

Nations' Land Rights vs. Corporate Exploitation

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

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

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

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

ABSTRACT

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

- (1) The effective deployment of civil lawsuits against extractive industries, their inner staff, and corporate personnel.
- (2) The human rights registration exposure of predatory extractive corporations to hold them accountable to internationally recognized human rights laws.
- (3) The public exposure and “shaming” of corporate, political, and investor leaders and financiers who reap profits and powers from extractive industries and financial accessories.
- (4) The engagement of effective vertical policy organizing, such as the strategic deployment of lobbying and political pressures against nations, states, regional inter-state organizations, and NGOs.
- (5) The facilitation of indigenous voices advancing demands, oppositions, and resistance to the actions taken by the extractive industrial complex to block access to nations’ territories and resources. Mediation establishing a balanced and mutually acceptable decision between concerned parties (transnational corporation, indigenous nations, and perhaps a state as well) employs concepts of accommodation and mutual benefit reducing or eliminating all violent effects of resource exploitation inside indigenous territories.

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

Colonizing Nations through Centuries and the Present

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

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

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

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

It is a familiar prophecy spoken by traditional healers and traditional spiritual leaders from indigenous nations throughout the world that “human wants must be balanced against the capacity of the earth to restore life support giving foods, medicines, air, and water.” Failure to adhere to this maxim results in the death of the people. A similar way of saying the same thing is offered by London-based business consultant Umar Haque¹ in a recent article appearing in DC Reports.² He points out that economic rebalancing the relationship between human consumption of earth's raw materials with transformational investment in the restoration of earth's life-supporting resources is essential to life. He argues that it is essential to alter the “economics of our civilization in a transformational way, at a global scale, on a level that never happened before. And we have to do

it fast.” Consumer wants must be balanced with investment in restoration. Promoting “balance” with the physical environment is necessary to avoid disruption and the resulting adverse effects of climate change.

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

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

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

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

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

States Formed on top of Nations

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

the Pacific and Atlantic regions is that a system of states was formed on top of the world's original nations. Traditional territories and peoples were occupied, and states and their businesses exploited communities and resources of the land for the economic and political benefit of the imposed states.

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

Of the 207 modern states, 181 were established on pre-existing indigenous nation territories. From 1810 through 1981, virtually all 35 western hemispheric states and 64 devolved states³ were established on top of indigenous nation territories. The UN's decolonization project beginning in 1945, created another 82 countries on top of indigenous territories.

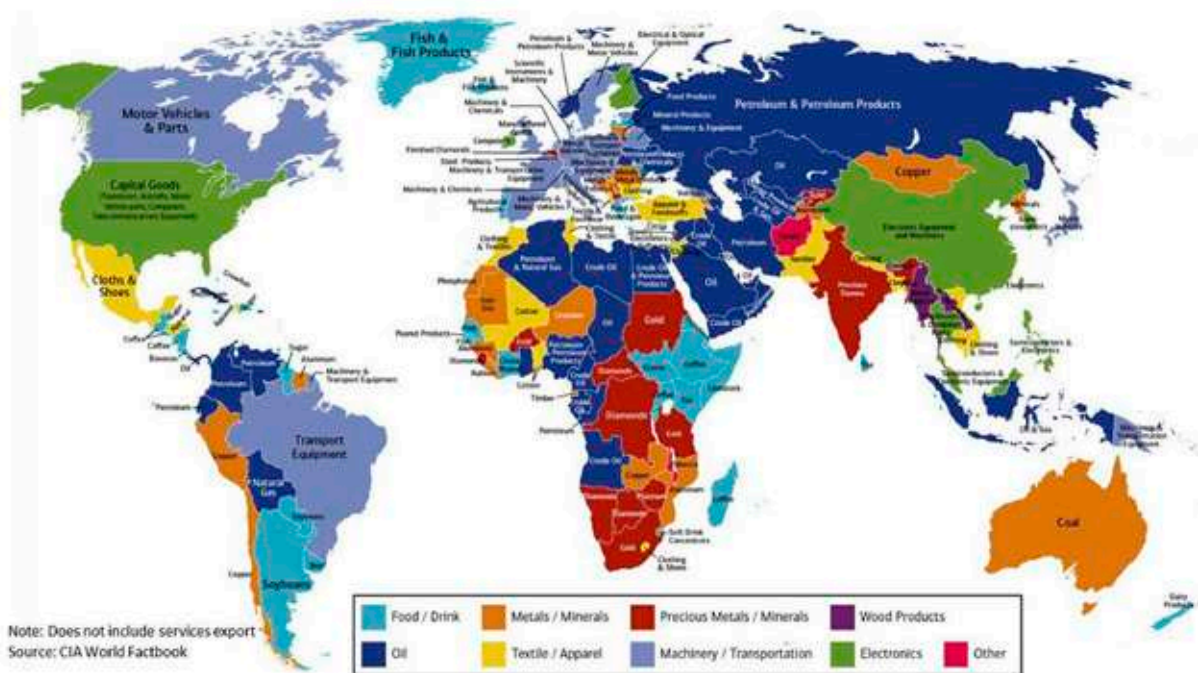
³ States such as Laos, Lebanon, Brunei, and Bangladesh. These states were devolved from colonial control or formed out of a larger geographic area.

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

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

Twenty-nine of the sixty-three states are considered “Resource-Rich Developing Countries.” These states, including Bolivia, Indonesia, Iraq, Timor-Leste, and the Democratic Republic of the Congo, were formed on top of mature nations and territories with resources

rich in precious metals, minerals, natural foods, petroleum, and forests. The nations suffer from poverty even as the state’s population benefits from the resources developed and exported from nations’ lands. The nations’ territories constitute 43% to 100% of the state’s claimed territory. The remaining developing countries on the IMF and World Bank list considered “developing” are not considered “resource-rich” but are nevertheless made up of mature nations on top of which a state is imposed. An example worth noting is Afghanistan, with fourteen nations, including the Pashto, covering more than 40% of the state. Vast minerals, foods, and metals are extracted from this traditional land of the Pashtuns. Exports of resources from nations’ territories constitute an estimated 20% of the revenues generated for the state’s economy.



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

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

Uncontrolled Development Destroys Peoples and Earth's Life Supports

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

The industrial revolution and its progeny, its most perverse and current form, neoliberalism, is perhaps wealth-generating, but it is also destroying the earth's fabric and its people. This approach has been mired in simple and vertical calculations, often economic or money-based,

that cannot account for either humanity or the earth. The neoliberal project, as George Monbiot so eloquently states, is one that puts us all in competition with one another. This "invisible system" has us competing, against humans and nature, instead of creating communities in which we can live in harmony with our abundant surroundings.⁷

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

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

⁶ IBID. <https://www.jstor.org/stable/24027184>

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

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

A compelling movement is going on; the World Economic Forum and the United Nations are working up a new governance system that directly includes corporations.⁹ The United Nations is a state-based organization that has never supported the millions of 'Indigenous' or Fourth World Nations throughout the world. States were formed on top of nations, and

to be legitimate, they have, for all purposes, ignored the weight of Fourth World people and tried to subsume them within their respective governments. Now, with this new global compact, governments of the United Nations are proposing a solid deal in the form of Multistakeholder Governance to allow corporations to take over key areas of interest in the world that governments (although without Indigenous nations) negotiated over decades. For Fourth World Nations, Indigenous people throughout the world, this is an added level of disenfranchisement and a new problem regarding government (military) and corporate control of resources.

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

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

⁹ Tedneke, A. (2019). World Economic Forum and UN Sign Strategic Partnership Framework. World Economic Forum. Geneva. Switzerland. <https://www.weforum.org/press/2019/06/world-economic-forum-and-un-sign-strategic-partnership-framework/>.

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

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

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

A Strategy for Restoring the Balance

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

(1) the establishment of the "civil jury" system as a strategic priority for the adjudication of civil lawsuits against extractive industries, thereby allowing

a panel of ordinary laypeople, including indigenous residents from the community targeted by extractive industries, to adjudicate civil disputes, as opposed to the bench trial adjudication led by the state-appointed professional judges; and

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

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

The establishment of Civil Jury Trials in Argentina and Japan

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

¹¹ IBID. (Gleckman 2018, p.4)

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

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

extractive firms in their homeland, the jury panel must also require an equal number of indigenous jurors in the adjudication process. This innovative jury model is called El Jurado Indígena (the Indigenous Jury). The law mandates explicitly that indigenous concerns and issues must be incorporated into the final judgment by ethnically- and culturally diverse jurors. In addition to the mandated requirement of indigenous inclusion in the jury trial, Argentina's jury system also required the equal participation of women in jury trials, i.e., six women and six men in the adjudication of criminal cases and civil disputes. The effect of the indigenous participation in resolving civil disputes has proven to be significant, and the indigenous jury panel has become emblematic of the expression of indigenous rights and sovereignty concerning corporate predation in their native lands. Before the adoption of the civil jury system in 2021, the Province of Neuquén in Argentina in 2011 had become the first jurisdiction to introduce the criminal component of the all-citizen jury trial, which Chaco, Buenos Aires soon followed, and other jurisdictions.¹⁴ The indigenous jury was first mobilized in Neuquén in 2015 when the leader of the Mapuche Nation, Relme Namku, was indicted for attempted homicide after a rock thrown by the Mapuche leader had allegedly endangered the lives of corporate representatives. Two other

indigenous land protectors were also indicted for severe damages to properties. The incident happened in December 2012 in the mining town of Zapala, Neuquén, when indigenous land protectors and their supporters who faced forceful removal from their ancestral homelands had participated in demonstrations against the extractive mining by multinational corporations. These powerful corporations included the Apache Corporation, the U.S. petroleum and natural gas exploration firm headquartered in Houston, Texas; Repsol S.A., Spain's energy company based in Madrid; and Argentina's state-run energy corporation YPF (Yacimientos Petrolíferos Fiscales). Before adopting criminal jury trials, more than 200 indigenous activists and land protectors had been charged and prosecuted for criminal offenses, and 50 of the indicted offenses were directly related to indigenous land resistance against extractive industries in their territories.¹⁵ Additionally, more than 300 Mapuche members have been prosecuted as illegal "usurpers" in the territories where they have lived for many generations.¹⁶

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

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

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

¹⁶ Amnistía Internacional (2015, Nov. 17), *Diario del Juicio a Relmu Namku*, <https://amnistia.org.ar/realmu/>.

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

It is also important to recognize that the introduction of all-citizen jury trials in Argentina's criminal justice system has been advanced and long supported by the two progressive civic organizations that were formed following Argentina's brutal military dictatorship from the 1970s to 1980s. Progressive scholars, legal practitioners, labor organizers, indigenous activists, and grassroots organizations created The Argentine Association of Trial by Jury

(*Asociacion Argentina de Juicio por Jurados, AAJJ*) and INECIP (*Instituto de Estudios Comparados en Ciencias Penales y Sociales*).¹⁸

These organizations argued that Argentina's introduction of the jury system was long overdue, given that the 1853 Constitution in Argentina had guaranteed the introduction of a jury trial. While Argentina amended the constitution on multiple occasions, the sections that guaranteed the jury trial remained intact in the most recently adopted 1991 Constitution. The INECIP and AAJJ, since their inception in 1989 and 2001 respectively, have been advocating for the introduction of the "constitutionally guaranteed" right to jury trial and the creation of adjudicative processes that are transparent and accessible to the public, including indigenous nations and peoples in Argentina. The Argentinian populace had experienced the so-called "Dirty War," Then-President Jorge Rafael Videla's military dictatorship in the 1970s and 1980s was responsible for secret interrogations, coerced confessions, and executions.

"Disappearances" were not uncommon among countless politicians, progressive lawyers, indigenous activists, student leaders, labor organizers, women activists, and many others.¹⁹ The public preferred the jury trial's open court process and judicially mandated transparency on evidence and testimony to the state-judge bench

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

¹⁸ Fukurai & Harfuch.

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

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

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

Japan’s Attempt to Introduce the Civil Jury System

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

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

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

²⁰ Meaghan Beatley (2017, Nov. 2) ‘Disappearing’ Indigenous Rights Protectors, TRT World.

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

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

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

negotiate the status of its operation schedules at the Air Force bases.

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

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

Nicaragua and its Socialist Agendas to Preserve Indigenous Sovereignty

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

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

The U.S.-supported Contras fought the Sandinistas and their supporters throughout the 1980s. The government led by U.S.-backed Violeta Chamorro finally replaced the Sandinistas in 1990. Following that, the constitutional protection of indigenous nations’ sovereignty was neglected and compromised. Neoliberal programs and privatization agendas led to the devastation of the rights of indigenous nations, the destruction of natural landscapes, deforestation,

environmental pollution, and the eradication of biodiversity and ecological health of the ancestral homelands.²³ In 2006, a democratically held election reinstated the Sandinistas government, which proposed social welfare programs, incorporated food sovereignty into law, and implemented socialist agendas that included free education, free healthcare, and housing subsidies for the poor. The socialist government also built twenty hospitals in indigenous communities and helped reduce maternal mortality, infant mortality, and malnutrition. The Sandinistas program also empowered peasant movements in indigenous and African-descendant communities. The indigenous community activists began to serve as the leaders of peasant struggles across the region and around the globe.²⁴ By offering the socialist-based legal compacts between the Nicaraguan government and indigenous people, the Sandinistas also promoted large-scale land reforms. They promoted the preservation of the communal property in indigenous ancestral homelands by extending the constitutional guarantee of the legal protection of sovereignty and independence to indigenous and Afro-descendant communities in the eastern Atlantic regions. From 2007 and 2019, for example, 140,000 land titles were issued to women (55%

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

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

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

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

Recent reports suggest that the government's socialist programs helped create the democratic space to reassure the sovereignty and independence of indigenous communities and peoples and their efforts in challenging and resisting the impacts of multinational extractive industries upon their ancestral lands and territories. The effects of Nicaragua's socialist agendas and closer compacts with its "political subjects" have been closely observed by international human rights organizations and indigenous alliance groups. The victory of the Sandinistas in the 2021 presidential election further solidified the continuation

of socialist agendas and programs while also triggering the imposition of new waves of U.S. economic sanctions against Nicaragua.²⁷ These new sanctions involved continuing the U.S. government's Nicaraguan Investment Conditionality Act (NICA) in 2017. The U.S. Act was designed to prevent foreign direct investment and further destabilize Nicaragua's economy and, thus, its political sovereignty.²⁸ Despite the U.S. economic and trade sanctions against the Sandinistas government, Nicaragua's socialist agendas have succeeded in improving the living standards of the general population, including indigenous and African-descendant peoples. As a result, Nicaragua remains the sole exception among the many Central American and Caribbean regions that are experiencing the phenomenon of the mass exodus of their peoples, fleeing their countries to seek refuge in the U.S. El Salvador, Guatemala, and Honduras in Central America, and Haiti in the Caribbean, have been victimized by both past, and present U.S. foreign policies that devastated their states through the U.S.-led neoliberal agendas and corporate predation, including mining industries of indigenous territories by the multinational corporations of the North Atlantic states such as the U.S. and Canada.²⁹

²⁵ Ibid.

²⁶ Ibid.

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

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

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

In Sum ...

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

This paper in part examined the adoption of the civil jury trial in Argentina and Japan, exploring how the direct participation of people, including indigenous community members, has advanced marginalized populations' interest in resolving civil conflicts and disputes. Their direct legal participation has instilled a strong sense of indigenous sovereignty and independence in their communities. Also explored was the impact of the socialist agendas and redistributive Nicaraguan government, including the implementation of land redistribution, food sovereignty, and social safety nets, which have helped empower

the indigenous and African-descendant communities and peoples. These socialist-oriented programs help restore the sense of indigenous peoples' authority by providing the collective ownership of ancestral territories in indigenous and African-descendant dominant regions in the eastern Caribbean coastal areas.

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

EPILOGUE

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

CWIS is reaching out to indigenous nations to determine the extent to which nations are willing, capable, or otherwise able to join in a "ground up" effort invoking nation-based domestic and

international laws. Several indigenous nations exercising their inherent sovereignty and nation-based law have demonstrated their willingness and ability to block extractive industries from entering their territories following the model of blocking entrance into indigenous territories due to the COVID-19 pandemic. They may invoke their laws to regulate corporate behavior inside their territories as the mediated best solution.

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

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

REFERENCES

- [1] Amnistía Internacional (2015, Nov. 17), *Diario del Juicio a Relmu Namku*, <https://amnistia.org.ar/reلمu/>.
- [2] Asociacion Argentina de Juicio por Jurados (2021) *The Civil Jury of Chaco (Argentina)*, Central Protagonist of the Presitious Annual Meeting of “Law and Society”, Cicago, 2021, <http://www.juicioporjurados.org/2021/01/the-civil-jury-of-chaco-argentina.html>.
- [3] Baracco, Luciano (2018) *Indigenous Struggles for Autonomy: The Caribbean Coast of Nicaragua* (Washington, DC: Lexington Books)
- [4] Censo Nacional de Poblacion, Hogares y Viviendas 2010:Pueblos Originarios” Region Noroeste Argentino: Serie D N 1, INDEC (last accessed on January 15, 2022), https://web.archive.org/web/20080611004448/http://www.indec.gov.ar/webcenso/ECPI/index_ecpi.asp.
- [5] Cheatham, Amelia (2021, Jul. 1) *Central America’s Turbulent Northern Triangle*, Council of Foreign Relations, <https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle>
- [6] Clark -Gollub, Rita Jill, Erika Takeo, & Avery Raimondo (2020, Feb. 2) *Feeding the People in Times of Pandemic: The Food Sovereignty Approach in Nicaragua*, Council of Hemispheric Affairs, <https://www.coha.org/feeding-the-people-in-times-of-pandemic-the-food-sovereignty-approach-in-nicaragua/>
- [7] Cregan, Fionuala (2015, Nov. 6) *Mapuche Leader Found ‘Not Guilty’ in Unprecedented Trial in Argentina*, *Intercontinental Cry*, <https://intercontinentalcry.org/mapuche-leader-found-not-guilty-in-unprecedented-trial-in-argentina/>.
- [8] Fukurai, Hiroshi & Richard Krooth (2010) *What Brings People to the Courtroom? Comparative Analysis of People’s Willingness to Serve as Jurors in Japan and the U.S.*, *International Journal of Law, Crime, and Justice*, 2011, 38:198-215.
- [9] Fukurai, Hiroshi & Andres Harfuch (2022) *The U.S. Supreme Court Decision in “Francis A. Keeble v. United States” and the Necessity for the Gender-Diverse and Nationally-Bifurcated Jury: Recuperatores in Rome, Jury de Medietate Linguae in England and the U.S., and El Jurado Indigena in Argentina*, (forthcoming in *El juicio por jurados en la jurisprudencia nacional e internacional*, edited by Andres Harfuch).
- [10] Kohut, David R. & Olga Vilella (2017), *Historical Dictionary of the Dirty War* (Plymouth, UK: Scarecrow Press).
- [11] Meaghan Beatley (2017, Nov. 2) *’Disappearing’ Indigenous Rights Protectors*, TRT World.
- [12] Palm Beach Post (2021, Aug. 18) *Reboot Foreign Policy to Address Crises in Haiti, Central America*, <https://www.palmbeachpost.com/story/opinion/2021/08/18/u-s-foreign-policy-must-change-help-haiti-and-central-america/8149987002/>.
- [13] Reding, Andrew (1987), *Nicaragua’s New Constitution: A Close Reading*, *World Policy Journal*, Vol.4, No.2: .257-294.
- [14] Robles, Frances (2018, Dec. 24) *In Nicaragua, Ortega Was on the Ropes: Now, He has Protesters on the Run*, *New York Times*, <https://www.nytimes.com/2018/12/24/world/americas/nicaragua-protests-daniel-ortega.html>.

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

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

This article may be cited as:

Al-Hashimi, M., Fukurai, H., Marchand, A., Singh, S., Rýser, R., Farley, M., Rogers, D., Delfanti, I., (2022) Nations’ Land Rights vs. Corporate Exploitation. *Fourth World Journal*. Vol. 21, N2. pp. 1-20.

ABOUT THE AUTHOR



Muhammad Al-Hashimi

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



Hiroshi Fukurai

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

ABOUT THE AUTHOR

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



Amelia Marchand

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



Sabina Singh

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

ABOUT THE AUTHOR



Rudolph Rýser, PhD

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



Melissa Farley

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



Irene Delfanti

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