into an England in the South Pacific… Now when they did that they denied themselves a wealth of knowledge and a wealth of understanding… For me, most New Zealanders haven't got a clue about this country. What they know about is a layer

[14] See Tawhai, (2020). p. 298.

[15] See Tawhai, (2020). p. 272.

> that was brought in by the British and laid over the true country, and they put a layer that was about Pākehās being supreme, and under that they put that Māori are inferior. So all of our extensive knowledge got put under there, and they built up these myths, myth upon myth… It's a whole lot of rubbish. I look at them and I think "You poor people. You don't know what you're missing out on. You'd love it if you knew, but you haven't been allowed to know", and for me they can't be proper citizens, or even full citizens of this country because they don't know about this country.[16]

## Citizenship Discussions Into the Future

Reconfiguration of Aotearoa New Zealand's constitutional arrangements to better provide for the exercise of *tino rangatiratanga* by *hapū* as per Te Tiriti o Waitangi has been an ongoing struggle by Māori and our allies since the expansion of *kāwanatanga* over Māori lives. Analyses on Indigenous, non-state conceptualisations of citizenship based on different bodies of knowledge, laws, philosophies and values, however, is an emerging field. Māori have our own distinct knowledges concerning political belonging, rights, and responsibilities on these lands that, as expressed above, extend beyond ourselves to others that now call Aotearoa home. The thoughts shared by the expert Indigenous educators above subsequently provide an initial indication of the potential this line of inquiry has as one approach to strengthening New Zealanders' understanding of Indigenous nationhood in Aotearoa and progressing us towards the more just futures our Te Tiriti agreement envisaged.

[13] See Tawhai, (2020). p. 276, 295.

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**This Article may be cited as:**
Tawhai V., (2023) Recognition of Indigenous Citizenship and Nationhood: Challenges for Educators in Aotearoa. *Fourth World Journal*. Vol. 22, N2. pp. 73-79.

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# Five Horsemen of the Apocalypse in Indian Country

## Strategizing to strengthen Nations' Sovereignty

An open letter


## ABSTRACT

On August 8, 2022, in anticipation of an important meeting of the leadership of the National Congress of American Indians, the Chairman of the Center for World Indigenous Studies wrote a brief letter to the President of the National Congress of American Indians. The letter was a product of earlier discussions between the Chairman and the President of the two organizations. The central thesis of the letter is a discussion of the emergent political dangers to tribal sovereignty in the United States and elsewhere in the world. The letter discussed the "five horsemen of the Apocalypse. Over the six months since the letter was written, new information became available and is now included in the updated letter. We publish its content in the Fourth World Journal to encourage a broader understanding of the challenges faced by indigenous peoples in the United States and other countries.


This is an open letter originally sent from the Center for World Indigenous Studies to the President of the National Congress of American Indians, President Fawn Sharp, on August 5, 2022, with limited updates and supplemented by information that goes beyond threats to Indian nations inside the boundaries of the United States. Indian Country in the United States and Indigenous nations in Canada, Mexico, Ethiopia, Indonesia, Chad, Nicaragua, Burma, Ecuador, China, and inside numerous other states are in grave danger from organized forces seeking to dismember tribal communities, destroy their governments and dismember nations exercise of control over their reserved lands and ancestral territories. Indeed, one analysis suggests that within a few decades, nearly half of all indigenous peoples globally will have been destroyed "in whole or in part."

Three significant threats to the existence and survival of many nations include the existence and proliferation of authoritarian governments controlling states with significant indigenous nations, the growing presence of transnational extractive, agricultural, and pharmaceutical corporations exploiting resources in nations' ancestral territories, and the growing

powerful influence of well-funded extremist organizations lobbying states' governments to promote policies to undermine the political, economic and cultural existence of indigenous nations.

The deliberate breakdown of Indian Country inside the United States and other peoples outside of the United States has consequences for Indigenous peoples globally. Below you will see what we have called the Five Horsemen of the Apocalypse, which points to a global movement of different forces actively working (in some cases together) to break apart tribal coalitions and tribal communities while taking control over valuable natural resources. The "Five Horsemen" are actively moving to gain control over tribal lands and natural resources to enrich the already rich in the US (including the 1% of wealthiest families, major corporations, militias, and mercenary groups. While giving benefits to states' jurisdictions and protecting the states' governments as a protector of the "Horsemen."

This is more serious than the "termination period" between 1944 and 1963 when the US government formally adopted laws to "assimilate Indian people." The reason is that the enormous wealth in the lands and resource reserves in Indian Country is sought by corporations, states, and the federal government to support their profits and limit or eliminate tribal jurisdiction or capacity to defend the land and raw materials on which their survival depends.

## Here is a Brief Discussion of the "Five Horsemen"

Indigenous nations of the Northern Hemisphere and nations worldwide are facing the gravest challenges to their existence since the late 19th century. Inside countries like the United States, a political movement of lobbyists, lawyers, academics and foundations, transnational corporations, and even criminal gangs are actively working to undermine tribal use and control over ancestral lands and resources while actively seeking to "divide and conquer" tribal communities with marketing propaganda and deliberate promotion of division over the authority of nations to give or deny their consent. Meanwhile, a growing number of nations are divided over negotiating agreements with oil, gas, and mineral companies emphasizing the development of their resources to advance "green energy" with 50% to 80% of the advanced critical minerals, an estimated 44% of the solar sites developed by energy companies inside indigenous nations' ancestral territories. States such as Canada, the United States of America, the United Kingdom, and Switzerland, and corporations and the major oil, gas, and mineral companies headquartered in those states actively engage in efforts to "alter tribal convictions" about culture through financial enticements and propaganda. Contrary to indigenous nations' interests, the various states and corporations are trashing the environment and breaking down the balance between human needs and the earth's capacity to regenerate and restore after contamination. Russia and China have massive stakes in major

oil, gas, and mineral development corporations. Still, they suppress the indigenous nations by claiming they have no stakes in the activities though virtually all of the resources are being extracted from indigenous nation territories.

## The Threats to Indigenous Peoples Noted by the United Nations

As the United Nations Human Rights Deputy High Commissioner Flavia Pansieri noted in her remarks before the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the "right to self-determination in the political, social and economic spheres is being threatened by the current model for advancing with natural resource extraction."[1] The Deputy High Commissioner informed EMRIP about the report of James Anaya[2] that stated, "Natural resource extraction and other major development projects in or near indigenous territories are one of the most significant sources of abuse of the rights of indigenous peoples worldwide." Anaya's report was based on a survey of states' governments, indigenous peoples and organizations, business corporations, and other actors. The UN report pointed to adverse effects on the environment, social and cultural effects, the lack of consultation and participation of indigenous nations in decisions affecting their interests, the lack of clear regulatory frameworks to control exploitation in ancestral territories, and the lack of tangible benefits of exploitation in ancestral territories for indigenous peoples.

While resource exploitation augmented by the involvement of armed mercenaries (Wagner group inside African states and eastern Europe); and militias (i.e., Bana Mura and 69 other armed groups competing for control over wealth from mineral extraction) is one of the profoundly influential Five Horsemen of the Apocalypse that exploit of indigenous peoples' territories, resources and populations is only one Horse. The remaining four Horsemen include the systematic and deliberate abolishment of indigenous nations by states' governments (India, Russia, Burma, United States, China, Indonesia, Kenya, and more), the systematic dismemberment of indigenous nations by extremist organizations such as the Atlas Network that operates in the United States with global links. Their wealthy supporters including Koch Industries and British Petroleum, and the racially motivated "ethnic supremacist," criminal gangs, cartels and killers of indigenous women (more than 5,172 reports of American Indians and Alaska Native women and girls reported by the National Crime Information Center.[3]

To defeat the Five Horsemen of the Apocalypse requires a sophisticated, well-funded, and activist intertribal effort combining strong tribal leaders, talented and experienced experts, and a strong ground communications game aimed at tribal communities, urban natives, and potential partners on the broader population. There

[1] Pansier, F. (2011) "Extraction of natural resources a key cause of abuse of indigenous peoples' rights." UN Human Rights, Office of the High Commissioner Press Release. https://www.ohchr.org/en/press-releases/2011/09/extraction-natural-resources-key-cause-abuse-indigenous-peoples-rights-un

[2] http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-35_en.pdf

[3] According to Native Hope – Facts about Missing and Murdered Indigenous Women. https://www.nativehope.org/missing-and-murdered-indigenous-women-mmiw

must be an "in-country" and an international dimension to a strategy that must be launched in the next thirty days with a plan to sustain at least a ten-year effort.

What elements make up the movement organized in the United States, Canada, Mexico, Australia, New Zealand, Africa's Mali, the Democratic Republic of the Congo, Nigeria, Central Africa, and the Middle East? What drives the movement against indigenous peoples is mainly due to the effects of climate change and demands for "green energy" supporting resources for extractors and commercial and consumer uses.

## The Systematic Movement Since 1945

More than 160 indigenous nations have suffered alleged crimes of genocide, with more than 12 million murdered and 40 million displaced from their ancestral lands since 1945.

It is fair to say that since the United Nations began working on what became the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 1972 and the formal adoption of the UNDRIP in 2007, crimes against indigenous nations have increased in social, economic, and political virulence. The main perpetrators of this violence inside the United States, Mexico, Canada, Kenya, and other countries such as Burma, the Democratic Republic of Congo, China, and Indonesia are states' governments and the agencies created by the states, including institutions of law, business, academia, criminal syndicates, and religion. This violence aims to control and plunder nations' ancestral lands and resources.

While it is obvious that indigenous nations' "undeveloped territories" are now targeted for "development," Indigenous nations occupy and exercise inherent sovereignty over their ancestral lands and resources. The lands constitute 33% to 90% of the lands inside states' boundaries. In Bolivia, the 36 distinct original peoples, including the Aymara, Quechua, Guarani, and Moxeñ, with a collective population of 11.3 million on 28 million hectares (108,108 thousand square miles).

In the United States, indigenous peoples retain sovereignty over their ancestral lands and resources, representing nearly two-thirds of the country's land mass. States and the US government receive economic benefits from raw materials (petroleum, gas, timber, minerals) from ancestral lands. Indian Nations Raw materials taken from American Indian lands include significant proportions of all raw materials taken from the land inside the United States. Of the total non-renewable raw materials taken from Indian Country, an estimated 30% of coal, 50% of uranium reserves, 20% of known gas and oil reserves, and 17% of the timber of total US production comes from Indian lands. Indian Country west of the Mississippi is estimated to contain 15 million acres of potential energy and mineral resources, including 2.1 million acres already being tapped for its resource wealth.[4] Of the raw materials produced to the US economy.

[4] Robert W. Middleton. Hearing before the Committee on Indian Affairs, US Senate. Indian Energy Development: Statement of Dr. Robert W. Middleton, 110th Congress, Second Session, 1 May 2008, http://www.indian.senate.gov/public/_files/May12008.pdf, accessed April 26, 2011.

Now, what is causing all the alarm? What makes us think we are on the verge of a new "termination" era that is even worse than the last. Well, it is about the Five Horsemen!

## Horseman 1: U.S. Supreme Court Annulment of Sovereignty

### American States' Rights Groups Seek to Abolish Sovereign Nations

The U.S. Supreme Court, as constituted presently, is demonstrating its commitment to empowering state governments over tribal governments contrary to established tribal laws, agreements with the United States, previous U.S. Supreme Court Decisions, and the U.S. Constitution. A favorable decision in Castro-Huerta and prospectively in Brackeen will further grant powers to the states to refuse (nullify) to aid in the enforcement of federal laws within its claimed jurisdiction, especially on U.S. Constitutional Grounds.

2022-- *Oklahoma v. Castro-Huerta*, No. 21-429, 597 U.S.

In the 5-4 ruling on June 29, 2022, the Court ruled that both federal and the state held joint jurisdiction to prosecute non-Native Americans for crimes on native lands. The decision effectively undermines the lawful jurisdiction of American Indian governments and transfers that jurisdiction to states in the federal union.

2023-- Haaland v. Brackeen –
Petition in 21-380:

(1) Whether ICWA's placement preferences—which disfavor non-Indian adoptive families in child-placement proceedings involving an "Indian child" and thereby disadvantage those children—discriminate based on race in violation of the U.S. Constitution; and

(2) Whether ICWA's placement preferences exceed Congress's Article I authority by invading the arena of child placement—the "virtually exclusive province of the States," *Sosna v. Iowa*—and otherwise commandeering state courts and state agencies to carry out a federal child-placement program.

The decision, if agreed to by the U.S. Supreme Court, would reverse a U.S. Congressional law recognizing the first order of American Indian family rights and the fundamental human right in international law affirming the preservation of communities and families of indigenous peoples.

## Horseman 2: Corporate Extremist Land and Resource Grab and Business Success

Indian Country's ancestral lands are extraordinarily attractive for commercial development and raw materials extraction by transnational corporations, state governments, and right-wing billionaires. This movement is primarily driven due to increasing raw materials limitations on US foreign policy and domestic access to non-tribal lands. The elevation of indigenous peoples' rights in international law[5]

[5] Adoption of the International Labor Convent 107 (1952) subsequently updated in International Labor Convention 169 (1989), the International Covenant on the Rights of Indigenous Peoples (1994), and the UN Declaration on the Rights of Indigenous Peoples (2007) combined with references to Indigenous Peoples in other international instruments have had the effect of establishing the rights of Indigenous peoples as a subject of international concern. Indigenous nations have employed this elevated status to advance their powers and influence in domestic state environments as well as international relations.

has caused greater scrutiny of lands and resources inside Indian Country by the US government,[6] state governments, and transnational mining and development corporations for extraction and development. The international principle advancing the sovereignty and right of Indian governments to exercise their power of consent or declination of consent under the principle of free, prior, and informed consent (FPIC)[7] has increased corporate sponsorship of campaigns to lobby governments and promote propaganda in Indian Country to cast the right of consent as a "veto" that will destroy the economy and powers of federal and state government. The leading lobby network supported by these corporations is the Atlas Network made up of extremist, right-wing lobby, legal, educational organizations, and foundations.

The main difficulty American Indian governments have with businesses and corporations doing business on their reservations and certainly in their ancestral territory results from an inability of tribal governments to establish binding obligations for a fair return on investments and the power of lawful decisions by the governments. Such binding relations through agreement would assure investors that a state or federal court will enforce the tribal contracts. Tribal Courts are diminished from being able to enforce contracts with companies and investors.[8] Meanwhile, Transnational corporations engage in their business of extracting raw materials on and near Indian reservations, often under the protective umbrella of state and US federal laws and governance. The result is that Indian nations experience low or minimal returns on resource production from their lands (revenues are split with the state and federal government, where nations sometimes receive less than 20% of the revenues. Their consent is not sought in many instances due to private allotments and individual non-Indian land ownership inside tribal jurisdictions—complicating control over access and extraction of resources.

For Indigenous nations elsewhere in the world, similar problems exist, amplified by corporate involvement in illicit activities involving resource confiscation without indigenous nation consent. In addition, resource extraction or land confiscation by corporations permitted by states' governments often contributes to the creation of "company towns" that promote unregulated activities such as prostitution established by armed militias and gangs.

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[6] With greater attention being paid to the implications of Indigenous peoples' domestic and international standing by the United States government, indigenous nations globally have taken more vigorous actions politically and legally to stir concerns by other states.

[7] Established standard affirmed in Part 1, Para 9., Part 3, Para 11., Part 5., Para 18., Part 6., Para 25., Para 28., Part 9., Para 43., inter alia of the International Covenant on the Rights of Indigenous Nations (ICRIN); Article 27 of the International Covenant on Civil and Political Rights (ICCPR), Article 15 of the International Covenant on Economic, Social and Cultural Rights the International Labor Organization Convention 169, the UN Declaration on the Rights of Indigenous Peoples (Article 10, Article 11, 2. and Article 19 inter alia) asserting the requirement that no decisions by the parties concerning their mutual concerns shall be declared by their governmental, institutional organs without the full, free, prior and informed consent of the other party.

[8] Dao L. Bernardi-Boyle, State Corporations for Indian Reservations, 26 AM. INDIAN L. REV. 41 (2001), https://digitalcommons.law.ou.edu/ailr/vol26/iss1/2. Akee, R., Mykerezi, E., and Todd, RM., 2021 "Business Dynamics on American Indian Reservations: Evidence from Longitudinal Datasets.

Tribal taxation of non-Indian businesses operating inside their jurisdiction is often prevented by claims by states or other municipal authorities to exercise jurisdiction over non-Indian businesses. Extraction businesses avoid taxes altogether due to state and federal preemptions.

Inside the United States, mining on and near Indian Reservations is out of proportion to the total reserved land under tribal jurisdiction. Raw material reserves located explicitly on reservation lands (not including ancestral lands) have been estimated to include 4.2 billion barrels and 18.5 trillion cubic feet of natural gas (3% to 10% of the reserves in the United States) and 15% of the total deposits of coal in the United States (15% of the reserves of the US low-sulfur strippable coal), 15% to 40% of the available uranium in the United States and significant unexploited tungsten, zeolite, and bentonite deposits. Copper, vanadium and phosphate, tantalum, lithium, gold, and silver are also in significant quantities on and near Indian reservations.

Businesses on and near reservations include agriculture, mining, utilities, real estate, education, arts and entertainment, construction, healthcare, information finance, manufacturing, professional services, public administration, transportation, wholesale, lodging, industrial agriculture, and food are somewhat successful.[9] Education, arts, and entertainment, wholesale and retail, and public administration are particularly successful on and near reservations. The study by Akee and Jorgensen (2014) revealed that "tribes are able to innovate and devise solutions that allow for housing and business development to converge in value" compared to the less successful businesses off-reservation. All of this was demonstrated because of the 2007-2016 Great Recession.

## Horseman 3: Organized Extremist Organization: Oppose "Consent" as a "Veto" by Indigenous Nations

*Atlas Network is an organization of 500 organizations (161 in the US and 11 in Canada) dedicated to promoting "individualism, market economy and no government involvement in the economy. (Request more information, and it can be made available). Here is the Atlas policy framework):*

Corporate-funded libertarian and politically extreme right-wing "think tanks," including the United States-based Heritage Foundation, Federalist Society, Koch Foundation, and Canada-based MacDonald Laurier Institute[10] are part of the global Atlas Network actively working to undermine indigenous nations. The main focus of their efforts with indigenous communities is to promote propaganda and policies to increase the development of mining, extraction, and development of oil and gas, uranium, and other resources on and under indigenous nations' lands and ancestral territories.

[9] Akee, R., Mykerezi, E., and Todd, RM., 2021 "Business Dynamics on American Indian Reservations: Evidence from Longitudinal Datasets.

[10] he Ottawa-based Macdonald-Laurier Institute is an active participant in the Atlas Network https://en.wikipedia.org/wiki/Macdonald%E2%80%93Laurier_Institute The Institute supports Daniel Coates and former Assembly of First Nations Chief Ovide Mercredi to influence indigenous communities to transform their decision-making structures and support resource exploitation by corporations.

The Atlas Network is organized with over 500 independent, nonprofit organizations operating in nearly 100 countries. They lobby states' governments and corporations to prevent indigenous nations from implementing and maintaining control over their lands and resources. The Atlas Network makes hundreds of grant and training investments in organizations to promote, support, and strengthen nonprofit organizations to weaken, subvert, obstruct, and disrupt indigenous communities. Members of the Atlas Board of Directors are associated with the Aegis Financial corporation in McLean, Virginia; Wield & Company Banking & Financial Services; and one member of the Board is the former Director for International Affairs in the US Department of the Interior.[11] The major funders for the Atlas Network include British Petroleum, British American Tobacco, Koch Industries and the Koch Foundation, and Americans for Prosperity. The nonprofit institutes supported by these, and more transnational corporations directly insert their anti-tribal policies into indigenous communities by concealing their identities. They actively work to divide vulnerable indigenous communities to prevent them from actively controlling access to their ancestral lands and resources so that corporations can more easily use a small amount of money to buy off community leaders.

In countries such as Mexico, an Atlas Network affiliate, the *Instituto Mexicano para la Competividad* (IMCO) presents itself as working to reintroduce competition in the energy market while exploiting indigenous peoples' lands and resources. In Spain, the *Foro Regulación Inteligente* organization is active in Malaga, and the Free Russia Institute in Lithuania actively promotes less regulation of resource use and development.

While libertarian policies and goals are not inherently evil, extremist policies in sabotaging the authority of indigenous peoples to freely decide who has access to or use of their lands and resources is, however, a dangerous reality. Many indigenous communities are experiencing the breakdown of their social and cultural fabric as a direct result of sabotage of their decision-making abilities by the corporate/think tank network operated by organizations such as the Atlas Network.

### *Atlas Network Policy Framework*

The policies espoused by the Atlas Network, its members and corporate sponsors include the following as stated officially by the Atlas Network:

- Government was never and cannot be the solution to the problems facing Aboriginal groups.
- Prevent implementation of UNDRIP and especially the internationally established process of free, prior, and informed consent (FPIC) that requires states' governments, corporations, and other entities to obtain the consent of indigenous communities when actions are contemplated that may have an effect on the interests of the communities.

[11] The Board of Directors is chaired by Debbi Gibbs, formerly of Gibbs Technologies (with business mainly conducted in Sub-Saharan Africa https://gibbstech.co.za/about-us ) with a roster including thirteen other members: https://www.atlasnetwork.org/our-people

• Declare FPIC and granting of veto authority to indigenous peoples undermining economic development, individual rights, and sovereignty of the state government.

• Encourage policies that allow Indigenous populations to benefit from mining and energy development by promoting their usage and development of natural resources such as gas, potash, uranium, and oil located on their lands.

• Indigenous communities would enjoy greater autonomy from government intervention as well as increased business opportunities and partnerships with companies operating on their land.

***Atlas Network Strategy:***

• Recruit an individual who is knowledgeable about, and trusted by, indigenous people to lead the effort.

• Identify and empower an advisory team that is representative of the American Indians to champion the policy goals and recommendations of the Institute in their communities.

• Recognize when the Institute's voice isn't the most effective voice and be willing to give the spotlight to more representative voices who will champion our solutions such as Indians supporting the movement for free enterprise, individual rights, and anti-government involvement in the economy.

• Establish connections within the Aboriginal community to develop a 12-person Advisory Committee composed of reform-minded Aboriginal economists, business leaders, lawyers, public policy analysts, and scholars.

• Lend credibility to the efforts of the Institutes throughout the indigenous community using the Advisory Committee as a "shield against opponents."

• Remember efforts that seek to challenge the status quo require persistence and flexibility. Many small triumphs over an extended time often result in greater change than a single large victory.

## Horseman 4: Climate, Environmental & Biodiversity Collapse

An obvious challenge to tribes everywhere.

## Horseman 5: Criminal Gangs, Killing and Missing Indigenous Women and Girls, White Supremacists, and Drug Cartels

Armed Groups directly attack, threaten, and forcibly evict indigenous peoples in their ancestral homelands worldwide, notably in the United States, Mexico, Syria, Iraq, Ethiopia, Guatemala, Brazil, the Democratic Republic of Congo, Nigeria, South Sudan, and Botswana. The Bundy militias have been active in the Northern Paiute ancestral territories seeking to take land for "ranchers and miners" in the Malheur National Wildlife Refuge created by the United States and taken from the Paiute in 1868. Active armed groups such as the private military company Wagner Group founded by Dmitriy Valeryevich Utkin (a former lieutenant colonel and brigade commander of a special forces unit

owned by billionaire Russian oligarch Yevgeny Prigozhin actively target indigenous communities. The Wagner Group is reported to operate in Syria, Libya, Venezuela, Sudan, Ukraine, and the Central African Republic. The company is registered in Argentina and has offices in Saint Petersburg, Russia, and in China's Hong Kong.[12] Extremist Nazi groups sponsored independently include the Base and Feuerkrieg Division that operate near the Washington State located in Spokane near the Spokane Tribe and the Idaho-located Coeur de Lane tribe in the United States are violent private non-state groups.

Killing and Missing Indigenous Women: https://thecrimereport.org/2022/05/05/a-crisis-ignored-missing-and-murdered-indigenous-women/ An estimated 45,000 women and girls were killed by family members in 2021 worldwide; and in Asia17,800 with women and girls in Africa at greater risk of being killed by a family member with 2.5 per 100,000 of the female population in Africa compared with 1.4 per 100,000 of the female population in the Americas, 1.2 per 100,000 in Oceania, .8 per 100,000 in Asia and .6 per 100, in Europe.

Gangs and white supremacists led the Anti-Indian Movement of the 1970s through the 1990s and continue to be active on and near Indian reserves and reservations in the United States and Canada. They are now elected state, county, and federal officials. The Citizen's Equal Rights Alliance in Kalispell, Montana, is one of the most active anti-Indian groups in the United States seeking to terminate tribal governments, abrogate US/tribal treaties, and converting management of tribal resources to state governments.[13]

"Drug traffickers and irregular armed groups pose the greatest threat" to indigenous peoples, stated UN Special Rapporteur on the Rights of Indigenous Peoples James Anaya in a 2011 statement.[14] Drug cartels in Colombia and Mexico threaten and force the removal of tribal communities from their lands. Kichwa communities in Peru are struggling to control illicit coca growing on their lands in the district of Huibayoc and also unsanctioned logging of high-value timber from lupuna, misho, marir mari and caupuri trees.[15] Drug trafficking is prevalent on the Saint Regis Mohawk and Tohono O'odham territories cited mainly since they are located on borders between the United States, Canada, and Mexico. Drug rings have operated on the Red Lake and White Earth Indian reservations as well. Indian reservations and other indigenous territories provide drug rings with havens without the knowledge of tribal officials. The presence of

[12] Sof, Eric. (2022) Wagner Group: Notorious Private Military Company. Spec Ops Magazine.https://special-ops.org/wagner-group-notorious-private-military-company/

[13] The Center for World Indigenous Studies documented the Anti-Indian Movement in its 1992 publication "Anti-Indian Movement on the Tribal Frontier" (available free at https://cwis.org/wp-content/uploads/2018/01/Anti-Indian-Movement-on-the-Tribal-Frontier-1992.pdf). Chuck Tanner, the lead researcher at the Institute for Research and Education on Human Rights, issued a Special Report in 2015 with the Montana Human Rights Network and the Native Generational Change (https://www.irehr.org/2015/10/19/the-american-lands-council-and-the-anti-indian-movement/)

[14] Deálogo Américas https://dialogo-americas.com/articles/drug-cartels-armed-groups-pose-grave-threat-to-indigenous-rights/#.Y8gxuuLMJhE

[15] https://news.mongabay.com/2021/08/drug-trafficking-and-illegal-logging-threaten-indigenous-communities-in-peru/

drug rings, cartels, and enterprises have been identified and active on the Turtle Mountain, Spirit Lake, and Fort Berthold reservations as well, according to a report by Sara E. Teller of the Legal Reader.[16]

The indigenous women targeted for killing and the forced missing of indigenous women and girls as blatant acts of femicide is a chilling threat to indigenous families in Canada, the United States, Mexico, Guatemala, and other countries in the western hemisphere, but not isolated to the Americas only. The reality of femicide in indigenous communities is present on every continent, and the failure of official state police and investigative authorities to uncover perpetrators is common. The problem of drug gangs and cartels is no less a threat to indigenous communities. Armed groups such as the Bundy Militia, the Wagner Group, cartels, and criminal acts of femicide are separate but often increasingly common crimes against indigenous peoples.

The "Five Horsemen" challenge organizations dedicated to advancing the rights, and cultural survival of indigenous peoples. Organizations cannot ignore the presence of the appalling mass violence that the Horsemen produce. The reality is that the violence placed on indigenous peoples is asymmetrical, where the power, wealth, and capacity for violence exist and calls on organizations like the National Congress of American Indians and the Center for World Indigenous Studies to produce actions to build capacities in indigenous nations to defend themselves.

[16] https://www.legalreader.com/drug-traffickers-target-american-indian-reservations-across-the-u-s/

**This Article may be cited as:**
Five Horsemen of the Apocalypse in Indian Country, Strategizing to Strengthen Nations' Sovereignty. *Fourth World Journal*. Vol. 22, N2. pp. 81-91.

CWIS Documenting the Fourth World

# Cradling the Heart

## Community-Based Medical Massage for Diabetes Type 2

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# Fourth World Nations and the Process of Free, Prior and Informed Consent

The Center for World Indigenous Studies (CWIS) released an innovative and interactive website to assist indigenous nations in negotiating with countries and corporations about access to their ancestral territories. Global exploitation of "green economy" resources such as minerals, oil and gas, foods, and medicines focuses on undeveloped indigenous territories. The CWIS team of international researchers, information technology, and graphic designers developed and created an online application to aid indigenous leaders, government, and corporate leaders in understanding and implementing the internationally required process of free, prior, and informed consent, known as FPIC. The critical elements of the interactive online Free, Prior and Informed Consent application are accessible from the link opens a powerful and detailed opportunity to engage the process of FPIC—obtaining the consent of indigenous nations for access to their people and territories.

Implementing FPIC has enormous implications for peaceful relations between peoples and reversing the adverse effects of climate change, but only if countries, corporations, and indigenous nations cooperate. The Center's online tool offers user-specific directions and methods for promoting clean "green energy" through enforceable

negotiated compacts and other agreements between indigenous nations, states' governments, transnational businesses, and non-governmental organizations.

Inside the ancestral territories of indigenous peoples around the world, hundreds of extractive industries are without regulation seeking to exploit and profit from the extraction of oil, gas, precious metals, minerals, and even foods and medicines. In most cases, these industries and the countries benefiting from their activities have not formally obtained consent from indigenous peoples before exploiting resources. Exploiting ancestral territories and their peoples causes extensive environmental, social, political, and economic damage. Mass violence is often committed against indigenous peoples. These companies and often governments have not bothered to consider the myriad ways in which their operations can dramatically destabilize the native communities in operating areas.

Germany, the United States, Canada, Japan, the United Kingdom, Australia, and other countries are setting in place "green energy" policies to protect the environment, reversing climate change, and shifting from dependence on oil, coal, and gas as energy sources for their businesses and homes. While shifting to "green energy" has the potential to achieve new global and regional environmental and climate goals, the Center for World Indigenous Studies FPIC tool demonstrates that without obtaining the negotiated consent of indigenous peoples for access to their ancestral territories, the environmental and climate problems will only become worse.

We have designed the Fourth World and the Process of Free, Prior and Informed Consent digital platform to present graphics, diagrams, maps, and an interactive questionnaire for convenient access to information about FPIC and Fourth World Nations' uses of this important internationally recognized authority.

## About the People Behind the Fourth World and the FPIC Initiative

This presentation was produced by the Center for World Indigenous Studies (CWIS) thanks to the research of the Extractive Industries Panel, including Associate Scholars listed here. The aim is to explain problems created by the extraction of resources in ancestral indigenous lands of Fourth World Nations and what actions are needed to implement the internationally recognized process of Free, Prior, and Informed Consent (FPIC).

View and engage the online application to gain full access to information in these categories:

## What is the Process of Free, Prior, and Informed Consent (FPIC)?

Free, Prior, and Informed Consent (FPIC) is a legal principle in international law that recognizes the power of indigenous peoples to choose what to do with their land, people, and culture.

FPIC requires outsiders to obtain a nation's consent before doing any action on its territory.

FPIC is not about Fourth World Nations people being "consulted" alone. But the principle concerns Fourth World Nations choosing if we want to be part of a deal, a policy, or a negotiated agreement and on what terms.

## According to Legal Standards… We May Understand the FPIC Process as Follows:

**Free:** It must be uncorrupted from coercion or intimidation before, during, and after the consent negotiation process.

**Prior:** Provision of all relevant information on a proposed action must be made available to a nation and all other parties before any action or decision is taken that affects any of a nation's interests or the interests of other parties.

**Informed:** All information must be available to all parties in a manner that is accessible and understandable and includes any social, economic, cultural, and environmental benefits and risks resulting from proposed projects, actions, or policies. This information must be delivered in the language of the affected people in a manner understandable by all parties from which consent is sought.

**Consent:** The FPIC process requires that parties engage in shared dialogue as a first step, followed by a review of differences between the parties, potential points of agreement, and then organized negotiations of consent that both parties can accept.

Negotiating consent is about the authority of indigenous people engaging our negotiating partners and deciding if we want the particular activity on our ancestral lands or in our communities and on what terms.

A nation and its prospective partner may withdraw from negotiating consent at any stage of the process. No policy initiatives or actions originally contemplated may be taken unless and until a successful process of negotiated consent is resumed. All parties must understand the process before commencing the process.

FPIC first appeared in connection with Fourth World Nations in the International Labor Organization ILD Convention 169 of 1989, and since then, it has been part of international law. It also appears in the International Covenant on the Rights of Indigenous Nations (1994), the 2007 United Nations Declaration for the Rights of Indigenous Peoples, the Alta Outcome Statement (2013), and the UN World Conference on Indigenous Peoples Outcome Statement (2014).

## What is the Problem with this International Human Rights Law? It is Almost Never Enforced

So, it's a law that companies and states don't use; how is this possible? International treaties encourage states to implement their laws, but this never happens in most cases!

Nevertheless, it doesn't mean people haven't tried to use FPIC or make it work. For example, there is a long list of Fourth World Nations seeking to implement the protocols as shown on the European Network of Integrity Practitioners website: ENIP website.

Another example is the ALDMEM mechanism that CWIS, in cooperation with the president of the US-based National Congress of American Indians (NCAI) and Fourth World Nations in Africa, West Asia, Canada, and Melanesia, are now formulating. ALDMEM will be announced in the months ahead.

## Why is FPIC Relevant?

FPIC recognizes our communities' power to stop unwanted projects on our territories and harms to our communities and creates a space for negotiations to ensure any activity happens on mutually agreeable terms.

## Why is FPIC Important?

Mainly to deal with extractive industries and governments seeking access to indigenous nations' ancestral lands and resources and other interventions that affect the interests of nations.

On the online platform, we define extractive industries as a broad range of industries based on taking something from our lands, such as water, wood, minerals, oil, or labor. Our definition also includes industries that want to pass through our land for their benefit. Such projects include oil pipelines, conservation parks, and roads, to name a few.

It is essential to understand that FPIC also concerns development projects intended to increase the quality of life in our communities, such as schools, parks, and hospitals. Indigenous Nations have the right to negotiate the terms of these projects as well. As crucial as these assets may be for our communities, we must be aware of any potentially adverse environmental, economic, or social effects they could bring.

## How do Extractive Industries Approach Fourth World Nations?

Companies may give us money or valuable objects in exchange for the right to use our land. Such acts are bribery, and no community members should accept anything outside official negotiations.

Representatives of companies or states may try to pressure us with time constraints or ask to speak with people who are not legitimate decision-makers for our community. These attempts are illegal! They violate international human rights laws. FPIC allows us to make every step of the process at our own pace. See more guidelines on what you can do on the online page.

We have the right not to be pressured and to use our normal decision-making processes to assess all proposals.

## … and What do They Leave Behind?

At first, extractive industries bring in a lot of money. This period may be short-term or may last for years, but eventually, we will feel the backlashes to our community's ecosystems and social structure.

Even if an industry plans to provide jobs for years, the overall loss to the community compared to the money gained may be too high of a price to pay. For this reason, our communities must negotiate the terms and conditions by which others may use our land and monitor that those terms are respected.

Backlashes from extractive industries range from poverty to health issues, prostitution to child labor, and can create an unrepairable situation.

Considering how an extractive industry will impact our community's current social and economic structure during and after its presence on our land is imperative.

## Extraction Industry Backlash

Our environment, people, and the social structure of our communities are all at risk.

After the initial cash boom of the extractive industry, controversies will develop. Spills or other technical issues may poison the environment, and problems related to poor working conditions, drugs, and alcoholism may surge. In the case of state government policies that are unwanted or not agreed to by a community, their implementation without a Fourth World Nation's consent can produce cultural, economic, political, and social harm.

The development of human trafficking, especially of women, is a pervasive side effect of extractive industries: one that is very difficult to eradicate once installed.

Depending on the industry, there are many documented cases of child labor, but other issues for children include playing in contaminated areas.

The presence of organized crime often increases where an extractive industry operates. The reason for this is extractive industries tend to destabilize the communities in which they operate, often forcing people into criminal activity to survive and attracting other criminals seeking to take advantage of the situation.

## Who is in this Situation?

This situation is familiar to many people around the globe, as to how industries and their beneficiaries work follows similar patterns across the continents.

Listen to the stories on the platform such as--

## State Violence vs Nations Solidarity

Dr. Sabina Singh highlights the efforts of the Tiny House Warriors and cooperation between nations in Canada.

## Ring of Fire

Dr. Sabina Sing, PhD, talks about a new mining venture in the ring of fire and its consequences for the original nations there.

## *Jurado Indigena*

Dr. Hiroshi Fukurai explains how an indigenous jury in Argentina helped the Mapuche nation see their rights respected.

## FPIC in Perú

Dr. Rudolph Rÿser illustrates a case where FPIC was used successfully to win a case in a state court, but the decision of the court was not enforced.

## And Who Benefits from Extractive Industries?

Finding the exact names of the people who will benefit from an extractive industry on our lands is not simple.

In general, mining companies are intertwined in many geopolitical power games. We may be dealing with the state, a private company, or a private company financed by the state, banks, other companies, or even single (very rich) people.

TIPS

• Make sure official negotiations follow the community's traditional process, appeal to the right of free, prior, and informed consent, and think of ways of blocking access to your territory.

• Depending on the materials they are interested in, look up the major world companies that deal with those materials

and see if some of the shareholders match the company that approached you. If so, the money will go straight up to them.

• Connect with neighbors and see if they have also been contacted and on what terms.

### So How to Know with Whom You are Speaking?

A single person or a small team will usually contact us. These people may work for the actual company, or an interface company (front company) made specifically for the occasion.

Why does this happen? If there are problems, having an interface company in place acts as a buffer for the actual company and makes it harder for us to harm the company's reputation or hold it accountable.

### So, Where Does the Money Go?

No matter how much a company offers us, most of the profits will not stay in our community but will go into the company (and its board members!). Other beneficiaries may be investors, fellow companies, international institutions, and lobbyists.

It's important to note that the people who use the products produced from the extracted raw materials will pay money to use them, so neither are they the biggest beneficiaries of this production chain. Sometimes you may find consumers are allies. For example, the Right to Repair consumerist movement is currently fighting battles that could positively influence how industries consume natural resources.

### Sovereignty and Indigenous People

*Words that shape our narrative.*

The words we use shape the reality we see and to which we subject ourselves. Companies, states, and organizations often hide behind words, using terms that make it seem like what they do is different than what it is.

### What is Sovereignty?

Sovereignty is the absolute power an entity or a person has over a land and its people. Sovereignty is vital to understand because it is what states claim to justify their right to make decisions on their claimed territory. When a nation tries to stop something from happening on its territory, it challenges the state's sovereignty.

Most of our struggles are rooted in this fundamental contradiction.

### What is "Divide and Conquer"?

Divide and conquer is tactic colonizers use to take over indigenous lands. By creating conflicts within and between our communities, colonizers can more easily infiltrate our decision¬ making processes and get what they want. It is a common tactic that, if successful, prevents us from aligning with each other and pursuing the same goals.

### What is Vertical Integration?

Vertical integration is a business strategy through which one company expands into different sectors of the same production chain. For example, instead of a company only mining for lithium, they would also own a refinery and

a company to assemble a battery. An example of such a company is the government-controlled China Shenhua Energy (electricity and mining since 1995) company in Beijing, China. The company is so secret that the Chinese government has blocked internet access to the company (www.csec.com) for all countries except China's allies.

## What is the Difference Between a Nation and a State?

A nation is a group of people with common origins and culture who live on the same territory, whether on the sea or land and on waters aim to pass on their culture to future generations. A state is a legal construct that originated in 17th-century Europe. Unlike nations, states can be created and dismantled.

For a state to be considered a state, it has to have all these characteristics:

- It must claim central government within its borders.
- It needs to exercise universal law within its borders.
- It needs to claim power over a population.
- It needs to be recognized by other states.
- It claims a monopoly on the use of violence.

## What Do I Need to Know About UNDRIP?

Although the United Nations Declaration on the right of Indigenous Peoples (UNDRIP) is a milestone of Indigenous Peoples' rights, it has one big downside: States are not obliged to enforce it. When a State does not enforce international law, it means that although it may have signed the document at the United Nations, nobody will punish them if they don't respect what it says. Because of this, UNDRIP's efficiency has been continually compromised by the US, Canada, New Zealand, and Russia - the same states were also the most prominent opponents to the passage of UNDRIP by the United Nations.

## Sovereignty and Indigenous People, What are "Indigenous People" in State Law?

For nations, indigenous means that they are the original inhabitants of the land who are autonomous and distinct from the state.

However, the states' governments tend to view "indigenous" communities with little regard for their native origins within regions and distinct traditional social, cultural, and economic political structures. Instead, indigenous peoples are treated according to state law as a minority group subject to the state's control and authority.

## Inherited Rights vs. Legal Rights, What's There to Know?

Although all people have inherited rights, they need to be legislated into state law for them to be respected. For example, state-based laws do not automatically recognize a community's right over the land.

If the state needs access to a tribe's territory for "the greater good" of the state and its people, they have the right to remove people and carry on with its process.

## What is Development?

The meaning of development changes depending on the people who speak about it. Although things like schools and access to health care are what a community would want, often there is another face to development that companies enforce.

The jobs they promise will only be valuable if their operations last. For example, if a lot of cash and many supermarkets enter a community, the preexisting food chains may be compromised, and once the company leaves, so will the jobs they brought. The land and expertise previously used for such purposes will be destroyed.

## What is the Importance of Enforcement?

Enforcement is the key to understanding why so many promises about indigenous rights in international law are not respected--no legally respected institution is checking!

A law without enforcement is like a parent promising to punish a child without punishing them. It's an empty promise and a way for states to hide from their commitments.

## Is FPIC the Only Framework that Companies and States Do Not Respect?

As you probably can guess, FPIC is not a stand-alone case in international law subject to this dynamic. Generally, it's important to remember that the United Nations does not have enforcement powers for any of its work. When States agree to commitments through U.N. declarations, they take on themselves the responsibility of translating it into State law. Still, if they don't, the U.N. has no power to "punish them" effectively without the states themselves approving "punishment."

## What is ALDMEM? – an International Mechanism to Enforce Agreements with Indigenous Peoples

ALDMEM is the acronym for "ancestral lands decolonization, monitoring, and enforcement mechanism."

It is a work-in-progress mechanism to actualize the enforcement of free, prior, and informed consent.

It's a response to the enforcement problems addressed in this platform. It results from a joint effort between the Chairman of the Center for World Indigenous Studies (CWIS) and the President of the National Congress of American Indians (NCAI).

## Mission

To facilitate the negotiation of agreements between nations and parties seeking to establish policies, take actions affecting land and communities, and others who seek access to ancestral territories to use or extract resources for outside benefit.

## Goals

- Register nation, state, corporate, and purchaser parties seeking to socially, economically, environmentally, or culturally use or extract resources from ancestral territories.

• Monitor existing territorial occupations and respond to requests for mediation between indigenous nations and other parties.

• Facilitate Third Party Guarantor participation in negotiations as an active party with a mutually determined role as monitor and enforcer of the final agreements.

• Notify prospective parties of the mediation and negotiation framework for establishing amicable relations between parties and offer venues for engagement.

• Facilitate communications about the customary governance of nations' corporate, state, and purchaser systems structure.

• Facilitate communications, translation, and customary languages to maximize understanding of engagement between parties.

• Conduct Public Affairs communications in symposiums, public media releases, public conferences, and documentary releases.

## How it works

Nations, States, organizations, and corporations can independently join the mechanism.

By doing so, they will be subject to how the mechanism works and benefit from its advantages.

The mechanism has three primary duties:

1. To monitor states, corporations, and nations' work to evaluate potential conflicts of interest.

2. To Mediate between parties.

3. To function as a third-party guarantor in the negotiations of the agreements.

## Behind the Scenes

ALDMEM will be managed by a director and organized through different departments such as: monitoring, diplomatic, communication, mediation, and public affairs.

The mechanism will be independently funded through a cooperative agreement between indigenous nations, states, non-governmental organizations, and corporations.

You are welcome to visit and use the FPIC platform at the CWIS website – CLICK HERE. Click the introductory screen or scroll down to click on different icons for information that may interest you. Welcome to the Fourth World Nations and the Process of Free, Prior and Informed Consent.

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**This article may be cited as:**
Fourth World Nations and the process of Free, Prior and Informed Consent. *Fourth World Journal.* Vol. 22, N2. pp. 93-102.