



## 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 ILO 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 Rýser 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.

A special thanks to the people who gave us their time and interviewed with us:

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